This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No: IL12C0026 & IL12C00917

Neutral Citation Number: [2014] EWHC 2042 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2014

Before :

MR JUSTICE COBB

- -

Between :

	Local Authority 1 ("LA1") **Local Authority 2 ("LA2")**	**Applicants**
	- and -	
	AF (mother) **BF (father)** **CF, DF and EF (children)** **(By their Guardian)**	**Respondents**

- -
- -

Chris Barnes (instructed by **Local Authority solicitors**) for both Local Authorities
Sally Bradley (instructed by **T V Edwards LLP**) for the mother
Gillian Marks (instructed by **Dunning & Co**.) for the father
Shiva Ancliffe (instructed by **FMW Law**) for the Guardian

Hearing dates: 9-18 June 2014

- -

Judgment**The Honourable Mr Justice Cobb :**

Introduction

1.By this judgment, I give reasons for my decisions in relation to three siblings:

i) CF, a boy aged 6, currently the subject of a care order and placement order in favour of Local Authority 1 ("LA1");

ii) DF, a boy aged 4, currently the subject of a care order and placement order in favour of Local Authority 1 ("LA1");

and

iii) EF, a girl aged 20 months, currently the subject of an interim care order in favour of Local Authority 2 ("LA2").

They are the three children of the First Respondent, AF, ("mother") and the Second Respondent, BF, ("father"). They live together in a foster home in the area of LA1.

2.The boys have been the subject of ongoing public law (or associated) proceedings now for approximately 30 months - since January 2012. It is salutary to record that CF was merely 3 years 9 months old when court proceedings were first issued in respect of his future; he is now over 6 years old. At a final hearing in relation to the boys over a year ago, the Children's Guardian stressed that "*the boys needed a decision to be made urgently…*" (see the judgment of Ms Recorder Ray ['Ray']). Ms Recorder Ray acknowledged at the conclusion of that hearing that the children "*need final decisions as soon as possible … their opportunities for successful placement together will diminish quickly over time.*"

3.Fourteen months later, final decisions are still being debated for these children; the parents argue even now that the court should defer further the making of final orders. The local authorities and Guardian are clear that resolution is overdue: "*the children are awaiting answers … they need certainty*" (Mr A: Social Worker LA1).

4.The multiple substantive applications before the Court at this hearing are as follows:

i) Application by the mother (supported by the father) for leave to apply to revoke the placement order in relation to CF and DF; this application is opposed by LA1 and by the Children's Guardian;

ii) Application by the mother (supported by the father) for discharge of the care order in relation to CF and DF; this application is opposed by LA1 and by the Children's Guardian;

iii) Application by the mother for an order authorising a residential assessment under *section 38(6)* of the *CA 1989* in relation to EF (the subject of an interim care order), on the basis that this would also include the boys; this application is opposed by LA1, LA2, and by the Children's Guardian;

iv) A deemed application by the father for an order authorising a residential assessment under *section 38(6)* of the *CA 1989* in relation to EF (the subject of an interim care order), on the basis that this would also include the boys; this application is opposed by LA1, LA2, and also by the Children's Guardian;

v) Application by LA2 for a care order in relation to EF. This application is opposed by the parents, and supported by the Children's Guardian;

vi) Application by LA2 for a placement order in relation to EF. This application is opposed by the parents, and supported by the Children's Guardian;

vii) Application by the Maternal Grandmother ("MGM") for a Child Arrangements Order, to provide that the children 'spend time' with her. The Local Authorities and Guardian oppose this application, as do the parents.

5.I am conscious that this is a lengthy judgment. I make no apology for that. There are multiple and complex issues to resolve. Moreover, I felt that it may be helpful to set out the relevant material fully here in the hope that it will endure as a valuable record for the children (when they are of an age and maturity to understand it) of why these life-changing decisions were made for them.

6.Fortunately, I do not need to rehearse the lengthy background history of the period prior to March 2013 which is amply summarised in the judgment of Ms Recorder Ray (8 March 2013); that judgment should be read as a preface to this.

7.I rely upon the findings which she made (see further [11]-[17] below), and the narrative which is set out in that judgment. Unless necessary to do so for the purposes of explaining my own reasoning, I do not propose to repeat that here.

8.The inter-connecting issues which have featured prominently in this hearing are:

i) The capability of these parents to meet the needs of these children; although devoted to their children, the parents' lives have been ravaged by drugs, trauma and abuse; specifically, I have had to consider their capacity in the short-term and long-term to meet the needs of damaged children who have suffered significant emotional harm;

ii) The consequence of a prematurely terminated professional parental assessment, particularly where it is argued (by the parents) that the cause for the termination of the assessment could not be blamed upon the parents' themselves;

iii) Delay in decision-making for young children in a case which entered its 123rd week as this hearing reached its conclusion, against the benchmark of 26-weeks imposed by statute (see *section 38(7A) CA* 1989);

iv) The challenges facing family finders searching for permanent substitute families for a sibling group of three children, of mixed race, the oldest of whom is already 6 and who has displayed some behavioural difficulties;

v) Specific consideration of sibling attachment and/or relationship, and the weight which should be given to this, where potentially different care plans apply for the older 2 children and youngest child.

9. Points of note for practitioners in this and other cases are reinforced in this judgment in relation to are:

i) The preparation of a note of a Without Notice or Out of Hours hearing (see [295]-[301] below);

ii) Compliance with Practice Direction relevant to the preparation of court bundles (*PD27A FPR 2010*) (as amended) (see [302]-[305] below).

10. I have heard evidence from the parents, social workers from the two interested Local Authorities (the parents having moved in the period between the birth of the older two children and youngest child), two family finders, an independent drugs worker, the manager of the residential unit where the children stayed with the parents for a 10-day period in December 2013, maternal family members (maternal grandmother and a maternal aunt) and the Guardian.

Background: Judgment – 8 March 2013

11. As indicated above, the background history is amply set out in the judgment of Ms Recorder Ray, delivered on 8 March 2013, following an 8-day hearing in January/ February 2013. By the time of her judgment, the two older children (the boys) had been in foster care for more than 1 year; they had been removed from their parents by LA1 following an incident of extreme domestic violence, the final act of harm to the children against a history of chaotic and abusive parenting, materially contributed to by the parents' chronic drug addiction. At the time of reception into care, the children were found to have an unusually high number of injuries.

12. EF was, at the time of the hearing, in January-March 2013, still in her parents care, but:

    i) Since 27 December 2012 she had been the subject of care proceedings brought by LA2 (into whose area the parents had by then moved); she was not the subject of any public law order;

    and

    ii) Since 7 January 2013, she had been the subject of a written agreement with LA2 that she would reside with her parents at a specified address in that borough.

13. At that hearing, the court received evidence from family members and social workers; it further received expert evidence from:

    i) Representatives from LA1's Assessment Centre (assessment of the father as a primary carer);

    ii) Dr. Stephenson (independent social worker) (assessment of the parents);

    iii) Dr. Dowd (independent forensic psychologist) (report on both parents);

    and

    iv) Dr. McEvedy (adult psychiatrist) (report on the mother).

14. At that hearing, the Judge weighed carefully the competing proposals of the parties. The parents had advanced a plan for the children to be in the primary care of the father – not a role which he had fulfilled up to that point – supported by the mother and his parents. The mother was accepting that she would not be the primary carer for CF and DF, but would offer support to the father and paternal grandparents. Alternatively, it was

proposed that the paternal grandparents would be the children's primary carers. LA1 sought care and placement orders for the boys on a plan to place them for adoption.

15. Ms Recorder Ray made a number of important findings; it is not appropriate to do more than highlight a few, which I summarise below.

The background history

i) By January 2012, the family life had "*deteriorated into chaos and neglect … the causes of this are complex and intertwined*";

ii) There had been serious domestic violence (accepted by the parents);

iii) Both parents had a lengthy relationship with drugs – the mother had used cocaine for 11 years, and the father for 14 years; during the course of those proceedings, the mother relapsed into cocaine use on at least three occasions;

iv) That said, the father had been able to remain drug-free for a period, and in the opinion of the judge deserved congratulation "*on having sustained abstinence since June 2012*";

v) "*Both father and mother have faced the challenges before them with admirable courage and determination*";

vi) The mother is in a "*fragile and vulnerable state with the significant challenge of starting psychotherapy in April 2013*";

vii) "*[T]his case highlights the terrible, terrible cost that drug use can have on a family*".

The parents' proposal

viii) The father was to be the primary carer of the children; the mother did not (unlike her position at this hearing) put herself forward in that role;

ix) The alternative plan for the children to live with the paternal grandparents as an alternative to the parents had not been properly formulated or considered;

x) The plans for extended family support and/or extended family placements were being hurriedly considered even as the hearing unfolded; (this has echoes of the current hearing);

xi) Because of their life experiences before coming into care (January 2012), and the experience of consistent care which they received in foster care "*neither boy can afford to return to any kind of instability – it would not be in their interests and the risk to their emotional wellbeing is high… one cannot experiment with [the next] placement.*"

xii) Father will find it difficult not working – "*work forms a very important part of his own self-esteem and self-respect as it does within his wider family*"

xiii) The father had "*psychological tasks to be undertaken…*"; he lacked "*in-depth understanding*" of his own psychological journey, and "*did not evidence insight of the mother's own psychological difficulties*";

xiv) There was no effective contingency plan: "*the family members have not really thought through what would happen if there were difficulties…*";

xv) The father's plan "*lacks sufficient coherence that I can be satisfied that CF and DF would be held over the longer term within a network of safe and reliable care…*".

Parents' relationship:

xvi) "*I have significant concerns about the parents' relationship and the father's ability to effectively separate from the mother in the high likelihood of her relapse*";

xvii) "*The father feels protective of the mother and that is not a criticism per se but in the light of Dr. Dowd's assessment of his personality and the risk of him behaving in an avoidant and impulsive way, this may impact on his full commitment to his children's needs.*";

xviii) "*[I]t is more likely than not that his current focus on his and mother's recovery and the nature of their relationship would lead to compromise on the children's care*".

General

xix) The Judge summarised, and endorsed, the view of Dr. Stephenson (ISW) who had "*stressed that it was essential the mother and father were honest with the professionals and that if there was dishonesty or deception or concealment of areas of concern he would not recommend rehabilitation of the children*", adding later "*if there was not honesty, you simply could not take the risk*";

xx) The judge found the father not to be an honest witness;

xxi) The Judge further endorsed Dr. Stephenson's "*serious*" concerns that "*if either attempted to parent alone as they were likely to become overwhelmed but that as a couple and [if] their relationship remained stable and they were able to work together as a couple, they should be able to manage the care*." (emphasis by underlining added).

Primary attachment for the children

xxii) "*the boys need to have one primary carer in terms of their attachment needs…*"

16. The judge acceded to the applications of LA1 making care and placement orders. The parents sought permission to appeal against the orders made. By their Grounds of Appeal, they complained that Ms Recorder Ray's decision was "*unreasonable and was not merited upon the facts of the case*". The Notice of Appeal contains six fully-argued grounds, set out in manuscript in the mother's hand.

17. By the time that their application for permission to appeal was listed for hearing (28 June 2013), the parents were in fact out of the jurisdiction with the children (see [22] below). Ryder LJ, unaware of that extraordinary development, had waited for the parents to attend at court ("*the court has waited in the hope that they might attend*") and then disposed of the application on paper, concluding *inter alia* that:

i) Ms Recorder Ray's judgment was "*careful and detailed*"; she "*carefully set out the appropriate legal tests that she applied … there can be no realistic complaint about those tests*";

ii) "*The judgment was a careful evaluation based on detailed evidence that was before the court*";

iii) The "*expert evidence … was overwhelming. It is difficult for the parents to*

dispute two experts who were instructed for the purpose about which they gave evidence. They were skilled and experienced in that evidential field";

and

iv) "*It would certainly not have been appropriate after 17 months of proceedings to start again or allow more time*" for the parents to demonstrate change.

Abduction & Return

18. Following the judgment in March 2013, the mother sought to access psychotherapy as recommended by the experts, but failed to achieve an effective referral and did not in fact have any sessions.

19. The parents had some periods of contact with the children but at a reducing frequency.

20. The parents appeared to be working co-operatively with Mr A, the social worker for the boys; he described how he felt at that time that he:

> "*…had a supportive relationship with them; I had a committed set of parents that accepted where they were at that time; … there was no inkling that they were planning what they did; that has made me reflect on the engagement of these parents, and has made me question whether they were prioritising the needs of the children, and how they were misleading me…*"

21. On 23 May 2013, the mother (without warning to LA2) flew to X (a country) taking EF with her in breach of the written agreement, and notwithstanding the ongoing care proceedings. The mother left EF with her father, the Maternal Grandfather ("MGF") and returned alone to this country. MGF had previously been negatively assessed as a potential Special Guardianship carer for the children; serious concerns had been raised about his failure to protect his daughter (the mother) from harm as she grew up in his care. I pause here to reflect that the mother's decision to take EF to X to be cared for by her father whilst she returned to England to fulfil the second (unlawful) part of her plan was fraught with risk and uncertainty. Had the parents been thwarted during the abduction of CF and DF (discussed below) it is difficult to foresee what the outcome would have been for EF.

22. Two days later, on 25 May 2013, the mother and father removed CF and DF from foster care at a contact visit; they disappeared with them. Before their absence was noted, they were on a flight to X, as the father put it (in an e-mail sent to the social worker on the

following day) "*to start a new family life*".

23.I have not been invited to consider, or rule upon, whether the actions, or inactions, of LA1 contributed to this abduction. However, I cannot fail to observe that it was surely ill-advised for the social worker to have provided the mother with passport photos for CF and DF, asking her to obtain a passport form and complete it so that a passport could be issued in time for a holiday with the boys' foster-carer; it was also surprising that extended family members (the paternal grandparents) were permitted to supervise the parents' contact with the children, despite care and placement orders having being made, on a plan for adoption.

24.The removal of EF and the abduction of the boys had self-evidently been pre-planned. It was not impulsive as such, though it was an act taken without much if any forethought to the consequences; the mother described it as an act of "*desperation*" (pre-sentence report: see below). The father told me that it had been his wife's plan to abduct the children (he was not challenged on this) and that he went along with it. He added that it was ***his*** (as opposed to his wife's) idea ultimately to return to the UK.

25.As soon as the abduction was discovered, the police were notified; they made requests of their counterparts in X through Interpol to assist in tracing and returning the children. Although X is a signatory to the Hague Convention on the Civil Aspects of Child Abduction (1980), the Convention has not been ratified between X and England/Wales, and therefore offered no solution.

26.The local authorities sought urgent advice from specialist junior counsel; the advice (dated 5 June 2013) was filed with the court. She recommended issuing wardship proceedings in relation to EF, and restoring the case for directions.

27.The family stayed in touch with the local authorities from shortly after their arrival in X. They submitted a statement to the court dated 19 June 2014 within the proceedings relating to EF, confirming (so they maintained) that suitable arrangements had been made for her care.

28.On 21 June 2013, at a hearing in the Family Division, EF was warded, and directions were given for the management of the application (Peter Jackson J). Orders were made that the parents should return to this jurisdiction with all three children. Negotiations opened between the parents and LA1 in an endeavour to achieve the family's return to this jurisdiction.

29.On 27 July 2013 (two months after the abduction) the parents e-mailed a set of proposals to effect their return, providing for the children to remain in parental care in this country, subject only of supervision orders. These proposals were not acceptable to the

authorities.

30.A hearing followed in September 2013 (the first occasion on which I had conduct of the case); I was encouraged to permit time for the local authorities to continue the negotiations with the family. The social work team plainly felt betrayed and misled by the parents, but they wished to negotiate with them in good faith (and did, in my judgment, do so).

31.On 2 October 2013, the mother wrote confirming that "*it is absolutely our position that it be in the best the children* (sic.) *to return to the UK by consent of all parties.*"

32.The negotiations continued. I made orders in October requiring the family to return by the end of that month. They did not do so. On 31 October the father e-mailed indicating that the parents had agreed "*in principle a detailed care plan. We are planning to return to the UK ...*" and confirmed that they had purchased tickets for a return. While the authorities wished me to support the negotiations, the Guardian agitated for more draconian orders. It was plainly a difficult balance to strike. With some considerable hesitation I permitted the negotiations to continue, though (as the preambles to my last order I hope demonstrate – reference to disclosure of material to the police and the media) – I was close to running out of judicial patience.

33.The mother told me at this hearing (significantly) that it was not my orders which prompted the family's return, but her realisation, soon after her arrival in the foreign jurisdiction, that if she did not return to the UK, she was condemning her children to a life "*in exile*", without freedom of movement. MGF in X added a further revealing perspective: he told the social worker that "*the High Court would not lay off unfortunately which was a deciding factor of mother and father returning back to the UK*".

34.I pause to remark that this is the second case in which I have been required to make orders in relation to children who have been born or spirited abroad in order to avoid court processes &/or social services in England. In both cases the parent has quickly realised not only the sheer futility of the action taken, but also that such action is quite contrary to the child's interests. In both cases the parent has engaged the English Court in bringing about the return of the child(ren) to this country (see also *Re LM (Transfer of Irish Proceedings)* [2013] EWHC 646 (Fam) [2013] 2 FLR 708[2013] 2 FLR 708).

35. I know relatively little of the family's life in X, save what the parents have told me, and the photographs which I have seen. The parents took every opportunity at this hearing to enthuse about the happy time which they had had – little acknowledging the sense of puzzlement, confusion, and worry which the older children must have felt at being uprooted without notice, and spirited abroad. Moreover, the mother's e-mails to the social worker in which she describes family life in X (see [160] and [204(ii)/(iii)] below)

tell a somewhat different story.

36. It appears that the mother was propelled into the role of primary carer in X notwithstanding that this had not been the parents' plan at the hearing before Ms Recorder Ray. The father, having told Ms Recorder Ray in the 2013 proceedings that the children "*could not be left with the mother without supervision*", took employment as soon as he had arrived in X, away from home, necessarily leaving the children with the mother unsupervised. He told his probation office (pre-sentence report) that he had participated in the abduction in order to be able "*to spend more time with the children*", but this was self-evidently not so, as his work in X, and subsequently in Y (another country), took him away for weeks in a stretch.

37. The father told me that he regarded the maternal grandfather as a 'protective factor' notwithstanding the concerns surrounding his care of the mother during her childhood; the father did not accept that there was any proper basis for anyone to be concerned about his father-in-law. In the hearing before me, the father accepted that the maternal grandfather was not in any event providing 24h supervision, but appeared to acquiesce in the fact that the family were living in the same condominium where the grandfather could "*keep in contact*".

38. Social services in X were invited to prepare a report on the family, and did so on 10 July 2013. It is a short report, documenting in two short paragraphs only basic information about the parents' domestic circumstances; it does not begin to address any of the issues surrounding the emotional well-being of the children. This report was, in the view of the Guardian (and I agree) "*wholly inadequate*" to give any meaningful insight into life for the children in X. A letter from the teacher at CF's school was also furnished by the parents, but it is of dubious reliability, given the author's discussion (from an ill-informed perspective I suggest) about the '*travesty of justice*' arising from the removal of the children from the care of the "*loving caring family and thrown to the mercy of the care system*".

39. Back in the UK, the effects of the abduction were being felt by those left behind; the maternal grandmother told me that she was "*affected by the abduction very much, as were other people*" …"*we had all been left reeling from this*".

40. On the information available (largely self-serving, though independently verified to the limited extent indicated above [35]-[38]), there was a basis for at least a provisional view that the parents had changed. Even though there was room for doubt about this, the local authorities resolved, sensibly, to give the parents the opportunity to demonstrate change and offered a residential assessment.

41. On 10 December 2013, the children and the mother returned from X. The father had

returned a few days earlier to review the arrangements. When the children returned they underwent medicals; they were shown to be healthy.

Residential Assessment

42. Pursuant to the negotiated agreement, and subject to the pre-condition that the parents provide negative drug samples on their return, the family were admitted to a Residential Assessment Unit. The intention of the local authorities was to assess the family in a residential facility for a period of six weeks; if this assessment was positive, they would transfer into the community for a further six weeks.

43. It was to be a comprehensive assessment. The matters which the Residential Assessment Unit were to examine were set out in the *Part 25 FPR 2010* application, covering no fewer than ten domains of the family's life and parental functioning; the unit's bespoke assessment plan and outline rules was provided, and signed by all parties.

44. The placement at the Residential Assessment Unit began reasonably positively. The parents showed that they could offer "*good enough standard of care*" for the children.

45. The mother fulfilled the role of primary carer, while the father worked, leaving the unit most days in order to do this. Both parents were fully co-operative, and, it is said, did everything asked of them; there were few concerns. The parents occasionally had "*firm words*" with each other, but no arguments as such (until 23 December 2013). There was no evidence of the father's drinking or parental drug taking.

46. A report was prepared on 19 December 2013. It was, in line with my summary above, largely positive about the parents' progress:

> "*Mother can be commended on her role as a mother and it is evident that she has now started to implement acceptable standards of care for the children balancing their competing needs and ensuring that all of their care needs are met. Mother is very focused on routines and boundaries and father needs to evidence that he can adapt to ensuring that the children maintain a routine and stick to boundaries, which will be explored during the next stage of assessment.*
>
> *Mother shows consistent emotional warmth towards the children and her ability to provide stimulation to the children is excellent. Mother has started to implement boundaries for the children, which CF is struggling to adhere to, however consideration needs to be given to the sudden change of environment and the impact this may have had on CF and will continue to be monitored as the assessment progresses.*
>
> *Given that father has not spent time alone caring for the children independently, it*

can be assumed that he has not fully learned how to manage the consistent needs of all three children. Father has not been observed to be a hands-on father however it is positive that he has shown the children love, and is spending time with them each night before they settle for bed, and he has also expressed his love towards the children".

47. The professionals had cause to be hopeful; the indicators during the first ten days (since 10 December) were that the mother was heeding advice and looking after the children well. Key-worker sessions had started, addressing issues arising from her (the mother's) diagnosed ADHD. The children appeared happy in their parents' care. It was acknowledged to have been a stressful period for the parents, particularly as the first two weeks is often "*a settling down period*" for the family.

Residential Assessment breakdown

48. On 19 December, the maternal grandmother visited the unit. The mother had not, apparently, been looking forward to this visit; her relationship with her own mother was complex and fraught. The mother was anxious; she did not feel that she could cancel the arrangement as the children were looking forward to seeing their grandmother. The mother left the unit during the visit to attend a (perhaps strategically arranged) medical appointment, accordingly, the grandmother stayed later than usual so that she could look after the children.

49. That evening, the mother did not return to the unit at the time expected; she was out until 9pm. She gave an explanation on her return that she had lost her purse, oyster card, and mobile phone, which she said that she had left at the doctor's surgery; she was given the benefit of the doubt.

50. The assessment continued.

51. During the day on 22 December there is evidence that the mother was behaving out of the ordinary; she is described as being not quite "*with it*". The father spoke with her on the phone and thought that her speech sounded slurred. The father spoke with another resident about his concern; he recalled at this hearing having done so, but could not recall what he had said.

52. The father telephoned the maternal grandmother; he reported (according to the grandmother) that "*mother was not functioning properly… her speech was not right in the afternoon and she was not properly with it*".

53. That evening (22 December) the mother left the unit; she did so with permission with the stated intention of collecting cough mixture for CF. The father was left in charge of the

children (who were in bed).

54. The mother did not however return at all during that evening, and was in fact missing throughout the night.

55. Alarm was raised; the staff at the unit were understandably concerned. The out-of-hours duty manager, SC, was in contact with the staff throughout the night.

56. The father was, I accept, extremely anxious about the mother's welfare. He was further concerned (he told me) that she was in breach of the conditions imposed when she had been bailed by the police, after she had been charged.

57. The father went to bed. The staff thought that he was sleeping, but I accept that he probably was not. If staff had to wake him in the morning (as they say) then that does not reflect that he had enjoyed a comfortable night. Far from it.

58. Early in the morning of 23 December 2013, the mother walked back into the unit. She was incoherent and highly emotional; the scene was (according to SC) "*incredibly distressing*". The mother apparently gave confusing and inconsistent accounts of what had happened. Her account was that she said that she had searched for a pharmacy, had travelled to a Hospital, had got into an unmarked taxi, was effectively drugged and kidnapped, and woke up in a stranger's house or office. She believes that she was sexually assaulted although not necessarily raped. She described to me how all of this happened as a consequence of an "*error of judgment*" to get in the unmarked taxi.

59. The staff were sceptical about the mother's story.

60. The father told me that when he saw the mother he was angry with her. Knowing her as he does, he too was sceptical. His first reaction was that the mother had gone out deliberately and voluntarily taking cocaine and drinking, possibly even seeing another man.

61. The police were called. The mother was not entirely co-operative with the police; she insisted (against advice) on showering, she declined a breath test, she turned down the offer to go to the local specialist rape crisis centre.

62. The staff arranged for the mother to be drug tested (by urine). She tested positive for cocaine use; when advised that the test was positive, the mother told the drug tester, EM, that she had "*only used a little bit*" - EM confirmed (in oral evidence) that the mother was referring to cocaine. The mother has no recollection of this conversation, but I am wholly satisfied having heard EM that the mother said what she is recorded to have said,

and that EM has accurately recorded the events.

63. The mother told me that she accepted that she had ingested a chemical (which the police suggested may be Rohypnol – a brand name for flunitrazepam, a benzodiazepine, a very potent tranquilizer similar in nature to valium (diazepam), but many times stronger), but disputes that it was cocaine, and now challenges the accuracy of the urine test. I can indicate at this stage that I have no reason to doubt the accuracy of the test.

64. EM assessed the mother as behaving as if she had taken drugs. She formed the view "*straight away*" that the mother was under the influence of an illicit substance – "*I thought that it was cocaine*"; the mother's jaws were chattering and moving from side to side, her pupils were not focused, she was swaying from side to side, scratching, picking at her face; her speech was slurred. These were (according to EM) classic manifestations of someone having taken cocaine; the father contended that the mother was like this normally (with/without her ADHD medication).

65. SC attended for work at the unit early in the morning; SC agreed with counsel that the father was "*angry, distressed, traumatised, and stressed*". Staff supported him in the care of the children. He was apparently asked what his intentions were concerning the future of the placement; he was advised (more than once, reported SC) to contact his solicitor. He later told staff at the unit that his solicitor had advised him not to contest the removal of the children at that stage, and he said that he would divorce the mother in the New Year and put himself forward as a sole carer. SC later reported that the father told the staff that he worried about giving up his career and looking after the children. The father was asked about this comment; he accepts that he made this comment, saying that he was trying to assimilate what had happened. He felt that the comment was "*off the cuff*", and referable to the specific and practical situation he then found himself in.

66. The concern of the staff on the unit was that the children should be protected from the crisis (which was difficult to achieve, given the lay-out of the house), and specifically from the behaviours of the parents. The mother was 'in pieces', and the father ostensibly struggling to cope with this situation – periodically entering the office where she was contained, shouting at her, telling her that he was intending that they should separate. He was very "*up and down*"; alternating from being "*angry and upset*" (SC). The children were aware that the mother was in the unit, and they were concerned and upset: "*on/off we had tears*"; the father "*muddled through*" (per SC) in caring for the children.

67. The father, at one point, raised concerns about his own health complaining of high blood pressure. He was seen by a paramedic, and was thought to be fine.

68. Although the father's anger with the mother barely subsided (he accused her of having "*blown*" the assessment) it appears (and he now contends) that during the day he "*slowly*

realised" that the mother may well be telling the truth about a sexual assault; he added, through his distress in the witness box, that there were:

> "*so many emotions going through my head… worrying about her… for various phone calls… the police turning up all hours of the night… I hardly got any sleep… I was emotionally distraught, physically exhausted, traumatic… it was 24 hours which no husband has to go through… slowly dawning on me minute after minute the enormity, the scale, of what had happened… the possibility of the assessment breaking down and the children … through no fault of my own. I could not believe the bad luck which had been bestowed upon me. It was a tragedy of all proportions which I cannot begin to explain and I still look upon that bleak day …it was a horrible, horrible, day, and the poor kids. I was trying to look after at the same time, and try to be strong for them. I should have been the father I should always have been for the children. I was not strong enough*".

69. As the day unfolded, it was clear that neither parent was able to prioritise the needs of the children; in the opinion of the staff, the placement ceased to be safe or appropriate for them.

70. The 23 December was plainly difficult for all – staff and parents alike. This was a crisis; the staff managed it in my judgment effectively and sensitively. They endeavoured to protect the children from the chaos, and largely (though not completely) protected them – the children will have heard their parents shouting at each other.

71. The relevant local authorities had been contacted in the course of the day. By mid-afternoon, a decision was taken (though there are no written records of the decision-making) that the placement needed to come to an end. Mr. A – the key social worker for LA1 – was in fact dealing with two other placement breakdowns that day, and the decision-making was assigned to his manager, Mr S.

72. As it happens, I was Out of Hours Family Division duty judge on 23 December, and accordingly the application was sent to me electronically at 15:39 on that day. I received an application, position statement, the incident report, the previous orders, and I heard counsel. Having considered the material, I indicated that I wished to know more about the views of all the parties; I therefore put the application back for the local authority to obtain those views. I was later advised that:

i) The mother's position could not clearly be ascertained from her solicitors;

ii) The father wished to continue the assessment and parent the children alone;

iii) The guardian supported the removal of the children to foster care.

In the face of what appeared to be a crisis for this family and the unit, and with the support of the guardian, and the clear recommendation of the local authority. I made an order effectively bringing the placement to an end on that day. See further in relation to this application [297]-[298] below.

73. When news of the order came through to the unit, the mother told the children (then together in the bath) that they were going to be removed from the parents and placed into care; the unit workers considered that this was done neither sensitively nor gently. I suspect that they are right. As a consequence, the children were soon "*hysterical*" (SC). The parents continued to bicker, while they attended to their packing. It was a "*very distressing time for the children… it was not done in a sensitive manner*" (SC) particularly as the children had seen their mother in a state during the day. I accept SC's evidence that the parents were encouraged to stay until the children had left, but they wanted to leave before the children.

74. The parents left. The children later left, moving to foster carers who had been identified as an emergency placement.

75. The father's family "*reluctantly*" accepted the mother and father in to stay for the night (per father's evidence in chief); the maternal family were contacted, and it was said that the maternal grandmother was not prepared to have her to stay. The maternal aunt (who is now put forward critically as an important support) was not (as far as I can tell) contacted.

76. The father went to work, as usual, on the following day, 24 December. He said that it had been agreed that the paternal grandparents would look after the mother. The mother and father met for lunch. The father told me in evidence that the mother was "*very delicate*"; the effects of the last 24 hours seemed "*vivid*" for her. The father told her to book into a B&B, and he gave her some cash and a credit card; she was advised what bus to catch. He then did not hear from her.

77. On Christmas day the father attended contact with the children. The mother was due to attend but was not there. The father said that he phoned the credit card company and blocked it, before phoning the family on both sides to seek to locate her.

78. At 7pm on Christmas Day police officer had found the mother with severe head wounds. The mother disclosed that she had been subjected to another serious sexual assault by a stranger, this time involving a clear allegation of rape, during the course of the previous evening/night. This is the subject of criminal process, and I propose to say no more

about it in this judgment.

79. The parents remained living separately. The father with his parents; the mother at the B&B hotel. On New Years Eve they met for a meal. The father later reported to the maternal grandmother that the mother had been "*drinking*" and that he had "*put her to bed*" late afternoon/early evening.

80. The father denied in oral evidence that the mother had been "*drinking*", and had "*put her to bed*". The father did not recall telling the maternal grandmother that the mother had been drinking; he denied putting her to bed. He said that she was not well (but was unspecific about her ailment).

81. I am satisfied that the maternal grandmother has accurately recorded the contents of this phone call. I find that the mother had been drinking, probably to excess, on New Years' Eve as the father told the maternal grandmother.

Repercussions….

82. The repercussions following the abduction of the children, the return of the family, and the failed assessment have been, and continue to be, far-reaching and profound.

83. Both parents were charged with the offence of child abduction under the *Child Abduction Act 1984*. They were each sentenced to nine months in prison, the judge observing (correctly in my view) that this was not a 'spur of the moment' decision; its pre-planning being an aggravating factor.

84. Some months later the Court of Appeal Criminal Division reduced the parents' sentence, which allowed for their immediate release.

85. In December 2013, following the break-down of the Residential Assessment Unit placement, the children were removed from their parents' care, and placed with emergency foster-parents over Christmas. In January 2014, the children were moved from the emergency foster placement to the placement where the boys had been previously. The repercussions of the abduction, and the disrupted period of 7 months will be felt by the children – particularly the boys – for much time to come.

86. The parents and children have enjoyed contact in the last few months. This was regrettably disrupted while the parents were in custody. It is acknowledged that the contacts have been of "*good quality*" in the period between 23 December 2013 (when the children were received back into care) and when the parents were imprisoned. I

myself had directed additional contact for the mother and EF in that period.

87. I raised considerable concern about the lack of contact between the parents and the children when the parents were incarcerated, and by the time of their release, contact had only just resumed.

Legal issues

88. Before turning to analyse the evidence, I consider the relevant legal principles applicable in determining the multiple applications identified in [4] above.

89. **General principles**: First, the general legal principles:

i) Where I make findings of fact (as I have, above and below), I do so by applying the simple civil standard of proof (see *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 [2008] 2 FLR 141);

ii) Welfare considerations are prominently engaged on the applications for revocation of the placement order / discharge of care order (CF & DF) and on the application for a care order / placement order (EF); in considering the welfare factors, I have paid close regard to the factors adumbrated in *section 1(3) CA 1989* and in *section 1(4) ACA 2002*;

iii) In assessing issues of the parents' credibility, I have of course had particular regard to the guidance given in *R v Lucas (Ruth)* [1981] QB 720 and *R v Middleton* [2000] TLR 293. As appears from these authorities, a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B. Honesty is a key issue in this case.

iv) These three children and their parents have a right enshrined in *Article 8* of the *ECHR* (*section 1 & 6* of the *Human Rights Act 1998*) for respect for their private and family life. Placement of children for adoption against parental wishes would interfere with those rights more fundamentally and crucially than any other order; *Article 8* is engaged in this case in a vivid way. On this point, the Strasbourg court decisions cited by Lady Hale in paras 195-198 of *Re B* [2013] UKSC 33, [2013] 1 WLR 1911 make it clear that a care order can only be made in "*exceptional circumstances*", and that it could only be justified by "*overriding requirements pertaining to the child's welfare*", or, putting the same point in slightly different words, "*by the overriding necessity of the interests of the child*".

v) I have approached this case on the basis (as the Supreme Court has held *Re B*

[2013] UKSC 33, [2013] 1 WLR 1911) that a care order is a serious order, and "*is a very extreme thing, a last resort…*" (Lord Neuberger §74); I am clear that I should only make a care order (with its dramatic implications for parental responsibility of the parents) in these circumstances if I am "*satisfied that it* [is] *necessary to do so in order to protect the interests of the child*". By "*necessary*", I mean, to use Lady Hale's phrase in para 145/198, "*where nothing else will do*". At §77 Lord Neuberger referred to the fact that the interests of this child, as any child, "*would self-evidently require* [their] *relationship with* [their] *natural parents to be maintained unless no other course was possible in* [their] *interests*".

vi) I approach my decision making in relation to the three children, as required to do by that court, noting that there must be a *'high degree of justification'* before adoption is endorsed as being *'necessary'* (ECHR, Art 8) or 'required' (*ACA 2002, s 52(1)(b)*) (see Lord Wilson §34).

vii) I have further had specific regard to Hale LJ's comments (as she then was) in *Re C and B* [2001] 1 FLR 611, para 34 in which she said that

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

This was reinforced by the Strasbourg court in *YC v United Kingdom* (2012) 55 EHRR 33, para 134:

> "*family ties may only be severed in very exceptional circumstances and … everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing.*"

90. **Application for revocation of placement order and discharge of care order (CF and DF)**: *Section 24 ACA 2002* provides that:

> "*(1) The court may revoke a placement order on the application of any person.*
>
> *(2) But an application may not be made by a person other than the child or the local authority authorised by the order to place the child for adoption unless –*
>
> *(a)the court has given leave to apply, and*
>
> *(b)the child is not placed for adoption by the authority.*

(3) The court cannot give leave under subsection (2)(a) unless satisfied that there has been a change in circumstances since the order was made."

91. In these circumstances, a parent has to demonstrate that there has been a change of circumstances since the placement order was made; if so, then the court would then go on to consider whether or not to exercise its discretion and also whether the application has a real prospect of success (*Re F (a Child) EWCA Civ 439* and *Re AW (a Child: Application to revoke Placement Order: Leave to oppose Adoption)* [2013] EWHC 2967 (Fam)).

92. On an application for discharge of a care order, I am required to apply the principle of the paramountcy of the child's welfare, and have regard to the matters set out in the statutory check-list; the burden is on the parents to demonstrate that such an outcome is in the interests of the children: see *Re S (Discharge of Care Order)* [1995] 2 FLR 639.

93. **Application for residential assessment: section 38(6)**: The mother and father individually apply for orders for further assessment. Although their applications are framed notionally under *section 38(6) CA 1989*, that statutory provision only of course applies to EF (the subject of an *interim* care order) and not her brothers (the subject of *full* care orders). That said, I have proceeded on the basis that were I to revoke the placement orders and discharge the care orders in relation to the boys, I would be likely to impose interim care orders in respect of the boys, in which case *section 38(6)* would be engaged.

94. The application for further expert assessment can only succeed if I am satisfied that such an assessment is ***necessary*** within the meaning of *FPR 25.1* and *section 38(7A) CA 1989*. Further consideration would have to be given to the extent to which the assessment would extend the 26-week time limit of public law process (per *section 32(5)*) already significantly stretched in this case. On this point, see *Re S (A Child)* [2014] EWCC B44 (Fam), Sir James Munby P in which he said at §21:

> "*For present purposes the key point is the use in common in section 38(7A) of the 1989 Act, section 13(6) of the 2014 Act and FPR 25.1 of the qualifying requirement that the court may direct the assessment or expert evidence only if it is "necessary" to assist the court to resolve the proceedings. This phrase must have the same meaning in both contexts. The addition of the word "justly" only makes explicit what was necessarily implicit, for it goes without saying that any court must always act justly rather than unjustly. So "necessary" in section 38(7A) has the same meaning as the same word in section 13(6), as to which see Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5, [2013] 1 FLR 1250, para 30, and In re H-L (A Child) (Care Proceedings: Expert Evidence) [2013] EWCA Civ 655, [2014] 1 WLR 1160, [2013] 2 FLR 1434, para 3*."

95. As to the question of whether it could be said that an extension to the statutory 26-week

time limit was 'necessary to enable the court to resolve the proceedings justly' for the purposes of *section 32(5)* of the *1989 Act*, the President (§24) emphasised that the statutory time limit of 26 weeks

> "*… does not describe some mere aspiration or target, nor does it prescribe an average. It defines, subject only to the qualification in section 32(5) and compliance with the requirements of sections 32(6) and (7), a mandatory limit which applies to all cases. It follows that there will be many cases that can, and therefore should, be concluded well within the 26 week limit*."

96. Having reiterated and endorsed the words of Pauffley J in *Re NL (A child) (Appeal: Interim Care Order: Facts and Reasons)* [2014] EWHC 270 (Fam), para 40 that '*Justice must never be sacrificed upon the altar of speed'*, the President made clear that there can be exceptions to the 26-week time limit. He referred to his comments in *Re B-S*:

> "*If, despite all, the court does not have the kind of evidence we have identified, and is therefore not properly equipped to decide these issues, then an adjournment must be directed, even if this takes the case over 26 weeks. Where the proposal before the court is for non-consensual adoption, the issues are too grave, the stakes for all are too high, for the outcome to be determined by rigorous adherence to an inflexible timetable and justice thereby potentially denied*".

97. In unambiguous language, the President emphasised that "*in no case can an extension beyond 26 weeks be authorised unless it is "necessary" to enable the court to resolve the proceedings "justly". Only the imperative demands of justice – fair process – or of the child's welfare will suffice*" (§38).

98. In considering this aspect, I have also had regard to the speeches of the House of Lords in *Re G (Interim Care Order: Residential Assessment)* [2005] UKHL 68 [2006] 1 FLR 601[2006] 1 FLR 601. While the appeal in *Re G* was specifically focused on the ambit of *section 38(6)* (and whether assessments which included an element of therapy could be included in the direction), the Judicial Committee made a number of important observations:

i) An interim order is "*a temporary order, applied for and granted in care proceedings as an interim measure until sufficient information can be obtained about the child, the child's family, the child's circumstances and the child's needs, to enable a final decision in the care proceedings to be made*." [§2]

ii) "*The temporary character of interim care orders is, therefore, clear and the information gathering process for the purposes of the final decision as to whether a care order should be made, and during which it might be necessary to maintain*

an interim care order in place, is intended to be completed speedily". [§3]

And importantly

iii) "*Where the threshold is found or conceded but the proper order is in issue, the welfare checklist is likewise focussed on the present, for example, in s 1(3)(f): 'how capable each of his parents … is of meeting his needs'. The capacity to change, to learn and to develop may well be part of that. But it is still the present capacity with which the court is concerned. It cannot be a proper use of the court's powers under s 38(6) to seek to bring about change*" [67]

iv) "*These conclusions are reinforced by the Act's emphasis on reaching decisions without delay. It cannot have been contemplated that the examination or assessment ordered under s 38(6) would take many months to complete. It would be surprising if it were to last more than 2 or 3 months at most. The important decision for the court is whether or not to make a care order, with all that that entails. But the care order is not the end of the story. The court retains jurisdiction over the contact between the child and his family (see s 34). The local authority has a duty to place the child with parents or other members of the family, unless this is impracticable or inconsistent with the child's welfare (see s 23(6)). The court may sometimes have to accept that it is not possible to know all that is to be known before a final choice is made, because that choice will depend upon how the family and the child respond and develop in the future.*" [68]

99. The passages underlined above (my emphasis) reinforce the inappropriateness of prolonging proceedings where the starting point is the need to achieve change in the parent.

100. **Application for a care order and placement order (EF)**: Before I can consider the making of a care order, I must in the first place be satisfied that the threshold for making such an order is established (*section 31 CA 1989*), namely that that the child concerned is suffering, or is likely to suffer, significant harm; and that the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him.

101. In this particular case, the parents rightly concede that the threshold is established; at the very least they accept that EF suffered emotional harm by her being uprooted and abducted to X.

102. The crossing of the threshold makes way for the discretionary exercise in which the welfare of the child becomes the lodestar. I remind myself that making a care order on a plan for permanent placement away from a natural family is a step which should be taken only where it is necessary, and proportionate to the risks involved in rehabilitation. I have (as enjoined to do by the Supreme Court in *Re B* (para 77), reinforcing the statutory

obligation in *section 1(3)(g)* of the *1989 Act*) considered all the available options before reaching my conclusion.

103.It is not necessary or appropriate to over-burden this already long judgment with a more detailed rehearsal of the law, following the further judgments in the Court of Appeal; suffice it to say that I have had regard to those, and in particular to the decision of the President in *Re B-S* [2013] EWCA Civ 1146 (President) in which he said that:

i) Care orders with a plan for adoption, placement orders and adoption orders – are "*a very extreme thing, a last resort*", only to be made where "*nothing else will do*", where "*no other course* [is] *possible in* [the child's] *interests*": see *Re B* paras 74, 76, 77, 82, 104, 130, 135, 145, 198, 215;

ii) Behind all this there lies the well-established principle, derived from *section 1(5)* of the *1989 Act*, read in conjunction with *section 1(3)(g)*, and now similarly embodied in *section 1(6)* of the *2002 Act*, that the court should adopt the '*least interventionist*' approach ((§23)): (see Hale J, as she then was, said in *Re O (Care or Supervision Order)* [1996] 2 FLR 755, 760: "*the court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered to be in the better interests of the children … unless there are cogent reasons to the contrary*.")

iii) Although the child's interests in an adoption case are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible. (*Re B* paras 77, 104) (§26)

iv) The court "*must*" consider all the options before coming to a decision. (§27) (*Re B* para 77),

v) The court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. (§28) (*Re B* para 105),

104. I am very conscious that before I can make a decision of the seriousness of that proposed here, "*there must be proper evidence both from the local authority and from the guardian. The evidence must address <u>all</u> the options which are realistically possible and must contain an analysis of the arguments <u>for</u> and <u>against</u> each option*." (§34) Munby P in *Re B-S*: per Ryder LJ in *Re S, K v The London Borough of Brent* [2013] EWCA Civ 926 (Ryder LJ).

105. LA2 has applied for a placement order; *section 22* of the *2002 Act* indeed places a duty upon it so to apply 'if they (namely the ADM) are satisfied that the child ought to be placed for adoption'. The application requires me to consider the paramountcy principle in *section 1(2)* of the *2002 Act* and the additional specific factors spelt out in the welfare checklist of *section 1(4)* (ibid).

106. **On the Application by the grandmother for a CAO**, I have applied *section 10(9) CA 1989,* and am able to distinguish this case from the decision of *Re B-A (Children: Care Proceedings: Joinder of Grandmother)* [2011] EWCA Civ 1643 [2012] 2 FLR 382[2012] 2 FLR 382, where the grandmother wished to challenge the key assessment.

Children: pen-pictures

107. The children are of dual heritage. I have seen many photographs of the children – each bear many physical characteristics of both their parents.

108. CF is said to be "*slim, average height,* [and] *very active*". When CF was first received into care (January 2012), he "*... was very chaotic, he would not respond to boundaries; that progressed; he started to settle at the placement*". Mr A said that he and the foster mother saw many improvements before he was removed from his placement in May 2013.

109. DF is said to be "*more calm, but more anxious and clingy to the foster carer. He needs re-assurance, and needs to follow her around*" (Mr A). The foster carer had previously described him as a boy who found it difficult when he had to 'share' her with someone else. The boys were described in previous proceedings as "*very close*", a view confirmed now (see [115] below).

110. EF is described as being a happy and lively child, she eats and sleeps well and is meeting her developmental milestones. She is "*smiley, engaging and interactive*" (Ms I).

111. Mr. A was of the view that when the abduction took place, "*I suspect that they were very confused*", particularly given that by that time they had been with the same foster carer for 15 months. He added that when they returned "*they were confused and unsettled and they went to an interim foster placement, before their return to the previous placement. They have started to settle, the attachments are growing*".

112. The children are said to have benefited from having consistent routines, and a stable home over the last few months.

113. Ms Recorder Ray had described the relationship between the boys and their parents as

"*warm and affectionate*". Recent contact between the children and their parents has confirmed this. Mr A described the mother as "*nurturing* (in contact) *and this has been a positive experience*".

114. The social worker for LA1 told me that the children "*…have a strong bond with their parents, and they say that they want to go back to their parents care*". Both boys similarly told the guardian that they wanted to live with their parents but (according to the guardian) show no signs of distress at being separated from their parents.

115. The children all have a close relationship with each other; this needs to be carefully weighed in the balance in the plans going forward. I must have regard to the effect on the children of being raised together or being raised separately.

116. It is acknowledged that the continuing relationship between all three children will be of considerable benefit to the children (per LA2 social worker, Ms I), and should be maintained if at all possible. It is also recognised that it will be "*challenging*" (Ms I) for the family finders to find an adoptive placement for the children together.

117. The social work plan in March 2013 had incorporated limited post-adoption contact for the parents. This was seized upon by the parents' advocates as indicating an inconsistency in the local authority's current planning for the children (which contemplates no direct contact). Mr. A convincingly explained that he had not discussed the earlier plan with the family finder, and that any possibility of post-adoption contact had been forfeited by the parents' abduction of the children last year.

Assessment of the parents

118. Both parents gave extensive evidence before me, cross-examined thoroughly and fairly. I was able to make a good assessment of each.

119. The mother gave evidence over the course of a day. She coped well with the questioning; although I sought to limit the extent of the probing over the events of the overnights of 22-23 December and 24-25 December, she was utterly distraught at having to recount any aspect of those events. She is an engaging woman, articulate and intelligent. She has a directness in her approach to issues (and questions) which is in many ways diverting and refreshing. The father too was in the witness box for an extensive period spanning two days. He was at times tearful and reflective. Overall he was less forthright than the mother; at times he was evasive, and gave answers driven more by a desire to create a good impression than to help me with the truth.

120. Indeed it was clear that at times neither parent was honest with me. Ms Recorder Ray had

reflected in her earlier judgment the view of Dr. Stephenson on this issue "*one could work with honesty, but if a parent was not honest you could not take a risk*" (§205).

121. **Mother**: The mother has a complex, damaged character; she appears to live her life in a chaotic and impulsive whirlwind of activity and rapid thought, regrettably attracting (if not actually creating) drama and crisis around her. She has been a drug user for the whole of her adult life.

122. Expert evaluations in the January-March 2013 proceedings have assisted me to make a more informed assessment of the mother. I draw from the judgment of Ms Recorder Ray her summaries and findings of the evidence of Dr. Dowd and Dr. McEvedy. For example, Ms Recorder Ray noted in her judgment the opinion of Dr McEvedy, adult psychiatrist, thus:

> "*In terms of her mental health, he diagnosed mother as suffering from a number of features of personality difficulties including a lack of exercising forethought in planning her life. An example he identified was the fact that she had fallen pregnant twice in the last 9 months, the second occasion being at a time when the children were removed into care or shortly thereafter. He also identified antisocial features such as persistent Class A drug use and prostitution with little remorse. He described these problems as "substantial in their nature and effects" warranting a diagnosis of personality disorder*.
>
> *In his view her prognosis depended on her ability to control her drug use and excessive drinking and her ability to engage in long-term psychotherapy. Since at the time neither had happened, he could not be more predictive. He thought the psychotherapeutic process would take around 2 years which would require her to attend several times per week showing substantial benefit in 30% of those who engage in the process long term. He noted in oral evidence that despite a referral having been made for psychotherapy, it had not yet taken place*".

123. Dr Dowd, clinical psychologist, had reported on the mother and his views are reflected in Ms Recorder Ray's judgment as follows:

> "*Mother's profile suggests a number of impulsive sensation-seeking personality traits. Such a personality style features behaviours that may be erratic and/or unpredictable. This is due to the need to seek sensation and avoid boredom. Individuals with such personality profiles may demonstrate difficulties placing others needs, including those of children before their own and have a reduced ability to experience empathy for others in part due to an over-inflated self-worth. Due to an increased and unusual need for attention or self-recognition, combined with personal insecurity, they may demonstrate emotional and attachment instability that impacts negatively upon relationships with associates, partners and family members. They may seek to manipulate others to achieve their own wishes by engaging in behaviours that are generally considered to be socially unacceptable*.

"Mother states that she often makes people angry by bossing them around and that she often criticises people strongly if they annoy her. She states that she often gets angry with people who do things slowly and she thinks that it is necessary to place strict controls on the behaviour of members of her family. Evidence of mother's impulsive personality traits is illustrated through her numerous lifestyle choices, including illicit substance abuse, glamour modelling and "escorting". She reported a reluctance to relinquish this lifestyle and also chose to place her own needs above those of her children through continuing to use substances. Further she discussed that she "took advantage" of her ex-partner … and described becoming "bored" within the relationship. Such examples have evidenced her need to engage in sensation seeking behaviour and a wish to avoid boredom, and further, demonstrate a willingness to engage in behaviours that are generally considered to be socially unacceptable."

Adding:

"*Issues of adult personality are pervasive and enduring and as an individual's personality profile develops over the course of their lifetime, it remains resistant to external influence. I do not, however, consider that mother suffers from a personality disorder but nevertheless her personality characteristics, in order to be fundamentally altered or moderated, would require perhaps 18 months to 2 years of psychotherapeutic intervention. If mother is able to address the other psychological and behavioural difficulties I discuss, and that she also acknowledges, and as a result adopts a more stable and unproblematic lifestyle then need for such longer term psychotherapeutic intervention may not necessarily be required in order for her to deliver appropriate standards of care*".

124. Although the opinions of Dr. Dowd and Dr. McEvedy on the mother differ (i.e. as to whether the mother suffers a personality disorder or unhelpful personality traits/ characteristics), those differences were, in substance, inconsequential. Dr. Dowd in any event deferred to his psychiatrist colleague.

125. Ms Recorder Ray noted Dr Stephenson as indicating that:

"*… the mother presented as someone struggling with sexual abuse. She had entrenched difficulties, and psychotherapy was not a linear process – patients are likely to feel worse and less available to parent before they feel better. He felt that the father was overwhelmed by the mother – his assessment was that she wore the trousers, and was concerned that father was readily accepting of the mother's explanations in relation to her using cocaine for her ADHD. He also thought that the mother would not separate easily. He thought it was more likely they would stay together than apart*."

126. The mother's presentation is partly explained by her ADHD (for which, immediately prior to, and in the early days of, this hearing she had not been able to access relevant medication), but also by her personality disorder and lifestyle which was characterised by narcotic and other (including sexual) abuse. The mother has "*deep rooted ... psychological issues to address*" therapeutically; it will be painful for her to undergo treatment. She will be a recovering addict for the rest of her life; she knows this.

127. She has complex needs as a consequence of her upbringing, her life-style choices, and specifically her drug-abuse. Her family worries about her. Her aunt (Ms M) described the mother as someone who "*needs a lot of support*"; she was separately recorded as saying that the mother was someone who was "*a full time job in herself*", the "*centre of attention*" and has "*drama surrounding her*" (the aunt accepted that she had been accurately quoted in making these comments).

128. When giving evidence, I was struck that the mother displayed minimal insight into some of her recent behaviours:

i) She was less ready than the father to acknowledge that removing the children from the jurisdiction in the first place was hugely disruptive to them;

ii) To Mr Barnes (in the context of permitting the children to remain with the current foster carers): "*I would never, never, ever do anything to de-stabilise the children*"; yet this is plainly she plainly did when she moved the children to X;

iii) She could not see the effect on others (specifically her mother) of the abduction: "*when I took the children to X my mother was very upset, because she has a vendetta against my dad*."

iv) She indicated that she would be "*ecstatic*" if the children were placed in the care of the father. She had not begun to appreciate (or if so, then to articulate) how hard this would be for *her*.

129. **Father**: The father experienced a degree of ostracism from his community following his imprisonment in Z (country) (for convictions relating to his drug use). His relationship with his own parents and family appears to have been sorely tested by his behaviours and these court proceedings.

130. Dr. Dowd assessed the father as displaying a "*number of fearful personality traits – being fearful or anxious in nature*". Persons with such a profile "*may demonstrate a potential to be manipulated by others*". He added:

"*Father's impulsive personality traits have been demonstrated throughout his life, illustrated through his use of illegal substances and alcohol, the number of sexual partners he has had, his desire to engage in sexual activity with female escorts (as discussed by mother) and his frequent engagement in extra marital affairs whilst married to his first wife. ... Father's style of addressing problematic or stressful situations may fluctuate between task and avoidance orientation. His own lifestyle stability at any particular time may influence how he actually responds. .... In the future his own lifestyle preferences may be considered by him to be of greater importance than full commitment to his children's needs.*"

131. Dr. Dowd was of the view that the father required 18 month to 2 years of psychotherapeutic intervention, together with anger management intervention, before he could be regarded as in recovery.

132. The father has successfully abstained from cocaine use for over two years; this is a significant achievement. There is evidence before the court which demonstrates that he has undertaken some limited counselling in late 2012/early 2013, and has benefited from a Group Programme; again, this is to his credit.

133. The father acknowledges the legitimacy of the view held by many who know the couple that it is the mother who "*wears the trousers*" (per Dr. Stephenson). He attributed this to the fact that he has not had the day to day responsibility for running the household; she has "*taken it upon herself to be the dominant person in the household*". Dr. Stephenson had felt that the father was "*overwhelmed by the mother – his assessment was that she wore the trousers, and was concerned that father was readily accepting of the mother's explanations in relation to her using cocaine for her ADHD.*" The father now urges on me the fact that he proposes to take on the role which the mother had occupied – replacing her as "*the dominant person in the household; she needs to pass the baton on to me*".

134. He told me that he wishes to undertake a residential assessment with the children by himself – against the backdrop of 2 years abstinence, and a commitment to care for the children on a full-time basis, without work commitments. He proposed that the mother should have supervised contact as and when the court consider this necessary.

135. I discuss this further below, but observe for present purposes that:

i) Ms Recorder Ray was not persuaded that the father would be able to step up to the responsibilities as a primary carer, and further that the children themselves may be confused by the change of role;

ii) The father has, by clear choice, fulfilled the role of 'bread-winner' in the family, and accepted that prior to January 2012 (the removal of the boys from parental

care) he had been "*largely absent in caring for the boys*";

iii) For the period when the family were living in X (May-December 2013), the father chose to work (indeed he worked for much of the period in Y away from the family home, returning only for 5 days every three weeks). It is apparent from the mother's e-mails to the social worker at the time (which I accept to be broadly accurate accounts), that the father struggled to engage in family life and was not emotionally very well attuned to the needs of the children.

Has there been a change of circumstances?

136. In considering the application for leave to revoke the placement order, I must first consider whether there has indeed been a change in circumstances since the order of 8 March 2013.

137. In this respect, I should say at the outset that my assessment of the parents at this hearing chimed entirely with Ms Recorder Ray's assessment of them a little over one year ago. If they sought to portray a more enlightened, constructive, image, they have failed.

138. I turn to consider the specific issues on which Ms Recorder Ray founded her judgment.

139. **Psychotherapeutic input**: As will be apparent from the judgment above, both parents have profound psychological issues. That much is clear from the expert reports, and if I may be permitted to say so, from their presentation in court. Ms Recorder Ray reflected the expert view that both parents needed to engage with intensive and long-term psychotherapy.

140. This has not happened.

141. Although the mother has attended for CBT counselling through the Women's Trust, and told me that she had been to a 'mentalisation' group in prison for the limited period of her imprisonment, she had not accessed the necessary psychodynamic counselling required to address her long-term issues. She acknowledged that:

> "*I function very well on the face of it. But what I do know that I have underlying emotional issues which may arise in the future. They have the capacity to raise their head in the future*."

In reality, we are no further forward in the mother receiving help for these '*issues*' which

she recognises in herself.

142. The father is in essentially the same position. He has not accessed, or benefited from, therapy or counselling for over a year.

143. **Drug use/exposure to drugs:** Against the background of chronic narcotic abuse (14+ years in the father's case, 11 years in the mother's) Ms Recorder Ray was understandably concerned about the parents' ability to abstain from drug use, and maintain abstinence – a concern compounded by:

i) the mother's relapses during the course of the proceedings;

and

ii) the mother's lies about her drug use/relapsing.

144. The evidence filed in these proceedings about possible drug use, or exposure to drugs, since March 2013 is not all one way; tests taken at different times, using different samples, appear to have produced different results. Positive results have confusingly covered some periods which have yielded negative results. This discrepancy is helpfully explained by Alere Toxicology (one of the testing laboratories) as referable to variation in growth rate, and 'resting' hair; the lab is nonetheless clear that where positive samples are detected (even at relatively low levels) cocaine is "*definitely present*".

145. In interpreting this evidence, I caution myself about relying on the science alone without regard to the wider picture (see on this Moylan J in *Richmond London Borough Council v B, W, B and CB* [2010] EWHC 2903 (Fam) [2011] 1 FLR 1345). I also accept that even in the relatively mature and sophisticated world of trichological drug testing (which render the results generally reliable) there is (even where well-established procedures in reputable and accredited laboratories are followed) still room for contamination or human error: see Baker J in *Bristol City Council v A and A and Others [*2012] EWHC 2548 (Fam) [2013] 2 FLR 1153[2013] 2 FLR 1153, and *Re T (Care Proceedings: Drug Testing)* [2012] EWHC 4081 (Fam) [2013] 2 FLR 467[2013] 2 FLR 467 at para [11]).

146. The mother calls into question the validity of the positive test results in two respects. First, the mother maintains that she has been exposed to crack cocaine while in her prison cell ("*Crack being smoked, marijuana being smoked and MDMA. There were three other girls in my room, and I was not taking things, and I told the staff and that was why I was moved*"), and that this could account for traces being found. This possible explanation was not mentioned in the instructions to Lextox nor was it mentioned to Dr. McKinnon (or indeed otherwise in the evidence leading up to this hearing); it was suggested for the

first time by the mother from the witness box. Had it been a serious argument, I am sure that it would have been referred to sooner, and for this reason, I reject this challenge to the positive test result.

147. Secondly, and separately, the mother has alleged that the scissors which were used to collect the sample on 22 April 2014 (generating a positive result) were not sterilised, and the paper on which the hair sample was placed was on an exposed surface in a wing of the prison where other drug users are accommodated. Lextox (the sampling agency) has provided a comprehensive answer to these challenges, compellingly confirming strict adherence to rigorous standards at all times, which I accept. Moreover, the mother did not question any aspect of the collection process at the time. For these reasons I reject this further challenge to the positive test results.

148. I should add that I am concerned that the mother has not herself been honest about the use of cosmetic hair treatments, given that a hair sample taken on 22 May 2014 was shown to be lighter than in colour than that on 22 April 2014 (Lextox were able to do a side-by-side comparison) "*suggesting that it is highly likely that mother has dyed her hair since the collection on 22 April 2014*". The significance of this is that hair dye may cause the drugs results to "*have been lowered or removed*". There can be no doubt that the mother was aware that hair dye may have this effect – see the judgment of Ms Recorder Ray. She gave unconvincing answers about this in evidence, explaining that she had not mentioned dye as she had only used 'highlights'. Taking the evidence as a whole, I find on the balance of probabilities that she has used indeed used hair dye with the intention of (or certainly knowing the likely consequence of) masking the effects of her drug taking.

149. A useful Schedule of the Drug and Alcohol Tests was prepared by Mr Barnes, and was an agreed document; it lays out the sequence of tests and summarised the results. I accept this as an accurate summary of the relevant evidence, and it should be referred to should any further elaboration be required.

150. Taking the evidence overall, and applying the simple civil standard, I am satisfied that the test results do indeed show that the mother has used cocaine in the last 7-8 months, and has probably done so voluntarily. In reaching this conclusion, I rely in particular, on the following points, taken in combination:

i) The positive drug test on 23 December at the Residential Assessment Unit by EM, (Urine drug test administered on 23/12/2013. Mother tested positive for Cocaine, tested negative for Amphetamines, Tetrahydrocannabinol, Methadone and Morphine) coupled with:

a) EM's visual assessment of the mother, as someone presenting having

taken cocaine;

b) The mother's admission to EM of having "*only used a little bit*".

ii) The report of Alere dated 25 February 2014 (sample of hair from the end of October 2013 to the end of January 2014);

iii) Lextox Report (29 April 2014)

> "*Mother has tested positive for cocaine and two cocaine metabolites, benzoylecgonine and cocaethylene, in the two most recent hair sections analysed, which cover the approximate time period from the beginning of February 2014 to the beginning of April 2014. The presence of benzoylecgonine confirms the use of cocaine and the presence of cocaethylene confirms the use of cocaine with alcohol. For guidance, from experience, the levels of cocaine detected are in the low range*."

iv) Dr. Andrew McKinnon (Forensic Toxicology Consultant) (report 19 May 2014) Additional Forensic Toxicology Report dated 19 May 2014:

> "*…on the balance of probabilities she had used cocaine at some stage over the period concerned, rather than simply having been exposed to it. She could have used cocaine at any time between the beginning of February and beginning of April, assuming an average growth rate. It is not possible to determine how much cocaine she had used during this time, or the frequency of use. However subject to the provisos earlier about potential drug losses from hair, the results are suggestive of a low rate of use*";

v) Dr. Andrew McKinnon (ibid.):

> "*The presence of CE in the two most recent sections of mother's hair sample of 22nd April 2014 indicates that, on the balance of probabilities, she had consumed alcohol in combination with cocaine at some stage during this period. It is not possible to say how much, or the frequency*";

vi) The mother's own comment "*mother sober will not take drugs. Mother after an alcohol is a lot more likely to take cocaine. Whenever I had a drink in the past, I would take cocaine.*"

vii) The evidence of her drinking alcohol to excess on New Year's Eve (it is likely, in

my judgment, that the father was reporting excessive drinking to the maternal grandmother in his call on that day).

151. The hair strand testing of the mother has revealed the use of alcohol in the period October 2013 to January 2014 as FAEE has been detected. The mother's case is that she had only drunk communion wine in 2014; I do not accept that. When taking the scientific evidence together with the evidence of the father's telephone call to the maternal grandmother on New Year's Eve, I am persuaded that the mother has drunk alcohol to a greater degree than she has admitted. This will inevitably have had an impact on her resistance to taking cocaine.

152. There is no evidence that the father has used drugs in the last two years. That is enormously to his credit. However, Dr. McKinnon raises the prospect that positive hair strand testing of the father could be attributable to "*environmental exposure*". No explanation has been offered (statement or otherwise) for this conclusion. I wonder (but do not find) that the father has been in the environment while the mother has smoked cocaine. On any view, environmental exposure would be a concern.

153. **Father and alcohol use**: The father accepts that he drinks alcohol; his case is that he does not do so to excess. While the expert evidence is not of excessive or binge drinking, or misuse of alcohol, one set of test results nonetheless give a raised level of CDT at 2.0% which is a possible indication of alcohol use above normal tolerance levels exceeding above 32 units of alcohol per week in the past three weeks. This result appears consistent with the results of Alere Toxicology, as only FAEE (fatty acid ethyl ester) and not EtG (ethyl glucuronide) have been identified.

154. The father had no explanation for the results showing use above normal tolerance levels. Perhaps more troubling was his acceptance that he had continued to drink in front of his wife, notwithstanding the views of Ms Recorder Ray; he accepted that he had prioritised his own wish for alcohol over support for his wife in her recovery.

155. On any view, the father has not achieved abstinence from alcohol.

156. **Parental relationship**: By the end of this hearing, the parents' future plans appear to be formulated upon the contemplation that they should parent alone – one without the other. The father contended that he wished to separate; the mother has not overtly demurred.

157. Dr. Dowd expressed the opinion in the earlier proceedings that the parents could not effectively separate given "*the level of emotional attachment presented by both parent*". He added that:

"*The mother would look to sustain the relationship and it would be for the father to resist this …he felt that the father had a need for dependence. There was a strong emotional bond between them*."

158. Dr. Stephenson "*also thought that the mother would not separate easily. He thought it was more likely they would stay together than apart.*" I am inclined to accept this view (as Ms Recorder Ray did).

159. Moreover, Dr. Stephenson was concerned that either parent would be 'overwhelmed' if tasked with parenting on their own.

160. There was strong evidence of negative patterns of behaviour between the parents in the previous proceedings, leading to domestic violence. While there is no evidence of a recurrence of physical domestic violence, it is apparent that the relationship between the parents has continued, until recently to be domestically abusive.

i) The mother wrote to the social worker from X complaining of the father's lack of support ("*Father being back is like a burden on us all*"), that he has been "*raising his voice and swearing to me and this has twice been audible to the children … he is just being so rude and lazy and selfish I do not know what to do…he can be quite unpleasant towards me*" (17 November 2013);

ii) The mother spoke of her fear of causing a "*confrontation*" with him if she were to discuss boundaries for the children (21 November 2013);

iii) She spoke of him being "*pretty unpleasant last night*" to her when she had tried to speak with him about his attitude towards the children (22 November).

161. The mother's account of this in her oral evidence was that:

"*The difficulties started when he stopped work; when he started to integrate himself into family life. I had things like a military regime; when father came back into that he felt jealous; and I think he struggled; we had heated discussions and arguments, and the e-mails are testament to that. It was not easy and it was tricky; we got there in the end. No more than a week or two….*

"*I did not think that the way father was behaving was ok. I had a duty of care to CF, DF and EF and I know I hurt him; the way he was behaving affected them. I had a duty to protect them*"

162. Overall, the parental relationship remains, in my judgment, an abusive one, having a direct impact – acknowledged by the mother – upon the well-being of the children (see

[204(iii)] below).

163. **Openness and honesty**. Ms Recorder Ray attached significance to this issue. In light of the gross deception surrounding the abduction of the children, it cannot be said that the parents 'circumstances' have improved in this domain.

164. **Lack of contingency plan**: It was a concern of Ms Recorder Ray that the parents lacked a coherent contingency plan in the event that their principal plan was to fail. The position is no better now. At an earlier stage of the proceedings (22 January 2014) the parents indicated that "*there are no other available permanent family carers available*". The position then changed with the mother indicating that family members could be considered as supports.

165. Only the maternal grandfather has been put forward as a true 'contingency'. He was subject to a viability assessment and a Special Guardianship assessment in the previous proceedings (concerning CF and DF). He was not supported as a potential carer for them. Nothing I have read by way of updating viability assessment gives me any greater confidence in the maternal grandfather to be an appropriate carer for the children.

166. I am concerned that he colluded with the mother and/or father over the abduction of the children (which he astonishingly sought to deny), and has – it would seem by reference to the letters from Ms M (maternal aunt) – somewhat less than stable relationships with his partners.

167. **Conclusion on 'change of circumstances'**: Reviewing the events of the last 12 months, there is very little (if any) change in the parents' circumstances. The concerns articulated by Ms Recorder Ray remain as valid today as they were then. I find that the mother has failed to be abstinent. The father has continued to drink alcohol to a significant extent; the parental relationship remains volatile and abusive.

168. In considering the important question of change of circumstance, I bear in mind that the *ACA 2002* does not require that the change of circumstances should be "*significant*"; the Court of Appeal in *Re P (Adoption: Leave Provisions)* [2007] 2 FLR 1069 held that any such change must be of a nature and degree sufficient to reopen consideration of the issue. I am of the view that there is no real change in the parents' circumstances, and they fall at the first statutory hurdle.

169. Even if I were to have found that the glimpses of positive parenting at the Residential Assessment Unit for the 10 days before the termination of the placement justified a conclusion that there had been a change of circumstance, such as to justify consideration of welfare on a fuller review on the application for revocation, it would be hard to conclude that the evidence discussed above – taken as a whole – would provide a

propitious basis for a positive review of welfare.

Social work assessment

170. This has undoubtedly been a difficult case for the local authorities to manage. The parents have presented with complex needs; the case has played out against a highly disturbed and disturbing background of drug-abuse and violence. The children have presented with very particular needs and challenges; the international child abduction in May 2013 created unusual and unprecedented additional challenges for the authorities.

171. One significant benefit for the children, and for the court, has been the constant involvement of Mr A, social worker since March 2012. Ms Recorder Ray found him to be "*reflective and fair*". I share that assessment of him. Ms I, the social worker for LA2 was equally conscientious in her approach to the case.

172. That said, it is notable, and regrettable, that the social workers have not taken time to meet with the parents and address issues with them directly this year. The quality of the social work would have been enhanced if that important step had been undertaken.

173. Care planning has continued, but efforts to find an adoptive home for CF and DF have been impeded by:

i) The abduction (and the absence of the children from the country for more than 7 months);

ii) The ongoing proceedings;

iii) The possibility of rehabilitation to the family reflected by the unresolved applications for revocation and discharge;

and

iv) Where increased contact with the natural family is a possibility as part of any proposed assessment.

174. **Care planning**: The care plans laid before the court present a case, in summary, for:

i) adoption for the children;

ii) placement of the three children together if at all possible;

iii) no direct contact between the parents and the children

175. **Family Finding**: I heard from family finding social workers for the authorities, Ms C for the LA2 and Ms J for LA1. The social workers and family finders have been clear in indicating that family finding in this case has not been (and is not) easy. The challenges lie in finding a placement for three siblings, specifically where

i) the oldest child is now 6 years old;

ii) the children have positive relationships with (and will have positive memories of) their parents;

iii) there is a history of abduction from care;

iv) CF has presented with behavioural issues;

v) the children are mixed-race;

vi) the parents seek ongoing contact.

176. The social workers reject the maternal grandmother's proposal (and the parents' secondary proposal) that the children should remain in foster care. The social worker from LA2 is clear that it would not be in EF's interests for her to remain in foster care. She (like her brothers in the circumstances) would be "*subjected to social work involvement*" for the rest of her minority. She would be deprived (it is said) of a normal family life. Adoption gives autonomy of decision making to the family, which – it was argued – would be preferable.

177. Both local authorities recommend only indirect contact for the parents post-adoption. The social workers for the two boroughs have agreed that there will be monthly supervised contact until permanency is achieved. If the care plan for the boys change for whatever reason, then the contact plan would need to be revisited.

178. Ms C thought that the prospect of finding a placement for all three was "*bleak but not impossible*". Ms I and Mr A did not disagree. Two families who are interested in the boys have emerged in the last few days, and they have contemplated also third child. One is a same-sex couple. It is of some re-assurance that there have been some

expressions of interest.

179. The authorities seem committed to looking for a placement for all three children. Ms C told me that "*I have visited EF in placement; there is a good attachment between EF and her brothers*". Separating them would be "*very second best*". Ms J too recognised that: "*There is a strong attachment between the three siblings*" and a better prognosis for the placement if they are placed together.

180. The family finders told me that they had already been searching for families for three months, which has given the authority a 'feel' for what is out there. There are plainly other children waiting in each borough for adoption.

181. Post-adoption contact to the parents was contemplated by the previous family finder. Contact could be helpful for (though reluctant to say that it would be in the best interests of) the children, but "*adopters may not want there to be direct contact and may dissuade them from coming forward*". Ms J conceded that it could be important for the boys to see their parents going forward.

Further assessment?

182. Both parents acknowledge that I could not, on the evidence currently available, properly conclude that they could care for the three children either together or individually. They both request an opportunity to demonstrate their parenting by way of further residential assessment.

The mother

183. The mother's case is that by virtue of the unusual circumstances in which the residential assessment came to an end, she has been wrongly deprived of the opportunity to demonstrate that there has been a change in circumstances and that she is now able to meet her children's needs and provide them with an appropriate level of care.

184. She has proposed that she and her husband be assessed ***as a couple***, and that if the assessment is positive she would propose that she and the father be supported in the care of the children by either the maternal family members or by the paternal grandfather and his partner in the event they should relocate to X.

185. The mother complains that the enquiries undertaken by the local authority with a view to ascertaining the level and nature of the support available from extended family members has been extremely limited. In this respect, she contends, the balance sheet is not wholly

compliant with the requirements set out in *Re B-S [2013] EWCA Civ 813*

186. She particularly highlights the absence of evidence of "*assistance and support*" which might be available to the parents – both from their family and friends *and* from the relevant Local Authority and equivalent in X; she maintains that this information is "*absolutely central to the issues to be determined*".

187. The mother proposes assessment at one of a number of units whose details she has laid before me, but which have not been considered at all during the hearing, as to their suitability or cost; I am advised (and note) that places are available at the units. The mother contends that following successful residential assessment, she would propose to move into the community, probably in her original home city where she would benefit from family support (see generally next section of this judgment).

The father

188. Over the course of the last four months, the father has variously expressed the view to the professionals (and to the court) that he wished to be considered as a sole carer, and/or as a joint carer with the mother. At the outset of this hearing, the father's case was that he be assessed with the mother as joint carers for the children.

189. However, when he gave oral evidence (which followed the evidence of the mother, and an intervening weekend, on day 6), his position firmly changed. He told me that:

i) He now proposes to separate from the mother (this separation would happen, he explained, come-what-may, i.e. irrespective of the outcome of the proceedings); when I asked him whether his relationship is at an end, he said that he felt that they needed "*time out*", and that it would be at least a temporary separation;

ii) He proposes to be the sole carer of the children, and wishes to be assessed on his own, without the mother;

iii) The mother should have only supervised contact with the children.

190. He said that it had been in the "*back of his mind*" for some time that he should put himself forward as the sole carer, and he had resolved that this should now be his primary case. He said that he made the decision (to put himself forward as a sole carer) in "*my head*" in the "*last couple of days*".

191. His change of mind (i.e. the tipping point) had come – he said – over the immediately

preceding weekend. He could not say specifically what had caused it, but told me that he:

> "*needed to be confident in myself 100% whether or not if I do pass the assessment to look after these three wonderful children, and how I am going to be able to do that. Taking into account the dynamics of their mother, and to separate from her which I would be able to do… and at the same time she could go back to her family…they love her very much. That in a way helps my decision as well; as she could go … and be with them. I could stay here and look after my wonderful family. I have taken into account all the factors… this is my chance. I should 'man up' and say that I could be a sole carer for these children. It is the right time in my life, and I am sure that I will be able to do it.*"

192. He felt that he wanted to parent the children "*the way they should have been parented all along*".

193. He told me that he had communicated that his recently-formed decision to separate from the mother, and to present for assessment as a sole carer ("*go it alone*") "*probably*" on the way to court on the morning of his evidence – they had travelled to court by public transport ("*on the train*"). He told me that "*I did not go into too much detail…*" except to indicate to her that "*I expect you to go back home. I could not make it any more patently clear than that. She said that she might go to X*".

194. He said that when he told her, she was "*relatively shocked*"; she had said "*are you sure that is what you want?*" and "*I said 'yeah'*".

195. With reference to his change of position he told me that he thought that it would be better for the children to have one parent caring for them, and that he would be better than the mother, as (he said) he considers himself to be a quite stable person (inferentially, unlike her). He felt that he "*would do a better job*" than the mother.

196. He proposed that if the children were in his care the mother should have "*supervised*" contact. He would prefer contact to be supervised, because although "*all the documents show that she is a capable Mum*", he would regard it as his responsibility to ensure the safety of the children when they were with their mother; he wanted to ensure that there are no problems with that contact.

197. In the event that the father's application was to be unsuccessful, he told me that he supported the mother's plans for her to go home with the children "*because the children love mother*". He said that in that event he should see the children for contact, unsupervised.

198. The father was not cross-examined about the conversation referred to at [193] (above), but I am far from convinced that it took place between the parents as described, or at all. The father was, frankly, vague about it, volunteering only when pressed that it "*probably*" occurred on the train. On an issue of life-changing importance, it is incredible that the father would be unclear about the context or circumstances of the conversation which had (on his account) happened only a matter of minutes, or at most 2 hours, earlier; alternatively, it is astonishing that he would have communicated such information on a commuter train on the way to court, displaying remarkable insensitivity to the mother. If it did take place as described, I would have expected the mother (who was easily upset at various points during the hearing) to have shown some emotion during the father's evidence; she showed none. If there was a conversation at all, I suspect (but do not find) that it was of a different order; it seems to me more likely that the father and the mother jointly agreed the father's position as a tactical manoeuvre – a last throw of the dice.

199. The father's revised position raises three important questions

i) Can (or will) the parents actually separate?

ii) What are the prospects for either parent as a sole carer?

iii) What is the father's assessed capability as a parent, and/or sole carer?

200. As to the first question, I find that the parents cannot or will not easily separate. I have referred above to the opinion of Dr. Dowd who commented on "*the level of emotional attachment presented by both parent*", the father's "*need*" for dependent relationship, and the "*strong emotional bond between them*".

201. Having reviewed the evidence as a whole, and observed them in court (even after the father's evidence) my own view is that they remain heavily dependent upon each other. I accept the Guardian's view that the parents have "*an enmeshed relationship*", and there is a significant question-mark over whether an assessment of the father as a sole carer would be assessing a 'true' circumstance.

202. As to the second question, I note, and accept, the evidence of Dr. Stephenson that "*if either attempted to parent alone as they were likely to become overwhelmed*". The demands of looking after three damaged children will be a not inconsiderable challenge to any parent. The father and the mother both have considerable *and untreated* psychological needs of their own, which would render difficult, if not impossible, their capacity to care for the children.

203. The father has been assessed by LA1's assessment centre as a primary carer for the children; the assessment was negative. Ms Recorder Ray reviewed that material carefully, and commented that:

a) He has no experience of being a primary carer;

b) He had told professionals that he had been largely absent from the children's early lives;

c) The mother would 'revert' to the role of primary carer if given the chance.

204. Other than an avowed intention to be a sole carer, there is no evidence that within the last two years the father has taken any meaningful step to demonstrate that he is ready or willing, or well-able, to take on the care of the children full-time. Moreover, I find that:

i) Following the abduction, he chose to work away from home (in spite of his declared intent to 'spend more time with the family) for extended periods of time. He entrusted the role of primary care-giver to the mother and was not around even jointly to care for the children. When he returned to the family at weekends and holidays, there is powerful evidence that he struggled to fit in.

ii) The mother explicitly raised concerns (in her own e-mails to the social worker) about the father's contribution to the upbringing of the children. I accept as accurate the accounts given by the mother in her e-mails from X which clearly indicate that the mother was concerned about the father's conduct towards the children:

a) "*upon return DF was told to shut up to his dismayed little face 3 times in an hour or so and all he was doing was whining on and off as four year olds do sometimes, and subsequently he was referred to as an 'arse hole' although this was out of his ear shot so he will not have heard*." (21 November 2013); (the father did not accept that he said this directly to the child, but may have "*said this under* [his] *breath*");

b) Father "*hollering*" at the children (22 November).

iii) The mother complained, and I find, that the father's conduct had an adverse effect on the children:

a) "*the children … after three days complained that he is grumpy and lazy*" (21 November);

b) "*CF wants daddy to live in another house next to ours but in our own with a different gate and a different garden …. He is not kind to us*" (21 November);

c) "*CF later commented 'we should get a new daddy*"' (22 November 2013);

d) "*recently their* [the children's] *chat has been re: their being dissatisfied with daddy*" (21 November);

e) "*after being hollered at, DF in hysterics said that he wants daddy to 'live super very far away'. CF upset too. Father tried to apologise to them after again*" (22 November).

iv) In the Residential Assessment Unit the father was not seen to be the caregiver. Mr A felt that if he wanted to be a caregiver, he needed to demonstrate this, and he did not do so. I accept this view. Although the 23 December was undeniably a difficult day for the father, he failed to protect the children when the crisis unfolded.

Family support: role of extended family

205. In the 2013 proceedings much attention was focused on the assessment of extended family members; at that time, the paternal family were being presented to the court as integral supports to the parents.

206. Within these proceedings, and by direction off 22 January 2014, I required the parties to nominate family members who they wished to propose to care for the children. In fact, neither parent advanced names at that stage but on the last few weeks have proposals been made for wider family support.

207. At this hearing attention had specifically turned to the role of maternal family members, and particularly the role of Ms M, the mother's aunt, who gave evidence before me. Ms M is the mother of six children, three of whom currently live at home with her. She asserts that she is close to her niece (the mother) whom she regards as another daughter; that said, her contacts with the mother (and the subject children) has, it transpired, been limited to family gatherings only in recent years. Notably, however:

i) She has not seen CF and DF for approximately 3 years;

ii) She did not put herself forward in a supportive capacity n the March 2013 proceedings;

iii) She had not, it appears, enquired as to the reasons for the decisions in March 2013, only requesting sight of the judgment for the first time on day 4 of this hearing.

208. Ms M sees herself as offering emotional and practical support for the mother, and a roof over the heads of the mother and children, for a temporary period ("*a year or two*"), while the mother establishes herself (interestingly the mother proposed that she would live with her aunt for only about 6 months). And then she thought that the mother would set up on her own. The father was not obviously included in the offer of accommodation as such (as things have turned out, this may not matter), Ms M contemplating that he may choose to visit for weekends, and if so suggesting that the parents may then go to a B&B.

209. It was of great assistance to the court that Ms M travelled to London during the hearing, provided a statement over a weekend, meeting with the Guardian, before giving evidence by video-link. She sees herself as a "*supporter*" – to "*monitor*" the situation. Ms M is reported (as indicated above) as indicating that the mother is "*a full time job in herself*", who likes to be the "*centre of attention*"; in this respect, Ms M made a realistic appraisal of the challenges which would face her.

210. Ms M was clear in her discussions with the Guardian (12 June) that she would not wish to be considered as a primary carer. She did not feel that any of the other maternal relatives would fulfil that role.

211. I should add that were the mother to relocate she would be living in close geographic proximity to her own mother; for the reasons more fully set out below (see [225]) I am concerned about the increased risk of adult conflict and instability for the children.

212. The maternal grandfather was assessed as a potential alternative carer; he did not seem to be aware (or did not specifically propose) that he could offer an alternative supportive role for the mother.

213. Ms I (LA2) undertook a viability assessment by speaking with MGF, by reviewing the earlier judgment, and by drawing on the information contained within the papers. She said that she was "*confident*" of her assessment that the maternal grandfather would not

be a suitable she made.

214. There is already a concern raised (see the Ray judgment) of the mother disclosing sexual abuse when a child, and the real concern that he had not fulfilled the role of protective parent to his own daughter. Recorder Ray also raises the concern that the maternal grandfather was using cocaine and drinking.

215. I am satisfied that the maternal grandfather was complicit in the abduction (it is frankly incredible that he would not have known of the mother's plan to return with the boys when she delivered EF to him on 23 May), yet he refused to provide an address for the children when they arrived in X.

216. His domestic circumstances do not appear particularly stable; he has separated from his wife now; he is now in a new relationship with the children's former nanny.

217. In the previous proceedings before Ms Recorder Ray the father advanced a plan that the children should be cared for within the paternal family. The father told me at this hearing that the earlier plan had "*ended up as a bit of a "mish mash"*" which would "*have been more robust if we had been given a day or two more to resolve it*". He still believed that the earlier plan "*could have worked with a bit of fine-tuning… that plan could have worked…*"; he now says that the current plan is materially different because he is proposing that he will not work.

218. On the second day of this hearing, the paternal family submitted a note written obviously by the father but which they apparently signed in which they indicate that as a family, they:

> "*intend to lend their support and offer their family support network on similar terms as proposed to Recorder Ray.*"

219. This late-submitted note was intended to rebut the social work evidence that the paternal family had effectively turned their back on the father – a view which they deny, and which they say may only have been uttered in response to information falsely given by the social worker that the father had resumed his drug taking.

220. I can make no finding about what was said at any earlier meeting by either the social worker or the paternal family. If there had been miscommunication of information, I am satisfied – having formed my assessment of the social workers – that it would have been inadvertent and not deliberate. Mr A told me that he had told the family of the father's drug results which were conflicting. He accepted that he could have phrased things

more carefully and sensitively.

221. The Local Authorities have no confidence that the extended family on either side would be able to keep the children safe, be able to recognise (and deal with the effects of) drug use, and dysfunctional behaviours of the parents.

Maternal Grandmother

222. The maternal grandmother attended on the first day of the hearing with an application seeking:

i) party status, and

ii) leave to make an application for a Child Arrangements Order (CAO).

These applications were opposed by all parties including the parents (*section 10(9)(d) CA 1989*).

223. In relation to [222(ii)] (above), I considered the provisions of *section 10(9)* of the *CA 1989* carefully; on balance resolved to refuse maternal grandmother party status and leave to make the application for a CAO. I so concluded on the basis that:

i) I had received and read a witness statement from MGM; she was to be called by the local authority as a witness (i.e. I would be hearing from her in any event);

ii) Her application (essentially for contact with the children) was very much ancillary to the central issues in the case, and could be considered whatever orders I made on the principal applications (see *section 10(9)(a) CA 1989*);

and

iii) I could make a CAO if this was in the interests of the children in the absence of an application;

224. I was concerned about the impact on the dynamics of the hearing were MGM to be given access to all of the documentation, and sitting in court throughout; my concern were borne out by events as they unfolded.

225. MGM gave evidence before me. She is a thoughtful, quiet and reflective woman. She is a primary school teacher. She spoke of the difficult relationship which she had with her daughter. Ms Recorder Ray had described family relationships as "*complex*" and this was as evident now as then. Indeed this was vividly exposed, when at one point in the maternal grandmother's evidence she touched a 'raw nerve' with the mother, and the mother exploded with a tirade of angry abuse from her seat behind her counsel. The mother withdrew from the court, leaving the maternal grandmother visibly shocked, shaken and upset. The mother later apologised to me (which I accepted); it was not clear that she had apologised to her mother. The mother told me:

> "*as much as I would like to have a positive relationship I don't know if it is possible. One of the reasons I have stopped talking to her is that it makes me unwell. That is why I withdrew from having a relationship with my Mum*"

The mother had recently written to the guardian in which she said that she felt that she had to protect her own "*mental health*" where her relationship with her mother was concerned; the mother accepted that the relationship with her mother "*has a very profound effect on me* ... [It may] "*never be fixed*".

226. I allowed the maternal grandmother to present to me her own 'care plan' for the children. She was keen to point out that this plan would be relevant only if I concluded that the children could not be rehabilitated to the care of their parents. She proposed that the children should remain with the current foster carers, and for her to retain a relationship with the children 'as a Granny', which would permit for the children to spend time with her during school holidays. She made a number of powerful, and essentially valid, submissions in support of her contentions. She made a number of valid observations about the children themselves, which I accept, namely:

i) The children have experienced "*an unbelievable litany of traumas*" in their short lives;

ii) While in the care of their parents, the boys' lives were "*unsafe, neglected, and traumatic*";

and

iii) The children have known "*precious little 'normal'*".

227. I accept that the plan was advanced out of a genuine and deep sense of love and commitment to her grandchildren. However, I do not believe that the grandmother would be able to enjoy a trouble-free relationship with her grandchildren – whether the

mother were primary carer or not. It would be challenging for the mother to support this in any way. As they get older, the children will become more aware of the discordant family relationships, which is not likely to serve them well.

228. I have carefully considered whether I should make a Child Arrangements Order in favour of MGM; while I am of the clear view that she has much positive to offer her grandchildren, I have concluded that it is not likely to be in the children's interests for me to impose an order requiring such a relationship given the many other complicating features affecting the children's ultimate placement.

Guardian's recommendations

229. The Guardian has prepared a detailed and lengthy report, drawing on materials filed in these and the earlier proceedings. He has recently interviewed the parents, and seen the children.

230. He expressed the view that

> "*... by virtue of their parents neglectful and high risk behaviour EF, DF and CF have become embroiled in a set of circumstances that eventually lead the to parents being imprisoned. They have been denied the stability and security that, the making of Care and Placement Orders in respect of the boys and the placement of EF by way of a written agreement within care proceedings were designed to give them.*"

231. The Guardian opposes any further assessment, and excludes the ability of the parents to change within a timescale which would meet the needs of these children

> "*The difficulties that mother and father have regarding parenting are located within the constellation of untreated personality difficulties that include, but are not reducible to, risk of relapse into substance abuse and possible domestic violence between the parents .... neither parent has embarked upon psychotherapy and the timescales for this work are outside those required to afford the children permanency*".

232. He brings to the case the great advantage of continuity of involvement. He has reviewed with care the plans of the local authority, and in particular the challenges of finding an adoptive home for this sibling group:

> "*The difficulty in locating a family who may be able to adopt all three children has been highlighted and under these circumstances it may be that it will be easier to place EF separately from her brothers. Such a development would be particularly*

painful for CF and DF given their expressed wish to live with their parents and sister. However to forgo the opportunity of EF, or indeed her brothers attaining an adoptive placement because of the difficulties of placing all three children together would be to consign all three children to long term foster care with its attendant risks of placement disruption".

233. The Guardian is of the view that "*[t]he children simply can not wait any longer*" for a decision. He has considered the vexed question of how inter-sibling contact could be achieved if CF and DF are *not* adopted (and maintain some limited contact with their parents), but EF is adopted. He cautions particular care (which I endorse) around the disclosure of any information which would divulge the whereabouts of EF's placement. He opines that the plans for the children – including the contact plans – are reasonable and proportionate.

Analysis of options

234. The local authorities have undertaken an analysis of the options available for these children, as has the Guardian. It is ultimately my responsibility to perform the same welfare analysis required by *section 1(3)* of the *1989 Act* and *section 1(4)* of the *2002 Act*, assisted (as I am) by their views (see Ryder LJ in *Surrey County Council v S* [2014] EWCA Civ 601). This evaluation requires a comparison of each placement/welfare option and a consideration of whether, having regard to the benefits and detriments of each option, the proportionality of interference proposed by the local authority was justified.

235. **Further assessment of the parents with a view to rehabilitation**: As indicated above, it appears that I should consider separate assessments of the parents with a view to rehabilitation to one or other.

236. I require no persuading that it would be of considerable benefit to the children if they could be raised within their own natural family, by one or other of their parents (or both together), enjoying the unique, irreplaceable, and powerful relationships which only parents can bring to their children. The advantages of family placement for these children would extend also to:

i) ensuring that they remained together as a sibling group;

ii) maintaining relationships with their wider extended family;

and

iii) promoting absolutely their mixed ethnic/cultural heritage

237. Such a plan would I am confident correspond with the children's wishes.

238. Moreover, I am satisfied when considering this plan that the children love their parents, and the parents love the children.

239. That all said, I have to weigh those advantages against the proven harm to the children at the hands of their parents – and the chaotic and emotionally disruptive life which the children have experienced even in recent times causing them (as the father at least acknowledges) significant emotional harm.

240. I have paid close attention to Ms Recorder Ray's analysis of the early life of this family, and note that Ryder LJ had considered her judgment to be "*a careful evaluation based on detailed evidence that was before the court*".

241. Since the March 2013 judgment, there has been no material change of circumstance in the lives of the parents (see conclusions on this issue at [167] above). Indeed many of the risk factors remain, with no substantive or reliable contingency plan in place.

242. **Long-term foster carer**: I weighed carefully the pros and cons of foster care for these three children. In doing so I have paid regard to the comments of Black LJ in *Re V (Children)* [2013] EWCA Civ 913 (at §96). I took the opportunity to discuss these considerations with the Guardian at the conclusion of his evidence.

243. There are plainly advantages for these children remaining in a home where they have enjoyed a high quality of substitute care. Indeed, there are advantages to the children of long-term fostering more generally.

244. For the children, remaining in their current foster-home would provide them with consistency; they have thrived in this placement, and they are plainly devoted to their foster carer (as she is to them). The continued placement would be likely to protect the continued relationship of all three children in a home together – a valued outcome, in my view.

245. Placement of the children with long-term foster carers (this carer, or more generally) would more readily allow for ongoing parental contact (and contact with other family members), subject to the important proviso that the natural family would have to support the placement as a long-term home. After all, the local authority would be obliged to allow the child reasonable contact with his parents in such a situation (*section 34(1)*

Children Act 1989).

246. Those not inconsiderable advantages have to be balanced against the following factors:

Generally:

i) Given the history of this case, there is an obvious risk that the parents would take the law into their own hands once again and abduct the children from care; they know where the foster carer lives and would be likely to know where any substitute foster carer lives; injunctive orders currently impose a cordon around the placement, but I have to have regard to the fact that the parents have knowingly broken the law in the past. Moreover, a *perceived* risk and/or *fear* of abduction is (or may) be just as potent an affliction on any placement than abduction itself; it is to be noted that even within these proceedings, comments made by the children in the foster home suggested that a further abduction was being planned – significantly raising anxiety levels among the carers and professionals. It would be contrary to the interests of the children to impose this level of anxiety on the foster carer. The parents are known to be bright, and resourceful; they have demonstrated this clearly over recent times.

ii) Foster care requires a considerable degree of statutory intervention in a young person's life by way of social work visits and LAC reviews; these can have the effect of institutionalising family life;

iii) The guardian was concerned (and I accept) that many children can feel stigmatised by being 'in care';

iv) There is the higher risk (than in adoption) of placement moves and disruption with its concomitant risks to the children's emotional wellbeing and sense of belonging;

v) Ongoing parental contact (and contact with other family members) could have the effect of destabilising the placement if the natural family could not hide their opposition to this substitute care arrangement;

vi) The placement would be vulnerable to legal challenge;

vii) The placement would be vulnerable to parental criticism or allegations – either subtle or overt (as has happened here already) (see [246(xi)] below).

And in relation to this foster placement specifically

viii) The current foster carer is not specifically approved as a long-term foster carer by LA1, nor is she approved by LA2;

ix) The current foster carer's age. While, so far as I know, she is healthy and able to care for these three young children, her age when EF is 18 would have to be borne in mind (she would be in her 70s);

x) Possible changes in the composition of this family cannot be ruled out; additional grandchildren may be born into the household; it is not assured that the younger generation in the home would remain in the home; they obviously provide a degree of support for her;

xi) The parents have already made numerous complaints about her care, accusing her (and her adult child) at one stage of "*systematically*" striking and verbally abusing the children (""*systematically struck and verbally abused by their foster mum and her alternative adult 'carers'*."); in his recent discussion with the guardian the father raised "*questions how DF has come to acquire a bruise on his leg since being in foster care*"; in discussion with the probation officer, the mother expressed her concern "*that the children were not being well cared for by the foster carers*". This is all potentially undermining of the placement and would be likely to disrupt the children's ability to settle.

247. **Adoption**: Adoption would enable the children, CF, DF and EF, to become integrated members of their carers' family so conferring all the legal and emotional security which this entails. As Black LJ put it in *Re V* (above)

> "*Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement*"

248. The Local Authority's care plan is for the siblings to be placed together in an adoptive placement; if this is achieved, they would not therefore lose each other.

249. However, adoption brings with it the cessation of legal and actual relationship with the natural family. It is the most draconian of the family law orders, and interferes most radically with the parents and children's right to family life. There is a real prospect of

the three siblings being separated, with EF placed separately notwithstanding the universal view that the children enjoy a special relationship. Prospects of the children retaining any form of contact with their natural families are reduced to negligible limit.

250. **Contact post-placement**. I have been asked to consider post-adoption contact for the parents (including the making of an order for direct contact) and an order for post-adoption contact for the maternal grandmother.

251. The local authorities propose that the parents should have letter box contact twice yearly in the event that all three children, or EF alone, are adopted. In the event that EF is separated from her brothers it is recommended that that EF maintain twice yearly direct and indirect contact. The Guardian does not support passing photographs of the children to the parents post-adoption; I share his concern that given the ingenuity and determination shown by these parents in abducting the children photographs could be used as a means of searching for individuals via the internet

Conclusion

252. I have had the considerable benefit of seeing and hearing the witnesses, and reviewing the material as a whole.

253. Both parents have qualities. They are bright people. They have offered good enough parenting for their children at times. They have shown great love to the children, and that is wholly reciprocated.

254. The judgment of Ms Recorder Ray has to be my starting point for the evaluation of the best interests of the children now. I have therefore to give close attention to more recent events.

255. The abduction of the children in May 2013 was a calculated, clandestine, and audacious act undertaken, in my judgment, with scant regard for the welfare of the children – both in the short term and the long term. The children experienced considerable disruption; the boys were removed from the care of their foster home (where they had been for 15 months), without preparation or warning, to the other side of the world, only for them to be returned some months later after the parents had reflected on the error of their decision. It was a futile act, condemning the children (as the mother herself acknowledged) to the status of 'exiles' – an outcome which the mother, with even a modest time to reflect, realised was wholly contrary to their interests. The father accepted that he and the mother were "*reckless to the consequences*" of their criminal acts.

256. I am satisfied that the parents behaviour in the abduction itself caused all three children significant harm; the parents displayed a worrying lack of empathy towards their children, failing to demonstrate a capacity to understand the consequences of their behaviour upon their children's wellbeing.

257. I am conscious that decisions reached in the best interests of the children now should not include any element of punishment for the parents for what they have done. They have faced up to the criminal consequences of their actions with their guilty pleas. I accept that the mother was the prime mover in arranging and facilitating the abduction; the events reveal all too starkly how impotent the father is, or has been, to moderate or contain his wife's behaviours, and/or protect the children. Worse still, he readily colluded with her in becoming a willing participant.

258. I am not at all satisfied that the parents have been able to reflect upon the abduction, and understand it as a manifestation of their own personality difficulties with (as the Guardian put it) "*profoundly disruptive and disorganising consequences for all their children*".

259. It is difficult to know how the children truly experienced family life in X. The father, having told Ms Recorder Ray that he thought that the mother should have no unsupervised contact with the children was left to solely care for them; I was concerned to hear repeated references to her "*military*" regime for them. The father, having been championed as a potential primary carer for the children, reverted to his established pattern of full-time working, this time away from home. It appears that his visits back to the family were characterised by tension and anger, he finding it difficult to slot into the regime established by the mother. He told me, and I accept that he was "*finding it difficult to fit into the family. This had an effect on the children*".

260. The events which followed their return to this country illuminated once again the chaotic and destructive nature of the family life orchestrated by these parents.

261. I am not able to find as a fact precisely what happened to the mother overnight on 22 December; I have only the mother's rather incomplete account. It is of course entirely possible that the mother was indeed drugged and sexually assaulted as she alleges, events flowing – as she maintains – from her unwise decision to take an unmarked taxi; it may indeed be that she was the wretched victim of opportunistic crime. Features of the account which continue to jar are the father's evidence (which I accept) that the mother had not been 'with it' before she left the unit, and the mother's acknowledgement to EM on the following morning (which I accept) that she had taken a "*little bit*" of cocaine overnight.

262. Equally, I cannot make findings about what happened on the night of 24 December.

The evidence is plainly regarded to be of sufficiently good quality currently to justify the prosecution of the mother's alleged assailant.

263. What is obvious is that the events of 22-23 December and 24-25 December have left the mother profoundly traumatised and deeply emotionally wounded; she writhed in pain in the witness box when endeavouring to recall the events. She struggled to give answers, through a wall of sobs, a picture of utter wretchedness and despair. That anguish was to a lesser, but still significant, extent displayed by the father too when he was asked to re-live the events of these days. His otherwise confident demeanour crumbled and he laid bare his own deep pain.

264. These events sadly underline how vulnerable the mother and the father are; the parents have found it difficult to be emotionally strong for their own well-being, let alone for the well-being of their children. Neither of them has begun the long journey of therapy to assist them to come to terms with their life experiences.

265. I have no doubt that the parents were rendered effectively incapable of caring for the children by the events of 22-23 December. They were struggling, and I suspect barely managing, to contain their own overwhelming emotions. They were in no state to tend to the needs of the three children who had already experienced such disruptions in their own lives. These events appear to have left the mother, in particular, deeply scarred. She will, it seems to me, require intensive therapeutic intervention to help her to repair the damage of these experiences, coming – as they do – upon a lifetime of chaos and abuse. Her ability to hold herself together is extraordinarily fragile. Her veneer of coping is wafer thin. She was easily provoked to an outpouring of grief – even when the father was giving his evidence.

266. That these events had a catastrophic effect on the assessment is all too apparent from my description above.

267. Over and above these devastating experiences, I am satisfied on the balance of probabilities, as indicated above, that the mother has relapsed into cocaine use and alcohol use during the course of this year. This is a tragic and depressing development; it has effectively turned the stop-watch back to zero when reviewing the requirement for proven abstinence and sobriety before she can be an effective parent.

268. I find that the father naively continues to accept the mother's word for her abstinence, underlining perhaps his blinkered dependence on her; he knows no other way at present. Astonishingly, he told me at one point in his evidence that he felt that there was "*no reason why she should lie about it*" (i.e. her drug taking). I asked him to reflect on the fact that the mother had every reason to lie about it, and he reluctantly appeared to accept this. The father's recent alcohol consumption has not been excessive, but has

been above normal tolerance level and unwisely has taken place in front of the mother.

269. I am wholly unpersuaded that the father has carefully thought through his proposal to be the sole carer of the children. My impression was that he only truly declared his hand when giving evidence; I do not accept that the conversation with his wife took place on the way to court on day 6 as he reported, or at all. I am not convinced that he has thought through how life would be not working; I accept Ms Recorder Ray's comment that work forms a very important part of making up his own self-esteem and self-respect, and I am concerned that this self-esteem may well diminish if he is effectively prevented from working.

270. Future psychotherapy for the parents is going to be painful, and long-term. Both parents will be vulnerable during the period of any work. The mother also has to contend with the inevitable strain of the criminal court process.

271. I have, with something of a heavy heart, reached the conclusion that it could not be in the interests of any of these children to be returned to the care of either or both of these parents. Further assessment of the parents is not going to yield any information which is not already known or reasonably predicted; at no level could such an assessment be regarded as 'necessary' for my determination of the futures of the children. Family support from the maternal aunt, even from the maternal grandfather, is doubtless well-intentioned, but wholly inadequate to compensate or offset the deficits in parenting which have been apparent thus far. I have furthermore to have regard to the inordinate delay in resolving these proceedings already, and the additional delay which would be created by further assessment.

272. I have reflected carefully on the prospects of long-term foster placements for the children weighing carefully the powerful considerations which I have outlined and discussed above. I have concluded that the detriments of such a placement greatly outweigh the potential benefits. There are plainly advantages in the children remaining where they are, but overall I do not regard this as an outcome which would necessarily be in the children's interests.

273. While recognising that finding an adoptive placement for these children will be challenging, I have nonetheless reached the clear conclusion on all of the evidence that adoption is the outcome which will best promote and enhance these children's well-being now and in the future. I am satisfied on the evidence that adoption is "*necessary ... in order to protect the interests of the children*" – to use Lady Hale's phrase, I am driven to the conclusion that "*nothing else will do.*"

274. In reaching this conclusion, I have attached considerable weight to the *Article 8* rights of the family members, but consider that interference with those rights is not just justified,

it is necessary, to achieve outcomes in the children's best interests. The care plans of the authorities for the children should be endorsed, with one revision – namely to give greater prominence to parallel planning to find a family for a sibling group of three. I am satisfied that the benefits of adoption do outweigh the benefits of long-term foster care, but not conclusively so. As the searches are undertaken so it may be that individual factors identified as of relevance to the decision will assume different importance. I wish to emphasise that the children should, if at all possible, remain together; this is plainly in their interests. The children have a close sibling relationship; they have endured much instability in their short lives, and some of that instability has experienced by them together. They have experienced already a number of material and life-changing losses; they will, I am sure, experience another significant loss through the reduction and probable elimination of contact with their natural parents.

275. **Revocation/discharge (CF and DF)**: For the reasons set out above, I refuse leave to the parents to revoke the placement orders. It is not in the children's interests that the care orders should be discharged. The applications for discharge of the care orders follows.

276. **Care order/placement (EF)**. I have weighed carefully the arguments for and against the competing options for the children's futures above ([234]-[249]). As indicated, I conclude that adoption is necessary to protect EF's best interests, and is the order which will most likely provide for her stability and consistency throughout her childhood.

277. I have reminded myself of the test as formulated by Sir Nicholas Wall in *Re P (Placement Orders: Parental Consent)* 2008] EWCA Civ 535, [2008] 2 FLR 625. I have to be satisfied that EF's welfare now, throughout the rest of her childhood, into adulthood and indeed throughout her life requires that she be adopted.

278. In considering that specific point, I have of course weighed in the balance of all the matters outlined in this judgment above including but not limited to (a) the mutual love of the parents and EF and (b) the positive experience of contact and the loss to EF of this relationship. These factors have to be weighed against the future stability and security of her life. I am satisfied that the plan put forward by the parents would not provide EF with the secure home which she deserves.

279. In considering whether I can dispense with the consent of the parents, I have had regard to the provisions of *section 1* of the *ACA 2002* and the checklist in *section 1(4)*. I am of the view that neither parent has the 'ability' (*section (1)(4)(f)(ii)*)) to provide EF with a "*secure environment in which [she] can develop, and otherwise to meet [her] needs*". I have borne in mind the likely effect on EF (throughout her life) of having ceased to be a member of her birth family and become an adopted person. I have had to pay close regard to the chaotic and disruptive background of family life experienced by EF herself, and more specifically by her older brothers.

280. Of significance is the relationship which EF has with her brothers; this is not just a "*relevant*" relationship (per *section 1(4)(f)*) but a significant one. I have had to have regard to the likelihood of that relationship continuing and "*the value to* [EF] *of its doing so*",

281. I am satisfied that EF's welfare requires that the consent of the parents be dispensed with under *section 52* of the *ACA 2002*.

282. Having dispensed with their consent, I have to consider whether a placement order is in the best interests of EF. In this regard, I have reviewed again the provisions of *section 1(4) ACA 2002*; for the reasons set out above, I consider that adoption is in the best interests of EF, and I therefore make the placement order.

Orders.

283. I propose to make the following orders

i) I dismiss the application by the parents for leave to revoke the placement order in relation to CF and DF;

ii) I dismiss the application by the parents for discharge of the care order in relation to CF and DF;

iii) I refuse the application by the mother and/or father for an order authorising a residential assessment under *section 38(6)* of the *CA 1989*

iv) I grant the application by LA2 for a care order in relation to EF;

v) I grant the application by LA2 for a placement order in relation to EF

vi) I propose to make no substantive orders in relation to contact in favour of the parents or wider family members.

vii) I shall continue the injunctive orders restraining the parents from entering within the prescribed cordon around the foster mother's home.

Immediate consequences

284.It is proposed that there should be a reduction in parental contact with the children, and that this should follow the plan for EF rather than the plan for the boys. Contact will reduce to once every two months until prospective adopters are matched with the boys. The parents are then to be afforded a good bye contact with the grandparents potentially attending this

Post-Script (1): Publication and Publicity

285.Consideration needs to be given to the publication of this judgment.

286.In accordance with §17 of the *Practice Guidance* issued by the President of the Family Division on 16 January 2014 ('*Transparency in the Family Courts': Publication of Judgments*'), I start from the proposition that permission should be given for this judgment to be published unless there are compelling reasons why not. Plainly it will need to be anonymised. I shall give counsel an opportunity to address me (orally or in writing) about this.

287.On a separate note, I have been advised that the parents have in the past confided their story in a journalist. I have seen the article which was regrettably tendentious, and factually inaccurate. I trust that the family will not breach the ordinary confidentiality of the court process again in this way. If they wish to discuss details of these proceedings with the press, with a view to publication of information arising from these proceedings, they may of course apply to the court for that permission.

Post-Script (2): Support from Justice for Families

288.Part-way through this hearing (day 4), Ms Amber Hartman attended at court; she sought my leave to sit in the hearing and observe. Ms Hartman told me that she was a representative of 'Justice for Families', this is a campaigning organisation chaired by John Hemming MP. She informed me that she had been asked to attend by the parents "*to take notes*" and give them "*support*". She told me that she further sought to enhance her skills and experience as a McKenzie Friend by observing the proceedings; she relied upon the fact that she had previously been permitted to attend hearings conducted in private.

289.She advised me that Justice for Families had been in touch with the family "*in X*". The mother later told me that she thought that she may have first been in contact with 'Justice for Families' ***before*** they left for X – a point of concern (but no more) given that Mr Hemming is reported (for instance, BBC report: January 2014) to advise parents to leave this country (lawfully) if they wish to avoid social services and the courts.

290.When asked for the views of the parties, I was informed by counsel that the parents were

'*neutral*' as to whether Ms Hartman should sit in the hearing; the Local authorities and Guardian opposed the application, concerned about the confidentiality of the process.

291. I considered carefully the provisions of *rule 27.11 FPR 2010* and having heard submissions, I refused her application, not least because

i) the parents were/are represented by experienced counsel and solicitors; there was no need for a note-taker (and, as indicated above, they did not actively support Ms Hartman's attendance);

ii) the parents told me that 'Justice for Families' had contacted them the previous evening asking to attend, not the other way round. (By e-mail received later two days later, I was advised by Ms Haines of the organisation that the parents had been "*insistent*" that someone attend, and they were not 'neutral' on the point of someone attending from the organisation);

and

iii) it was difficult to see how Ms Hartman could offer material or actual support to the parents, given that she had only met the parents moments before the hearing outside court.

292. The father later told me that he had paid Justice for Families travel and "*child-care*" expenses, a figure negotiated down to £100. The father later accepted that he had indeed asked that a representative from this campaign organisation should attend but that they "*changed [their] mind*...". Regrettably, the father misled the court about how this came about.

293. I wish to make clear – as I did in my short judgment dealing with Ms Hartman's application – that the Court generally welcomes McKenzie Friends to assist unrepresented parties in family and civil cases.

294. However Ms Hartman's attendance fell into a different category altogether.

Post-Script (3): Out of Hours and Without Notice hearings

295. I would like to make a point about Out of Hours or without notice applications.

296. In this case, as referred to in [72] above, on 23 December 2013 I made an order, out of

hours and essentially *ex parte* (although notice of the hearing had in fact been given to the Respondents). The application was in writing, supported by a position statement, and an 'incident report' from the Residential Assessment Unit. Counsel then appearing for the applicant local authorities supported his application with a position statement and proposed draft order. I did not accept the proposed order as originally drafted. I caused further enquiries to be made of the Respondents, as a result of which I required recitals to be added to the order which reflected the positions of the parties. There was a certain amount of to-ing and fro-ing.

297. Counsel who then appeared for the local authorities has played no subsequent part in the case. No counsel appearing at this final hearing was aware of how the hearing had evolved or of the enquiries raised by me, nor had they seen the position statement. I should add, out of fairness to counsel who made the application, that none of the respondent parties or their lawyers had in fact asked for this information or sight of the relevant documents.

298. Issue arose in the hearing as to how the recital reflecting the father's position at the time of the breakdown of the residential assessment came to be recorded on the face of the order. This was important; there was a clear issue of fact about his position and intentions, and how to whom it was being communicated. As it happens, and fortuitously, I was able to fill in the gap.

299. It is, in my judgment, not just important but ***essential*** that in a hearing of this nature in this kind of case, counsel or solicitor instructed should prepare a note of the hearing and circulate it to the respondents forthwith following the hearing. While recognising that there are ever-increasing burdens on publicly funded counsel, the cost of transcripts will not be justified in many cases.

300. This is not a new obligation. Indeed the notes in the White Book to *rule 25.3 CPR 2010* refer to the long-established "*duty*" on the applicant to provide full notes of any without notice hearing "*with all expedition to any party that would be affected by the relief sought.*" (§25.3.10). The note continues:

> "*Counsel and solicitors have responsibility for taking full notes of what was said at the hearing and they should not expect that a transcript of the hearing would be available or would suffice if it were (Cinpres Gas Injection Ltd. V Melea Ltd. [2005] EWHC 381 (Pat))…. The preparation and provision of such notes are important, not only to inform anyone notified of the order of what evidence was put before the court (in addition to that which is in the witness statements) but also to inform them of any points or queries that may have been raised by the Judge (G v Wikimedia Foundation Inc [2009] EWHC 3148*)"

301. In this respect it is helpful to refer further to *C v C (Without Notice Orders)* [2005] EWHC 2741 (Fam); [2006] 1 FLR 936 (per Munby J) citing the earlier authorities of *Re W (Ex parte Orders)* [2000] 2 FLR 927 (i.e. "*the applicant's legal representatives should respond forthwith to any reasonable request from the party injuncted or his legal representatives either for copies of the materials read by the judge or for information about what took place at the hearing. Persons injuncted ex parte are entitled to be given, if they ask, proper information as to what happened at the hearing*"), and *Kelly v BBC* [2001] 1 FLR 197, and *S (Ex Parte Orders), Re* [2001] 1 WLR 211, [2001] 1 FLR 308 [2001] 1 All ER 362, FD.

Post-Script (4): Bundles

302. Five lever arch files have been lodged for this hearing by LA2, with a further four lever arch files of papers from the previous proceedings.

303. The pagination of the documents (many key documents apparently being inserted after the pagination had been completed) was, in parts, of impenetrable and wholly avoidable complexity.

304. I wish to re-state the importance of compliance with *PD27A FPR 2010* (as amended), specifically:

i) "*The bundle shall contain copies of only those documents which are relevant to the hearing and which it is necessary for the court to read or which will actually be referred to during the hearing*" (§4.1)

ii) "*Unless the court has specifically directed otherwise, being satisfied that such direction is necessary to enable the proceedings to be disposed of justly, the bundle shall be contained in one A4 size ring binder or lever arch file limited to no more than 350 sheets of A4 paper and 350 sides of text*" (§5.1)

iii) "*All documents in the bundle shall (a) be copied on one side of paper only, unless the court has specifically directed otherwise, and (b) be typed or printed in a font no smaller than 12 point and with 1½ or double spacing*" (§5.2)

305. I would further like to take this opportunity to remind counsel of the provisions of §12.1 of *PD27A*, namely:

> "*Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a "wasted costs" order or some other adverse costs*

order".

It would have been quite contrary to the interests of these children to have removed this case from the list on this ground; I am nonetheless disappointed that the warning about wasted costs was not of itself sufficient to ensure compliance.

306. That is my judgment.