

Bath & North East Somerset Council v A Mother & Ors [2008] EWHC B10 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

BRISTOL DISTRICT REGISTRY

IN THE MATTER OF CHILD, 1, CHILD 2 AND CHILD 3

AND IN THE MATTER OF THE CHILDREN ACT 1989

22nd December 2008

Before:

HIS HONOUR JUDGE BARCLAY

BATH & NORTH EAST SOMERSET COUNCIL

Applicant

- and -

MOTHER

1st Respondent

FATHER A

2nd Respondent

FATHER B

3rd Respondent

CHILD 1, CHILD 2 and CHILD 3

(by their Children's Guardian)

4th-6th Respondents

FATHER B'S MOTHER

7th Respondent

FATHER A's PARENTS

8th-9th Respondents

LYNDA BARNES

1st Intervener

SOCIAL WORKER C

2nd Intervener

Tape Transcription of Marten Walsh Cherer Ltd.,
6th Floor, 12-14 New Fetter Lane, London EC4A 1AG.
Telephone No: 020 7936 6000. Fax No: 020 7427 0093

MR. STEPHEN BELLAMY QC and MISS CLAIRE ROWSELL, Counsel appeared for the Applicant Local Authority

MR. JONATHAN BAKER QC and MISS LOUISE O'NEILL appeared for the 1st Respondent Mother

MISS JANE MILLER QC and Miss CAROLINE HARTLEY appeared for the 2nd Respondent Father A

MR. CHRISTOPHER SHARP QC and MR. KAMBIZ MORADIFAR appeared for the 3rd Respondent Father B

MR. MICHAEL KEEHAN QC and MR. STEPHEN ROBERTS appeared for the 4th to 6th Respondents by their Children's Guardian

MR. SIMON MILLER, Counsel appeared for the 7th Respondent Father B's mother

FATHER A'S PARENTS, the 8th and 9th Respondents, appeared in person

FATHER B'S SISTER, the 10th Respondent, appeared in person

MISS PENELOPE WOOD, Counsel appeared on behalf of the First Intervener Ms Lynda Barnes

MS FAITH RYAN, Solicitor appeared on behalf of the Second Intervener Social Worker C

HTML VERSION OF JUDGMENT

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See also: [2009] EWHC B11 (Fam)

Judge Barclay:

I want to begin this judgment by paying tribute to all those involved, not only to leading and junior counsel and the solicitor advocate acting on behalf of the represented parties, but also to the unrepresented parties. The advocates have been of enormous assistance in this difficult case, and I pay tribute to their skill and expertise on all sides. I also thank the unrepresented parties for their patience in seeing this litigation to its conclusion after what is, I believe, some thirty days of evidence. I recognise that for all parties, both represented and unrepresented, it has been an enormous burden to complete this unusual case and enable me to reach a final conclusion.

The case concerns three young children. There were originally eight parties, many with competing ambitions. The case has been made more complicated than necessary by revelations in the course of the lengthy hearing about the alleged conduct and background of Mrs. Lynda Barnes, the local authority Team Manager in charge of the care plans and progress of the litigation. I shall deal with that aspect in due course. It was necessary for the proper conduct of the litigation not only for Mrs. Barnes but also her junior, Social Worker C, to be made intervening parties in the case in order to resolve what has become known as "the discrete issue" between them. In passing, I make it clear that Mrs Lynda Barnes is not to be confused with another employee of the same local authority with a similar name – Linda Barnes – who has played no part in this case.

The fact that this issue arose between local authority witnesses has caused much delay and vast amounts of paper work being generated, as the local authority sought to lay forth all documents in its possession including ones normally covered by its own legal privilege. It has also led the local authority to make a series of admissions which include its failure ever to complete a core assessment of the children the subject of this litigation, despite its considerable length. That admission document in its amended form is at A177 of the papers. Further, it caused the local authority at a late stage in the proceedings during the course of the evidence formally to abandon "any reliance in any way on the evidence of Mrs. Lynda Barnes either as to her opinion, judgment, conclusions or the factual evidence given in statements or orally to the court by her".

The case essentially began on 31st July 2006. This final hearing began on 12th June 2008. There have clearly therefore been long delays before this judgment is able to be given. As long ago as 11th June 2007 the independent reviewing officer at K218, spoke of "an air of helplessness" so far as the case was concerned. That, of course, was some eighteen months or so ago.

The children are as follow: Child 1 is four years of age; his sister, Child 2, is three; and their half-sister, Child 3, is now two years old. She has spent her entire life in foster care.

The mother is mother of all three children. The Father A is father of the eldest two. The father of Child 3 is Father B. Mother and Father A had a relationship said to be characterised by drug and alcohol misuse and some alleged domestic violence. That latter aspect is denied by Father A, although reference can be seen to it, for example at Q144 of the papers, on 5th November 2005. The local authority for the family's area, the previous County Council, clearly had their concerns. Their transfer summary is seen at F405 and their papers are now before the court between Q1 to Q236.

It is common ground that Father A's parents played a large part in the care of the children, including having them to stay for periods of time with their mother's agreement. It is clear that Father A's mother contacted the local authority because of her concerns, as can be seen at Q143 and Q144, on 5th August 2005 and 5th November 2005. It is fair to say that the previous County Council were also critical of Father A's mother's attitude towards her daughter-in-law, Mother. At a very early stage, namely 5th August 2005, as can be seen at Q159, Father A's parents offered to have the children to stay with them if there were problems. Father A's mother says that she did her best to help Mother, the children's mother, but that was seen as interference by Mother. Father A's father accepted that at times Father A's mother may have undermined Mother but did not believe that was done deliberately. Father A's mother initially said that she did not feel that she was being controlling of Mother, but she now recognised that she had indeed been controlling of her.

Mother began a relationship with Father B in about November 2005 and in due course they married. The family lived with the children at the home of Father B's mother, between March and June 2006. This can be seen at C39(2) in the documents. The previous County Council's closing summary dated 27th July 2006 says as follows at Q18:

"Concerns were raised about mother's ability to care for the children independently. Father A's father and mother, the paternal grandparents, have been providing a significant amount of support and care to the children over the last two years and feel Mother does not have the knowledge and skills needed to parent her children independently. The relationship between Mother and the children's paternal grandparents (Father A's parents) has broken down, although contact is continuing. Mother and Father B are being offered support from his mother and Mother's parents. There are no concerns about Mother and Father B's ability to provide care for Child 1 and Child 2. The family have moved to ... and relinquished the flat in"

The fact that Mother had taken up with Father B caused a deepening family rift .It is clear to me that Mother's preference for Father B over Father A caused some difficulty and in particular between Father A's mother and Father B's mother. Father B's mother lived very close to her son Father B and Mother. Her other child, Father B's sister, lived not very far away and they both saw a lot of the children before the proceedings began. The rift in the family has been exacerbated at times by the progress of the litigation with each side of the family at times blaming the other for what they perceive as preferential treatment by the local authority who bring this application.

The local authority is Bath and North East Somerset Council. Their application for care orders for all three children is dated 5th December 2006. Their care plan was originally framed as follows:

1. For Child 1 and Child 2 (dated 21st May 2008, D36-51) for those children to live with Father A's parents under a special guardianship order. They would, it was proposed have contact with their mother limited to 3 to 4 times a year while they settled down. They would not see her husband Father B or Father B's mother at all, despite the care which each gave them in a way I shall set out in due course. That care plan has now been amended and indeed re-amended to provide for contact no more than six times a year for the children to Mother and Father B and his mother. It is dated 26th November 2008.

2. The care plan for Child 3 is and was for her to be placed for adoption outside the family (dated 21st May 2008 and now amended at 26 November 2008). The original begins at D52 and the latest is at D82(a). The plan is for Child 3 to have some limited face to face contact with Child 1 and Child 2, if possible, even though those children would on the local authority's proposal be living in the family and having some contact with their Mother and Father B and his mother. I should say that the Adoption Panel did not initially approve this plan but deferred a decision. It was on the very day that these proceedings began before me on 12th June 2008 that approval was formally given, and that approval has now been ratified by the local authority's decision making officer.

The claims of the other parties are as follows. The Mother, and her husband, Father B, father of Child 3, have throughout this case (until a very late stage so far as Father B is concerned) wished for all three children to be rehabilitated to their care as soon as possible. Mother in the course of her evidence made other alternative suggestions, namely that if she could not have all three children she would look after just Child 3. Her next preferred option for all three children would be with her mother-in-law, Father B's mother. It is only if that was not possible so far as Child 1 and Child 2 were concerned that Mother would support the children living with Father A's parents, their grandparents, and in those circumstances she would prefer a residence order rather than a special guardianship order. She also at a very late stage in the proceedings in the course of her evidence suggested that her own mother, or her father might be able to assist. At the very last stage of the proceedings, namely when his learned leading counsel was making submissions to me, Father B, Child 3's father, was able to instruct Mr. Sharp QC that he would not actively oppose an adoption order for Child 3 unless the court felt able to place her with his mother.

Father A's parents, were made parties to this case by order of 18th September 2007 and given leave to apply for residence of their grandchildren. They applied to the court at B61 on 24th October 2007 for Child 1 and Child 2 to live with them. Their son, the children's father, Father A, supports them in this application. They ask the court to make a special guardianship order.

Father B's mother, was made a party on 26th March 2007 and given leave to apply for a residence order in respect of all three children. She made clear at paragraph 18 of her latest statement dated 28th May 2008 if she cannot have all three children to live with her then she confined her application to Child 3 to live with her under a residence order. She confirmed in the course of her evidence that she now confined her application to Child 3 and accepted that if Child 1 and Child 2 could not live with their mother and stepfather they should indeed be placed with Father A's parents, their grandparents.

The other application was made by Father B's sister, who was made a party on 30th May 2008 at the pre-hearing review. She originally applied by her statement to have Child 3 to live with her and she was assessed by the local authority accordingly. But on 21st September 2008 she filed a document with the court withdrawing her application and I gave her leave so to withdraw. She supports her brother, Father B, and her sister-in-law, Mother, in their application for the children to live with them, and she also supports by way of alternative her mother, in her application. On the day allotted to Father B's sister to give evidence in this case, namely 8th December 2008, she provided a doctor's certificate that she was unfit to give evidence. She also provided a very poignant letter dated 4th December 2008 setting out the strain which these proceedings have brought upon her and why she felt unable to continue to seek to care for Child 3.

The children's guardian, who is very experienced, has supported the local authority throughout this case. She supports the amended care plan for Child 1 and Child 2 to live with Father A's parents and for Child 3 to be adopted.

There have been a number of reports commissioned in this case. The jointly instructed psychologist supports the local authority and the guardian. She has reported no fewer than ten times, but she is by no means the only expert. The jointly instructed viability expert has reported on the possibility of rehabilitation of the children to their mother and Father B. He was supportive in his first two reports but allied himself to the jointly instructed psychologist by the time of his last report. The Local authority instructed an independent social worker (ISW 1), who has reported in support of the application of Father A's parents. An independent social worker and guardian (ISW 2), has reported in support of Father B's mother in her application. Finally, a social worker, Social Worker F assessing Father B's sister, has reported supposedly independently of the local authority in respect of Father B's sister's application. She did not support that application. The guardian has produced two reports in this case and her final report of 4th June 2008 begins at E770 of the papers.

The difficulties which existed in this family during 2006 are made clear in the papers from the previous County Council. At Q127 on 7th February 2006 Father A's mother is recorded as saying that she is "devastated" that Father B is with Mother. She told us, as the document indeed records, that this was because she feared that her son Father A may give up his drugs rehabilitation course as a

reaction. Father A's mother is further recorded as saying that she is "disgusted" at their wedding, at Q25 [.....]

It is clear from those brief references to the history and from consideration of those documents that by the middle of 2006 these were unfortunately very fractured families. The jointly instructed psychologist was able to listen to the evidence of Father A's mother and Father B's mother and she told us that what emerged was "the extent of a deeply pathological relationship between the families".

This case eventually came to court as a result of the fact that on 31st July 2006 Child 2 was taken to hospital by her mother, Mother, and her stepfather, Father B, with a swollen right lower leg. This was at the insistence of Father B's mother. A fracture was in due course diagnosed and other fractures were later found on 4th August 2006. It was unknown at that time if the injuries were accidental or inflicted and if the latter who may have caused them. Much later in the chronology the court endorsed the agreed threshold dated 6th June 2007 as set out at A32 in the bundle. This document came into being during a fact finding exercise conducted largely by negotiation over three days and concluding on 22nd May 2007. It was drafted by mother's own junior counsel, Miss O'Neill. The document says this:

"The evidence discloses that:

(1) between 30th June and 31st July 2006 Child 2 suffered the following injuries.

(i) metaphyseal fracture of distal right tibia

(ii) spiral fracture of the right tibia

(iii) buckle fracture of the proximal right tibia

(iv) fracture of right radius

(2) (a) Fractures in (i), (ii) and (iv) are likely to have been caused non-accidentally in the sense of being caused by inappropriate handling of Child 2/ handling which fell short of reasonable care/lack of proper supervision and involved excessive force. There is no evidence that the injuries were inflicted deliberately but the person who caused the injuries would have known that the force used was excessive.

(b) The buckle fracture was caused on a separate and more recent occasion than the other injuries and the medical evidence was that it was possibly suspicious of non-accidental injury.

(3) All the injuries happened at a time when the child was in the care of Mother and Father B.

(4) There is no real possibility that any other person caused the injuries.

(5) Mother and Father B failed to protect Child 2 from being injured and failed to seek appropriate medical attention."

Much later in the proceedings the local authority sought to widen the facts which the court would be asked to find on the medical evidence as drafted by their then counsel, Mr. Kerry Barker. This is set out at pages A54-57 in the papers dated 30th May 2008 in time for the pre-hearing review as "medical findings sought". By their letter of 10th June 2008 to the court the local authority said as follows:

"The local authority has decided not to pursue the findings as set out by Mr. Barker on 30th May 2008 and seeks to rely on the admissions as set out on page A32 of the bundle."

It is in part the perceived reluctance of others such as Father B's mother and her daughter Father B's sister to accept that Child 2 was injured whilst in her parents' care that has caused the local authority, the guardian and the jointly instructed psychologist to doubt that either could safely care for Child 3. Neither Father B's mother nor Father B's sister noticed anything untoward in Child 2 until the day she was taken to hospital.

Essentially therefore the case began on 31st July 2006, some two and a half years ago. It is therefore incumbent upon me to set out a good deal of the history after that time in order to explain the ensuing delay. Quite independently of the proceedings I am concerned with, on 1st August 2006 at X County Court a court order for contact was made, as seen at J13-J14, by a District Judge on the application dated 30th May 2006 by Father A's parents. Neither Father A's parents nor the District Judge were told of the seriousness of Child 2's injuries. Father A's parents later applied (at J15) for a residence order in respect of their grandchildren on 21st November 2006. The local authority, Bath & North East Somerset, were informed of Child 2's injuries on 1st August 2006. They knew of the court hearing at X and decided not to notify the court of their involvement. This can be seen at K187-188 of the bundle. The local authority held a strategy meeting on 2nd August 2006 (E5-E8). The legal file reference for this meeting is also to be seen at K189. The decision was taken to discharge the children, Child 1 and Child 2, into the care of Father B's mother. She was, it will be remembered, the step-grandmother of those children.

The A side of the family were not informed even of Child 2's injuries. Father A, the children's father, was not informed despite not only being their father but having parental responsibility for them. The first time he became aware of Child 2's injuries was on 27th August 2006 when Father B's sister and his mother were visiting him in hospital following a stroke which he had suffered. He was at that stage continuing his drug rehabilitation programme.

Those omissions I regard as serious failings on the part of the local authority. The local authority were apparently prepared to accept Mother's word that informing Father A of the situation would

cause her trouble. The local authority case through Mrs. Barnes is that this was simply a private family arrangement between family members only and not a placement by the local authority for the children to reside with Father B's mother. The local authority case was at this stage being managed by the Referral and Assessment Team. I heard from Social Worker A who was in day to day charge of the case and the allocated social worker from 8th August to 9th September 2006. Her manager was Team Manager 1. Social Worker A wrote a social work report at F13 for an initial case conference which took place on 22nd August 2006. She told us she visited the home on two occasions, namely 8th August and 18th August 2006 for at least an hour on each occasion.

Following the children coming to live with Father B's mother the health visitor was assigned to the family from 3rd August 2006. She visited many times. She was immensely experienced. She attended a case conference on 22nd August and gave evidence before me. A child and family support worker with 40 years' experience ("CFSW") became responsible for this family from 27th September to 7th November 2006. She made 8 visits of one and a half hours duration plus further home visits on 7th December and 12th December 2006 (F132-F133). She wrote a parenting assessment dated 9th October 2006 which appears at C27-30 of the bundle.

The initial decision by the local authority as to where the children should reside seems to me to have been quite extraordinary, if only because at that stage there was still uncertainty about the origin and timing of Child 2's injuries. The Mother, her husband Father B and his mother were all in the "pool of possible perpetrators". Yet the local authority had placed the children in Father B's mother's care and permitted Mother and Father B to visit their children under her supervision for up to 12 hours each day. It must have been a very difficult task for her indeed. Yet all the reports of professionals that I have referred to speak very positively of her. For example, the minutes of the initial case conference held on 22nd August 2006 are at F1-F12. At F8 it is recorded:

"The plan that Father B's mother cares for the children has reduced the risk at that time."

At F11 of those minutes it can be seen that Social Worker B is to take over responsibility as case co-ordinator. So it can be seen that that was the view of Social Services at that stage.

Mrs. Lynda Barnes, who became the team manager for the case officially on 31st August 2006, attended that meeting. Thus it is little wonder that in the legal memorandum dated 10th January 2008 produced from the local authority's privileged file the senior legal adviser writes as follows at K80:

"As we know, we are in a difficult situation with Father B's mother as we did, as a local authority, see fit for the children to be placed with her for up to five months."

It is also in that memorandum that the legal adviser realised that when Father B's mother was caring for the children she had not been properly assessed as a foster carer and that in particular no core assessment was ever completed, and that, despite the express terms of the order of District Judge Daniel on 23rd June 2007 at B50. On 8th February 2008 at B87 Father B's mother's solicitor wrote complaining of a total absence of an assessment of their client. The absence of a completed assessment is contained as part of the local authority's admitted facts at paragraph 3 of A177.

Returning to the narrative, it will be remembered that at the stage of the initial case conference on 22nd August 2006 the A side of the family were still not aware of the situation that pertained for the two children. That is a further manifest failing on the part of the local authority, in my view. A core group meeting took place on 31st August 2006. As Social Worker B said in her statement at C764(7) and during the course of her evidence, she is not sure why she did not attend that meeting. She gave her apologies, as can be seen from the minutes at F29-30. A draft agreement for the children's care was drawn up on 31st August 2006 and can be seen at F293-294. It was on 7th September 2006 that Social Worker B told us she took over as the responsible social worker in the Children and Families Team, accepting this case from the Referral and Assessment Team. The transfer summary is dated 7th September 2006 at F72. On 27th September 2006, as F113 reveals, the CFSW, accompanied Social Worker B in visiting the family. It is recorded that:

"Both children looked well and both parents interacted with the children appropriately. Mother and Father B demonstrated emotional warmth to the children. The health visitor, was present and we exchanged phone numbers, details, etc. she reported that both children were performing well and Child 2's speech is very advanced."

Unfortunately, Social Worker B was off sick for a good deal of the time and therefore unable to make any full assessment for the full child protection conference which took place on 17th November 2006, the minutes of which begin at F31. Her line manager, Mrs. Barnes, can be seen apologising to the meeting for that at F34. Social Worker B visited the family on the further occasions that she sets out in her statement, namely on 6th October, 1st November and 2nd November 2006. She amplified in evidence some of the concerns she was feeling at that time as set out in her statement regarding the difficulty she believed Father B's mother was experiencing in looking after the children in that situation. We discovered during the course of this hearing that Social Worker B was a quite newly qualified social worker who later reported to her employer by way of complaint against the local authority that she had felt completely out of her depth. She alleged that she had been given far too much work to do and far too much responsibility for her experience. When she had left the employer, Bath & North East Somerset, on 3rd November 2006 she brought a claim against them for unfair dismissal, largely based on the way she had felt unsupported by the management and in particular by her line manager Mrs. Barnes. She settled her claim on the basis of a written reference being provided. At the beginning of the hearing before me attempts were made to locate Social Worker B and her address was eventually learnt from the Department of Work and Pensions in time for the resumed hearing on 10th September 2006. Social Worker B filed a statement in the proceedings which although undated begins at C761. It was clearly not possible or appropriate in any way to retry Social Worker B's claim for unfair dismissal, but in my judgment she gave valuable

evidence in this case. By that stage Mrs. Barnes had become an intervener and her counsel was able to cross-examine Social Worker B.

Social Worker B's statement, filed very late in the proceedings, was in response to a letter from the very experienced solicitor acting on behalf of the mother. A number of agreed questions were to be put to Social Worker B in order to assist her in the compilation of that statement. She told us she worked for the local authority from 8th February 2005 to 3rd November 2006 when she resigned. She said in her statement at C769(25):

"People are frightened of Lyn Barnes and they do not want to go against her. She is a force to be reckoned with."

Social Worker B maintained that position in her evidence. She told us that in Mrs. Barnes' eyes people were either good or bad. She told us that there was a feeling in the team that Mrs. Barnes had her favourites, the ones who agreed with her whole-heartedly. If they did not do so "life would be made very difficult". Social Worker B maintained that she found it very difficult to talk to Mrs. Barnes about her cases because she was very stretched. "I felt she made decisions without taking my input into account", she said. Social Worker B also gave in her statement a number of instances where she maintained that her team manager, Mrs. Barnes, had lied to others. They can be seen in that statement between paragraphs 24-27. Social Worker B told us that she was "happy to address this issue" but not because she was out to get revenge on Mrs. Barnes for, as she saw it, cutting short her social work career. She told us, "I'm a truthful and honest person. I would not lie to the court. I'm sitting here to tell the truth."

Mrs. Barnes totally refutes these allegations. I subsequently heard from her in evidence denying all these matters and her learned counsel, Miss Wood, has submitted a very detailed critique of Social Worker B, which I very much have in mind at this stage. But I am bound to say that my overall impression of Social Worker B was that I found her to be an entirely honest and sincere witness. She did not recognise a number of the complaints put to her as described by her successor as allocated social worker, Social Worker C, who made allegations against Mrs. Barnes on the discrete issue, and Social Worker B answered in a very measured way throughout. She even made excuses for Mrs. Barnes' attitude to her team based on Mrs. Barnes being either over-stretched or so busy in her work schedule. I have no doubt that she accurately described how life was in the Children and Families Team for such an inexperienced social worker as herself. I do not believe that any contact she had with anyone else in the Social Services Team just before she gave her statement or the way in which it was compiled by the mother's solicitor affected her account in the slightest degree.

These matters require mention because there is a very striking resonance with what the social worker who later found herself in charge of the case of the children I am concerned with, Social

Worker C, has told me in evidence of the way she was treated by the local authority and in particular by Mrs. Barnes.

Returning to the historical narrative, before the Child Protection Conference took place on 17th November 2006 the CFSW, presented her parenting assessment on 9th October 2006, which she told us she felt was part of a core assessment. The parenting assessment is to be seen at C27-C30. I have already said that no completed core assessment of the children ever took place and that the local authority admit this fundamental failing as part of their admissions. In closing it was described by the local authority's leading counsel as "inexcusable". That is really the only word for it. It is deliberately intended to be a vital document in care proceedings. Under the Framework for the Assessment of Children in Need and Their Families published by the Department of Health in 2000 it says this at paragraph 3.11:

"A core assessment is defined as an in depth assessment which addresses the central or most important aspects of the needs of a child and the capacity of his or her parents or care givers to respond appropriately to these needs within the wider family and community context."

Mrs. Barnes later chaired a strategy meeting on 20th October 2006, the minutes of which are at G11-G12.

Throughout this time it will be remembered that the children continued to live with Father B's mother and to see their mother and stepfather on a daily basis for up to 12 hours a day. Mrs. Barnes, who never visited the children, took the view in her evidence that Father B's mother was not really a primary carer of the children. Social Worker C who became involved from 9th November 2006, having made three visits, said she thought the parents did most of the caring. The jointly instructed viability expert, who wrote an assessment, has a record to the same effect at E157(32) and E162(47-50). He states in paragraph 48:

"Father B's mother should have been doing most of the caring of the children and not just supervising. Father B's mother told me that this was never made clear to her by the local authority."

The jointly instructed viability expert questioned what he calls the ambiguous nature of the written agreement between the parties in paragraph 49 and wonders why the issue was not raised with Father B's mother during the lengthy period that she was in charge of the children if the local authority believed she was not doing as they wished. Social Worker B told us that: "Father B and Mother did most of the caring for the children and Father B's mother was supervising them." Father B's mother accepted that analysis when she gave her evidence. I heard from the health visitor, and the CFSW, that from their many observations and with their enormous combined experience Father B's mother was assiduous in keeping to her remit of being in charge of the children.

Given the doubts I have been asked to have about the truthfulness and accuracy of Mrs. Barnes' evidence (for reasons which will become clear) and my doubts as to the experience and competence of Social Worker C, on her own admission, it seems to me quite simply my duty to accept the evidence of the health visitor and the CFSW, both called by the local authority. At the time of their combined observations it seems to me that I should accept that Father B's mother was indeed in overall charge of the children and supervising the parents. Her son, Father B, told us in evidence that his mother "did not have sole care of the children on a consistent basis", and that does not seem to me to be at odds with that finding.

For the avoidance of doubt I deal with the suggestion that Father B's mother was willing to permit her son Father B and his wife Mother unsupervised access to the children. This was one of the local authority's original complaints about Father B's mother, which was part of the jointly instructed psychologist's instruction. Mrs. Barnes indeed gave evidence to the Family Proceedings Court about it. It was formally abandoned in Social Worker C's statement of 20th May 2008 (C402, 6.2) at a very late stage in the proceedings, but it is still referred to by her regarding a letter of 9th May 2007 at C56 as having been "a concern". Mrs. Barnes even suggested in her evidence that there was no finding sought on the matter "so as not to cause unpleasantness" with Father B's mother. She said this:

"We do have concerns. We know of a breach of trust on at least one occasion. We do not ask for findings of fact so as to smooth the proceedings and to avoid unnecessary disagreements."

Having heard from the social worker A, the health visitor, and the CFSW, I have not the slightest doubt that Father B's mother fulfilled her remit as being in overall charge of the children and not permitting unsupervised contact between the children and their mother, and her husband, Father B. It was in my judgment disingenuous in the extreme for the local authority through Mrs. Barnes to seek to make an issue of the matter in evidence. It was at my direction that the local authority wrote to the jointly instructed psychologist the letter of 11th June 2008 that sought to draw attention to the new position reflected in Social Worker C's statement. But the jointly instructed psychologist was to tell us in the course of her evidence that it was partly those concerns by the local authority which she believed to subsist which at a meeting at the residential assessment centre on 19th December 2007 misled her as to the true facts and caused her to recommend that the children be returned to foster care at the conclusion of her residential assessment, thereby depriving Father B's mother of an opportunity of further caring for the children. Given what I have described as the extraordinary decision of the local authority to place the children with Father B's mother and to permit up to 12 hour daily contact to Mother and Father B following the final report of the health visitor dated 15th November 2006 at F48-51 and the CFSW, of 9th October 2006 at C27-30, it is not entirely surprising that even without any more formal assessment the case conference of the local authority on 17th November 2006 at F31 recommended that Child 1 and Child 2 should remain with Father B's mother and that the baby when born should also be placed with her. The legal meeting of 28th November 2006 at K194 made the same recommendation.

In her much later statement of 3rd October 2007 Mrs. Lynda Barnes at C178(3.4) did say this:

"During the time when the children were placed with Father B's mother there were times when she found it tiring and overwhelming and became distressed. This was at the time when Father B and the Mother were present."

She maintained this position in her evidence.

There was a resonance between that evidence and what Social Worker B, who filed her statement much later during the course of the proceedings, was to say at C764(9). She maintained in her oral evidence regarding that first meeting on 27th September 2006 that this was the first time that she had met the family and she did remember that what really stood out was "the fact that Father B's mother was struggling. She seemed quite short and sharp in her tone in the way she was interacting." Social Worker B maintained her opinion that she had concerns regarding Father B's mother's mental health and the fact that she was stressed. Social Worker B said that she had observed on her third visit on 1st November 2006 what she had written at C765(12), that she also noted "Father B's mother seemed to be struggling. Father B's mother said that she was very tired." Yet Social Worker B did agree with counsel for Father B's mother, Mr. Miller, that she was describing her being a tired granny, but the situation was within the realms of good enough parenting. "You would expect it", said Social Worker B. "She is placed with two small children in very difficult circumstances." She it was who said that Father B and Mother were doing the caring and Father B's mother was supervising them at that time. Father B's mother accepted when she gave evidence that at that time some days might have been better than others so far as she was concerned.

Mrs. Barnes was asked about the reference in her statement, C161(3.5), regarding an incident between Father A's father and Father B's mother when Father B's mother allegedly "broke down and told him of the pressure she feels under ... of the arguments going on between Father B and Mother". This is in relation to what she described as a situation "whilst the children were placed with Father B's mother there were tensions and disagreements over parenting styles. Due to the children's age they would have been at home when these tensions and arguments took place." Mrs. Barnes maintained that that was her understanding of the position and Father A's father much later in the evidence told us about an occasion which he described on 13th November 2006, which appears at F126. Father A's father said that Father B's mother was crying. He put his arms around her and she said she could not cope. She said that Father B was no longer her son because he was being manipulated by Mother and Mother had said she (Father B's mother) would not see her grandchild when the child was born. So, said Father A's father, "I say she was totally overwhelmed." Father A's father said that his response was to say: "Those two bastards have no right to treat you like that." Father B's mother disputes that she spoke in this way. I have no reason to disbelieve the evidence of Father A's father on this matter.

Returning to the narrative history of the case, on 9th November 2006 Social Worker C had her first involvement in this case. This was just three days after she had joined the local authority on what was intended to be a three month temporary contract following her 12 month degree course, which had included a 3 month placement with Bath & North East Somerset. Social Worker C told us she expected to do some assessments and to supervise some contact but nothing more. However, such was the level of staff shortage at the local authority, she told us, that she was asked to "baby sit" Social Worker B's cases including that of Child 1 and Child 2 and the soon to be born Child 3, and she visited on 9th November and 16th November and again on 12th December 2006 prior to proceedings being issued. Social Worker C was, on her own evidence, "completely out of her depth" and "did not really know what was going on". Mr. Bellamy QC on behalf of the local authority reminds me that inexperience is not necessarily incompetence, but in my judgment, having heard Social Worker C's own account of her abilities, I take the view she should never have been put in this vulnerable position. Her first absence with stress she thought was as early as May 2007. The records at A128 show that it was between 9th July and 6th August 2007. There have been other absences with stress, namely 17th September to 1st November 2007 and Social Worker C collapsed under cross-examination on the third day of her evidence when dealing with what she alleged to be the inept state of the local authority's approach to this case and Mrs. Barnes' alleged dishonesty. Social Worker C was signed off with "severe stress" and a medical report dated 16th September 2008 was filed on her behalf in answer to a witness summons when it was hoped to resume the case at the earliest possible opportunity.

It was Social Worker C's case that she became the allocated social worker by February 2007 when she was taken on full time by the local authority. But she says she does not understand how this allocation actually happened. At paragraph 10 of the local authority admission document they say that she was allocated to Child 1 and Child 2 on 7th November 2006 and to Child 3 on 14th December 2006, and that is how Mrs. Barnes contends the matter in her statement filed for the purposes of the discrete issue on 12th September 2008 at C707(42). There are further issues regarding Social Worker C's lack of supervision as contended by her. The records are at K251-262 and form part of the amended admissions at A177. It was Mrs. Barnes' evidence that Social Worker C was adequately supervised. It is not necessary to go into that matter for the purposes of this judgment.

In keeping with the view that the local authority had by that stage formed, a legal meeting took place on 28th November 2006 chaired by the local authority's service manager. It is referred to as F131. Present were Mrs. Barnes, the legal adviser, and the service manager. The decision was made at the meeting to apply to the court for interim care orders on the basis of the children all remaining with Father B's mother and being visited by Father Band Mother. In this way there was to be a "form of legal protection" according to the meeting. The service manager was required to file a statement very late in these proceedings and she gave evidence, saying that she and Mrs. Barnes did discuss the possibility of removing the children to a foster placement. Clearly by their decision at the meeting that suggestion was put to one side. The local authority began their care proceedings on 5th December 2006. The care plans following the legal meeting on the basis of retaining Child 1 and

Child 2 and Child 3 when born with Father B's mother purport to come from Social Worker C, but she told us she did not have a hand in their creation and they were the work of Mrs. Barnes. Mrs. Barnes denies this in her statement of 10th July 2008 at C764(11).

Social Worker C did accept in her evidence that Father A's parents are not included as "persons whose view should be considered", as required in the care plan at D4, despite their having a contact order, having applied for a residence order and having looked after the children historically for some time. There was simply no care plan at all presented to the court regarding Child 3 in respect of whom the FPC made an interim care order on 14th December 2006. In later care plans neither Father A's parents as grandparents of Child 1 and Child 2 nor Father B's mother as grandmother of Child 3 and who had cared for Child 1 and Child 2 since 31st July 2006 are referred to at D15. Social Worker C had no idea why this was the case.

The local authority first put their application before the FPC in Y on 13th December 2006 following Child 3's birth in the early hours of that day. The guardian was appointed on 7th December 2006 and she, being very experienced, expressed her astonishment at the local authority's decisions taken since July. She had visited Father B and mother's home on 12th December but says that she only conveyed her views to the local authority and those parties assembled at court on 13th December 2006. It is clear to me, as she indeed herself accepts, that the children's guardian played a significant role in causing the local authority to amend its existing two care plans and to seek immediate removal of all three children from any family members. The local authority's service manager, told us that she approved this course, having spoken to Mrs. Barnes. She relied on what she was told by Mrs. Barnes who also conveyed to her the views of the guardian, which the service manager understandably thought were important. There is a record of that meeting on 13th December 2006 at F134 but no minutes exist of the meeting. The service manager did not recall being informed about what fostering arrangements the local authority had available and relied on the fact that as she understood it the local authority had suitable arrangements in place.

The parties returned to court on 14th December 2006 and interim care orders were granted and the removal of the children sanctioned by the court. The facts and reasons of the FPC can be seen beginning at B31 of the bundle. The situation so far as the family is concerned is that first of all Mother was in hospital following the birth of Child 3. Father B, Child 3's father, was at court and he and the Mother, were at least represented by counsel. Father A, the father of Child 1 and Child 2, had written to the court through his solicitors on 13th December 2006 and that letter has now been recovered and placed in the bundle at F414. It can be seen that he did not oppose a care order, but that was based on what he understood the care plans to be, namely placing his children with Father B's mother. The social worker, Social Worker C, told us that she had not ever seen that letter before giving her evidence.

Father A's parents, had not been notified of the hearing at all and this despite the fact that on 31st August 2006 the local authority had received a letter from them (F70) asking to be considered as carers and also the fact that on 5th September 2006 Social Worker A told Father A's father that if the children's residence changed they would be considered as carers (F71). Father B's mother, who had been in charge of the children for nearly five months, had not been served with notice of the application, despite being named as a person to whom notice should be given at B2, and said that she was unaware of the hearing. She was caring for the two children at the time. Social Worker C had visited her on 12th December 2006 but given no hint of any change of care plan (which to be fair may not by then have come into being). The guardian had also visited Father B's mother on 12th December 2006, as I have said. The guardian told us that she believed Father B's mother would have been aware of the hearing, but she had not spoken to her directly about it. Despite clear evidence that Father B's mother incorrectly failed to recall a later visit from the guardian (E791(b)), I see no reason not to accept Father B's mother's recollection about such an important event as this initial court hearing. Mrs. Barnes told us that Father B's mother would have been made aware of the hearing but chose not to attend. Father B's mother says that the first she knew of the hearing was when Social Worker C telephoned on 14th December 2006 to say that the children would be removed but not that night. The local authority took the view that it was too late in the day and they had no placement available for the children.

Having heard Father B's mother and Mrs. Barnes on that point, I prefer the evidence of Father B's mother. Father B's mother makes the point that her care of the children cannot have been so deficient if the children were not instantly removed that night. It is clear that she was upset by the decision, but to her credit it was she who prepared the children for their removal to foster care the next day. Social Worker C said the local authority stand by their letter at F79, that Father B's mother was told that the removal of the children was not because of her care. The service manager told us that as she saw it Social Worker C was simply presenting the matter in as kind a fashion as possible to the family. I do not attach much weight to that observation having heard Social Worker C, whose evidence I accept.

For the sake of completeness I say that the jointly instructed viability expert, who was later jointly instructed to prepare an assessment, told us that he was not convinced that the removal of the children from Father B's mother's care was justified. He said that he assumed that there must have been a sufficient reason to warrant that removal but he could not find any evidence that Father B's mother was not able to care for the children. However, the plain fact is that the court sanctioned the removal on 14th December 2006 and this County Court became seised of the matter very soon afterwards and court orders were thereafter made and were not at any stage appealed. It is right also to record that the jointly instructed viability expert believed that the children's guardian was correct to say that the children should never have been placed with Father B's mother in the first place because of the uncertain origin of the injuries. But he added that given the fact that they had been there for five months he would not have acted so precipitately and he would have allowed time for a careful review of the situation. The jointly instructed viability expert also felt that every effort should have been made to keep the children together. For his part he did not see that their

need was so pressing as to merit placement in three separate foster placements. He also believed that the way in which the children had been removed and the eldest Child 1 and Child 2 separated from each other would have been "emotionally traumatic" and "devastating" because of the distinct lack of preparation. It was the jointly instructed viability expert's belief that the evidence of the health visitor, the CFSW, and Social Worker A appeared to have been "down played" at the FPC. It is fair to say that the parenting assessment of the CFSW and the work of the health visitor, were not put before the FPC at all. Those two witnesses also told us that they had never met the guardian throughout the long history of this case. The children's guardian accepted that but told us that she had acquainted herself with their written material subsequently. I accept that.

Thus the children on 15th December 2006 were removed from Father B's mother's care so far as Child 1 and Child 2 are concerned and from hospital as far as Child 3 was concerned and placed in three separate foster placements. The local authority made a decision in due course to allow that to continue, even though their case outline for the hearing on 18th January 2007 makes it clear that it was their intention to reunite the children if possible. The service manager, said that she was advised by her social work team that the removal to foster care "had gone reasonably well". The guardian told us in evidence that it soon became clear that the children, especially Child 1, had such needs that they could only be met by being placed individually. So she supported what had clearly been an emergency arrangement continuing, and she accepted that she had led on that decision.

Child 1's foster carer told us in evidence that she would have taken Child 2 also had she been asked. A statement was filed by a member of the Placement team at the Local Authority dated 27th June 2008 at C147 refuting that proposition. Whatever the reality of the situation, since 9th January 2008 Child 2 has in fact been living with Child 1 at Child 1's foster carer's home following the end of the jointly instructed psychologist's residential assessment. Child 3 has remained living separate from her half-siblings. Considerable emphasis is placed in this case in the expert evidence on the way in which the children presented when first in foster care. Of course due allowance must be given for the way in which they were removed from what was familiar to them and the way in which they were separated. Child 1's behaviour in the car on the way to foster care is recorded by Social Worker C at F78 on 15th December 2006, which she maintains is an accurate record. Her record of observed contact at F82 for 19th December 2006 and at F83 for 28th December 2006 and of her statutory visit at F85 on 10th January 2007 are, she maintains, correct. She said she relied upon what the foster carers told her rather than what they might have written in their foster care diary notes.

Social Worker C told us that the foster father of Child 1 was more forthright in his concerns about Child 1 than his wife who wrote the diary sheet, which she suggested "tended to be toned down". She also told us that the entry at C22(c) 3.1, namely "Child 1 scared of male carer", although the only evidence in the diary is on one occasion regarding a flannel on the child's head, was included because she was told by the foster father that this had gone on for some time. A further issue of Child 1 holding out his hand to be smacked was a major factor in this case and incidentally led to the alleged exposure of Mrs. Barnes' alleged dishonest practices when in the middle of her evidence it is

said that she contacted Social Worker C by telephone to ask her to check up on that behaviour. Mrs. Barnes' statement of 3rd October 2007 says at C156: "It is clearly documented that for some considerable time after being accommodated Child 1 put his hand out to be smacked." Mrs. Barnes had told us in evidence: "It still happens." She was challenged on that topic. The foster mother of Child 1 said in her statement of 17th June 2008 filed in direct response to that answer at C564 that the practice went on for 6 to 8 weeks. In her oral evidence she said it had gone on for 4 weeks, but when it came to looking at the diary sheet she accepted that it had lasted for no more than 2 weeks. Social Worker C accepted that Mrs. Barnes' statement gives a wrong and/or false impression and she explained that she had allowed this to be put in evidence because "we were under a lot of pressure in the office".

The jointly instructed psychologist gave evidence on this topic and said that she had realised that the practice had not gone on for very long. Thus she for her part was not distracted by the mistaken references. But the jointly instructed psychologist added this: "when I was informed about it (she thought by the children's guardian) I was concerned that it had happened even once." She had set out Child 1's behaviour in her report of 5th February 2008 at E506 8.3.3. On the topic of the children's behaviour in foster care Social Worker C was taken to her statement regarding contact visits which had gone on around the time they were taken into care. That statement had come to light very late in the day even though it is dated 17th January 2007. The statement begins at C22(a). Social Worker C's statement was compared with the records of contact that were disclosed in questions asked by Mr. Sharp on behalf of Father B. Social Worker C was asked as to where the positives shown in the diary entries were reflected in her statement. She accepted that they did not appear to be present and that her statement did not suggest contact was a positive experience. Her statement at C22(b) was compared with entries at M9, 3rd January 2007, M10, 1 January 2007, and M12, 8 January 2007. The same point was made on behalf of Father B's mother by Mr. Miller of counsel. It is clear that contact was stopped for his client after contact in February 2007 because, as Social Worker C had said at C72, "introduction of contact clearly had an unsettling effect on Child 1." Her entries at F243 and F244 and the foster care record at M30 and M31 suggested it was more of a positive experience. Social Worker C was unsure if she had relied upon comments of the foster carer for her description. It was suggested by the lay parties that Social Worker C had allowed herself to be drawn in by Mrs. Barnes to present a negative picture of the family. If she had done this I am perfectly satisfied, having heard Social Worker C for several days in the witness box, that there was no deliberate action on her part.

On the question of contact generally Mrs. Barnes told the FPC that she would "keep issues of contact under review" (see B31, Facts and Reasons). The children's guardian had said that she would make it her business to "sort out the complicated jigsaw of contact". There was clearly a large task to arrange contact between these three children and their families and it did not progress rapidly. I made an order on 21st December 2006 (B34-35). It is manifest that inaccurate information was provided to the court in the case log dated 20th December 2006 at A4 as to records of domestic acrimony between Father B and Mother together with possible drug and alcohol abuse by them. Experts who later reported fortunately were aware of this error. The jointly instructed viability

expert said at E159 "No such records exist." The jointly instructed psychologist confirmed at E302, "There was no evidence of domestic abuse within their relationship."

I also adjourned the matter to 17th January 2007 to deal with issues of contact, placement and time tabling. The fact finding on the question of the injuries was listed for four days on 22nd May 2007. On 17th January 2007 Her Honour Judge Darwall-Smith at paragraph 9 on B36-37 ordered contact to take place "in accordance with the attached schedule". By that stage therefore the issue of contact was clearly before the court. Orders were being made and they governed the situation. Those orders were not appealed by any party.

As required by law, Looked After Children (LAC) reviews were by that stage being held. The first one was 4th January 2007. The references are F164 for Child 3, F167 for Child 2 and F170 for Child 1. It is to my mind somewhat surprising that the children's guardian did not attend either that review or any subsequent review until the very last one, even though she was invited. She plainly felt able sufficiently to inform herself about the case in other detailed enquiries.

I deal with a specific complaint made on behalf of Father B's mother that although reference was made in the LAC reviews to "both sets of grandparents" and "contact with wider family members to be considered" it did not progress until Father B's mother saw the children for one hour on 23rd February 2007. Father A's parents saw the children for one hour on 27th February 2007. It is right to say that the independent reviewing officer agreed with Mr. Miller on behalf of Father B's mother that there should have been more contact with Father B's mother, but it is clear to me that there were a large number of other persons to be considered and the court was clearly overseeing the situation at that stage. It is also clear that Social Worker C said on 11th January 2007 (F87) to Father B and Mother that she was not proposing to allow contact to the grandparents for at least a month. It is right that on 27th January 2007 (F90) Father B's mother may have had to telephone Social Worker C to ask about contact, but the court order had plainly been made and had not been appealed or sought to be varied. The guardian has apologised to the court for not making sure that the local authority had informed Father B's mother about this matter even though, as she said, it was not her job to do so.

Father A, father of Child 1 and Child 2, first saw his children on 2nd February 2007, nearly two months after they had gone into care. They were "overjoyed" to see him. Thereafter even his proposed contact was to be every three weeks. At that stage Father B and Mother were seeing the children three times a week. So plainly the A side of the family were not then being preferred to the B side. Father A's parents next saw the children on 3rd May 2007.

I have already said that Social Worker C found herself in charge of this case, whatever the correct date, with virtually no experience, very little training and on her own account inadequate and often rushed supervision. She also had a number of personal problems associated with homelessness with her large family, sick leave and requests for counselling. Her service manager told us that she was aware of these factors. The Service manager accepted that there was "significantly less than the optimal service from the department for these families and their children".

Social Worker C, in the course of her evidence, made a large number of allegations of a very serious nature in respect of Mrs. Barnes' working practices and management style. She told us that Mrs. Barnes was controlling, although not bullying, of her. She said that Mrs. Barnes tended to take decisions without proper consultation or taking account of the views of others and she misrepresented facts or exaggerated isolated events into established patterns of behaviour. The most striking example of this last suggestion appeared to me to be at F41 when during a case conference Mrs. Barnes had notified the meeting that all the professionals had observed Child 1 being indiscriminate in going to strangers. That was behaviour that neither Social Worker A, the Health Visitor or CFSW had seen, as they told us in evidence. They confirm they had in fact seen the opposite in Child 1. There is a striking resonance to what Social Worker B told us, as already described. The children's guardian also told us at a rather late stage in the proceedings in a document at E1554 how she had experienced Mrs. Barnes' attitude to others. The service manager told us that she was never made aware of Social Worker C's concerns. She had only learned of Social Worker B' complaints following her resignation and she believed Social Worker B had simply not attended her supervision sessions with Mrs. Barnes. Social Worker B denied that this was the case, and I see no reason to disbelieve her as to that.

But the most remarkable development in this case, which tended at times inevitably to distract the court from the children to the adults involved, came from the information which Social Worker C was to give the solicitor and counsel for the local authority on the morning of the third day of this case. Social Worker C alleged:

(1) that Mrs. Barnes, being part-heard in her evidence and in direct contravention of my instructions at the end of the first day of her evidence not to talk to anybody, had that evening (Thursday, 12th June 2008) telephoned Social Worker C to inform her of the questions that she was being asked and to ask her to check up with Child 1's foster mother, on the extent of the child's hand smacking behaviour. At the very least, if true, that would have amounted to contempt of court. Social Worker C said she had complied with that request.

(2) Social Worker C said that she had become concerned when the next day Mrs. Barnes had instructed her to deny, if asked, that the conversation between them had ever taken place, and made it clear that for her, Mrs. Barnes, lying in evidence if necessary was permissible. Mrs. Barnes completed her evidence that day (Friday, 13th June 2008) and went to Jamaica the following day on

professional duties. It was this matter which caused Social Worker C, she said, to contact a confidante in the local authority, namely Social Worker D, who contacted the senior legal adviser over the course of the weekend. On Monday, 16th June 2008 Miss Rowsell, junior counsel for the local authority, informed the court of the matter and a statement was taken from Social Worker C (C561). Social Worker C made a second statement dated 19th June 2008 setting out instances where in this case and in other cases she believed Mrs. Barnes' conduct had been less than appropriate (C567).

(3) Later in her evidence Social Worker C also told us on oath that Mrs. Barnes had suggested that she should lie if necessary on the way to court for the pre-hearing review. She qualified that later by saying that it may have been on the way to a directions hearing on what she thought was Wednesday, 15th June 2008.

(4) Social Worker C also later said, in answer to a question as to whether she ever had reason to doubt Mrs. Barnes' honesty, that Mrs. Barnes had suggested that they both defraud the local authority for Social Worker C's benefit by creating a false travel claim invoice.

It was in those unusual circumstances at a later stage during Social Worker C's evidence I acceded to a request by Father B's counsel for the local authority to produce to the court Mrs. Barnes' CRB Certificate. The local authority had objected to such a course in their position statement dated 19th June 2008. When available it revealed that Mrs. Barnes had a conviction for conspiracy to murder her husband and had been sentenced to two years' imprisonment, suspended for two years on 24th March 1995 at Bristol Crown Court. She had pleaded guilty on the second day of a trial. Her co-conspirator received thirty eight months' imprisonment. Mrs. Barnes was at that stage working as a social worker with Avon Social Services in their Child Care Department. Mrs. Barnes had joined Bath & North East Somerset on 30th September 2005 as an assistant team manager and she became a team manager on 2nd November 2006. She had disclosed the matter of her conviction, as set out at F535. She had also in the usual way been required to apply for registration with the General Social Care Council (GSCC) on 4th May 2005 (F498) which she achieved in January 2006. It is fair to say that she gave authority for the criminal file to be seen in each case. It is clear that her local authority employer did not achieve that, and on the evidence I have received it is unclear but probably unlikely that the GSCC achieved it. The service manager on behalf of the local authority told us that she would have preferred to have corroboration of Mrs. Barnes' account of the facts leading to conviction, but was unable to access the file. Hence her employer and, so far as can be discerned, the GSCC simply relied on Mrs. Barnes' own account of her conviction, as well of course as her excellent references. The service manager for her part was quite unaware that psychological and psychiatric reports were commissioned before Mrs. Barnes was sentenced in the criminal trial, and she told us she would have wanted to see them if she had been so aware.

Having set out Mrs. Barnes' account of the offence, the author of the pre-sentence report says this at Z465:

"It is a matter of some concern that Mrs. Barnes' sense of reality is blurred with her fantasies. Even after twenty months on remand she still does not accept that her actions were in any way 'real'. If it is to be believed, then I would suggest Mrs. Barnes needs assistance in enabling her to separate reality from fantasy."

Mrs. Barnes when asked regarding the matter of her conviction in evidence said that she had believed the account she had given to her prospective employer and to the GSCC had been entirely accurate and truthful. When the CRB Certificate was presented to the court on the afternoon of 20th June 2008 Social Worker C became very distressed and indeed later, having been removed, could be heard sobbing outside court. She was quite unable to complete her evidence. She later told us that she had known about the criminal conviction of Mrs. Barnes and was concerned for her personal safety.

These extraordinary and very late revelations had a most unfortunate and destabilising effect on the court process. Days fixed for the hearing were lost because Social Worker C was off sick with severe anxiety. Statements had to be obtained from Mrs. Barnes dated 10th July 2008 and 12th September 2008 and on application she was given the status of intervener on 18th July 2008. The local authority paid for her legal representation. Social Worker C also successfully applied to be an intervener on 10th September 2008 and the local authority also paid for her legal representation in order to be even-handed. It also meant that a vast number of extra documents were required including transcripts of the first seven days of evidence, all records of any correspondence between Mrs. Barnes and the local authority legal team with privilege being waived, all records of any contact between Mrs. Barnes and all other professionals in the case were bespoken in order to see how far any allegedly malign influence of Mrs. Barnes might have pervaded.

The local authority made its position clear on 19th June 2008 when in a document offered to the court as to its current position it said as follows:

1. The local authority's care plans for the children are based on:
 - (a) the threshold as set out in page A32 of the bundle;
 - (b) psychological assessments undertaken by the jointly instructed psychologist;
 - (c) the residential assessment undertaken.
2. The local authority acknowledges that its evidence is likely to have been compromised as a result of allegations made in respect of Mrs. Barnes' conduct. It also acknowledges that errors have

occurred in respect of the early conduct of this case and that proper procedures have not been adhered to in that the core assessments in respect of the children and the assessments of Father B's mother were not undertaken.

3. However, at this stage the local authority does not believe that as a result of these omissions or current allegations in respect of Mrs. Barnes its care plans are flawed, as they are based on the admissions and expert evidence as outlined in paragraph 1 above. It will wish to reserve its right to consider its care plans after hearing the evidence of the jointly instructed psychologist."

It was in these unusual circumstances that leading counsel were then commissioned by all but one of the parties. They were led first in time by Mr. Bellamy QC for the local authority. He saw his remit as providing the court and all the parties with as much information as they required. He proposed to "shake the tree and see what good fruit remained". He attempted to compile a list of admissions from the local authority so that the other parties should better see what case they now had to meet. Before the issue between Social Worker C and Mrs. Barnes could be resolved it was of necessity a somewhat thin document. It was later amended, principally to show that no core assessments had ever been completed for any of these children by the local authority.

Before moving on to consider the issues between Social Worker C and Mrs. Barnes, for the avoidance of doubt I place on record that I do not find the local authority acted improperly in the service manager travelling to Jamaica to inform Mrs. Barnes of the developments in court. It is fair to say that the legal adviser, told the court at P432: "Everyone has been instructed not to talk to her (Mrs. Barnes) until she returns to this country." I had in fact made no specific direction on the topic but accepted what the legal adviser said. The service manager in her statement filed on 8th July 2008 spoke of not knowing about this concession (C661(17)). Yet at one point in her evidence the service manager said that the first time she was aware that this had been said in court was when she, the service manager, was being cross-examined. There is an obvious inconsistency but nothing turns on this in my view. I do not find any bad faith in the local authority in the service manager alerting Mrs. Barnes to developments. She might have been better to have referred the matter to the court, but the local authority, as I find, acted in good faith. Mrs. Barnes received legal advice and representation before she resumed her evidence in any event.

Attempts were made to litigate the "discrete issue" between Social Worker C and Mrs. Barnes at as early a stage as practicable. However, Social Worker C could not begin her evidence on the advice of her doctor until 29th September 2008. She did so by video link, having been given special measures protection, and resumed her cross-examination by the parties in the care proceedings before answering her own solicitor advocate and being cross-examined by counsel for Mrs. Barnes on the matters between them. It is fair to say that Social Worker C maintained her allegations against Mrs. Barnes as well as her support for the local authority care plans as drawn and placed before the court. Mrs. Barnes then began her evidence, sitting in the witness box in court on the discrete issue. She was first asked about how candid she had been to Bath & North East Somerset and the GSCC regarding her conviction. Having said that she believed the facts that she had stated to be true and accurate, she very soon broke down and was quite unable to carry on. It was in those circumstances

that Mr. Bellamy on behalf of the local authority abandoned any reliance on Mrs. Barnes' evidence, although he made it clear that if anyone else wished to do so that was a matter for them. It was at that stage that I was met with a very powerful submission by learned leading counsel for mother, for father and by junior counsel for Father B's mother to abandon these proceedings and allow further assessments with a new independent social worker, a new psychologist and indeed a new children's guardian. It was contended that all were tainted or may appear to be tainted by Mrs. Barnes' alleged dishonesty. I rejected that application and decided to proceed with the rest of the available evidence before being in a position to complete the discrete issue. That, unfortunately, caused yet further delay owing to the difficulty in reassembling all such experienced and busy counsel in one place for a sufficient period of time to complete the forensic process.

The discrete issue was tried out before me by Social Worker C being cross-examined on her allegations by video link by counsel for Mrs. Barnes, as I have said. Later Mrs. Barnes returned to the witness box and was cross-examined by the solicitor-advocate for Social Worker C. I remind myself that at other times in the evidence, before Mrs. Barnes became an intervener, counsel for Mrs. Barnes did not have an opportunity to challenge what was said, and I must be very cautious how far, if at all, I allow that evidence to influence me on this matter. I must also remind myself that objection was taken by Miss Wood on behalf of Mrs. Barnes as to comments made by me as to how Mrs. Barnes' conduct appeared to have affected this case. These comments were made in her absence, and before Mrs. Barnes had had a chance to refute the allegations. I expressly stated at P350 that I would assume for the moment that what Social Worker C had alleged was true. All comments thereafter should be seen in that light. They were made before Mrs. Barnes became an intervener. As soon as she was made an intervener I took the opportunity to make it clear that any comment of mine was entirely provisional and that I did indeed keep an open mind on the matter until the conclusion of all the evidence. I believe that I have done so.

Miss Wood helpfully reminds me that the burden of proving these allegations is upon Social Worker C who makes them. The test is a straightforward balance of probabilities following the decision of Re B (2008) UKHL 35. As Baroness Hale said in that case:

"In this country we do not require documentary proof. We rely heavily on oral evidence, especially from those who were present when the alleged events took place. Day after day up and down the country on issues large and small judges are making up their minds whom to believe. They are guided by many things including the inherent probabilities, any contemporaneous documentation records, any circumstantial evidence tending to support one account rather than the other and their overall impression of the characters and motivations of the witnesses."

In that context I have had the opportunity of observing both Social Worker C and Mrs. Barnes for several days each in the witness box, both on the discrete issue and on the issues regarding the children's welfare. I believe therefore that I am in an excellent position to judge between them, but I respectfully agree with Baroness Hale's next sentence in the passage quoted:

"The task is a difficult one. It must be performed without prejudice and to the best of our ability."

I confirm that I have attempted to do that.

On the issue of allegedly contacting Social Worker C on the evening of Thursday, 12th June 2008 Mrs. Barnes' case is, as she sets out at C676(22) that she did indeed speak to Social Worker C but only to ask her how she had got on at the Adoption Panel meeting that day, about which she knew Social Worker C had been anxious. Mrs. Barnes acknowledged in cross-examination that, as appears at P81, she had been warned by me at the end of the first day of her evidence not to talk to anyone and particularly to Social Worker C. But Mrs. Barnes maintains that she had not spoken to her about her own evidence given that day. Mrs. Barnes denied Social Worker C's allegation at C562(3) that she should check on the number of social work visits made to Father B's mother since it had been suggested at court that not enough visits had been made. That indeed had been suggested to Mrs. Barnes in evidence, when of course Social Worker C was not present to hear it. When cross-examined as to how Social Worker C would have known about it in order to make the allegation, Mrs. Barnes simply said she must have found out some other way. I am afraid I found that a rather unconvincing answer.

On the issue of talking to Child 1's foster mother, Mrs. Barnes' case is as set out at C674-675 that she and Social Worker C had had a meeting on Wednesday, 11th June and she had suggested to her subordinate that she might wish to undertake a number of checks to remind herself of the details of the evidence. This included speaking to the foster carer regarding the children's behaviour on placement. Mrs. Barnes utterly denied that she had on Thursday, 12th June 2008 during her evidence instructed Social Worker C to contact the foster mother to make those checks. Social Worker C's allegation is that she was told by Mrs. Barnes to telephone the foster mother and talk first about general matters before asking her about the hand smacking issue (see C562(4)). The foster mother later gave a statement to the court at C565 confirming that she was indeed called by Social Worker C on Thursday, 12th June 2008. The phone records held by Bath & North East Somerset of Mrs. Barnes' and Social Worker C's phones produced much later in the case show that Social Worker C called Mrs. Barnes at 1617 hours on that day and they talked for some 25 minutes. At 1711 hours Social Worker C telephoned the foster carers' land line. It can be seen from the foster mother's statement that, having discussed general matters relating to the children, Social Worker C asked her about Child 1's hand smacking behaviour.

Mrs. Barnes' case on this issue is that in addition to the conversation on Wednesday, 11th June she had been telephoned by Social Worker C after she, Mrs. Barnes, had completed her evidence on Friday, 13th June 2008 and as she said at C679(41 and 42), she reminded her of the need to check on the children's behaviour on placement as she, Mrs. Barnes, had been asked how long Child 1's behaviour had continued. Mrs. Barnes accepted when cross-examined that these questions were put to her on Thursday, 12th June, not on Friday, 13th June. Mrs. Barnes also accepted that the rules

required her not to discuss the case in detail with a witness such as Social Worker C who had yet to give her evidence. However, Mrs. Barnes justified her conduct by the fact that Social Worker C had been in court to hear what she herself had said on Friday the 13th. That was a surprising admission in a witness as experienced as Mrs. Barnes. Mrs. Barnes also produced what she claimed to be a record of her call from Social Worker C on her mobile phone as being made at 1622 hours on 13th June 2008. It will be remembered that Social Worker C's case was that no such call was made at all and that the only call between them was on Thursday, 12th June 2008. The photocopy of the telephone display screen on Mrs. Barnes' phone is at K229(a) and was put by Miss Wood to Social Worker C on Mrs. Barnes' instructions. When Mrs. Barnes came to be cross-examined by Miss Ryan on behalf of Social Worker C she had received from the local authority their phone records of the employees' telephone calls. They clearly show at K359 that Social Worker C's phone was otherwise employed on Friday, 13th June. Social Worker C's case, as I say, is that she did not speak to Mrs. Barnes on Friday, 13th June 2008, since she was so upset. There is no record of any phone call between Mrs. Barnes and Social Worker C but just a text message at K350 at 1808 hours from Mrs. Barnes to Social Worker C.

Miss Wood makes the point that these are not original Orange phone records but rather the computerised records of the local authority. Mrs. Barnes said that she is not used to seeing records in this format. I take due account of that argument, but I have no reason to doubt the accuracy of the local authority records which seem to me to have been reorganised to show all calls from Mrs. Barnes to Social Worker C and any from Social Worker C to Mrs. Barnes. Accordingly, it seems to me that the documentary records are entirely consistent with the account given by Social Worker C and entirely inconsistent with that of Mrs. Barnes. On the evidence presented before me on the balance of probabilities it seems to me that the contention that a mobile telephone call was made by Social Worker C to Mrs. Barnes on Friday, 13th June is disproved by the telephone records.

Miss Ryan on behalf of Social Worker C asks me to draw the conclusion that Mrs. Barnes has lied about the telephone call on 13th June 2008 and has falsified evidence in an attempt to corroborate the lie by reference to her mobile phone display screen. Mrs. Barnes hotly refutes that suggestion but has no explanation as to how the purported display screen at K229(a) shows the incorrect date so far as her case is concerned. The final point about this purported telephone call that Mrs. Barnes claims took place on Friday, 13th June 2008 is that Mrs. Barnes told us that she had expected Social Worker C to have obtained the information about Child 1's behaviour from the paper work and not from the foster mother herself. Mrs. Barnes said she did not know that Social Worker C had in fact spoken to the foster mother. When asked how she could account for the fact that on her version Social Worker C had not mentioned speaking to the foster mother on Thursday the 12th, Mrs. Barnes suggested it may have been because Social Worker C was worried having first been spoken to about the matter on Wednesday, 11th June. That struck me as a singularly unconvincing response and it seems to me had Mrs. Barnes indeed asked Social Worker C to check on the matter on Wednesday, 11th June, there is every reason to suppose that Social Worker C would have mentioned it to her in the telephone call on the 13th, if indeed it had taken place.

Mrs Barnes told us that she had been disappointed with way she had given evidence and had felt unprepared, having not expected to be asked about historical matters following an indication from the court at an earlier directions hearing. In those circumstances, as Miss Ryan suggests, it is to my mind unlikely that Mrs Barnes would have suggested to Social Worker C to check up on Child 1's behaviour on 11th June, as she contends. It is far more likely, in my judgement, that she would have felt the need to do so after being asked numerous questions on the topic on 12th June.

In those circumstances I find that I am on balance driven to accept the submissions made by Miss Ryan regarding the documentary evidence surrounding the phone calls and I am entitled to draw the inference that she asks me, that Mrs. Barnes not only failed to tell the truth about the matter, but manufactured evidence.

Mrs. Barnes completely denies the content of the conversation ascribed to her by Social Worker C on the way to court on 13th June 2008 as set out at C563(8-11). In particular, she says that she did not tell Social Worker C to explain the absence of a care plan by saying that the local authority had been applying for an EPO, so that no care plan was needed. Mrs. Barnes had indeed been cross-examined on that point on 12th June 2008. Mrs. Barnes also denied that she told Social Worker C to lie in court "if things get too tricky". Mrs. Barnes' explanation is that when they travelled over to court together on Friday, the 13th, as she sets out at C679(29), she told Social Worker C they could not discuss matters or they would both lose their jobs. "You just have to be honest and not lie" is what Mrs. Barnes asserts that she said. Social Worker C's case is that she had made clear on that journey that she was not prepared to tell lies. The point is made by and on behalf of Mrs. Barnes as to why if she had asked Social Worker C to contact the foster mother did Mrs. Barnes not ask Social Worker C what the foster mother had said. Social Worker C at no stage suggested that she had been so asked. Social Worker C's case is that she was not asked that in the circumstances of her negative response to Mrs. Barnes' suggestion.

It is common ground that Social Worker C contacted her confidante in the Authority, Social Worker D, and then spoke to the Local Authority legal adviser, over the weekend of 14-15 June 2008. The record of these conversations is at K273-275. It is fair to say, as Miss Wood contends, that that early record of Social Worker C's complaint is not the full version of the matter that she later put in her statement for the court on Monday, 16th June 2008, and indeed that statement did not equate with the full extent of Social Worker C's allegations, since she made further allegations in her statement of 19th June 2008 and also in answer to questions put to her by counsel and indeed by myself in the course of her later evidence. Miss Wood also makes the point that it is clear from what the legal adviser has recorded in her telephone call to Social Worker C on Sunday, 15th June 2008 that Social Worker C was asking whether it was necessary for the matters she had alleged to be divulged to the court. That, it is suggested, is evidence of Social Worker C not wishing to pursue what she knows to be an untrue allegation, but it is to my mind equally consistent with this junior social worker not only being concerned for her own position if the allegations are made known to the court and to Mrs. Barnes, but also for the well being of the children, given that these revelations would undoubtedly

have the potential to deflect the court from the enquiry into the children's welfare. But in my judgment it is significant that, although she expressed doubts about the matters being divulged, at no stage did Social Worker C seek to retract them.

Quite clearly Social Worker C had taken a serious step in making allegations against a very experienced team manager, Mrs. Barnes. The initial referral from Social Worker C to the legal adviser on 13th June 2008 at K277 contained a reference that Social Worker C was "in a terrible state about giving evidence on Monday". Miss Wood in submissions reminds me of all the matters Social Worker C would have to deal with in giving evidence before the court and the fact that she would have been giving evidence for the first time. Mrs. Barnes' first explanation as to why Social Worker C might make such false accusations, although of course it is not for Mrs. Barnes to prove anything, was to say that they were as a result of Social Worker C's anxiety levels being so high and that she had confused their conversations and muddled herself. Towards the end of her evidence Mrs. Barnes said that, having had time to reflect, she believed that Social Worker C had said these things in an effort to prevent Social Worker C's own mistakes being exposed. Yet Social Worker C at various times during her evidence was prepared to accept that she had indeed made many mistakes in her handling of the case. It may be said that that was only after she had sought to bolster her position by falsely accusing Mrs. Barnes, but in my judgment Social Worker C's acceptance of failure had a sincere and convincing tone and content.

I have already said that Social Worker C's later allegations were made in the course of her continuing evidence. She was asked on 18th June 2008 by me whether Mrs. Barnes had ever asked her to lie before (P431B). She said it was about a week before on her way to the pre-hearing review of the case, walking to the train station. "If you're unsure or if anything gets difficult you can always lie. She suggested I lie to cover up any mistakes which the local authority may have made." Social Worker C continued: "With hindsight, I should have disclosed that. I did question if my job would be secure if I did disclose that." Social Worker C later changed her account as to the date of that alleged conversation from the pre-hearing review to another date when she and Mrs. Barnes had attended court. I had to look with great scrutiny at that change of description and give it appropriate weight. Mrs. Barnes when cross-examined totally denied this account whatsoever. She said she could not hazard a guess why Social Worker C should have fabricated her account. She said she would have had nothing to achieve by it. She denied that it was in order to provide support for her own evidence.

The final matter on the discrete issue between Social Worker C and Mrs. Barnes relates to the alleged false invoice for expenses which Social Worker C says Mrs. Barnes had suggested to her. Again, Social Worker C raised the matter, not in her original complaint to the legal adviser or her statements of 16th and 19th June, but in her oral evidence when asked whether she had ever had reason to doubt Mrs. Barnes' honesty before (P435). Social Worker C explained this omission by stating that her first statement had related to the phone calls Mrs. Barnes had made. Mrs. Barnes' account of this episode is given at C683(65). She claims it was not even an irregular procedure but a

means of providing Social Worker C with some instant cash. It was most certainly not an attempted defalcation. In those circumstances it is hard to understand why on her account Mrs. Barnes would tell Social Worker C to keep quiet or all her fellow employees would want to make use of that method. However, there would be every reason for Social Worker C to keep quiet at the risk of both she and Mrs. Barnes losing their jobs on Social Worker C's account.

Time and space do not permit me to record all the many matters made in Miss Wood's final written submissions on behalf of Mrs. Barnes. I have read them and have them in my mind, especially those relating to Social Worker C's credibility. Miss Woods asserts that the possibility exists that Social Worker C, her confidante, Social Worker D whom she frequently telephoned around the time of her evidence, together with Social Worker B and other named former employees in the local authority had reason to combine to make false allegations against Mrs. Barnes. Having listened very carefully to Social Worker B, I could detect no outside influence on her evidence from having contact with anyone from whom we have not heard, and there is no evidence before me, as I find, that those witnesses have combined together against Mrs. Barnes to make false allegations. Social Worker C and Social Worker B never worked together and have only spoken once. Social Worker B gave a statement giving a number of examples where she said Mrs. Barnes had lied (C768, 23-24). Mrs. Barnes denied all those allegations. I remind myself yet again that her evidence was cross-examined by Miss Wood on behalf of Mrs. Barnes and I have already given my impression of Social Worker B's evidence. Miss Wood reminds me that Social Worker B may have been paying revenge on Mrs. Barnes, but I could detect no attempt to mislead in Social Worker B. She was an open and candid witness in my judgment, and I believe what she has told me. What she told me does provide some corroboration to what Social Worker C has had to say about Mrs. Barnes' attitude to the truth.

The other matter which to my mind is relevant to the issue of Mrs. Barnes' and Social Worker C's credibility is the evidence that emerged at a very late stage in this case regarding core assessments of the children. The Local Authority admissions document stated that they had been started but not completed. But they have never been produced to the court. They were produced, very properly, by Miss Wood on behalf of Mrs. Barnes on 2nd December 2008, nearly six months after this court hearing had first begun. Mrs. Barnes was to say to us that she had accessed those relating to Child 3 on 9th June and 10th June 2008 since she wanted to prepare properly for her evidence and knew that this was an area which she could be tested upon. As Mrs. Barnes herself conceded, it is clear from a cursory inspection of those documents (now at F623 and F640) that they are plainly not of a proper standard. Mrs. Barnes said she had had to sign them off on 30th and 31st May of 2007 as incomplete. Mrs. Barnes had been asked about the core assessments by Mr. Miller on Friday, 13th June 2008 (see P101). Her response was to say: "they are available. It was my understanding that they were filed". She said at P102G: "We completed our own." I asked her at P103B: "Are you saying they have been filed and served?" She answered: "That was my understanding." I then said (P103E): "That has got to be produced. They have got to be produced if they exist. They should have been produced by 1st October 2007." I am confident Mrs. Barnes would have understood that to be a direction and not an observation by me.

We now know that in fact Mrs. Barnes had accessed these documents just 3 or 4 days before she was giving evidence. In my judgment Mrs. Barnes must have realised from Mr. Miller's cross-examination that he had not seen them and that the court had not seen them. She could very easily have volunteered that she could provide them by accessing the computer she had herself recently used and she could have told the court had she wished to that they were of poor quality. Mrs. Barnes would have known also that in late 2007 the Local Authority legal adviser, was trying to extract core assessments from her. I refer to K49 20.9.07, K57 5.10.07, K58 12.10.07. It is not clear if the legal adviser ever knew what had happened to the ones now produced and I must not speculate. Mrs. Barnes told us when cross-examined about these documents that she had not told the court of their state or whereabouts because she was trying to be protective of Social Worker C and she said she did not know that Child 1 and Child 2's core assessments had been abandoned, as we discovered that they had indeed been. As team manager Mrs. Barnes plainly should have known about that matter. She said that she had not wanted to state in open court that Social Worker C had not done a good job. There is a resonance there with what she said right at the end of her evidence on the discrete issue and with some emotion, that she had always tried to be as supportive as she could of her team and not to run anybody down.

But in my judgment just as Social Worker C may well have been criticised for the state of the documents, so also would Mrs. Barnes as team manager. Mrs. Barnes must have known that the Local Authority was under a continuing duty to disclose documents to the court and she chose not to do so. I cannot accept that Mrs. Barnes' motive for not producing the documents was to protect Social Worker C. She had not hesitated to attribute failures in the Local Authority to Social Worker C on her evidence on 12th and 13th June, as Miss Ryan on behalf of Social Worker C reminds me. Plainly she had told Mr. Miller that the documents had been in effect completed to an appropriate standard. At P103H on 13th June 2008 she was reminded that a core assessment is an "in-depth assessment" and she was asked if appropriate family members had been consulted as part of that in-depth assessment. Her response at P104E was to say, "Yes, they would have been." She must have known that this was wholly inaccurate. Her answers were at the least disingenuous and I believe deliberately misleading, and by that evidence Mrs. Barnes intended to put her own reputation before the need for the court to approach the case with regard to the children on all proper available evidence. I believe I am entitled to take that matter into account in deciding the discrete issue.

Miss Ryan submits that Social Worker C has been consistent in her version of events. I have already reminded myself that Social Worker C's account built up as the matter progressed. I have been especially alert to take account of the risk of Social Worker C taking an opportunity to invent matters as the parties and the court responded to her initial allegation, but I see no reason and no evidence that she has done that. Of course I take great care to remind myself that amounting as they do to allegations of perjury, attempting to pervert the course of justice and contempt that these are very serious allegations indeed, and of course I remind myself that Mrs. Barnes has had vast experience as a social worker over many years. She herself said that she would not have wanted to risk everything that she had worked for, for forty years, and I attach due weight to that. I do not take

account on the discrete issue of either the convictions of Social Worker C or Mrs. Barnes, as I shall set out in due course.

Taking all these matters into account, on the balance of probabilities where the evidence of Social Worker C and Barnes conflicts on the discrete issue I prefer that of Social Worker C. Her account is corroborated by the foster mother, the documentary evidence consisting of the telephone records, by what Social Worker B has had to say on oath and what I find to be Mrs. Barnes' misleading references to the core assessments in her evidence. I do believe therefore and so find that the allegations I have dealt with made by Social Worker C are proved on the balance of probabilities. The explanation may be that it was a misguided attempt by Mrs. Barnes to promote what she saw as the children's best interests at any cost and by not revealing the Local Authority's shortcomings in the investigative process to the court, but I have no doubt that Mrs. Barnes did engage in the behaviour Social Worker C attributes to her.

I have already indicated that I do not attach weight to Mrs. Barnes' conviction for conspiracy to murder in deciding the discrete issue. But I say this. On any objective view it is clear to me that Mrs. Barnes did put forward to her employer and to the GSCC a highly sanitised version of events in which her role is minimised compared to what is revealed in the Crown Court papers in bundle Z. Mrs. Barnes told us that shortly after her conviction in 1995 she had, with the help of her criminal solicitor (now deceased) compiled a form of letter for future use in re-establishing her employment. At that time the probation officer who wrote the report at Z464, as I have said, opined that in relation to the facts of the case she had difficulty "distinguishing fantasy from reality". Mrs. Barnes denies that that was accurate, but I have no reason to doubt that it is accurate, which to my mind implies that Mrs. Barnes' then version, which is not unlike her current version, concerned the probation officer.

It is plain to me that some very serious matters were disclosed by Mrs. Barnes to the undercover police officer who investigated the criminal case. Mrs. Barnes was taken to some of those at Z360, 376 and 377, and both Mr. Baker QC and Mr. Sharp QC advert to them in their final written submissions. Miss Wood on behalf of Mrs. Barnes makes the point that it is impossible to know at this juncture what might have been any basis of plea by Mrs. Barnes. If there was any such mitigating basis of plea it was not referred to by the probation officer. She also reminds me that the sentencing judge's remarks cannot be retrieved and she points to the apparently very lenient sentence imposed in respect of Mrs. Barnes' late guilty plea to conspiracy to murder entered on the second day of her trial. To all those points I give due weight. What is clear is that Mrs. Barnes authorised both her employer and the GSCC to have access to the criminal file, but for whatever reason neither body, it seems on the evidence before me, was able to do so. The Local Authority acknowledge that they did not see the file. The evidence relating to the GSCC is less clear and there is no evidence they did see it, although the police appear to have accessed it at around the time of registration, as Z7/8 reveals.

Mr. Baker put to Mrs. Barnes in the course of his questioning that "it may be that you truly believe your role was minimal and you have persuaded yourself and your husband that you were not really involved." Mr. Sharp put it more bluntly to Mrs. Barnes, that her letter to the GSCC was misleading. Mrs. Barnes did not accept that. Despite my findings about Mrs. Barnes' credibility on the discrete issue, it seems to me that it is not possible to say in the absence of up to date medical evidence what is now the true state of Mrs. Barnes' mind so far as the facts leading up to her conviction are concerned. She may well, as I see it, have blotted out from her mind the details of the matter. She certainly could not bring herself to look at the criminal file when she returned for cross-examination, having had to stand down some weeks before in obvious distress regarding her conviction. She returned to court to resume by way of video link on the issue of her conviction. I place on record that counsel gave Mrs. Barnes every possible opportunity to look at the criminal file and to comment on it as she may have wished, but she could not or would not do it.

My conclusions therefore on Mrs. Barnes' conviction are that on any objective view her account to Bath & North East Somerset and to the GSCC is likely to have been far from accurate, but that is not to say that it was deliberately designed to mislead. In giving full authority for her file to be retrieved she could not have known that both of those bodies would separately fail to secure sight of it. To my mind it is highly regrettable that they did not do so, but it was not her fault.

The extent of Mrs. Barnes' influence on other professionals involved in this case and whether that influence was appropriate or inappropriate was explored with a number of individuals. Social Worker F assessing Father B's sister was a fellow employee of Bath & North East Somerset and indeed Mrs. Barnes was her team manager. She was assigned the task of providing an assessment of Father B's sister, Child 3's aunt, and her partner. She produced a document at A672 dated 21st April 2008. In the circumstances of Father B's sister's late decision to withdraw her claim to care for Child 3 given in writing on 19th September 2008 it was not necessary for Social Worker F to be challenged on all aspects of her report, but she did attend to give evidence and was asked about the possible influence of an e-mail sent by Mrs. Barnes, which appears in the Local Authority file at K114. This is dated 2 April 08 and plainly refers to an earlier version of Social Worker F's final report, which she said that she was unable to retrieve from her computer. The e-mail begins in this way :

"The Social Worker instructed to assess Father B's sister, Thank you for this. I particularly like the conclusion. What I feel is that the body of the report needs to be more evidence based. For example ... "

It was this e-mail that undoubtedly prompted Social Worker F to make a further visit to Father B's Sister on 10th April 2008, but she said in evidence: "I would not write anything that I would not stand by." She added that the e-mail did not influence her to a particular conclusion that she would not otherwise have come to. Mrs. Barnes says in her statement that it is perfectly proper practice for her as a team manager to guide a subordinate's work, referring to Social Worker C at C707(43). The

same can no doubt be said for Social Worker F. Social Worker F told us as to K114 that the e-mail was typical of the conversations she had with Mrs. Barnes as a supervisor. "I wrote my report and submitted it without any reference to her." Plainly she had written the first draft before submitting it to Mrs. Barnes, but on the vital topic of whether Mrs. Barnes had influenced the report Social Worker F said: "With my integrity as an experienced social work I'm entitled to respond to an e-mail such as K114 with all good intention in a case such as this."

I accept that evidence from Social Worker F unreservedly. I believe she was telling me the truth and did not in my judgment allow herself to include in that report anything that she did not conscientiously believe to be accurate. She was not suborned by Mrs. Barnes' influence in my view. She rejected Mr. Sharp's suggestion that there were "pockets of prejudice and antipathy to Father B and his family which suggested the influence of Mrs. Barnes." I accept that from Social Worker F. To my mind, however, Social Worker F did allow herself to reach a conclusion regarding Father B being the most likely perpetrator of the injuries to Child 2, which was not capable of being supported by the evidence. I refer to E689 and E691. She told us in evidence that she could not account for the matter, but it was not inserted at Mrs. Barnes' suggestion and she did not believe it negated the rest of the assessment. I agree with that. She was also wrong to say at E686 that Father B had "admitted that he'd probably harmed Child 2" he had simply "considered it was a possibility" at E436 1.1.10. Other references are E304 1.7.41 and E358 9.3.9. Social Worker F did give examples of a number of what she regarded as very positive factors in Father B's sister's qualities as a supportive family member to anyone else in the family looking after the children.

The next professional whose evidence may have been affected by Mrs. Barnes was the jointly instructed viability expert who set out in his second report of 24th October 2007 beginning at E271 at page E276 that he had been approached by Mrs. Barnes to attend to a detail in his report and had "acceded to that request". The viability expert was jointly instructed on behalf of the parties and was fully aware that he should not hold any unrecorded discussion with anybody. That is clear from his letter of instruction dated 4 October 2007 at E269, paragraph 3. The jointly instructed viability expert was asked about the matter. He told us that he was "not unused to local authority staff adopting a particular position and trying to influence me." He indeed encouraged social workers and guardians to attend during his investigative process. The jointly instructed viability expert was clear that Mrs. Barnes told him that she was very worried about the prospects of the children returning to their parents. He told us he felt that Mrs. Barnes' view was that it was just too dangerous. However, the jointly instructed viability expert was quite clear in saying this: "As far as I'm aware I was an independently instructed expert. There were no alarm bells as such sounding when Mrs. Barnes contacted me. It was not unusual." He went on: "Yes, I was aware of her opinion ... I would like to think I am able to remain independent and reach my conclusions based on my profession experience."

The jointly instructed viability expert was clear that the local authority did not favour a placement of the children with the B side of the family. Yet he cited a large number of positive factors in Mother

and Father B and he had already said that Father B's mother had an important role to play, and that the children should probably not have been removed from her care. He had, it will be remembered, supported rehabilitation according to his model in his first two reports. He only withdrew that recommendation in his third report based on the jointly instructed psychologist's analysis, to which he said he had no option but to defer. The jointly instructed viability expert explained that where he had largely accommodated the Local Authority it was in the context of family dynamics. These were matters he would have ordinarily addressed in any event he told us. He said this: "I ended up doing what I felt was appropriate. I was not prepared to let Mrs. Barnes' view interfere." He further told us that he was not prepared to compromise his position in outlining further provisional dates for his work to continue as he had been requested by Mrs. Barnes. These dates, it should be noted, were not then required when the residential assessment route was pursued.

My overall finding regarding any influence on the jointly instructed viability expert from Mrs. Barnes is that I am entirely satisfied that he approached his duty conscientiously and did not allow himself to be compromised in the slightest degree. The jointly instructed viability expert was jointly instructed by all parties as a reliable and independent expert. He comes very well recommended to this court, and I am perfectly satisfied that he maintained his independence in his enquiries.

Clearly a crucial witness for the Local Authority's continuation of the proceedings and their ultimate stance is the jointly instructed psychologist. She also is very well known to this court and approaches her task in an extremely thorough and conscientious and careful manner in ordinary course. The court had ordered a residential assessment for Father B and Mother and all three children. This was of course the first time they had looked after all three children. They had never looked after Child 3. There had been significant separations for Child 1 and Child 2 from their parents. The children had never lived together. The jointly instructed psychologist agreed that the way in which the children had been removed from Father B's mother's care would have been likely to cause them emotional harm. The adults went to the residential assessment centre on 12th November 2007. Child 1 and Child 2 went there on 14th November, and Child 2 became very ill. She had to go to the hospital on one occasion and on another to the out of hours doctor's service. Child 3 joined the family two weeks later and had been ill before she arrived.

The question to consider at this stage is whether Mrs. Barnes interfered unduly in the residential assessment process. Initially however the jointly instructed psychologist believed she had not been unduly influenced by Mrs. Barnes and maintained all her recommendations. Then having had time to reflect over the lunch adjournment, she volunteered to Mr. Baker for the mother that she believed she was influenced by Mrs. Barnes and that was in a meeting she had with her on 19th December 2007 before the arranged professional meeting of that same day. The jointly instructed psychologist had already described Mrs. Barnes' "non-verbal communication" in that meeting as "quite significant ... in the way she had of looking forward and looking at me to express specific concern in advance of what she would then ask." The jointly instructed psychologist's other example regarded Mrs. Barnes' method of pausing for emphasis during any telephone call. This was exemplified in her description at

E809. The meeting of 19th December 2007 is set out at E814-816 and is recorded at E467 3.6.1 and 3.6.2.

Originally the jointly instructed psychologist had said: "I take my role as an independent expert very seriously and being aware of the emphasis Mrs. Barnes used I remember being vigilant about it." But upon reflection, as she later explained, the jointly instructed psychologist accepted that she was influenced by Mrs. Barnes not to consider the children returning to the family after the residential assessment finished, following which a community based assessment had originally been planned. This, she said, was because she was told that the Local Authority were assessing Father B's mother and that they had concerns about her capacity to care. She wrote this at E816, paragraph 10:

"Concern from L/A +++ re children, contact, foster care.

Concern re Father B's mother/? care and/or sup'n/await assess."

Thus it was that ultimately the jointly instructed psychologist said that she believed she had indeed been misled and that had she known the truth she would have taken steps to involve Father B's mother in the second part of the assessment. The jointly instructed psychologist suggested, "she (Father B's mother) could have come to stay with us for a while." Or "at least attend for contact, as Father A's parents had done." The jointly instructed psychologist readily agreed with Mr. Baker on behalf of the mother as follows:

"Absolutely, the question of Father B's mother was of crucial importance."

It is perhaps worth recording in this context that there is a memorandum in the legal file at K74, no doubt correctly dated 27 December 07 in which the legal adviser records her advice to Mrs. Barnes in this way: "Advising to be cautious on contact with the residential assessment centre." She also writes in an e-mail of the same day at K75 as follows:

"I think that given the delicacy of the situation with the jointly instructed psychologist, it would be better if you did not instigate any further communication with residential assessment centre. If they contact you to discuss something directly in relation to the children or to deal with a practical arrangement, then that is fine. But given that she is going to have to give live evidence on 8/9th, we ought to keep a distance between now and then."

In later cross-examination on behalf of Father B's mother by her counsel Mr. Miller the jointly instructed psychologist readily conceded that she did have "enormous concerns" regarding the Local Authority's care plan for Child 3 in light of the fact that she did not, she felt, get accurate information from Mrs. Barnes. By that stage she had already been shown e-mails clearly demonstrating that Father B's mother was not in fact being assessed by the Local Authority. The jointly instructed psychologist was clearly very troubled by the fact that her assessment was affected, as she saw it, by

the Local Authority and that she was not in a position to engage Father B's mother in contact in January 2008. I should add that the jointly instructed psychologist was quite clear that she did not believe her parenting assessment of Father B and Mother was in any way affected by Mrs. Barnes. But so far as Father B's mother was concerned the jointly instructed psychologist said this: "I would have insisted on a psychological assessment being done." She agreed that what she regarded as misleading information from Mrs. Barnes fundamentally affected her recommendation regarding Father B's mother and changed her opinion.

It was in those circumstances that the jointly instructed psychologist agreed to provide the missing information, observing: "It would be far preferable for Child 3 to be placed within the family rather than out of the family for adoption." The jointly instructed psychologist detailed the work she would propose to do regarding Father B's mother and, to her credit, Father B's mother agreed to carry out that work. Accordingly, I made an order dated 12th October 2008 and a letter of further instruction to the jointly instructed psychologist to direct that assessment was agreed between the parties dated 9th October 2008. I should add that no party objected to that further assessment and the Local Authority and the guardian supported it fully.

All this had been said by the jointly instructed psychologist when Mrs. Barnes was not present in court and Miss Wood, her counsel, was also absent. Thus it was when Mrs. Barnes returned to answer questions on the discrete issue she was also asked about the jointly instructed psychologist's assertions. Mrs. Barnes said that she did not accept the jointly instructed psychologist's concerns and does not believe that she could have influenced the jointly instructed psychologist either in a telephone call that she had with her or at a meeting. She told us that her visual impairment might well have meant that she lent forward during any conversation, but she contended that she knew that she had to be extra cautious about having a conversation with an expert witness for fear of influencing her. But of course she accepts that she did indeed have such a conversation. The jointly instructed psychologist clearly kept a record of it, as indeed she should have done. I have already referred to E816, paragraph 10 and E809 is a further reference.

Miss Wood has provided me with lengthy submissions regarding the state of the jointly instructed psychologist's enquiries up to and including 19th December 2007, the day of the informal meeting at the residential assessment centre. She submits that it is impossible to imagine the jointly instructed psychologist believing that she could have been misled in the way she suggested. Miss Wood has also suggested that Mrs. Barnes was denied a fair trial on this issue by virtue of only being provided with junior counsel's summation of one part of the jointly instructed psychologist's evidence that was not transcribed. I do not believe that any sufficient reliance was placed on that part of the evidence to make Miss Wood's argument valid. The note was provided, albeit at a late stage, to Mrs. Barnes and her advisers for them to consider. But on the issue between Mrs. Barnes and the jointly instructed psychologist I do not believe it is necessary to make any finding as to whether the jointly instructed psychologist was indeed misled or not. It was not strictly part of the discrete issue, but understandably the parties felt that Mrs. Barnes should have the opportunity of commenting on

what the jointly instructed psychologist said when she returned to the witness box. Mrs. Barnes stated that in truth the Local Authority were trying to assess Father B's mother through the agency of Social Worker E, who was also assessing Father A's parents and Father B's sister. She told us that Father B's mother was not co-operating with those attempts. I do not recall any supporting evidence for that. But be that as it may, from the references in the Local Authority documents that Mr. Miller took Mrs. Barnes to at K72, 6.12.07, K75, 27.12.07, K246, 27.12.07 and K80, 10.1.08 as well as their own position statement of 8.1.08 at A42 (indicating that the Local Authority now believed it had sufficient information to oppose Father B's mother's application) it would seem to me that on the face of it the Local Authority did not intend to assess Father B's mother in a real sense.

But I need make no finding about it whatsoever because any mischief caused by the jointly instructed psychologist either being misled or making a wrong assumption about Father B's mother has been corrected by the jointly instructed psychologist's report of 23rd October 2008, and in this context I make it absolutely clear, for the avoidance of any doubt, that I have not allowed the assertions made by the jointly instructed psychologist to influence me on my decision in relation to the discrete issue. Mrs. Barnes was denied the opportunity of cross-examining the jointly instructed psychologist on the topic, and it seems to me in those circumstances that I must properly leave out of account on the matter of the discrete issue that evidence.

I say a final word about Mrs. Barnes. She told us in the course of her resumed evidence that at the moment she has been redeployed by the Local Authority in "a strategic role". I recognise the years of service Mrs. Barnes has given the profession and the need for the Local Authority to obtain some recompense for paying her salary while this case has been able to conclude, especially given the fact they may continue to be hard pressed in terms of recruitment. But in the light of the allegations made against Mrs. Barnes pending my decision and the general complaint that she has manipulated very junior colleagues, this seems to me to be an astonishing decision. I leave it to the Local Authority to take such steps as it thinks fit in the light of my findings.

Further failures on the part of the Local Authority regarding the assessment of Father B's mother were exposed during the course of the evidence, which to my mind displays at the very least a lack of competence in the Local Authority. It will be remembered that on 22nd March 2007 Father B's mother applied to be a party and for leave to apply for contact and to be assessed as a carer for all three children. I joined her by order of 26th March 2007 at B44. It is an admitted fact on behalf of the local authority that no assessment of Father B's mother was ever carried out by them. Mrs. Barnes told us that it was because the placement of Child 1 and Child 2 with Father B's mother between July and December 2006 was a private arrangement that a foster care assessment was not done. She said she had believed there had been such an assessment. Yet included in Mrs. Barnes' statement of 21st January 2008 at C207 there is a concession that no such assessment had ever taken place. It was at that stage that Mrs. Barnes attempted to commission the independent social worker. The Local authority instructed an independent social worker, who wrote a report regarding Father A's parents, to carry out an assessment of Father B's mother. Mrs. Barnes even purported to

send a letter of instruction to the Local Authority's instructed Independent social Worker on 22nd January 2008 at K82. This was, as I understand it, entirely without reference to Father B's mother or her legal advisers. Father B's mother declined to be involved, and we cannot be surprised at that.

The other failure of Mrs. Barnes and her team was in relation to compliance with the order of District Judge Daniel made on 12th June 2007 which appears at B50 in the papers. The preamble to the order says this:

"On the basis that contact shall proceed in accordance with the attached schedule as amended and on the basis that the contact of both Father B's mother and Father A's parents shall be observed and shall be facilitated by the Local Authority at a neutral venue so that appropriate assessments can take place and to monitor the children's reaction to such contact. ..."

By paragraph 14 of that order the Local Authority were to file all contact notes of all contacts which had taken place during these proceedings forthwith and thereafter on an ongoing basis. By paragraph 15 the Local Authority were to file their preliminary assessments of the parties and those who had put themselves forward as potential carers by 3 September 2007. Despite that very plain direction, the contact notes were simply not filed at all save for one visit on 4th July 2007 which appears at F317. No preliminary assessment was filed as directed. Instead of such assessment Social Worker C filed a statement of 31st August 2007. Mrs. Barnes told us that Social Worker C had been on sick leave for an extended period of time, but Social Worker C's statement does not refer to that matter, as no doubt it should have done. She had been absent between 9 July and 6 August 2007 as A128 records.

It was in those unhappy circumstances that by my order of 18th September 2007, which appears at B58 in paragraph 2, I gave permission to extend the period of time for a preliminary assessment to be filed to 1st October 2007. I also ordered that by that date the Local Authority would file and serve full copies of their core assessment of the children. Quite simply those documents were never produced. I have previously referred to them.

Instead of including Father B's mother in the core assessment what Mrs. Barnes did next was to file "my own reflections on Father B's mother" at C175 as part of her statement of 3rd October 2007. I was initially told by Mr. Bellamy that this had been filed without the knowledge of the Local Authority Legal Department. This was tempered to suggest that no reference by Mrs. Barnes to the Local Authority Legal Team had been made before this was filed. Mrs. Barnes uses that phrase "my own reflections" in her reported instruction of the Local authority instructed independent social worker at C209 as set out in her statement of 21st January 2008. The problem with these "reflections" is that they are simply taken from the papers and not from Mrs. Barnes speaking to Father B's mother or even seeing her with the children. Mrs. Barnes personally never met the children.

When he came to give evidence the jointly instructed viability expert was asked about this document, and he told us: "I felt Lyn Barnes' statement was almost a fabrication in places, especially about Father B's mother. If accurate it is unbalanced and the negatives have been amplified with the positives almost ignored." He regarded her statement as "highly selective". It should be recorded that at A142 of the papers the mother's junior counsel, Miss O'Neill, had objected to the filing of that statement. Mrs. Barnes in evidence denied that that statement should be seen in the way the jointly instructed viability expert described. She said it was based on good practice to gather in all other available evidence in one place.

For the sake of completeness on this topic I place on record the fact that an assessment of Father B's mother was directed by the court to be produced by the jointly instructed independent social worker assessing the mother of Father B, an independent social worker and some time guardian. The letter of instruction is 3rd March 2008 at E639 and the report of 16 April 2008 is E648-E671. It is a favourable report. The jointly instructed independent social worker assessing the mother of Father B was cross-examined. He was aware that the Local Authority and the children's guardian and the jointly instructed psychologist, the jointly instructed psychologist, did not agree with his conclusions, but he remained of the view that Father B's mother was capable of providing "good enough parenting" for one or more of her grandchildren. I add at this point that the jointly instructed viability expert opined that the fact that Father B's mother struggled to accept that Father B and Mother caused injuries to Child 2 did not in itself prevent rehabilitation of the child to Father B's mother. He said he had worked with a number of people in that situation and managed to achieve rehabilitation.

On the question of assessments I deal briefly with the assessment of Father B's sister. The action plan of the Local Authority of 15th November 2006 says at F76: "Speak to Father B's sister." It was not done. Social Worker C told us that she had attempted to speak to her but failed. She did not record those attempts. She believed Father B's sister had possibly been seen at court on 18th January 2008. Letters were written by Father B's sister to Social Worker C on 12th June 2007 at K165, asking to be assessed as a carer for Child 3. A letter was written back on 25th June 2007 at K166 incorrectly speaking of her caring for the children. Father B's sister immediately replied on 27th June 2007 at K167 indicating she wished to care for Child 3. Social Worker C told us she was told to write the letter of 25th June 2007 by Mrs. Barnes. There are two further letters on 26th June and 15th July 2007 at K168 and K171, which are said to have been sent to Father B's sister and indeed electronic records confirm that. Father B's sister says she did not receive those letters. The evidence discloses that they were accessed on the computer by Mrs. Barnes on 12th June 2008 at 11.10 and 11.13, that is the day the case first began. No sensible explanation as to why that was ever done has been produced to me. Father B's sister says that she did not receive those letters. I cannot imagine in the circumstances that she would not have responded had such letters been sent to her, and I do wonder why it was necessary to send a letter on 26th June 2007 so shortly after the one sent on the 25th.

At K135 in the legal bundle, produced in the spirit of full disclosure the Local Authority attendance note for Mrs. Barnes on 15th June 2007 by the solicitor says this: "Not involve Father B's sister at this point. If by September we knock out the others then look at Father B's sister." The Local Authority did commission Social Worker E to meet with Father B's sister in November and December 2007 (K178-181) but she was unable to complete an assessment. Thereafter, as I have already described, Social Worker F assessing Father B's sister, the part-time worker in Mrs. Barnes' team, began to assess Father B's sister by visiting on 27 March 2008. It is worth recording that by that stage Father B's sister had not met Child 3 save on two occasions including the day she was born and when she was just a few days old. Her first visit took place on 21st May 2008 at C480. The Local Authority's legal advisers disapproved of that proposal, as can be seen in their memo at K121 on 15 May 2008.

A further issue arose regarding the Local Authority's assessment of Father A's father and mother . It will be remembered that they applied to be parties on 22nd October 2007 and were granted that status on 6th November 2007. In the updating statement of Social Worker C dated 4th June 2007 regarding the children's placement and contact a very clear reference was given at C78 regarding the fact that Father B's mother was in receipt of severe disability allowance and understood to suffer from a lot of physical pain. This was thought to have possible implications for her ability to care for the children unsupervised and without assistance. That may be contrasted with the fact that at C79 regarding the children's contact with Father A's parents the proposal was that the three children have contact with their grandparents on a fortnightly basis. Their indication of an interest in being assessed as permanent carers for all three children is then described. Social Worker C did not feel it necessary to comment on the fact that Father A's mother was also in receipt of severe disability living allowance.

Father A's parents were subsequently assessed by the Local Authority instructed independent social worker on the instruction of Mrs. Barnes. In ISW 1's assessment dated 3 May 2008 beginning at E694 she did not refer on the topic of Father A's mother's health to the fact of her receipt of disability living allowance. ISW 1 accepted that she should have done so. At that stage ISW 1 confirmed that she had indeed seen the Consultant Community Paediatrician's report dated 5th February 2008 which appears at E1538 of the bundle. That clearly refers to the fact that: "There are several health issues in relation to the application which need to be taken into consideration." the Consultant Community Paediatrician had written that: "Before this application comes to Panel there needs to be a clear exploration of the day to day impact to Father A's mother of her illness and how it might impact on her ability to care for possibly three young children." ISW 1 told us that she had not seen the Consultant Community Paediatrician's letter of 13th February 2008, which appears at E1540, written by the Consultant to Father A's mother in respect of her health and the fact of a recently missed appointment. That letter clearly predates ISW 1's written report. ISW 1 accepted that she should have seen it. The letter from the Consultant Community Paediatrician dated 12th June 2008 at E1542 clearly post-dates the report but ISW 1 had not seen it by the time she gave evidence. That letter from the Consultant Community Paediatrician includes this reference: "Health issues remain therefore of considerable concern."

Social Worker C's statement of 19 May 2008 beginning at C394 which endorses the Local Authority's proposal that Child 1 and Child 2 should live with Father A's parents under a special guardianship order makes no reference to health difficulties of Father A's mother. The special guardianship report filed by the Local Authority similarly do not make any such reference. The matter was clearly an issue for the Local Authority legal adviser in her memorandum to the social workers of 28 May 2008 which appears at K126, which says:

"Father A's mother's disabilities -- can you expand on how she presents of they are active. Panel will definitely pick up on this, particularly as she is in receipt of DLA."

In the course of her evidence Social Worker C had to accept that she had not even seen the Consultant Community Paediatrician letter of 13th February 2008 at E1540 until 16th June 2008 after the case had already commenced.

It is also clear from a legal file at K93 that the Consultant Community Paediatrician is in fact discounting both Father A's mother and Father B's mother on 7th February 2008 as carers for the children because of their respective health issues in a memorandum of a meeting between the legal adviser for the legal team and Mrs. Barnes which sets out the Consultant Community Paediatrician views. Thus it is quite clear to me that at that stage the matter was clearly being raised as an issue for the Local Authority, and yet it was not made clear in the documentation, at least so far as Father A's mother was concerned. At the very least the impression is given that the Local Authority and ISW 1 had somehow skated over the matter and, exactly as predicted by the legal adviser when the special guardianship reports were put before the Panel (on the very day the case began on 12th June 2008) the decision was taken to defer the matter precisely because of Father A's mother's health concerns. I should add on this topic that there has been produced on behalf of Father A's mother a letter by her Consultant Physician, dated 26th June 2008 which appears at E792 in the bundle and which sets out Father A's mother's situation, and, having recorded the fact that her "blood pressure was a little higher than last time today" concludes by saying:

"Father A's mother has adopted an extremely positive attitude towards her condition and is managing it entirely appropriately. As a result I can see no reason why this should preclude her from taking custody of her grandchildren."

This has to be seen alongside a yet further report from the Consultant Community Paediatrician of 20th June 2008 beginning at E1527. She says by way of overall assessment:

"Father A's mother clearly has a far greater risk than most women of her age of developing significant health issues over the next 15 years and due to the combination of her two medical conditions she has a not insignificant risk of dying during that period."

The doctor concludes by saying:

"I would strongly advise if the Local Authority choose to place Child 1 and Child 2 with Father A's mother there should be ongoing monthly support in terms of social work visits and there would need to be an extremely robust plan for placement of the children with other assessed family members should Father A's mother become seriously unwell or die."

Finally, on the issue of Father A's mother's health a Consultant Rheumatologist, has written a short report dated 4th July 2008 at E1530 which suggests that at the present time her lupus condition is currently in remission. The report concludes:

"She has a supportive husband and I can see no current medical reason for her not to go ahead with this adoption process."

Father A's mother told us in evidence that since 8th October 2008 she was no longer in receipt of DLA following reassessment.

It is clear that originally Father A's parents would have asked to look after Child 3 in addition to Child 1 and Child 2, but for the reasons that they described to ISW 1 at E731 (13.5) they withdrew from that ambition. It is perhaps indicative of the difficulties the Local Authority have found themselves in with regard to this case that as recently as 7 January 2008 the Local Authority sent an e-mail at K565 sent by Mrs. Barnes:

"It is not beyond the realms of possibility for Child 3 to go with her siblings (to Father A's parents) if we are pushed on this."

The legal memorandum dated 13 December 2007 at K230 says this:

"Father A's parents are keen to have all three children but okay with Child 3 going to Father B's sister."

The same matter is also discussed at K182(a) in a report of Social Worker E. In the result Father A's parents have confined their application to caring for Child 1 and Child 2 and the Local Authority fully support them in this ambition.

I deal shortly with the complaint made on behalf of the B side of the family that the Local Authority appear to have pre-judged the outcome for Child 1 and Child 2 by allowing contact for Father A's parents at the foster care home from where they have been allowed to take the children out. It was

also pointed out that recently Father A's sister had been included in that contact. There was plainly no court order to this effect, but it is clear to me that there was in fact a professionals meeting at F360 and the jointly instructed psychologist made the suggestion at F367 on 21 February 2008. It was, however, somewhat concerning that Social Worker C told us that she had only recently become aware of this fact and did not know who had authorised it. Further, she was quite unaware when Father A's sister had first seen the children. Father A's mother told us how much her daughter looks forward to having the children come to live with her and her parents if a special guardianship order is made.

From what I have said already it is clear that a great deal of time has been spent in this case examining the conduct of the Local Authority from the time the children first came to their notice until the litigation was commenced, and even thereafter in so far as Social Worker C has made very serious allegations of misconduct and dishonest practice against her senior team manager, Mrs. Barnes. The court has been required to examine these matters with even more than the usual rigour and scrutiny. It has been necessary to see whether any malign influence of Mrs. Barnes reached the professionals who have reported in the matter and the extent to which a fair court process has been able to be conducted. The Local Authority have made a series of admissions. They have effectively abandoned the evidence of Mrs. Barnes, and Social Worker C has told me as follows: "I am sorry to say I do not think this case has been handled at all well and I do take my share of the blame for that." Plainly, as I have been discussing, one of Social Worker C's complaints against Mrs. Barnes is that she was told that she could tell lies if necessary. However, Social Worker C has maintained throughout that at no stage did she in fact succumb to that temptation and has told the truth on factual matters and has not misrepresented the position so far as the children or the parents are concerned. She has maintained that the Local Authority care plan should be put into effect.

I do not find any evidence that Social Worker C has in fact told lies or misrepresented the position. Social Worker C vigorously refuted the suggestion that she had simply allowed herself to be drawn into portraying the same negative approach to the family as Mrs. Barnes had adopted, and I accept her evidence as to that. I saw her in the witness box for a very long time indeed, and I believe that she did her best to act conscientiously throughout.

Further than the matters I have referred to above in the course of this judgment about the conduct of the Local Authority investigation and the court proceedings I do not feel it is appropriate or necessary to go, for reasons of space and time. These proceedings have been ongoing for over two years as a court process. Investigation began five months before that on 31st July 2006. The very poignant letter filed by Father B's sister to explain her absence on health grounds from the witness box which I received on 8th December 2008 draws attention to the undoubted strain that all parties will have been under this time. The children simply need an answer at the earliest possible opportunity in my judgment. There is a Christmas holiday fast approaching. Child 1 has just finished his first term at school. Child 2 is with him in foster care. Child 3 has been in foster care all her life. Mr. Baker on behalf of the mother urged me to expose all the Local Authority failings for the benefit

of others, but he accepted there was an understandable temptation for the court to confine itself to the matters relevant to welfare in this case. Mr. Sharp at one point suggested that it would amount to a "manifest abnegation of my responsibility" if I did not go into all the matters we had touched on. I have attached all due weight to those submissions in my decision, but I say no more about the local authority.

[The judge proceeded to consider the evidence and to make findings on the issues about the future placement of the three children. He concluded:]

The orders I make are as follows:

1. For Child 1 and Child 2 a special guardianship order for them to reside with Father A's parents. Their move to that placement should proceed as soon and as smoothly as possible. The Local Authority will, I know, be keen to provide the statutory support service that is required.
2. As for contact there will be supervised contact for the children with Mother and Father B together with Father B's mother and/or Father B's sister as the parties may agree at a frequency of six times a year. That will no doubt be reviewed as time goes by and may well be able to be increased in the way that the jointly instructed psychologist and the children's guardian have suggested.
3. For Child 3 a care order on the basis of the approved care plan for adoption with no direct contact to her parents but with indirect letter box contact to be arranged. I make no order for contact with Child 1 and Child 2 and leave it for further consideration.
4. I formally discharge Father B's sister as a party to these proceedings.

I will consider any application for permission to appeal this judgment from any party following its being formally handed down on Monday, 22nd December 2008. I have in mind to fix a hearing in February 2009 (when I am next available) to consider any consequential directions and orders that may be required in this case including that of costs. Written submissions can be provided for that hearing, but I have in mind forthwith, subject to further discussion with learned counsel, to permit selected parts or even the full version of this judgment to be shown:

(a) to any party involved in any case which is ongoing where Mrs. Barnes has to date played any significant role;

(b) to any necessary Local Authority managers outside the Children and Young Persons Department and to any duly authorised body enquiring into their recent conduct as a result of this case, which I understand may be awaiting this decision; and

(c) to the General Social Care Council so they may review their procedures, as may be necessary, for checking the circumstances of a serious criminal offence on the record of an applicant for registration as a social worker. There are grounds for thinking that the circumstances of Mrs Barnes' conviction were not subjected to sufficiently rigorous scrutiny.

I would welcome brief submission on these last points.

[At a subsequent hearing the judge ordered the local authority to pay (1) 50% of the 1st, 2nd, 3rd, 4th to 6th and 7th Respondents' costs of the proceedings as assessed by the Legal Services Commission and (2) the costs of preparing all transcripts ordered to be produced within the proceedings.]