

[2010] EWCC 38 (Fam)

In the County Court

Before:
HHJ X

Between:

Local Authority X	Applicant
and	
A Mother	1 st Respondent
And	
A Father	2 nd Respondent
And	
Children by their Guardian	3 rd Respondent

Hearing dates: 23 June 2010

Judgement

1. My decision in this case is as follows. Firstly, the threshold is crossed. Secondly, care orders are appropriate subject to choate care plans. Thirdly, the currently plans are inchoate and I invite the local authority to reconsider them with a view to long term foster care in current placements for all the children. Fourthly, the applicants for the placement orders are refused. Fifthly, the three eldest children should have contact with mother and father reducing to once a month for four months and then to six occasions per annum. Sixthly, the three youngest should have contact three times per annum with mother, once a year with father reducing to once a month for four months initially but with immediate effect in respect of father's contact. Seventhly, inter-sibling contact should continue weekly. Eighthly, telephone contact should cease. Ninthly, the application for the permissive order under section 34 is refused.
2. I now give my judgment and the reasons for those conclusions.
3. This case related to the welfare and entire future of six children, A who is 12, B who is 11, C who is 12, D who is 9, E who is 6 and F who is 4.
4. Mother is T; G is the biological father of all of the children except A. He is effectively her father as well as having been in a relationship with her mother for most of her life. Her natural father no longer plays any role in these proceedings and for the sake of convenience I will refer to T and G as 'mother' and 'father' or as 'the parents' throughout. It is a tragic case in which decisions of lifelong significance are required in respect of six children who have had a very long association with the care system whose inter-sibling bond is strong. They have all formed parental attachments. They all know who they are, they know each other and they know their parents. The complexities presented by these features are accentuated by the age of the children, their age span, and the fact that in a month or so mother is due to give birth to a seventh sibling.
5. The background is as follows. The relationship between the parents began after they met in (year given). X Social Services were involved with the family in (date given) in relation to another child. In (date given) A and B were placed on the child protection register. They were de-registered in (date given) but re-registered again at the end of the year when they were accommodated voluntarily following the parents' arrest for neglect.
6. The family moved to (place given). Emergency procedures were implemented in (date given). During that year, the first four of the six children were placed in foster care but rehabilitated in (date given) after the court made a supervision order.
7. In (year given) there was a further registration under the category of 'neglect'. The family moved to the (name given) area and the registration was transferred. The children remained on the register until (date given) by which

time a considerable degree of improvement was reported. There were further referrals in (year given) when a core assessment was undertaken; the concerns at that time centred around father's heroin use. No further action was taken on the basis that mother was the principal carer and able to protect the children. There were several referrals in the period beginning (year given) leading to registration once again in (month given) of that year. That registration was in respect of all six children and has remained in place ever since.

8. On (date given) Social Services gained access to the family home with the police. On (date given) the view was taken that the home conditions were such that it was unsafe for the children to be left there. Mother and children moved into a crisis centre. Father refused to leave. Mother then left the refuge and went to live with a brother and she later returned to the home. As a consequence of that, on (date given) an emergency protection order was sought and obtained. An interim care order was made on (date given) and has been renewed successively ever since including on (date given) when the parents contested its renewal before his Honour Judge M.
9. The current circumstances are as follows. The three eldest children are in one placement and the three youngest in another. Contact has reduced over the period since (date given). Currently all children see their mother once a week, each sibling group seeing her separately. Currently there is none with father because of the local authority concerns over his behaviour and his unwillingness to enter an agreement about it. His last contact with the three eldest children was on (date given) and the last with the three youngest was ten days or so before that.
10. The respective foster carers have facilitated weekly inter-sibling contact. This has been developed spontaneously and flexibly and is reported to have been very successful.
11. The local authority's concerns now relied upon and which are before the court are in the composite threshold document, the most recently updated version having been drafted on the first day of the hearing. Many matters are agreed. There are a few residual and relatively inconsequential issues between the local authority and mother about the underlying facts although she accepts the vast majority of them. However, she still however denies that they establish the statutory threshold is crossed.
12. There are a raft of issues about father's drug use over a long period, the parents allowing unsuitable people to visit the home and stay there, the presence of ornamental weapons and ammunition within the home, father keeping dogs with the consequent effect upon hygiene and implications for the security of the tenancy they hold, poor school attendance, poor home conditions, failure to keep health appointments, failure to engage consistently with Social Services and professionals and a prior history of orders and protracted periods of registration of the children on the child protection register.

13. The applications by the local authority are for care orders and for placement orders in respect of E and D. The care plans have evolved in the course of proceedings. The current and final care plans are those dated (date given) and (date given). The local authority proposes entirely new arrangements for all the children, and that firstly, A and B, secondly C and D be placed in new long term foster placements. The plan for E and F is one of adoption. In terms of future contact the plans, as now deemed amended, provide firstly for the four eldest children to have contact reducing to six times per annum with the parents and once every six weeks with each other, and, secondly, for the youngest children contact reducing to letter box contact after an adoptive placement is found.
14. The parents oppose the care orders and seek rehabilitation. In the event that the court makes care orders they oppose placement orders for E and F, and seek to preserve the status quo and the continuing placement of the siblings in two groups of three in their current foster homes.
15. They seek a minimum of monthly contact between themselves and the children. In the event of the court concluding that the current plans are inchoate the mother says contact should be continued at the present rate of once per week in the interim.
16. The guardian, (name given), supports the care order for all six children. Because her views conflicted with those of A, C and B, they are separately represented by (name given). They tell (name given) that they want to go home but if they cannot go home they want to remain in foster care. Ideally they would like to be together as a group of six but if not they want frequent inter-sibling and parental contact. Neither the guardian nor the children support the plan for adoption for E and F.
17. I turn now to the disputed threshold issues. There are five discrete points in relation to mother, all relating to the condition of the home on (date given). The first is that it was not possible to walk around the home safely. That was because of the clutter present. I deal with this succinctly in these terms. The evidence of clutter is incontrovertible. Whether that rendered it unsafe as opposed to being cumbersome or difficult to walk around the home is completely indeterminate on the basis of the evidence before me and this is not proved.
18. Secondly it is said the children's beds were stained with urine. There is a direct conflict in the evidence between (name given) and (name given) such that this cannot be proved on that evidence.
19. Thirdly it is said there were no toiletries or washing facilities. None were seen and the father said the children had electric toothbrushes which they kept in their rooms. It is obvious on this evidence that facilities were Spartan at best. They were probably highly inadequate. I doubt very much that the children all possessed electric toothbrushes which they kept privately and which they used. Whether one can go as far as saying there were no facilities is debatable but what facilities there were, were as good as none or close to.

20. The fourth is that there was rotting material in the sink and bathroom. The evidence was about the sink in the downstairs bathroom. Father's account of plaster having fallen from the ceiling caused by the leak, and having been left there at the specific instructions of the local authority's insurers is completely implausible. I am not able to say what the material was but it ought not to have been there. The condition of the downstairs room was poor and unhygienic.
21. Finally the fire alarms were not working. No-one tested them and on what was an assumption alone I find that this allegation is not proved.
22. I turn now to the issues in relation to father. Did father inform Dr (name given) that associates of his may have left needles in his home? This is an argument about a distinction without a difference in my view. It arose in context of discussion between father and Dr (name given) about father's injecting history. He said he disliked injecting. He had done it only once and had no venous access available. She challenged father about reports of needles having been seen in the home – reports which incidentally, I have not been referred to and which have not been part of the evidence in this case. He said (name given) and (name given) were intravenous drug users and that the needles may have belonged to them. Was he acknowledging the presence of needles by saying that, or was he merely suggesting a possible explanation for any needles that may have been there coupled with a simultaneous denial? The difference between them is slight at the most. The real issue is whether the needles were present and whether father was aware of that. Dr (name given) says she may have got her wires crossed about what father said but made an assumption – an entirely reasonable assumption in my view on the basis of what he had said – that he had accepted the presence of needles. She said he definitely did not deny it.
23. My conclusion is based on the following factors. Firstly, there is no historical report that there were needles seen. Secondly, if they had been there they would have been clearly visible to anyone within the house. Thirdly, father's reaction, unusual though it may be, in offering an explanation and not a denial is consistent entirely with his general argumentative disposition. He would simultaneously and instinctively offer a denial and an alternative version of events when confronted with anything. There is no issue that what is relied upon in the threshold document is right, that is that he suggested to Dr (name given) an explanation for the presence of needles. The issue is over the inference, if any, to be drawn from that. In my view the inference sought is not a fair and proper one to draw in this case because of his tendency and his predisposition to instinctively deflect blame from himself without acknowledging, in this case, the presence of needles. The omission of a denial does not in my mind amount to an acknowledgement.
24. On (date given) the threshold contends that the social worker, Mr. (name given) was in the home when two men knocked on the door and F said "There's no drugs here". Father has previously accepted that people have called at the house wanting to buy drugs. The issue is whether F said this. I

am satisfied that this is proved. Firstly, the parents were neutral about it until trial – even though Mr (name given) contended that mother at least would have heard it. Both previously said they could not say either way. Secondly, this is an extraordinary and therefore a memorable thing for a child to have said. It is not something trite or something which could readily have been misinterpreted. Thirdly, there is no other explanation for it other than that he said it. Fourthly, Mr (name given) has no malign vindictive motives against the family. Fifthly, the confusion of whether it was the 16th or 17th, or where the community support officer was standing at the time is nothing more than that – confusion in recollection about the precise details of this. It does not reveal an underlying unreliability or, worse still, a fabrication of events. Sixthly, F was three and a half at the time and there is nothing to support the contention that his age or delay in his learning would have prevented him saying and formulating this expression. The probability is therefore that it is true, for what it is worth.

25. The next allegation is that (name given), a Schedule One offender with a diagnosis of paranoid schizophrenia and a drug user, was allowed to stay at the property. There is no evidence of father's awareness of (name given) being schizophrenic. Otherwise this is proved. Father himself told Dr (name given) that this happened and that (name given) was a drug user when he offered this as part of a possible explanation for the presence of needles. He told a probation officer in (date given) that (name given) was a Schedule One offender.
26. On (date given) it is contended that father threw a remote control at mother which missed her and hit F, causing a cut and swelling. Father was arrested. The issue that was pursued was of father's intention. There is no issue, therefore, that father lost control of himself within the home, and that in temper used the remote control as a missile and threw it in a confined space and that it hit the child and injured him. Whether or not he actually intended to hit mother, or whether he aimed it at her is a distraction from the real issue here, particularly as there is no suggestion anyway that he deliberately aimed it at the child F. Whether it was caused because he threw it indiscriminately or his aim was poor is of no significance in my judgment. It was an ill-tempered act of violence which injured a child. The probability is in fact that it was deliberately thrown at least in mother's direction as he appeared to concede yesterday in evidence.
27. On (date given) it is contended that father behaved in what would have been perceived to be an aggressive and threatening manner to staff from (name given) Housing. I am satisfied that the contemporaneous account prepared by Miss (name given) is an accurate record of what happened and that this allegation is proved. Both Miss (name given) and Mr (name given) struck me as very impressive and reliable witnesses. Their function is to house families. They are accustomed to dealing with people with significant frustrations in their lives. They have strategies for dealing with them. They have no reason whatsoever to record inaccuracies, nor to misinterpret what was actually happening in front of them. Father was particularly sensitive over the concerns about the dogs. It was not suggested to him, I find, that he

should place the dogs in commercial kennels, but he was given details and the suggestion of them being housed at the RSPCA.

28. I accept father smelt of alcohol. He was accompanied by (name given). I find he became abusive and aggressive as claimed. His explanation that Miss (name given) bared herself to him, embarrassing him and prompting him politely to ask her to cover herself up is completely implausible.
29. The entirety of the garden was said to be used for dogs and no separate area allowed for the children to play without there being a risk to health. The garden was noted to be in poor condition on various dates and full of dog faeces smelling horrendously on one occasion. No improvements were made. Mother contended that it was father's responsibility to look after the dogs.
30. Much of this is admitted. Father's evidence was that the garden was the dogs' space and that the children were not allowed to go there and the reason for that was the very fear of contamination and disease. However he says the photographic evidence produced is nothing more than a series of snapshots upon particular days – wet days when it was either impossible or over-burdensome for the faeces to be cleared.
31. The recording observations span the period from (date given) to (date given). There are five separate occasions. This has been a long-standing concern to the local authority and to the housing association. The photograph produced in evidence was taken in (date given). Mrs (name given) visited in (date given) and (date given). The state of the yard was particularly striking to her. She described it as 'appalling'. There is a raft of evidence in this case which points to this being a long-standing persistent problem. Father's dismissive explanation of this being down to the weather is entirely unconvincing.
32. On the basis of the extensive admissions and the findings I have now made, is the threshold criteria in section 31 of the Children Act 1989 met? That is, at the relevant date which is agreed to be (date given) were the children likely to suffer significant harm and was the likelihood attributable to the care being given to them not being what it would be reasonable to expect a parent to give them?
33. A combination and cumulative effect of father's drugs and alcohol misuse and bringing unsuitable people to the home, father's volatility, the ornamental weapons, the unhygienic effect of the dogs and the threat to the tenancy, poor school attendance, the unsafe home conditions, the missed health appointments, failure to engage with professionals, the prior proceedings and prolonged registration mean that the threshold in this case is crossed by a very considerable margin. The test is whether this is much more than usual. It is and it is well beyond commonplace failure or inadequacy.
34. I turn therefore to the welfare issues and what should happen as a result of that conclusion. The decision has to be based upon the principle set out in section 1 of the Children Act, that is that the welfare of the children is the

court's paramount consideration. The court has to consider all of the circumstances as well as the criteria specified in section 1(3), (the welfare check list) and, in the case of E and F, the welfare check list in section 1 (4) of the Adoption and Children Act, 2002.

35. I turn to the children's ascertainable wishes and feelings. There is unequivocal evidence that A, B and C say they want to go home and they want to have the whole family reunited. They do not want E and F to be adopted. These views have been expressed to parents, to the guardian, to their own solicitor, to Mr (name given) and to Dr (name given). Dr (name given) reported F as saying the same thing. In order to ascertain the true wishes and feelings of children of this age, eight to twelve, it is necessary to look beyond what they say and not merely accept that at face value.
36. It is the view of Dr (name given), Mr (name given) and Dr (name given) based upon their observations of the children in different contexts that their behaviour with their parents is markedly different from that in their foster placements. All of them attribute this to feelings of split loyalties and a desire by the children to ally themselves with the parents, the father in particular, when with them and to adopt their controversial attitude towards authority, Social Services and social workers in particular.
37. Dr (name given) was struck by this. He observed two contact sessions and observed A behave in a challenging, controlling and domineering fashion. In the foster home she was much calmer. She revealed a gentler side to her personality. She was open in interview. He concluded A, and to some extent B, had become agents for their father - hence the split loyalties that they harboured. Wishes and feelings can be ascertained from what they do and how they behave as well as from what they say. Dr (name given) and Dr (name given) report A, B and C as being happy and settled. They have good relationships with foster carers; they both saw clear signs of A as the most vociferous spokesperson but nevertheless being happy where she is. Dr (name given) suggested that in her heart of hearts A knew what the benefits were and that she was actually enjoying them. Dr (name given) said that A and B followed the foster carer around the house constantly wanting to talk to her, notwithstanding simultaneously trying to maintain a distance between them.
38. The evidence is of both placements having been successful over the last eleven months and of the children having improved considerably in many aspects. Whilst the older children have expressed a clear wish, the evidence shows that they have feelings of warmth and affection towards their foster carers. The ease with which they have settled and progressed, the success of the inter-sibling contact arrangements demonstrate this. Despite superficially strong views the placements have remained stable and in fact demonstrate that their true wishes and feelings are far deeper and more complex than what they say. A is proud of her achievements in school, contemplating changing the sleeping arrangements in September and contemplating, it would seem, therefore staying where she is. All of them

display a feeling of ease and contentment in their placements. The eldest have a contradictory and confused view.

39. In direct work undertaken by Miss (name given) with the three youngest children, E has expressed to her that she does not want to see her father any more because of his use of the 'v sign' and holding up his middle digit to her and swearing on (date given). F has said his father shouts a lot which is the 'worst thing about contact' E added that her father shouts at her, pinches her, scrams and elbows her. F said he disliked (description given) which his father liked to draw. Beyond that there is no other evidence of expressed wishes and feelings by the younger children. But they, too, demonstrate ease, contentment and feelings in relation to their current placement.
40. Secondly to the children's physical, emotional and educational needs. All have conventional needs for loving, safe, secure, supportive and stimulating nurturing during childhood. The children have particular needs arising from past experiences. Dr. (name given) defined their collective current and future needs as follows: "Their main need at present is to be able to grow up in a permanent family environment where they can receive the quality of care and boundaries they require and where they have the opportunity to develop secure and stable attachment relationships with their care givers". He specifically said that A, B and C need and should be given the opportunity of specialist psychological therapy to help them work through unresolved past experiences and unresolved issues. He regarded this as particularly important if they are to be placed permanently in foster care.
41. The three younger children might benefit from a course of specialist play therapy to help them with their unresolved issues. He recommends further work and therefore a need for specialist work with the siblings to reduce negativity and conflict and to promote concern and understanding.
42. Mr (name given), too, referred to the need for specialist help for F. The local authority was looking to CAMHS for guidance, a referral having been made approximately two weeks ago. A need for direct work with the children had been identified but not undertaken because of changes of personnel and because of difficulties in the dynamic between the parents and his predecessors.
43. He said that various forms of therapeutic intervention were definitely needed to ameliorate the damage which had been caused. That was a view echoed as well by his colleague Mr (name given). F had particular problems in settling in his foster placement. He became aggressive, he was turbulent. These aspects of his behaviour were being addressed and referred to as 'work in progress'. He is educationally delayed and emotionally immature which are aspects requiring particular attention. C and B's assessments suggest that they too may have learning difficulties giving rise to particular needs.
44. Further identifiable needs arise from their familial and sibling relationships. All of these children know who they are, who their parents are, who their siblings are. They have a sense of identity and a sense of heritage. They love each

other and the parents. The degree of attachment is variable because of the age span but these are real relationships and give rise to real needs on the children's part for their preservation in one way or another.

45. The next consideration is the likely effect of any change of circumstance. Firstly, if the children are returned home they would become a sibling group of seven. They would return in all probability to adversity and chaos. It is likely that they would regress. That conclusion is reached because of the past history, the harm that they have been exposed to and the parents' lack of ability to meet their needs, all of which I will refer to again shortly.
46. Secondly, if they were moved to new foster placements the four eldest would be faced with forming new attachments with new carers. The sibling relationship between C and the older sisters, and F and the younger siblings, would be disrupted. F and C would be together for the first time and they are acknowledged to be the children with the greatest difficulties which are yet to be fully addressed.
47. Thirdly if F and E were placed for adoption the effect upon the sibling relationship would be considerable. That is the view both of Dr (name given) and Dr (name given). That would generate a huge sense of loss and deliver yet another huge blow to the well-being of the children.
48. Fourthly, all of them would lose the benefit of the current placements.
49. Fifthly, E and F would face a new life affected by severance from their current family and from their placement in a 'forever family' of adoptive parents yet to be identified.
50. Sixthly, all the children would be exposed to an immediate period probably of about six months or so at least whilst these plans were implemented. That would be unsettling and make very considerable demands of them and impose considerable stresses upon their emotional wellbeing during a difficult transition.
51. None of this is an exact science. Some of the predicted effects of change are definable. Others in terms of the children's reactions, the effect upon their respective levels of stability and, consequently, the proposed success of any changes are unpredictable. That is necessarily so because there are six of them in different stages of childhood. In short it is a delicate and highly complex situation. Dr (name given) summarised these uncertainties and her view as follows "I have grave concerns that if the children are moved again they will simply regress to their previous presentation and behaviours like they do in contact and therefore all their progress, hard work and effort since entering care will have been in vain. The children have lived in chaos and adversity for most of their lives and another move would not only disrupt their current relationships with their carers but the precious sense of security and stability that these children currently have".

52. A major issue in relation to the effect of prospective changes in their circumstances is whether they could and would be capable of forming the new attachments each of them would have to make. There is a sharp conflict in the evidence about this. The local authority's position is that E and F should receive specialist therapy based on therapy techniques developed in the United States, which would enable the adopters to undertake exercises with the children to alleviate any effects of attachment difficulties. Mr (name given) is very mindful of the effect upon the other four of making their move but it was a question of balancing this against the benefits for them.
53. Dr (name given)'s view supported by the guardian is that the local authority has misunderstood the effect of attachments. Attachments are not designed to be transferable. They are not inherently flexible, they are a major force of bonding in a pathway between six months and four years of age after which, by analogy with a sticking plaster, he says they lose their adhesive quality - that is to say lose their emotional intensity. The effect, therefore, of a change of circumstances such as this in this respect would be to expose all of the children to a very real risk that some or all of them would not make successful new attachments. I accept that analysis by Dr (name given). It is accentuated in this case by the fact that the children have all to different degrees formed two different attachments already and cover such a wide age span.
54. I turn to their ages, sex, background and relevant characteristics. The age span referred to is a highly relevant consideration both in terms of their individual and their collective needs. Their background is one of close sibling and parental bonding. There are no characteristics other than those referred to when I addressed their needs that are relevant. There are no linguistic or ethnicity factors of relevance.
55. I consider the harm which they have suffered or are at risk of suffering. The children's history and association with the care system at different times over virtually the whole of their lives has been analysed in depth in the course of the core assessments, experts' reports and the evidence in this case. In general, Dr (name given) said they had experienced chaos and adversity. Mr (name given) agrees. Dr (name given) said when they first came into care they were almost feral. They ate with their hands, pawed at food, had no manners, no learned social behaviours, no boundaries, they lied and fought and ran around naked. It is clear as well from the evidence that their education must have suffered, that they have lived in chaotic and unhygienic conditions at home and that their health needs have not been attended to as they should have been. Despite ongoing local authority concerns and interventions the parents have failed to attend child protection core group meetings between (year given) and (year given).
56. Mrs (name given), the independent social worker, undertook an analysis in relation to the next consideration which is the capability of the parents. In the course of that, she also identified the harm which the records show clearly the children had been exposed to and its effects. A and B wore clothes – underclothes in particular - which had to be binned. They both displayed

chaotic eating and toileting behaviour. There was a real question of whether they ever cleaned their teeth and they both used bad language. C had head lice and displayed the same issues in relation to toileting and oral hygiene and eating. F was grubby and had poor toilet behaviour. He was aggressive and turbulent. E was grubby and had ill fitting clothes, she knew about oral hygiene but needed further training. She has a complex attachment related process according to Dr (name given) and she used some bad language. F was grubby, his teeth were brown. He did not know how to clean his teeth and he was reported to have been unhappy, distressed and worried at school. He, too, used bad language. I agree with the guardian's analysis that throughout their lives the (name given) children have been at risk of neglect, physical harm, emotional harm and social disadvantage.

57. I turn now to the capability each of the parent has of meeting the children's needs. There are no other relevant persons for the purpose of this consideration. It is a pivotal consideration in the context of this case. In the first place it is important to acknowledge that there have been periods and aspects of positive parenting. All of the experts acknowledge this to have been the case. There has been identified harm, and there have been significant shortcomings, but in (year given) the children were returned to the parents' care. They had been removed from the register before and, whilst child protection procedures were engaged, proceedings have not been issued. Some improvements were made in the home conditions. The dogs are no longer there. The children were generally healthy when taken into care. There is no question of a bond having been established between the parents and the children. There is no question that the parents love them and there is no question that the elder children want, in part, to return home. However, the evidence of an inability to effect and sustain change is equally clear. Sadly, it shows inescapably that the parents are incapable of it.
58. Miss (name given) undertook an extensive exercise involving many interviews between (date given) and (date given) involving some 14 hours with the parents on two home visits. She assessed their capacity by reference to basic care and safety, stimulation and attentiveness to need, emotional aspects of parenting, guidance and boundaries, stability and the ability to work with professionals. Her conclusions were that the children had greater needs than most. She attributed that to instability, inattentive parenting, complex emotional relationships and limited intellectual functioning in some of the children and to mother's limited intellectual ability and her own adverse upbringing, as well as to father's chaotic and unstable childhood and his immersion in drugs, alcohol and crime. She was indeed concerned that the situation had been allowed to continue until now. She did not believe that the parents could provide safe or adequate parenting that would meet the children's needs. She suggested possible explanations for the deterioration in the home as the number of children, the chronic absence of a capable partner and parent, low spirits and the cumulative responsibility of a growing number of children for persons with limited capacity. Neither could provide good enough care. There had been considerable support in the past. There had been the opportunity for further support but this was met with limited and erratic engagement.

59. Dr (name given) undertook a psychological assessment of the family and in relation to mother he concluded that, firstly, she had a very limited understanding of the local authority concerns. That was so in the past and is so now. She became annoyed and generally reluctant to acknowledge problems. Consequently it was very difficult to make improvements.
60. Secondly, there were major concerns about her ability to work with Social Services and others in an open, honest and constructive way. She had a marked tendency to blame others. She attributes a negative intent to Social Services for their current involvement. Thirdly, in terms of her general personality functioning mother showed tendencies towards avoiding self disclosure, towards wish fulfilment rather than reality, towards creating an image of how she would like to be seen. She lacked insight and was very disinclined to admit her shortcomings, was reticent, secretive, with a tendency to conceal problems and portray herself in an attractive light. Consequently she conceals her own very troubled experiences in childhood including her own exposure to serious sexual abuse and the breakdown of two adoptive placements, and of Social Services' involvement in her own life from the early age of 16 when she first became pregnant.
61. Fourthly, she has difficulties in developing an accurate and realistic view of the psychological functioning of the children. She describes them all in interview as 'happy go lucky' children with not a care in the world and nothing wrong. All of this is at odds with the findings that several of the children had some psychological problems and high levels of conflict and negativity in their sibling relationship. In all she had very limited awareness of many problems and issues facing the children. Fifthly, her intellectual functioning was at borderline level. Her thinking might be quite concrete. She has difficulty in thinking in an abstract manner and may have difficulties in understanding the psychological needs of the children. This lack of insight as well as the dismissive state of mind about her own experiences and those of the children and the rigid nature of her personality means the prognosis for change is very poor indeed. There is a high risk that she will continue to deal with Social Services as she has done in the past.
62. In relation to father, Dr (name given) diagnosed very significant personality difficulties. He has 35 convictions for 101 criminal offences committed between the ages of (same given) and last year. These included offences of violence and aggression. He may well meet the criteria for a diagnosis of antisocial personality disorder - that is a pervasive pattern of disregard for and the violation of the rights of others. Testing indicated that he met the criteria for self defeating personality traits and antisocial and depressive personality traits. These lead to irresponsible, impulsive and insensitive or ruthless behaviour and a tendency on the other hand to be obsequious and allow others to exploit him.
63. His profile suggests a tendency to feel misunderstood and to struggle with feelings of anger and resentment, to feel erratic, antagonised, bitter and resentful. Those findings echo those in the earlier report of Dr (name given)

and they amount to very serious concerns about his personality and its impact upon the children, particularly the (number given) boys who he treats markedly differently from the girls. He has been observed encouraging antisocial behaviour on the part of the boys during contact.

64. In addition to his personality problems there is, secondly, the issue of substance misuse - a very serious issue indeed over the past two to three years. He admits daily heroin use culminating in what he described to me yesterday as 'a bender' following the removal of the children in (month given). He refers to having been 'out of his mind' most days. What Dr (name given) concludes is that the court needs evidence of continued abstinence over a long time. The court acknowledges, as did the experts, father's progress to date and the engagement with the drug intervention programme from last summer. There is some question over that continuing. On the basis of what father said yesterday it appears as an informal, voluntary arrangement with the operator of the programme. More disturbing however is Dr (name given)'s evidence that he has relapsed. The test results recently undertaken detected the use of heroin within the two month period covered by those results.
65. I accept her evidence about it. She described herself as 'fairly confident' in scientific terms that it indicated heroin use and the usage at a level which has to be seen in relative terms because it is set against very high levels of past use by him. But the explanations he advanced are all accounted for and are implausible. If he had taken dihydrocodeine it would have shown up as such. It is highly unlikely that he was prescribed diamorphine if and when he was recently in hospital. The equivalent production in our brain systems would not circulate in blood nor therefore would it appear be detectable in hair follicles. Passive smoking is highly unlikely to be an explanation because smoking heroin involves inhalation alone and not exhalation, if ingested in the course of something being spiked whilst that could amount to an explanation, the test regime is such that it is highly unlikely that a single one-off use would sound in these results.
66. Likewise in relation to his alcohol use, as father appeared yesterday to recognise, he has under-reported this. All of this is disappointing.
67. A third major concern in relation to father is his inability to work with professionals. He attributes malign motives connected with his own abuse when in care. He has 'something on Social Services' which is why they are against him. These are major concerns of his parenting capacity. He cannot control himself and his thoughts when dealing with the children or interacting with them. He expresses resentment and anger towards Social Services at contact. He speaks negatively in front of the children. He speaks negatively about the foster placements in terms that, if allowed, will inevitably undermine them. He is very negative and inappropriate in his behaviour towards the children which itself has an entirely negative effect upon their functioning.
68. He puts the children under pressure to conform to his views and this has had a particular effect on A and B. In this respect I accept what is being said in general terms and by reference to the specifics by Mr (name given) and by Dr

(name given) both of whom observed these very behaviours and effect. There is an example on (date given) of a contact with the older children only. The parents were not informed that the younger ones would not be there. Father walked off. He came back. There was tension. Father was angry and upset. The children observed this and they were upset. He eventually joined the contact for the last 15 minutes but was volatile, outspoken and spent that time demanding to have videos taken of the evidence of contact saying he could not 'deal with supervisors like that'. He could not deal with their 'mind games' and he accused one of the supervisors of 'flirting' and then he left. All in all this must have been and it is recorded as having been a very miserable, entirely unproductive and a negative experience for these children. That is one example only. There are many others of insensitive and inappropriate behaviour at contact in (date given) and (date given). Father's explanation that Mr. (name given) 'baits' him and that on one occasion he was not even there despite the making of the record are completely implausible. He offered an explanation for a recording of the attempts he made to frighten the children when they were to fly to (country given) with their foster carers as some form of reaction by the local authority to knowledge they had of him being part of a mixed family of religious members which included (religion given). These are fanciful and incredible explanations of what has been going on and they raise themselves a worrying suggestion that not only is father prepared to say these things but he may have actually begun to believe them himself. They are further evidence of Dr (name given)'s conclusions and I accept they are very real concerns and that the records which are included in extensive papers before me are themselves accurate and reliable records of what has been going on.

69. All of this demonstrates past inability and ongoing inability to meet the children's needs. The prognosis for father is poor because of the deep-seated nature of this personality disorder and the need for acknowledgement before any meaningful change could even be contemplated. Recent evidence of relapse adds to the difficulties.
70. The final consideration is the range of powers the court could make. The court could make no order, it could return the children to the home, it could make a supervision order, it could make a care order on the basis of current plans, it could make interim care orders in place of inchoate plans and it could make placement orders for E and F. There are no other available carers and no other available orders.
71. I turn to section 14 of the Adoption and Children Act 2002. Many of the criteria, save for two, are identical to those in the welfare checklist in the Children Act. Where they are then my conclusions are the same.
72. I deal now discretely with two different and therefore additional matters. The first is the likely effect on the children throughout their lives of having ceased to be a member of the original family and become an adopted person. The effect of adoption will be a definite loss of a sense of identity and awareness and of having been dealt with differently. There will be a real sense of loss

particularly between the siblings. The likely success of placement in terms of attachment is, as I have already indicated, far less clear.

73. The second consideration is the relationship the child or children has with relatives including the likelihood of it continuing, the ability and willingness of the relatives to provide a secure environment for the children and the wishes and feelings of the relatives. The relatives here are not relatives in the sense of wider family members. There was some suggestion that the elder children wanted to see some unidentified members of the wider family but there is no evidence of any involvement by E and F of anyone other than their mother, their father and their siblings.
74. The sibling relationship would continue between E and F. In relation to the others it is a very important relationship with life-long implications for them. They would to all intents and purposes lose it unless or until it resumed at some later stage in life.
75. The parents cannot provide a secure environment. The siblings and the parents all harbour very strong wishes which I have already expressed about this.
76. I turn now to outcome. Rehabilitation is not an option with or without a supervision order. In my judgment a level of harm which I have addressed and future risk to the children's welfare coupled with the inadequacies of the parents in terms of parenting ability preclude that as a possibility. There are no other carers available. Subject, therefore, to choate plans, care orders are necessary, justifiable and proportionate and a warranted interference with the rights of the children and the family under Article 8 of the European Convention for Human Rights.
77. I refuse the application for placement orders for E and F for these reasons: firstly, the proposition or policy that one should offer as many of the children as possible the best chance of permanence does not adequately take into account the reality of the situation and in particular, the strength of the sibling and familial relationships that exist. They have very real knowledge of identity and of each other. The reality is that the children will be (ages given), likely to experience very difficult issues in relation to their selection and removal.
78. Secondly, that is a point exacerbated by Dr (name given)'s identification of problems in the area of attachment such that he says instability should be kept to an absolute minimum. They have all formed two attachments already. Attachments will inevitably become progressively more difficult and it is impossible to predict the quality of attachments they may or may not be able to make.
79. Thirdly, there are also concerns about the impact upon the other siblings, particularly F. The complexities of this situation arise in part because it is required to consider the children individually but inevitably the court must also consider the wider impact upon and within the sibling group.

- 80 There are concerns articulated by Dr (name given) about the children's capacity to resolve feelings of loss and separation. He predicts that they will be extremely angry and sad and it is unlikely that a support package could successfully deal with the ensuing grieving process.
- 81 Fourthly, this all represents a raft of problems for prospective adopters too. The children are at the upper end of the age bracket in which it is generally considered that adoption is suitable and where there can be some confidence of success. Dr (name given) puts the odds at 50/50 at this stage – these particular attachment problems and the resultant grief are a further threat to that level of success.
- 82 Fifthly, there are very real difficulties that would be encountered over the next six months during the transition period.
- 83 Sixthly, there is the pragmatic point that permanence is not confined to and exclusive to adoption. It can be achieved by long term fostering care. These children have been in placement for nearly a year. They have made real and undeniable progress. All the available evidence is that the placements are or will be available as long term foster placements. Why, the question is asked rhetorically, change it and run the risk?.
- 84 There is no perfect solution. It is a balancing exercise with, as Mr (name given) fairly acknowledged, pros and cons either way. But this plan for adoption is in my view one in pursuit of an uncertain outcome on the one hand in terms of permanence, with highly likely disadvantages both for E and F themselves and also for the whole sibling group on the other hand.
- 85 Currently their needs are well met. They do well, and adoption would in my judgment therefore be a disproportionate, unjustified and unnecessary intervention which would pay insufficient regard to the rights of the two children concerned as well as those of the family under Article 8.
- 86 In relation to the (number given) others I am not prepared to approve a plan that involves two new or three new groupings. I would invite the local authority to consider the situation with a view to a plan for long term foster care for all (number given) in two groups of (number given) in the current placements.
- 87 The reasons for that overlap in some respects but they are as follows: firstly, these children are happy and settled. Secondly, they have good relationships with their foster carers.
- 88 Thirdly, whilst there are issues between the three eldest with alliance shifting from time to time, I agree with the analysis of Dr (name given) and Dr (name given) that the appropriate response is to manage that conflict and work with the girls to resolve it. Conversely splitting them and simultaneously putting two out of the three in a single new placement and the third with F in a single new placement is a disproportionate response.

- 89 Fourthly, splitting the girls would be likely to have the effect of reinforcing the perceived rift when their needs would be best addressed by addressing that rift, that tension with some direct work.
- 90 Fifthly, in relation to the particular needs of C and F, they are identified as the most needy and most vulnerable and challenging of the siblings respectively. Placing them together in an entirely new placement seems to me to be the inevitable result of placing the two youngest for adoption and separating the two oldest and placing them separately. There is nowhere else for F and E to go. But that fails to consider their particular needs and how they are best addressed by or indeed to be addressed in that entirely new situation.
- 91 Sixthly, I acknowledge the concerns by the local authority that with things as they are the parents are likely to attempt to undermine the placements.
- 92 On reading my notes again last night I was not entirely sure whether Mr (name given) intended that to be an argument in relation to the adoptive placements by F and F or whether it related to changing the entire current arrangements for all (number given). It was said in the context of the latter, but either way, I think the answer to it is the same. In the first place the reality that we have to accept is that in this world of modern communication this could happen in any event. It is something which has to be managed and cannot simply be precluded by an order of the court or by a regime. Secondly, despite father's efforts and mother's concurrence in it, there is no evidence at all of it having happened to date. The effects have not permeated either placement to any disruptive extent. Nor has it affected the regular inter-sibling meetings. On the contrary, everything is working relatively well and it seems that A's obvious display of allegiance is met by an adjustment of her behaviour according to her circumstances and that she copes with both influences. Thirdly, as a consequence of the second point, if there is to be an attempt at disruption by these parents creating uncertainty over the next six months, creating an entirely new environment for all of these children seems to me to be a much more fertile opportunity for that disruption to have its full intended effect than actually leaving them where they are, continuing with the incremental improvement in school, home and personal life that they have experienced to date. This disruption and interference with their current relationships would in my judgment be unjustified, unnecessary and disproportionate and pay insufficient regard to their Article 8 rights.
- 93 I turn now to the question of contact. I accept the analysis of Dr (name given) and the guardian that the needs of the two groups of children differ, their degrees of attachment differ, their express wishes differ, the potential consequences of curtailing contact and the predicted risks differ. A common need however is that contact should be preserved to cater for their identified needs. It must however be a child-focused exercise and be conducted and managed for the benefit of the children. Contact which does not work or which is misused is not consistent with their welfare.
94. In respect of the three eldest there is now a new consensus between the guardian and the local authority that the contact should continue with both

parents up to six occasions per annum during and preferably at the start of school holiday. There are two factors in this decision. The first is the potential opportunity contact has for father in particular, but with mother's concurrence at least, to de-stabilise the placements by imposing negative views upon these children which they are expected to and have been inclined to adopt. The second is the need for permanence within the long term foster placement and the inconsistency that too high a level of frequency could create that need.

95. In relation to the former I have no doubt that father presents a very real risk by his actions and that mother does too by her inability to see this as a problem. A real question mark exists over whether she can see and therefore portray the placement positively. I find it surprising that contact has continued thus far with so many incidents of negativity by father in particular, although it is fair to say that the frequency and format were altered and that father has now withdrawn.
96. All of the conclusions of Dr (name given) were evident in father's evidence. He is argumentative and readily deflects blame from himself to others. At the same time he can be almost engaging in his own way but reveals no appreciation at all of the need for contact to be supportive and constructive and of his vital role in that. He is always a victim and he puts almost everyone else at fault other than himself. He revealed considerable frustrations in the course of his evidence and did eventually say that he will try to co-operate with any contact expectations. But that concession given as it was in the context of everything that had preceded it, carried very little persuasive weight in my mind.
97. Dr (name given) is right when he said that contact would be extremely difficult to manage. This has to start, if it is to be successful, with an acknowledgement of the problems by the parents and the conclusion of this part of the case is the opportunity for that to happen. If it continues to be undermined or be unsuccessful, as for example it was on (date given) then its future must be reviewed. There must be a clear contract of reasonable and appropriate expectations. Mother and father must sign up to it with a genuine intent to be bound by it. Some work is needed with them in this respect.
98. In relation to the second issue of permanence, the focus must now be on cementing the new attachments. Frequent contact with the parents can be disruptive to that essential focus. These children need to become even more firmly integrated into the foster families. Seeing parents weekly, which is what the parents would like, is going to interfere with that. In terms of frequency, so much depends on the value of the contact and therefore upon the parents themselves. Dr (name given) was wary about the risks associated with too brutal a reduction for the eldest children - worried that that by itself could act as a destabilising factor. The older children need this contact more than the two younger children do because they worry about their parents and miss them and he was considering proposing at that time that contact be three times a year which he considered 'a bit low'. Repeatedly Dr (name given), rightly in my judgment, returned to the theme that it needs to be managed and

reviewed. I conclude the balance strike of 'up to six times a year' is appropriate, subject to what I have already said about the contact of expectations and mechanism for review within the LAC process.

99. Inevitably there will be an interval between the making of this and a final order in the case. There should be a phased reduction in the meantime. I have considered the respective proposals and I consider that the level appropriate for the next four months shall be once a month then leading into the new regime.
100. In respect of the younger children and their identified needs and different wishes, I agree the level proposed by the guardian, namely three times per annum in respect of mother. A major issue is in relation to the frequency of father's contact and whether that should now be confined to one occasion a year for the preservation of identity. No-one would support that frequency and the differential if it was working well and what this raises is a question of the appropriate strategic approach - what I referred to yesterday as the 'stick and carrot dilemma'. Do we limit the contact now on the basis that it could be increased or should the court allow more now on the basis that it could be decreased? The answer is, in my judgment, to be found alongside the welfare of the three children.
101. Dr (name given) emphasises and everyone would agree that any contact has to be positive. Currently I hold out very little prospect of achieving that without significant change on the father's part. The children's competing need to establish themselves further is imperative. Nothing should be done to imperil that. Consequently the balance lies in saying that the time has come for the children's needs to be respected, their wishes to be factored into this and for father to demonstrate that real change is achievable and underway before departing from the guardian's recommendation. My conclusion is that it should be once a month and subject of course to the same review provisions.
102. As far as the interim is concerned, in my judgment, the same regime should apply for four months prior to the introduction of this new regime.
103. In terms of inter-sibling contact this is of immense importance. The mutual interaction between them about their respective homes seems to be a means of reinforcing their placements and giving them assurance about where they all are. It does not seem to me to have a destabilising effect, there is no evidence of contamination. Should it occur then this should be reviewed. It should in my judgment continue as currently exercised.
104. In relation to telephone contact, now that we have moved far forward towards the final conclusion of this case it should cease. It has no purpose. It is likely to have a much more disruptive influence upon the children than any other form of contact and, given the parents' inclinations and their inability to control those inclinations, it offers too ready an opportunity for abuse.
105. Finally I turn to the guardian's request that the court impose a permissive order under section 34 (4) of the Children Act at this stage permitting the local

authority to terminate contact in the event of a breach by the parents of requirements made of them. The question here is whether -- as this is indeed a watershed position now reached, albeit not on a final basis -- the contact should be buttressed by a permissive order. Father's attitude and the risk he represents has been taken into account in the order I have already made and in my judgment applying *A and M v Walsall Metropolitan Borough Council* [1993], the question for me is whether the residual risks are so severe and matters so exceptional that an order is justified at this interim stage.

106. I accept the need for change and that there are risks. However the factors are these: firstly, contact has been continued to date; secondly, father has currently withdrawn; and, thirdly, the court has now made its judgment and imposed a new order albeit with transitional provisions. In those circumstances, I cannot see how the criteria for the exercise of this jurisdiction at this stage is justified. What has been said by Mr (name given) in support of it is capable of general application. It could be said in very many cases that at this stage of final orders, where there are threats to the instability of what is about to be implemented, there should be a permissive order. But that would make such orders capable of general application. The law which binds me is in my judgment clear and, absent exceptional circumstances and severe risks, I have no jurisdiction to make it or at least it would be an inappropriate exercise of discretion.
107. I therefore invite reconsideration by the local authority of the care plans with a view to long term fostering placements for the (number given) children in two groups of (number given) in current placements with details of the new social worker after Mr (name given)'s imminent departure, details of the practitioner to engage in the life story work, details of the work to be undertaken, details of the therapy which has only been referred to in general terms throughout this hearing but which everyone recognises is imperative for all of these children, confirmation of the placements, reconsideration of the panel decision from April, a contract of expectations in relation to contact and the recruitment of ICS or another agency, something which I did not comment upon in the course of judgment because it seemed there was a consensus between everybody here that such were the circumstances that a neutral external agency accommodating, facilitating and supervising contact would be to everyone's advantage, not least these children.
108. Those are my reasons, those are my conclusions.