

St. Marys Court
Regents Park Road, N3 1BQ
Wednesday, 30th July 2014

Before:

HER HONOUR JUDGE LEVY
(In Private)

B E T W E E N :

LONDON BOROUGH OF HARINGEY

Applicant

- and -

(1) THE MOTHER
(2) THE FATHER

Respondents

-

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J U D G M E N T

(As Approved by the Judge)

APPEARANCES

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MS. C. PERRY (instructed by Legal Services Department) appeared on behalf of the Applicant.

MR. I. ERUTEYAN (Solicitor, VLS Solicitors) appeared on behalf of the 1st Respondent.

MR. D. MERRIGAN (instructed by Joseph Tily Solicitors) appeared on behalf of the
2nd Respondent.

MISS. S. KELLY (instructed by Williams & Co. Solicitors) appeared on behalf of the
Children's Guardian.

HER HONOUR JUDGE LEVY:

Introduction

- 1 This afternoon I am giving judgment in public law proceedings brought by the London Borough of Haringey in respect of three boys. They are: A who was born on 5th October 1998 and is 15 years and 9 months old, B born on 20th October 1999 who is 14 years and 9 months old, and C born on 2nd May 2001, who is 13 years and 2 months old.
- 2 The boys' parents are married. In the course of their marriage they have separated but they remained close and have been living together again since 30th June 2014. They present as a couple in these proceedings.
- 3 The children's guardian is Lorraine Hughes who was appointed on 31st January 2014.
- 4 A, B and C have two full siblings who are not the subject of these proceedings but were subjects of previous proceedings. I should explain a little about them because I will mention them in the course of my judgment. They are D who was born on 24th January 2004 and is almost 10½ years old and E who was born on 14th July 2008 and has just turned 6 years old. In respect of both

children full care orders were made to the London Borough of Haringey on 1st July 2011; they are placed in long-term foster care.

- 5 At the conclusion of the first proceedings A, B and C were made subject to supervision orders to the London Borough of Haringey for twelve months. In these proceedings the local authority seeks care orders. At the conclusion of the hearing on 18th July 2014 I told the parties that I would make the following orders: A would remain in the care of his parents, as he has been throughout these proceedings, and I would make a supervision order to the local authority for nine months. In respect of B and C I would make care orders and approve the amended final care plans. In this judgment I give my reasons for those decisions and also make final orders.

The parties' positions

- 6 The parties' positions at this final hearing were these: the local authority supported by the guardian proposed that A should remain at home and that there should be a supervision order for nine months. In respect of B and C, the local authority applied for care orders with the plan that they should remain in long-term foster care, preferably with their respective current carers. There are detailed plans for support, including therapeutic support which I will come back to in due course.
- 7 The parents do not agree that the threshold criteria have been established so that public law orders can be made. On behalf of the father it is said that in principle he agrees that threshold is met but does not agree how it is met. Another way in which his position was put was that he agrees the facts upon which the threshold was based but not the way in which those facts have been interpreted. The parents agree with the local authority's position with regard to A but they oppose the local authority's application for care orders for B and C. They seek B and C's immediate return to their care and would agree to supervision orders to the London Borough of Haringey for two years.
- 8 The parents have an alternative position which was put forward by way of exploring all of the possibilities, namely that B should return home if both boys cannot return home. It is important that I note that both B and C very much want to return home to the care of their parents and A wants them to come back. Their wishes and feelings have been made clear throughout these proceedings.

9 In view of the boys' wishes and feelings and their ages, the guardian has considered whether B and C should be separately represented. This question was put to Dr. Bourne, the consultant child and adolescent psychiatrist who has carried out an assessment, provided a report to the court and assessed B and C as not having capacity to instruct a solicitor. Throughout these proceedings the guardian has ensured that their views have been put before the court. She has made joint visits with the children's solicitor to B and C in their placements. She arranged and accompanied all three boys when they met me on 23rd June 2014. She has referred to their wishes and feelings in her report and she has exhibited C's letters to me.

10 With regard to A, the position is somewhat different because the guardian and A agreed with the local authority's final care plan for him, namely that he should remain at home subject to a supervision order.

The hearing

11 In preparation for this hearing I read four bundles of documents including documents relating to the previous care proceedings and criminal proceedings. I heard evidence from Gilbert Maingi, the allocated social worker, Dr. Malcolm Bourne, the mother, the father and the guardian.

The background

12 I have read a long and detailed social work chronology which I adopt and incorporate into this judgment. I will draw out the salient points. The parents and their children have been known to the local authority since 1998. There have been four child protection plans, in 1998, 2003, 2007 and 2010. The local authority's concerns can be summarised as: neglect including a lack of supervision of the children such that they had accidents; poor hygiene in the home and reports of the children running wild in the neighbourhood; emotional abuse of the children and domestic violence between the father and the mother.

13 The parents separated in February 2002 but reconciled later in the year, and separated again in 2010. They continued, in effect, to present as a couple while maintaining separate homes and actively parenting together. Since 30th June 2014 they have been living together in the mother's home.

14 The local authority's support and intervention since 1998 has been an issue in these proceedings. There have been a number of organisations to whom the parents and the family as a whole have been referred over the years. The first

referral to Red Gables Family Centre was made as long ago as 2001 and there was a further referral in April 2003. The chronology says that Red Gables closed its case because the mother failed to attend but, in September 2006 she began a six week parenting course there. The mother has been referred on two occasions to the Adult Learning Disabilities Team, in 2001 and 2007. The Young Children's Assessment team were working with the family in 2003. In 2003 Sure Start were providing weekly support to the mother, who was then pregnant with D. That support continued in 2004, in combination with the Learning Disabilities Team.

- 15 The housing association has been very supportive and has enabled the mother to move to a three bedroom house in February 2014. In 2005 a referral was made to the Tavistock Institute for six sessions of therapy starting in October. I note that the father has attended the Tavistock recently. The family were referred to HARTS, a local authority organisation which supports parents with housing difficulties, in early 2006 and again late in 2006, and that support continued in March 2007.
- 16 The children's school has provided support to the family. In 2004 it was supporting the mother in relation to B's challenging behaviour and made a further referral to Red Gables. In March 2010 the mother was referred to Hearthstone, an organisation which supports victims of domestic violence. Several referrals have been made to the Youth Offending Service Prevention Team: B and C were referred to the service in August 2008; B in February 2010, and; B and C in August 2012.
- 17 Finally, the family was referred to the Haringey Family Intervention Project ("FIP"). They were first referred within the previous proceedings on 8th June 2010. I note that on 13th November 2010 the FIP key worker visited but the mother refused the support. By July 2011 FIP were visiting the family home as often as four times a week and the parents were engaging positively with children's services and the other services which were provided.

The previous proceedings

- 18 The previous proceedings were issued in August 2010. In the bundle at B58 there is a copy of the agreed threshold document which I also incorporate into this judgment. I note that the headings under which the local authority made allegations at the time for the purposes of establishing threshold were: chronic neglect, including the children being unsupervised such that they had many accidents; poor hygiene; failing to keep health appointments and; domestic violence. In particular para.4 provides:

“The mother and father’s relationship up until the father left the family home in May 2010 has been characterised by violence and verbal abuse by both parties against each other as well as by frequent separations and reconciliations.”

There then follows a list of incidents.

- 19 The agreed threshold document states that the children were beyond parental control and notes (para.7):

“The mother in July accepted to social workers that she could not control the behaviour of the three older children and that they are often out at night when she has told them to return home. B in particular has suffered physical harm from fighting with other children when left unsupervised and on his own late at night.”

- 20 Finally, under the heading, “inability to work with professionals” (para.9), the local authority asserted that the parents had repeatedly shown that they are unable to work consistently with professionals who would seek to help the family.

- 21 Final care orders were made on 1st July 2011 in respect of D and E then aged 7½ and almost 3, respectively. The parents did not oppose those orders but agreed that the children’s needs were best met by a placement outside their family. They agreed the threshold document but they made it clear at the time they did not agree to the children being adopted.

- 22 On 26th November 2011 Her Honour Judge Mayer made placement orders in respect of D and E which the father and the mother opposed. Her orders were not appealed. On 30th November 2011 Her Honour Judge Mayer made supervision orders in respect of A, B and C for a year, which expired on 29th November 2012. The local authority did not seek an extension of those supervision orders. I note that D and E remain in long-term foster care and the parents, and A, B and C have contact with them.

- 23 On 4th March 2013 the local authority closed its file but the parents continued to have access to FIP and their key worker, to the courses FIP offers and to practical and financial support.

The parents’ attitude to the previous proceedings

24 The parents' attitude to the previous proceedings has been a feature of these proceedings. I note that they were both represented throughout and agreed the threshold document and the supervision orders for A, B and C. Furthermore, they did not contest the care orders with regard to D and E, although they did contest the placement orders. In the course of these proceedings the mother in particular, if not at the final hearing, has complained about her treatment in the previous proceedings. She has sought to complain about her treatment by Her Honour Judge Mayer and on 18th March 2014 she made an application to Judge Mayer that she recuse herself. The recital to the order of Judge Mayer notes:

“Upon the basis that the mother and father's recusal application has not been pursued in the light of the case having been transferred to Her Honour Judge Levy, Her Honour Judge Mayer indicating that the transfer is not because she saw any merit in the recusal application.”

The matter was transferred to me because I was able to accommodate a final hearing somewhat sooner than Her Honour Judge Mayer.

25 There have been frequent references to the previous proceedings and attempts have been made to re-open the issues determined then. I noted that there was no appeal against the only order which the parents opposed, and I have not permitted issues to be re-opened but I note that attempts have been made.

26 The mother told Dr. Bourne that D and E were placed in foster care because of their special needs. She did not acknowledge any of the matters set out in the agreed threshold document. To her credit, she is able to say that she likes D and E's foster carers, they are good people who are bringing her children up well.

Support provided by the local authority during and subsequent to the supervision orders

27 In the months following the making of the supervision orders there were a number of Children In Need meetings at which it was noted that the family was progressing well: A, B and C were engaging with CAMHS and FIP were visiting the family home and supporting the family with their housing needs. On 27th April 2012 FIP prepared a closing review summary report. The summary of involvement noted that there had been 97 contacts with the family since 24th October 2011. From September to December 2011 the parents were

enrolled on the FIP enhanced parenting program but they were not able to attend all the sessions. Home visits were reduced in November from twice a week to once a week and appointments at FIP had typically occurred weekly or more. There had also been regular telephone contact with the mother around issues of concern to the family, and the key worker had supported with regard to housing and had attended the regular child in need meetings (J112).

- 28 The report sets out all the issues that had been worked on with the family including: basic care and supervision, extra-curricular activities, supporting the children with school work, parenting skills, housing, staying safe in the community, budgeting, emotional processing and engagement with professionals. It also lists the individuals and agencies with whom FIP had liaised (J113). In conclusion the report notes that the parents had indicated that they would prefer less involvement with professionals so that they can move on with their lives. FIP suggested that they give the family an opportunity to manage without weekly professional involvement so they could develop their own strategies of proactive problem management (J114). There were further referrals of B and C to the Youth Offending Service Prevention Team. By September 2012 FIP were no longer providing one to one support but the family could access FIP services, either by telephone or by attending drop-in sessions at the FIP centre.
- 29 The supervision orders expired on 29th November 2012. The FIP chronology for the period after the end of November shows a number of home visits by FIP workers to the mother well as telephone calls to her. There were meetings to discuss housing and some visits including the father. However there seems to have been something of a falling away of involvement with FIP, even before the supervision order expired because, according to the chronology, after the mother attended a drop-in session for the purposes of some financial support on 14th August 2012 the next entry is dated 19th September 2013. (J(xiii)) After 19th September 2013 the mother attended the drop-in centre mainly because of housing and finance problems and was assisted in obtaining, and moving into, a new home in November 2013.
- 30 The Youth Offending Service continued to work with the boys. The witness statement of Sarah Clitteridge, a senior triage officer with the prevention team, refers to work with B including victim awareness, peer associations, consequences of offending behaviour and substance misuse awareness. She also made a referral to the community fire cadets which B attended on four occasions until the interim care order was made. He was said to have engaged very well, although it was noted that on one occasion he appeared to be under

the influence of a substance, possibly cannabis. Mr. Cross, a support worker with the Serious Youth Violence Team, worked with C covering similar areas, following a referral on 6th November 2013.

- 31 In January 2014 a Child and Family Assessment was carried out. The report refers to a meeting at which it was suggested that the parents attend a parenting program for parents of adolescents and notes that the father said, “No” straight away and the mother said she would think about it (F1). Subsequently, and indeed in the week prior to this hearing, the manager of FIP reported to Mr. Maingi, the social worker, that on 10th July 2014 the parents visited FIP and said they wanted to work with FIP again. She said they would be very welcome but there would need to be an initial planning meeting with the social worker and the team manager in order to agree the work which FIP was expected to do. The parents did not agree with that and they did not agree that she would decide who their key worker would be. She reported that in the course of these proceedings the parents were given the opportunity of taking a parenting course and given dates, but did not attend.

The precipitating events

- 32 There was a build-up of difficulties in relation to C and B in the autumn of 2013. On 16th November C was reported missing by his mother. He was found at Edmonton Green bus station by police the following day and returned home. On the same day he went missing a second time but was found at his maternal grandmother’s home. Whilst there he said he did not want to go home because his father had hit him. The father was arrested and bailed away from the family’s address. C said he did not want to return to his mother’s care and as he could not stay with his grandmother, the mother signed a s.20 agreement and C was placed with a foster carer in Leyton.
- 33 On 22nd October 2013 C went missing from school and was found on 23rd October by police. On 24th October he went missing from school again. The mother told the police the following day that he had returned home the previous evening. C retracted the allegation that he had made against his father and remained at home.
- 34 On 3rd or 4th November (both dates appear in the papers) B and C were arrested for going equipped for theft or attempting to steal a bicycle. On 24th December C and B disclosed to their mother that they had visited a man at his flat and the man had tried to kiss them. On 27th December the father found

that C had a £10 note and questioned him about the origin of the money. C disclosed he had met a man in a park a few weeks previously who had offered him cigarettes. The man had befriended him, invited him back to his flat, offered him cigarettes, cannabis and alcohol and had tried to kiss him. C said he had pushed the man away and left. However he had returned to the flat a number of times over a period of some four weeks. He was also shown adult pornography and offered money to perform a sexual act on this man. C had told B about the man and B visited the man's home. During that visit B was anally raped. In the social worker's view, although C says that he was not sexually abused by the man, it is highly likely that he was.

- 35 I have read the police report about this incident. It notes that the offences which the police were investigating were committed from about 6th December 2013 and were reported to the police on 27th December. C and B were seen by two police officers that evening who took a first account. C told the officers that two or three weeks earlier he was walking in the street in the Tottenham area smoking a cigarette when he was approached by a man who offered him a cigarette, which he accepted. The man asked C if he smoked cannabis and then begged C to go back to his flat. At his flat, a room in a shared house, the man offered C cannabis, alcohol and cigarettes. C smoked a cannabis joint but declined the alcohol and cigarettes. Then with no warning the man kissed C on his right cheek and attempted to kiss him on the lips. C pushed him away saying, "No" and attempted to leave but the man begged him to stay. C said he would come back the next day and the man gave him £5 before he left.
- 36 Two days later C returned to the man's home without being invited and without any contact in the intervening period. The man told C to go, but said that if he wanted C to come in on another occasion he would be sitting in the front window of his home and would beckon C to come in. About a week later C went back to the man's home, again without invitation. He was invited in and offered cannabis, alcohol and cigarettes. On this occasion C smoked a cigarette. The man again attempted to kiss C and C left. At some point C had told B that he had been to this man's home and he had been given money.
- 37 On 23rd December B went to the man's address. The man was sitting in his window and allowed B to come in. B's account as recorded in the CRIS report was that the man pushed him onto a bed, dragged him onto a sofa, pulled his head towards him and kissed him on the lips. B broke free and attempted to leave but found that the door was locked. He was then dragged to an armchair and shown pornography on a laptop. The man masturbated with his penis

exposed. B attempted to leave but was pulled to the floor. B broke free but could not unlock the door. Eventually he was able to leave and he was given a box of cigarettes and a £10 note.

- 38 On 26th December C went back to the man's home, again without an invitation. He was offered cannabis, cigarettes and alcohol. The man asked C whether he would play with him and offered him £10 to do so. C asked the man to put the money on the table and when he did C took the money and left without engaging in any sexual activity with the man. The story came to light when the father found the £10 note on 27th December.
- 39 It was not until 28th December that the police received the account that B had been anally raped by the man. They were told this when they went to collect the boys for interview, by the father who said that B had disclosed to him that he had been anally raped, and afterwards the man bathed B to remove the evidence. This had happened on Tuesday 24th December.
- 40 I have read the transcripts of both C's and B's ABE interviews which set out in greater detail the accounts which the police noted. It appears that C visited the man at least four times. He said at one stage in his interview, "I only went there for the money, as soon as I got the money I go". B also seems to have met this man four times and gives what I consider to be a graphic account of anal rape over a period of some 30 minutes. He also gives a very convincing account of this perhaps rather unusual feature of being forced to have a wash or shower afterwards. All of that information is in the papers disclosed by the police in these proceedings.
- 41 The parents have given in their witness statements their accounts of how they found out what had happened. On 24th December, when the mother was only told that the boys had met this man who had tried to kiss them, she told them to stay away from him. It was not until 26th or 27th December that the parents found out rather more. Their first reaction was to take the boys to the doctor. The doctor said that they should call the police which they did. C was able to take the police officers to point out the home of the man who was arrested and charged with rape and indecent assault. I believe there may have been six counts on the indictment. In June 2014 he was brought to trial, both C and B gave evidence and he was acquitted on all counts.
- 42 I have set out C's and B's accounts of what happened to them in some detail because it is so important. There has been no suggestion that there should be a fact finding hearing within these proceedings, even after it was known that the

man who had been charged had been acquitted. Mr. Maingi, Ms. Hughes, and Dr. Bourne have all proceeded on the basis that what the boys have said is true. However the parents' attitude is a little different, in particular the attitude of the father. He told me that B had told him that he was sexually abused and the father said, "I think it is possible, it could have happened or it couldn't, I'm unsure". He added, "The children have not told me the truth on all occasions". He does not believe that C was sexually abused.

- 43 Mr. Maingi's view that C was probably sexually abused was challenged on behalf of the mother. Mr. Maingi explained he thought it was highly likely that there had been sexual abuse of C on the basis of what he had read in the police disclosure, and taking into account that C had met the man first and visited him at his home several times, at least twice before he introduced him to B. C explained in his ABE interview that he had been offered cannabis, alcohol and pornography and that the man had tried to kiss him. For Mr. Maingi there is a question as to whether or not it stopped there. I have taken the view that the allegations of the boys should be taken seriously, that they are true, that they have suffered harm and that C was sexually abused on his own account (even if he was not raped) by virtue of all that he said happened to him.
- 44 After those matters came to light B and C remained at home for another month, and there were several instances of absconding. Between 29th December and 30th January 2014 C absconded six times and on two of those occasions B was with him. Each time the boys, or C if he was on his own, were away from their home overnight. Between 27th and 30th January 2014 C was away from home for either two or three nights. It is clear from the evidence I have heard, at some length, that the parents did not know where the boys were. They thought they might have been at their grandparents, their great grandparents, or at their friend, Josh's, home. On one occasion at least they had been at the grandparents or at Josh's home, but they were not there when the police arrived, having been called by the parents. It appears the parents made no telephone calls to check where the boys were and there were no telephone calls to the parents either from the grandparents or the great grandparents to confirm that the boys were with them. At that stage the boys did not have mobile phones. To this date neither the parents nor anybody else involved in this case knows where C and B were for most of the time when they absconded.

History of these proceedings

- 45 The police took C into their protection on 30th January 2014. On 31st January an application was made to the North London Family Proceedings Court and an emergency protection order was granted in respect of C, who was placed with foster carers in Suffolk. This matter first came before me on 5th February on the local authority's application for interim care orders in respect of both C and B, with a plan to remove B also and place him with foster carers, separately from C. There has been no application to remove A from home. I heard that as a contested matter on submissions and made the interim care orders. The application was listed for a fully contested hearing on evidence before Judge Mayer on 18th February, although I understand that it was dealt with on submissions and the interim care orders were renewed. At the same time Judge Mayer granted the guardian's application for permission to instruct Dr. Malcom Bourne to carry out an assessment.
- 46 Throughout the proceedings there were further indications that the parents wanted to contest interim care orders, and detailed directions were given as to how they should file evidence if they wished to do so. In the event the interim care orders were not contested. On 18th March Judge Mayer transferred the case to me. She gave detailed orders as to the parents' conduct during contact, about which there were concerns and which I will come back to.
- 47 The last interim matter I wish to refer to is that on 28th April I heard the parents' application for permission to be assessed by a psychologist, because they rejected Dr. Bourne's report. I refused the application because I found that it was not necessary and it was not clear what additional matters such a report would address. It was my view that any concerns about Dr. Bourne's report could be addressed in written questions which were subsequently put to him.

The parents

- 48 In the previous proceedings Dr. Gishard-Pine carried out a cognitive assessment of the mother. Her report is dated 24th September 2010 (K/E17). She assessed the mother as having a full-scale I.Q of 73 but said she had not had significant difficulty in responding to the various tests. In her view the mother's cognitive difficulties would prevent her from being an accomplished parent in relation to meeting stimulation needs, without training. The significant gaps in her knowledge of child development would require ongoing instruction, advice and support to enable her to care safely for children. She noted that the mother was not aware of any such gaps and had a hopeful outlook.

- 49 In the papers from the previous proceedings there is also an occupation therapy assessment of the mother's daily living skills and possible support needs, dated 31st March 2011. The writer of the report noted that the mother did not meet the criteria for the London Borough of Haringey's Learning Disabilities Service, although she would benefit from a referral to a speech and language therapist and support with parenting.
- 50 The mother's difficulties have been fully recognised in the course of this hearing and in the course of these proceedings. At the hearing questions were put to her as clearly as possible. She was given time to formulate her replies and the court took breaks when she required, and on at least one occasion when she felt she did not need a break.
- 51 In the previous proceedings Phillip Maggs, a chartered psychologist, carried out a cognitive assessment of the father. His report is dated 20th September 2010. The father has the same full-scale I.Q. as the mother which Dr. Maggs described as, "borderline mild learning disabilities with indications of slightly higher intellectual potential". The father does not have a "designated learning disability" (K/E9). In Dr. Maggs' view this did not impair the father's ability to understand the local authority's concerns about the impact of neglect or inconsistent parenting and parental relationship difficulties.
- 52 Dr. Maggs considered that the history of the father's mental health difficulties - (and he says himself that he suffers in particular from anxiety) - appear to have impacted on his functioning quite seriously at times. I note, and the father explained this to me when he gave evidence, that he has a cleft palate. He told me he feels he has difficulty in expressing himself and sometimes he is misunderstood. He also explained to me that the volume of his voice fluctuates and sometimes it can become very loud, giving the impression that he is being aggressive, when he is not. My impression of the father was that he spoke very well and I was able to understand him fully. He gave full answers to the questions he was asked when he could and I gave him the opportunity to add to his evidence, which he did from his notes, at some length. I treated that evidence as an addendum to his examination in chief.
- 53 In the course of Ms. Perry's cross-examination of the father, Mr. Eruteyan objected to the nature of the cross-examination. The father, of course, is not Mr. Eruteyan's client and Mr. Merrigan confirmed to me that he did not share Mr. Eruteyan's concerns. I am satisfied that the father was able to give a good account of himself and put his case to the court.

The children

A

54 A is in good health, he is always very well presented. Those who have met him more often than I have noted he is a very keen football player. Mr. Maingi described A in his witness statement in this way:

“A is very close to his parents, especially his mother. He appears to be the most resilient boy amongst his brothers. He tends to take responsibility for his mother and has always remained close to her. He has told the family intervention key worker that he feels stressed and lonely because of the removal of his brothers (into interim care).”
[C105]

55 Mr. Maingi noted that A, like his parents, is very much anti-local authority and it has been difficult to engage with him due to the animosity that exists between his parents and the local authority. A is doing well at school, there have been no behaviour incidents reported and his attendance is good. The guardian in her initial analysis said that she had not identified any issues of concern with regard to A who presents as a sensible young man with potential (E2).

56 I note in particular, and it is a recurring theme for A, not only the effect on him of the removal of B and C into interim care but the continuing effect on him of the loss of D and E, which he feels very strongly.

B

57 B is also in good health. He has a learning disability and a statement of special educational needs. He has received extra support in lessons, being taught in small groups. He is impressionable and tends to follow his younger brother, C. When he moved into care there was some considerable delay in finding a school place for him but eventually he started at his current school. I shall come to the account which he gave me of his new school in a moment.

58 In Mr. Maingi’s witness statement he says that emotionally B is the most fragile of the three brothers. He is easily influenced by his peers and will do things to please them. His learning disability coupled with his low self-esteem makes him vulnerable to abuse or being misled by his peers (C106). It was B who disclosed that he was sexually assaulted, which must have been a

traumatising experience for him, and he will need a significant amount of ongoing help and support. The parents have said that B has ADHD but Dr. Bourne, and the Looked After Children health team, find no evidence to support this.

- 59 There was a period of difficulty in B's foster placement, largely as a result of an incident that occurred during contact on 12th April 2014. At that point the foster carers considered giving notice to terminate B's placement but things seem to have settled considerably since then.

C

- 60 C is the youngest of the three boys. He has a very good relationship with his parents and his brothers, and he talked to me a great deal about his extended family. It has been noted by a number of people who have observed and met C that he seems to believe that, or at least behave as though, he is quite a lot older than his 13 years. Mr. Maingi reported that at the first meeting after C was placed with foster carers C told him that he wanted to stay in foster care until he was 18 because he wanted to turn his life around. However the next time Mr. Maingi met him C said that he wanted to go home and that has been his position ever since (C25).
- 61 In that foster placement C's behaviour was very challenging. He kept a daily log of what was happening and made allegations against the foster carers which were investigated and found to be unfounded and which he subsequently withdrew. He posted comments about the foster carers on Facebook. He asked people in the street where he could buy cannabis and managed to buy both cannabis and cigarettes. He stole from the foster carer's child. Early in March the foster carers gave the local authority 28 days' notice to find another placement for C. C's second placement rapidly became unstable, although he remains there.
- 62 There were a number of incidents of which the most serious was on 19th May 2014 when C was assaulted as a result of an altercation between with a girl. He said that she hit him and he hit her back but her older brother and his friends then assaulted him. The foster carer reported that C came back to the foster placement visibly shaken, with marks on his neck and without his trainers. He took a knife from the kitchen drawer which he was going to take out with him. The foster carer caught up with him as he was going out the back gate and managed to persuade him to put the knife back and was able to calm him down. This is a therapeutic placement and the foster carers have a great

deal of support from their agency. It is holding for the time being, but it is fragile.

- 63 In the course of these proceedings C has made a number of threats to harm himself and to end his life if he cannot not return to his parents' home following the hearing which he knew was taking place in July. He repeated those threats to Dr. Bourne who considered that this showed C's need to control matters and obtain what he wants. Dr. Bourne reported that C said:

“If the judge and the social worker wanted to help me they would stop me being angry by doing what I want to happen. I am behaving for them.” [E67]

And:

“If you really don't want me to end my life, you need to send me home.” [E69]

However C told me, and according to the father's evidence he also told his father, that he would not harm himself: it was a cry for help. (C123)

- 64 The guardian noted that C has made real efforts to attend school full-time and to deal not only with his new school but also with boundaries within his placement. However he remains challenging and increasingly hard to contain: it is difficult to protect him from risk and from himself. She very much hopes that his trajectory will not lead him towards a residential unit or a secure provision because he has many redeeming qualities and potential. This is a critical time in his adolescence and she is very concerned about his drift towards criminality, drugs and absconding.
- 65 I had the pleasure of meeting A, B and C who came to see me in my chambers, accompanied by Ms. Hughes and their solicitor, on 23rd June. I found them to be very likeable, very funny boys, although A was certainly by far the most serious of the three, and I enjoyed meeting them. However, the meeting had a serious purpose which was to give the boys an opportunity to tell me, as they all did very clearly, that B and C want to go home and A wants them to come home. They see themselves as part of a strong family which includes D, E, their parents and their large extended family, including grandparents and great grandparents.
- 66 B told me that he wants a second chance to prove that they are a good family. He talked about what he could do differently if he were to return home, for

example, not bunking off school, not hanging around with bad friends and not running away. He would listen to his dad. He said that his parents have done their best, but they could try harder and they are willing to do so. They are all willing to go to family counselling.

- 67 B told me about his attendance at school in Harlow where he is doing well because he chose to, he was clearly very proud of himself, and rightly so. He told me he would continue that good work if he could return home and resume attending his previous school. He was very worried about the possibility of a member of his family dying, but he wanted to have a good life, go to college and get a good job. He sees A as a role model from whom he and C can learn.
- 68 C read a letter to me and a copy of it was made for the guardian. I think C kept the original. I read the letter at the time rather more easily than I can read the photocopy because C wrote it in red ink. However it sets out C's views very clearly. He said he was writing to me to tell me where he had gone wrong and about his wishes and feelings. He is changing; he is more focused and he wants to change as a person. He has done good things as well as bad things and he really wants to go home.
- 69 C said he had made mistakes because he was young and did not understand the danger he was in, but he has now grown up and realises what those dangers are and what they could lead to. He told me that threatening to run away, if he did not go home after the hearing in July was a cry for help. C frankly told me that when he and B were living at home both of them were, as he put it, "Taking the mick out of mum and dad". It was his fault that he followed bad people but in future he is going to make his own decisions and choices. He wants one more chance to go home and prove that he can do well.
- 70 At the meeting the guardian reminded C of the LAC review at which she had heard that he was attending school every day, is doing very well and is well thought of at school, notwithstanding that he has had some exclusions and some difficulties, and C was clearly very pleased when she reminded him of that.
- 71 A told me that he wants C and B to come home. He has been suffering from considerable stress; he referred to having had a number of nose bleeds and taking medication because he has been having nightmares. He feels lonely, anxious and depressed, particularly having seen his family split up since 2010. The family should be together to support B and C.
- 72 After the meeting I received another letter from C, which is exhibited to the guardian's report. C, very frankly, wrote to tell me why he had been excluded

from school again and that he had not done what led to that exclusion on purpose. Again, he wanted to tell me about his wishes and feelings, namely that he should be able to live with his family. He misses them terribly. He had stopped hanging around with bad people and he would not do bad things if he were to go home. He said:

“Please Judge Levy, give me and B another chance because I promise and mean I will be good and won’t follow the bad people, and I will do more activities. All I am asking for is another chance to go home to live with my family so I can prove I can be brilliant and my mum and dad can look after me, because it wasn’t my mum and dad who couldn’t control me it was just me with my challenging behaviour.”

- 73 I am not a teacher but I have read a number of letters from children in the course of care proceedings and this is one of the best letters I have ever read. C writes a very good letter, an indication, quite apart from anything else, of his potential.

THRESHOLD

The law

- 74 In a public law case the court has no jurisdiction to make any public law order unless and until the so called threshold criteria, which are set out s.31 of the Children Act 1989, are established and they are:

“(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to -

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

- 75 The burden of proof is on the local authority and the standard of proof is the simple balance of probabilities. The relevant date since when protective arrangements have been in place is 30th January 2014, however I think that applied only to C, but certainly by the latest it is 5th February 2014 which was the date on which I made the interim care orders. The interim threshold document which is the local authority’s final threshold document is at p.A1-2 of the bundle. Both the parents deny that threshold is met, therefore the local

authority seek findings of threshold. The document at A1-2 should be read together with this judgment: I will not read the whole of the text into my judgment.

- 76 In general the local authority says that C and B were beyond the control of their parents and engaged in risk-taking behaviour from which their parents could not protect them. The parents were unable, and remain unable, to contain or control the children's behaviour, exposing them to the risk of physical and emotional harm. I have referred to the history of C and B absconding and being away overnight and the parents not knowing where they were. I have also referred to the history of B and C being groomed by the man whom C met in the street and who plied them with alcohol, drugs, pornography and money leading to B's rape. The local authority says that is clear evidence that B and C were beyond parental control.
- 77 In support of the threshold document the local authority also says that the parents did not fully engage with FIP, in particular after the supervision order lapsed. FIP workers supported the mother to obtain a new home but she did not tell them or their manager that she was having problems with the boys, particularly in the autumn of 2013. That is evidenced by the FIP chronology to which I have referred, except for one reference to a boy not arriving at school but there is no further information about that entry.
- 78 I have noted that the parents asked FIP for support in the form of a referral to a parenting course for parenting of teenagers, a week before this hearing. Although the parents said they made that request earlier, it is not recorded in the extensive FIP chronology. Mr. Maingi told me that the FIP manager was disappointed when she realised that the mother had not sought support when she was having difficulty with the boys, although FIP were working with her in relation to other matters.
- 79 The parents have filed responses to threshold in almost identical terms. They both say that they did impose boundaries on all three boys. The mother's case is that she and the father are not responsible for what happens to the boys outside the family home. The boys came to no harm inside the home. She accepts that B and C absconded, perhaps five times, but she does not consider that it was a chronic situation. In her view, B being raped is not evidence that he was beyond parental control: he was a victim and she says it could have happened to a child of any family (C54, para.24). Neither she nor the father has ever harmed C or B and they are able to care for them with support. She added in her witness statement:

“Being in care has been a difficult and unpleasant lesson for the boys and will be a strong deterrent for them. The boys are, in summary, not beyond control but challenging.” [C119]

- 80 With regard to keeping the boys safe, in her oral evidence the mother did not accept there is a problem, although she told me that she did not know, for example, about the boys smoking cannabis, and from the chronology it appears she did not know in September 2010 that A, C and B were visiting a 40 year old man, whom they described as a drug dealer, who drank excessive amounts of alcohol and demanded money from them (Cxxxviii).
- 81 With regard to the local authority’s assertion that the parents are unable, or unwilling, to work with professionals (para.(g)), the mother has been very critical of Mr. Maingi. She says that he threatened her, deliberately misrepresented the children’s wishes and feelings and talked over her. She told me that she cannot say that she has a good relationship with him, although she is willing to work with any professional for the sake of the boys.
- 82 With regard to the support provided by the local authority (para.(e) of the threshold document), the mother told me: “I said I don’t need help with boundaries because I already knew about my boundaries”. She told FIP she wanted help to move away from Tottenham. She told me that when the supervision order ended she was quite pleased that there were not so many professionals in her life because this enabled her to do more with her children. Her view of the support which the local authority offered was that it was unhelpful, “superficial and ineffective” and “not evaluated” (C118, para.3).
- 83 The mother was asked in cross-examination by Ms. Perry to comment on a number of the support agencies and the support they offered, including many of those to which I have referred as providing support throughout the period from 2001 to 2010. In respect of all of those agencies my note is that the mother either could not remember them working with her or she was unsure about the work they had done with her.
- 84 The father told me that he and the mother always had boundaries, guidance and appropriate discipline in place for the boys and always sat with them to help them with their problems. With regard to their absconding, he said that B, C or the children’s maternal grandmother would usually call to let the parents know where the boys were, but clearly not on the occasions when the parents felt it necessary to report to the police that the boys were missing. He agreed that C was pushing the boundaries and that he and the mother were trying to bring him back to the boundaries. He also told Dr. Bourne that C became immune to the

sanctions which the parents tried to impose. He said that he did all that he could to care for the children: they were victims of crime.

85 With regard to working with the social worker and his views of the support which the local authority had provided, the father denied that he had disengaged with FIP, although according to the FIP chronology, he does not seem to have been very much involved with them following the end of the supervision order. Both parents approached FIP again in the week prior to the hearing. The father told me that during the supervision order they had a lot of support and he mentioned the referral to the Tavistock Institute and the key worker at FIP and said he was grateful to both.

86 The position of the father was described as “accepting the facts on which the local authority relies but not the interpretation”. It is fair to say that the mother’s position is rather similar. In other words, yes, the boys absconded, yes, the boys were sexually abused but none of that means that they were beyond parental control or did not receive proper and reasonable care.

87 I have considered the threshold document in detail and I am going to make the findings sought but subject to some amendments. In para.3(b) I will delete the words in the third line, “whilst absconding from the home” because it is really not clear to me whether B was out with permission or for a short period of time. It is not, I think, an occasion of an overnight absconding. Paragraph (c) refers to the allegation that the father physically assaulted C in October 2013 and I propose to insert in the third line after the word, “days” the following: “The father denies the allegation which C has withdrawn. No charges were brought” because that more fully represents the position. In paragraph (d) in line four I am going to insert the words, “and alcohol” so the sentence will read:

“Both C and B have disclosed that during their absconding they were exposed to adult pornography provided with cannabis, cigarettes and alcohol.”

88 Having made those amendments I am entirely satisfied that threshold is made out. The boys’ absconding and the harm that they came to is evidence in itself that they were beyond the parents’ control. The boundaries the parents sought to impose did not work and the parents could not control them. While they do not want to accept that the boys were beyond their control, in many ways the parents confirm that in their own evidence. I find that the threshold criteria are established and I find that C and B have suffered significant harm. It is my view that given the difficulties in the home it was likely that A could have

suffered harm too, although nobody suggests this and I am not making any finding that he did in fact suffer any harm.

WELFARE

The local authority's case

- 89 I turn then to the second part of this judgment which concerns the boys' welfare. Mr. Maingi was allocated to this case in February 2014, although for some time prior to that he had worked alongside the previous allocated social worker, Sarah Rodin. He told me that he managed to get on well with the parents, despite their objections to his witness statements and the mother's criticisms of him. He told me they had not been aggressive with him. He accepted that the parents cooperated and things improved during the previous proceedings and during the supervision order. The local authority acknowledged that improvement by closing their case in April 2012.
- 90 However, in Mr. Maingi's view, once the supervision order expired B and C's behaviour began to deteriorate and the parents were unable to apply the parenting lessons they had learned. I note that throughout the period from October to December 2013 the local authority tried to work with the family. They did not immediately issue proceedings, nor to remove any of the boys. They tried to work with the family under a Child Protection Plan. The local authority did not even try to remove the boys at the end of December 2013 when it became clear that they had been sexually abused. It was not until C absconded again and was missing for two or three nights that proceedings began with the police taking him into their protection.
- 91 At that point given the history, the sexual assaults on the boys and the continuing absconding in the view of the local authority the risk to the boys became too great to manage while they remained at home. Mr. Maingi considers that both C and B are very vulnerable. He said of C:
- “C is able to talk about his behaviour when he lived with his parents and see the improvements he has made in foster care but he has no sense of risk. He is very easily influenced. He tends to be the one that takes the greatest risk.”
- 92 He referred me to the incident which I have noted, on 19th May 2014, when C was assaulted and when his trainers were stolen and he tried to take a knife from his foster carer's home. In Mr. Maingi's view B is more vulnerable to peer pressure and needs to be kept safe. He is dependent on C and requires close supervision and a lot of attention.

- 93 C has told Mr. Maingi that he used cannabis when he was in his parents' care whenever he had the money. Mr. Maingi takes the view that the parents are responsible for the children's welfare but do not understand or accept the contribution which their parenting has made to the boys' present situation. Mr. Maingi is also concerned that, from his experience of working with the parents, he finds their relationship unequal. The father tends to overshadow the mother, he interrupts her, tells her what to say and does not give her time to express her views. The foster carers have reported that this also occurs during telephone contact. Mr. Maingi considers this to be abusive behaviour.
- 94 Mr. Maingi does not agree with the suggestion put to him on behalf of the mother that B and C absconded because D and E were separated from them and placed in foster care. He accepts that all the family will have experienced this as a loss but says that the boys coped well and did not begin to abscond until almost two years after the care orders were made.
- 95 Mr. Maingi does not agree that a further supervision order, as proposed by the parents, will safeguard C and B. The local authority cannot keep giving the parents opportunities to parent the children because they need to be kept safe, now.
- 96 For the local authority, the parents' behaviour has been an issue throughout these proceedings. The local authority says they have behaved in such a way as to undermine C and B's foster placements. Mr. Maingi refers to the boys being provided with mobile phones. Early in these proceedings the boys had unsupervised contact with their parents every Saturday for three hours, but after two weeks B and C's behaviour in foster care deteriorated. They were found smoking in their placements, although initially when they came into foster care they did not have any cigarettes. Mr. Maingi explained that when C was taken into police protection he was searched by the police, he was escorted to his placement and he was searched again before he entered the foster carer's home.
- 97 One week later the parents brought things to contact for C in a bag which they gave to him. Mr. Maingi believes that the parents gave both C and B BlackBerry mobile phones because both were able to access the internet. C used a mobile phone to search for places where he could buy cannabis and posted things about his foster family on Facebook. Mr. Maingi said the parents had been told about the dangers that mobile phones could expose the boys to but they refused to confiscate them and denied that they had provided them. Mr. Maingi believes that the parents gave the boys the phones because when he

asked the parents to ask C to give him the phone, they agreed with C that he did not have one. When Mr. Maingi asked C how he had managed to post information on Facebook, C said he had had a phone but he threw it out of a train. Later the foster carers retrieved a BlackBerry phone from C. C and B had the same make of phone as A.

- 98 There have been concerns about contact. After the deterioration in the boys' behaviour and they had been found smoking in placement and had mobile phones, contact moved to being supervised in the community. There are a number of reports of difficulties at contact. There was a particular concern about a telephone contact on 10th March 2014 when the parents were asking B a lot of questions about the foster carer's care of them, and whether the foster carers were receiving B's disability living allowance. The foster carers, listening in, reported that the father had attacked B for telling the social worker that he was happy in foster care.
- 99 A number of contacts took place at a bowling alley and were supervised by a contact supervisor, David Smith. On 22nd March Mr. Smith reported an incident when the boys and their father went to the toilet separately and then C was escorted back by staff who suspected that he had been smoking in the toilet. The father took issue with the staff about this. As a result, the following week the staff said that the boys were banned from the bowling centre and Mr. Smith had to negotiate with the management so that the family could have another chance.
- 100 There was the incident on 12th April which I have previously referred to, when the mother approached B's foster mother and asked her why B was wearing clothes he did not like. The foster mother tried to say that he was wearing the clothes that he had chosen but before she could, she was surrounded by the whole family. The father began shouting at the mother telling her that the foster mother cannot tell B what to wear, A was shouting at B saying, "Don't listen to her, tell her you're not going home with her" and B was saying, "I'm not coming". This was reported by the contact supervisor and the foster carer who told Mr. Maingi that she felt threatened and she did not want to take the boys to contact. This seriously disrupted B's placement.
- 101 The parents do not agree with Mr. Maingi about the mobile phones or contact. They both deny giving mobile phones to B and C: the mother suggested that C had probably got his mobile from the first foster carer. That rather suggests that C had used it to contact her. The parents deny all the accounts to which I have referred. In particular they deny that they were aggressive, either with staff at

the bowling centre or the foster carer. The mother says that the father never spoke to the foster carer, it was she who spoke to her and she did not argue but the contact supervisor took it upon himself to separate them and then the foster carer stormed off.

- 102 There is a further account of contact in a report made by Dr. Bourne of the contact which he supervised on 21st May 2014. He noted that it was extremely difficult: he told me that having supervised 300 - 400 contact sessions, he struggles to remember one which was as difficult. He described a hard rubber ball whizzing around at head height and the father joining in the play as if he were also a boy. He reported the father undermining the mother and being aggressive towards her in front of Dr. Bourne and his colleague, Ms. Farrar. The father spoke at length about this contact when he gave additional evidence. He said it was not a hard ball; the family had been playing happily as a family and games included one-touch football; he said no balls had been thrown at anyone's face or head and he had not been aggressive to the mother or undermined her in any way.

Expert Evidence – Dr. Malcolm Bourne

- 103 The local authority relies on the report of Dr. Bourne and the guardian accepts his analysis and recommendations. Dr. Malcolm Bourne is a consultant child and adolescent psychiatrist. His CV and qualifications are set out at the beginning of his report (E9). I note that he has been a consultant for 18 years and for the past 15 years has undertaken medico-legal and consultancy work as an independent expert in both criminal and civil cases, preparing reports on children. His instructions are set out at E10. He met the parents on 6th March separately and he met the children and then observed the contact to which I have referred on 21st March.
- 104 Dr. Bourne's report is very long (over 80 pages) which he acknowledges. He explains that he records interviews with permission, those recordings are transcribed and then deleted, and that he has included portions of those interview transcripts in his report to illustrate the answers to the questions put and to give a basis for the conclusions that he has reached.
- 105 He was asked about his method and his approach to his work in his oral evidence. He explained that he works jointly with Maria Farrar, his colleague whose background is in social work. She is a specialist mental health practitioner with over 20 years' experience in the fields of child and adolescent psychiatry and children with learning disabilities. They have been working

together for some ten years. He explained that when he agrees to take on a piece of work such as this assessment both he and Ms. Farrar read all the documents as they did in this case. He then makes arrangements for face to face meetings. Both of them were present throughout, except when Dr. Bourne left the contact for a short period of time to speak to the professionals. They make a joint report having discussed their views at length, and then produce a final report.

106 In summary Dr. Bourne says:

“The key cause of the children’s emotional problems and vulnerabilities, and not being kept safe, lies with the parents. Following the (previous) proceedings... they received a huge amount of professional support from a number of resources. However, they have proven unable to sufficiently take on board the input and lack insight into their own responsibility for their difficulties as parents... In straightforward terms they have failed to keep C and B safe - committing abuse is, of course, the responsibility of the abuser, but keeping children safe is the responsibility of the parents, and they failed in this regard.” (E78)

And:

“The parents display little or no insight into their responsibility for their children’s problems including those which led to D and E being removed. Their own learning problems are at least in part the reason for this. Once the supervision order ran out and the level of support decreased they proved unable to look after the three older children, not being able to put boundaries around them and not able, ultimately, to keep B and C safe.” (E82)

And:

“That level of support is not something that can be expected to be resourced indefinitely, nor should it be - parents have to be able to learn from the support and put new practices in place, otherwise the parenting ends up being provided and practiced by professionals.” (E82)

107 Dr. Bourne talks about an unequal relationship between the parents in which the father is controlling which was exemplified on the day on which they observed contact. He noted that the parents have been locked in a battle with the professionals as if they will then win, rather than working with professionals. In his view:

“They are clearly and openly coaching the children in what to say to professionals, such that seeing the children feels like they are all reading from a prepared script.” (E83)

108 Dr. Bourne told me that exposing the children to criticisms of the social worker and the foster carers, coaching them and encouraging them to write notes all gives the children a sense that they have control and makes them feel responsible for their situation, although this will not influence the outcome of the case in the direction they want. It is abusive to make the children think that this will make a difference, because their failure to obtain the outcome they want will make them feel helpless and depressed and will be traumatic. It will make them feel that they have failed in their duty to their parents, when in fact their parents have failed them.

109 He noted the boys behave as though they are not used to being controlled or contained by their parents. During contact the outdoor play was overly aggressive and the parents did not change it. As I have noted, the father behaved like the children and the mother either joined in or was passive. Dr. Bourne concluded:

“The parents, we strongly believe, functioning as they do as a couple [this was before they began to live together again] cannot put their children’s needs ahead of their own... They lack insight into the key issues about their children’s safety and the capacity to change their parenting to be good enough for their children.”

110 Taking each of the boys in turn he said:

“A does not present as having a psychiatric disorder or specific diagnosis. He appears to have a calmer temperament compared with his brothers and a greater degree of insight and understanding into family issues and his own behaviour, so that he has made different choices than those of his brothers.”

At contact A was the only child who was quiet and reflective. He continued:

“Whilst the parents lack the skills to parent A successfully, A, at an older age and with more resilience and insight himself, is not at the same level of risk as his younger brothers and so it is difficult to envisage he would have a better outcome being cared for elsewhere.”

- 111 He agreed in cross-examination that the parents deserve credit for improvements that A has made as compared with his behaviour as observed in 2010, but he said as the older child A may have perceived a need to be more mature. He recommended that A should remain at home in his parents' care.
- 112 Dr. Bourne said that B presents as having the greatest degree of learning problems of the three brothers, and as the most vulnerable. His language skills were like those of a much younger child. He noted that:

“There was no written evidence or any indication from B's interview to support the view that he has ADHD. B is vulnerable to exploitation and being led and should therefore not be placed with another child liable to encourage him into risky situations.”

He strongly recommended that B and C should not be placed together because that would increase the risk to both of them as B is more vulnerable, easily led and passive whilst C's controlling and angry tendencies would be risky for B. He does not recommend that B is returned to the care of either or both parents. He believes they cannot meet his needs and keep him safe. B has clear learning difficulties which makes him particularly vulnerable to risk and exploitation.

- 113 C also presents without signs or symptoms of any specific psychiatric disorder or diagnosis. He does however present as:

“...an angry, vulnerable child who attempts to be very controlling of those around him as well as putting himself at risk, e.g. by absconding from his parents' care.”

- 114 Dr. Bourne observed that during the interview C tried to use threats and secrets as a way of controlling what happens to him and how Dr. Bourne and Ms. Farrar experienced him. During contact he was noticeably the most vocally aggressive of the boys, unable to acknowledge or take on board the views of others. He spoke and behaved as if he expected to control the decisions of professionals. Dr. Bourne noted that given that C is angry and controlling he may be increasingly difficult to contain and keep safe in a foster family environment, that is his recommendation, and therefore a residential provision might have to be considered.
- 115 Dr. Bourne was asked how the local authority should view C's threats that if he did not return to his parents' care at the end of these proceedings he would run away or self-harm, or take his life. I have noted that these threats have not been repeated more recently and C explained to me that they were a cry for help.

Dr. Bourne treats them as a genuine reflection of C's feelings about not being able to go home and of his sense of control over his future. He considers that interactions between the parents and C reinforce the view that if C keeps making threats, he will get his way. Nevertheless there is a risk that if the outcome of this hearing is not what C wants, he will be distressed and very angry, and Dr. Bourne would not discount the risk of self-harm or absconding. He advised that C's foster carers and others around him need to prepare for that eventuality by talking to C, monitoring, supervising him closely, imposing tighter boundaries, locking away sharp implements and tablets and possibly locking doors and windows, at least for a few days.

- 116 Dr. Bourne recommended therapeutic support for each of the boys with the aim of helping them resolve the underlying emotional distress because of their experiences (including sexual abuse, for B and C), family losses (of their siblings, for all three), and their overall experiences of living with their parents in an environment which has not met their emotional needs and has not kept them safe. He stressed that the key to a long-lasting change in the boys' behaviour lies in their respective placement needs being met. The primary need is for them to be looked after in a placement which can keep them safe and provide stability, predictability, age appropriate guidance and expectations and not expose them to exploitation. Therefore, and in particular for B and C, being in an appropriate placement is crucial to any therapeutic input.
- 117 Dr. Bourne was asked to explain the nature and purpose of the psycho-sexual work he recommended for B and C. He explained that it would involve talking to them about understanding their own biological and sexual maturation, their feelings about that and to understand what is right and what is not right, what is and is not acceptable, and creating boundaries about what they should and should not allow to happen to them. B's learning difficulties would make it harder for him to take on board what is happening to him, and the fact that the boys have been sexually abused will make the work harder. He offered to make enquiries about providers of such services in the appropriate areas.

The mother's criticisms of Dr. Bourne

- 118 The mother is very critical of Dr. Bourne's report both in her written evidence and in the cross-examination of Dr. Bourne. I have also noted that she has applied for a further assessment by a psychologist, which I refused. Her criticisms are set out in her third, fourth and fifth witness statements. I will focus on those which I consider to be the most important and which were put in cross-examination.

- 119 The first related to the fact that Dr. Bourne records interviews and the pressure which the mother felt she was under. It was accepted that the mother did not know in advance that the interview would be recorded. She also felt under pressure and thought that both Dr. Bourne and Ms. Farrar were trying to catch her out. Dr. Bourne explained that he and his colleague used to make written notes of interviews but they find that recording them enables them to focus better and provides a more accurate record. He agreed that the mother was not told in advance, but he said that the process of recording interviews is open, transparent and consensual. He always explains fully to everyone whom he is going to interview that he would like to record the interview; there is no secret about it; people are at liberty to refuse. He explained this to the parents and neither of them raised any objection. He explains that the recording will be transcribed and then it will be destroyed and nobody will ever listen to it. He does not switch the recording equipment on until the person he is interviewing has consented. If people say “no” then he and Ms. Farrar make notes.
- 120 With regard to the mother feeling under pressure Dr. Bourne said that he does his best to make people feel at ease: he does not wear a suit and tie. He is aware that the interview process is difficult and is conscious of people’s sensitivities, but it is in the nature of an assessment that he has to ask difficult and personal questions. He did not have any sense that either the mother or the father felt pressured or in any way that they were being treated unfairly. He used standard processes and does not believe that either he or Ms. Farrar were either pressurising or discriminatory.
- 121 The father was not as critical of Dr. Bourne’s approach but he was concerned that he had not done himself justice in his interview because he was nervous and because of his learning and speech difficulties. Dr. Bourne said that he and Ms. Farrar were aware of, and sensitive to, the father’s difficulties. They acknowledge that an interview with two professionals can provoke anxiety but they let the father say what he wanted to say. They found him chatty and engaging and his use of language was “pretty good”.
- 122 The mother suggested that Dr. Bourne started from the position that she was to blame and therefore his report was biased and unfair. Dr. Bourne said he did not have a presumed position. He has worked in this area for many years and is well aware of his role as an independent advisor to the court on what is in the best interests of the children. He did not know or have any view in advance about whether the children should return home. He has advised courts in various cases that children should or should not return home. He is capable of being critical of a local authority and because there are two of them (that is, he

and Ms. Farrar) they check each other's position. He strongly refuted the suggestion.

- 123 It was suggested the report was biased and unfair and that Dr. Bourne had rather lazily adopted the local authority's views. Dr. Bourne did not agree. He said that he and Ms. Farrar had worked very hard and that they will take issue with local authorities if they think it is appropriate. In this case the local authority was very much of the view that B and C should not return home and, having considered everything and completed their assessment, they agreed.
- 124 The mother criticised Dr. Bourne for ignoring the boys' wishes and feelings. They are teenagers and she is clearly of the view that their wishes and feelings should be respected and complied with. Dr. Bourne said that he and Ms. Farrar had listened to the children. They all had their own views. He had read recent documents which set out the boys' wishes and feelings. He was aware that B and C were very clear about their wish to return home. He did not agree with them, but that does not mean he ignored what they said: it was one of the factors which he had taken into account. In his opinion, B and C are not in a position to understand what is in their best interests. He pointed out that very few of the children he assesses want to remain in care so it is not unusual. It is the rule that children generally want to be able to go home. He was in no doubt about their wishes and feelings.
- 125 Dr. Bourne described the support provided to the family during the supervision order as significant, but the mother says it was superficial and ineffective. Dr. Bourne said both he and Ms. Farrar had read every document they were sent and there were descriptions of at least six or seven professionals who had given input, there was an analysis of their input and the local authority and the guardian had also provided analyses. He considered that the services that had been offered were entirely appropriate for these parents, in these circumstances. Sometimes appropriate services are tried and do not have the desired impact and in his view that is what happened in this case.
- 126 The mother says that Dr. Bourne failed to give due weight to the effect on the boys of the loss of D and E, which she says was the cause of B and C absconding in the period of October 2013 through to January 2014. It was suggested to Dr. Bourne that he had played down the effect on the boys of the loss of D and E. Dr. Bourne pointed to the transcripts of the interviews which show that this came up in conversation. He acknowledged the impact on the family and had acknowledged it in his recommendations for therapeutic input. He talked to the parents about it. He accepted that there may have been an effect and there may still be an impact of D and E's removal, but that had not

caused B and C's problems. The mother had suggested that this was the reason for them absconding, but in his view there was no direct correlation between the removal of D and E in 2011 and the boys absconding in 2013. It was not raised by the children or anybody else as a cause of their absconding.

- 127 Other criticisms made by the mother included the suggestion that Dr. Bourne intimidated her by changing his tack in the course of interviews. Dr. Bourne said that when he changed subject, as he did on some occasions that were pointed out, he did so following the line of the mother's responses, and picking up on things that she had said. He was also accused of bias because he had failed to acknowledge the children's wishes and feelings. I have referred to his views about that.
- 128 In all, Dr. Bourne said he was well aware of the parents' difficulties. His approach was as sensitive as it could be and as informal as possible. He described himself and Ms. Farrar as "nice, sensitive professionals who want to put people at their ease". I note that the mother was far more critical than the father of Dr. Bourne, although both reject his report. However they do accept his report with regard to his recommendation in respect of A. They do not seem to consider that the fact that he has reached different conclusions about A from those reached in respect of B and C, combined with their acceptance of his recommendations in respect of A, might in any way undermine their criticism of his work.

The final care plans

- 129 The local authority's plans for the boys are set out in amended final care plans dated 27th May 2014. They have been further amended in further discussion with the guardian. As regards A, it is proposed that there will be support for him and the family through Child In Need plans and a Child In Need meeting every six or eight weeks, with the social worker and a worker from FIP. The local authority will see that FIP assigns a key worker to the family. A has been offered the opportunity of a referral to CAMHS for counselling, which he has refused. He has also been signposted to the Open Door, a service for teenagers, which he is considering. The social worker will continue to encourage him to engage.
- 130 B will remain in long-term foster care, it is hoped, in his current placement where he is described as having made progress, being calmer, observing boundaries and routines, and where there have been no recent instances of criminal activity. His statement of educational needs has been updated, the

school is developing a support plan and therapeutic services will be put in place.

- 131 C remains with his second foster carers. The local authority hopes that, with agency support for the foster carers, they will be able to keep him there. He receives counselling at school with a trained counsellor who also works with, and for, CAMHS and who will advise when the time is right for a referral to CAMHS.

The parent's case

- 132 Both parents love all of their children, that is perfectly clear. They miss C and B and they miss D and E, as do their sons. The parents tell me they have close relationships with A, B and C, they talk to them. The father says the loss of them is hard to bear. As between themselves, the parents consider that they have a close supportive relationship. They say there has been no physical violence since 2003; the mother says there were just arguments in 2010 when she separated from the father; the mother disputes the assertion that the father controls her.
- 133 Both B and C want to return home and A wants them home. The parents believe that their wishes and feelings should be respected because they are at an age to know what they want. In her written evidence the mother suggests that their placement in foster care (she refers to interim foster care but I assume the same would apply to long-term foster care) is a breach of their Article 8 rights and tantamount to imprisonment. However, she feels the experience of having been in foster care will act as a deterrent and ensure their future good behaviour. In addition they will have the example and support of A. The parents' view is that both B and C have been challenging but with support they can keep them safe.
- 134 Both parents were asked what changes they would make if the boys were returned to their care. It seemed to me that they did not really accept that there were any changes they needed to make, because both said they have always set routines and boundaries and the boys knew them. If the boys were returned to their care, there would be two parents to take care of them. They would discuss their expectations with B and C. The mother would create a chart setting out a daily routine with set times for various activities. They would talk to the boys about any problems and they would take C to the doctor in relation to his smoking and cannabis use. They would have a meeting with the boys' head teacher. They would not allow the boys to have mobile phones, except for A. They would not allow them to socialise on social media sites and they would

take B and C to and from activities and wait for them while they took part in those activities. The mother would take the boys out more and keep them occupied.

- 135 Both parents said that they would tell B and C that if their behaviour did not improve they would be taken back into care and their parents would not fight for them. At the conclusion of her evidence, the mother showed me the timetable for the family's daily activities which was not yet complete but was an example of the way in which she would set routines and boundaries for them.
- 136 The parents also considered what support they need. The mother told me she needs no support in relation to boundaries, but would take a course for parents of teenagers. When asked why and how such a course would help her, she mentioned drugs and gangs and said, "It depends what's in the course". In effect, the mother was not able to identify any aspect of parenting with which she needs help, but accepted that a course might be useful.
- 137 The father told me that C and B need to be helped to understand dangers, which has not been done before. However it seems to me it was work that was covered by the Youth Prevention Team which I referred to earlier in this judgment. Both he and the mother would tell them that if they did not behave properly they would go back into care and their parents would not fight for them. He talked about the boys having counselling, about absconding and their behaviour at school: the mother referred to counselling because of the sexual abuse.
- 138 With regard to contact, the local authority's proposal is for family sessions six times a year in the school holidays, supervised in the community. This would include two family contacts per year with the younger children, D and E. It was pointed out that in his report Dr. Bourne recommended contact at a maximum of once a month, but he told me that this was a general statement of his views, and in this case he agrees with the local authority and the guardian that the frequency of contact needs to be reduced a great deal. A balance must be found between contact which maintains their relationships but does not disrupt the children's placements.
- 139 Dr. Bourne explained that going to contact requires a child to manage two changes of world, from foster care to the world of their parents and then back again. He suggested this is a far more difficult task for a child than it is often thought to be. Therefore he suggested contact six times a year, adding perhaps an extra contact in the summer holidays or for Christmas. He thought indirect

contact would be disruptive and a weekly indirect contact would be the maximum. The parents should enter into a contact agreement. When he was asked what would have to happen before contact would be increased, he said there would have to be good evidence that the boys are more settled and more able to deal with contact. There would have to be information about the effect on A of what his parents believe to be the case, and the parents would have to show that they could change.

- 140 The parents' position is that they do not accept that that is an appropriate level of contact. They want as much contact as possible if the children are not returned to their care. They do not accept that contact has disrupted B or C's placements.

The guardian's position

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- 141 The guardian has provided two reports: an initial analysis on 10th March 2014 and a final analysis on 7th July 2014. Ms. Hughes is a very proactive guardian and I observed a good relationship between her, A, B and C when they all came to see me on 23rd June. In the course of these proceedings she has visited A twice and B and C each three times. C has also called her on the telephone and in addition she met all three of them when they visited me. Throughout the proceedings she has taken steps to ensure that she was aware of their wishes and feelings, that all of the parties were made aware of the wishes and feelings, and she arranged their meeting with me and accompanied them. She has also exhibited to her report C's letters, to which I have referred. The guardian supports the local authority's position. In her final analysis she says:

“Alongside the local authority and Dr. Bourne I am unable to identify any safe and sustainable route home to the care of the parents for B and C given the multiplicity of longstanding concerns as to their ability to contain, protect and care for the boys.” (E123, para.7)

The evidence she heard in court did not change her views.

- 142 Despite the fact that she is well aware of the boys' wishes and feelings the guardian has to weigh those against their needs. In her view B and C cannot judge what is in their best interests and she said:

“It is very disheartening to spend time with them and realise that they do not know what it is to be parented, to have boundaries and to defer to authority.”

- 143 She told me she has been very clear with the boys about the role of a guardian and that what they want to happen will not necessarily be the outcome of these proceedings. She explained to them that while they were in the care of their parents they were exposed to unsafe situations. She told them she does not keep secrets and she refused to ask the local authority to provide them with mobile phones.
- 144 The guardian's view of the support provided by the local authority is that it was appropriate. She said a supervision order is effective if community supports are put in place, which did happen in this case in 2011. After a supervision order expires, work can continue through those community sources. She described FIP as a wonderful resource available to the parents whether there is a court order or not.
- 145 Ms. Hughes told me about the behaviour of the parents towards her. The father remained affable, pleasant, extremely cordial and respectful although he knew her recommendation. Of the mother she said the boys are the centre of her world and she would never doubt her commitment. She has no doubt that the mother has done her best. However, the guardian stressed that returning B and C to the care of their parents would not be safe because the parents cannot manage the risk. She said, "It is not about the boys and their behaviour, it is about how they have been parented" and that, I find, is a very succinct expression of the crux of this case.
- 146 She had not told the boys about her recommendation by the time she gave evidence because she had last seen them on 23rd June when they had just given evidence in the criminal proceedings, the verdict was not yet known, and she thought it was not an appropriate time.

The children's welfare – the law

- 147 The boys' welfare, the welfare of each of A, B and C, is my paramount consideration, I take that to mean that I have to consider the welfare of each individual child. I have considered the President's discussion in his judgment in the recent case of *Re B-S (Children)* [2013] EWCA Civ.1146 of the essential principles which a judge must have in mind in dealing with such cases. He was referring to cases in which adoption is proposed, which is not the case here, but the general principles he sets out apply just as much to a case such as this. I note that he confirmed that the over-arching principle remains as set out in the judgment of Hale LJ (as she then was) in the case of *Re C and B (Care order: Future Harm)* [2001] 1FLR 611 where she said, at para.34:

“Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end.”

- 148 In addition, Mr. Eruteyan referred me to the judgment of Wall LJ (as he then was) in *Re H (A child)* [2008] Civ. 1245. The facts of that case were very different from those with which I am concerned. I note that Wall LJ allowed an appeal concluding that the trial judge had erred in failing to perpetuate the fundamental importance of a relationship with, and a life with, a parent if that is at all possible. In paras.10-11, to which I was particularly directed, he noted that the judge had considered the factors in the welfare checklist but had not considered the child’s wishes and feelings in the light of her understanding which in that case was sufficiently astute, well-developed and mature for her to have been permitted separate representation at the age of 10½.
- 149 I have also reminded myself that the assessment of a parent’s ability to care for a child must take into account the assistance and support which the authorities would offer. I have reminded myself of the judgment of Lady Hale in *Re O (Supervision order)* [\[2001\] EWCA Civ 16](#).
- 150 The welfare checklist in s.1(3) of the Children Act 1989 applies. In reviewing the evidence I have considered all of the factors without necessarily referring to each of the section numbers. I have in mind, in the circumstances of this case, in particular the ascertainable wishes and feelings of each child considered in the light of his age and understanding, his needs (physical, emotional and educational), any harm he has suffered or is at risk of suffering and the capability of his parents to meet his needs. In the course of reviewing the evidence I have had all of the factors in mind.

Impressions of the parents

- 151 I want to say a little about my impression of the parents. I appreciate that this has been an extremely difficult hearing for them: the outcome is enormously important for them. They gave their evidence well, over a long period of time, albeit with breaks. Their conduct in court was polite, as the guardian confirmed they were to her. I was pleased to see that the mother’s presentation and her manner in the witness box were more measured than I had expected, having read her written evidence. It is clear that both the parents love all five of their children and desperately want to have them all at home. They attend contact with D and E and they have been seeing B and C. They tried to care for A, B

and C. They have been successful with A but he, as Dr. Bourne explained, is a very different boy from B and C.

- 152 Despite all of that I have formed the very clear view that neither the mother nor the father understands the needs of B and C in particular and that therefore they cannot keep them safe. I will give my reasons. The mother tells me that she knows about boundaries, she set boundaries and she has done as much as she can to protect her children. Mr. Eruteyan confirmed that it is her view that her responsibility for a child does not extend beyond her front door. When the child leaves her home and when the child goes to school he is the responsibility of the school authorities. It seems to me that this view explains why the mother accepts no responsibility for the children when they have absconded from school or indeed from foster care. It indicates that she has no understanding of the role of long-term parenting in the behaviour of a child, which is a matter Dr. Bourne referred to.
- 153 Similarly, the father said that there were boundaries and that C was pushing them. When asked, “Can you see problems with your parenting?” his answer was, “Can you tell me what problems?”. He said that C was challenging and he was influenced by his friend who had been in care and encouraged C to make allegations against his father. With regard to absconding the father said, “I couldn’t stop it. If I could have, I would have”, but nonetheless he maintains his denial that B and C were out of his control, even in the face of his own evidence.
- 154 The guardian defined insight as “understanding what is necessary, what has worked or not worked, and what needs to be done to keep children safe”. It was clear to me that the mother does not understand that her parenting has contributed to her sons’ problems. This has been expressed throughout this hearing in the way in which her case has been put, namely that the boys should be given another chance and that foster care has acted as a deterrent for them. When Ms. Perry asked the mother about the boys running away from home, and the question was put several times in different ways, the mother clearly had difficulty with the idea and said:

“I don’t understand the question. Does the fact that C keeps running away have anything to do with parenting?”

Similar questions were put by Miss Kelly, in various ways, but the mother could not make a link between parenting and the boys’ behaviour.

155 Although it is clear that the mother did not know where the boys were when they absconded and stayed out overnight - even though she thought she knew where they were she did not - she told me, "I can't see any problem. I know C will talk to me. They will tell me the truth about where they are going". The evidence is that they did not. They absconded and they visited a man who abused both of them. The evidence is clear that the boys did not tell their parents the truth about where they were going, where they had been and the man with whom they had been. The father said to Dr. Bourne:

"The boys became immune to us taking actions for them doing things wrong like taking their phone or TV. They became so immune to it. C would just smile, but I don't think that is them being out of control."
[E53]

I have to say, I do not know what else it is. That is a very clear description of boys not being controlled by their father.

156 Both parents deny that they blame B and C for the harm that they have suffered and for being in foster care, but their written and oral evidence and the presentation of their cases suggest strongly that it is B and C who have to change. Mr. Maingi told me that the parents have tried to tell him that the boys' behaviour is not their responsibility, but that the behaviour is just challenging. There are frequent references throughout the evidence to the boys needing to change. Mr. Eruteyan's cross-examination of Mr. Maingi referred to the boys being given "a second chance". The mother in her fifth witness statement refers to the boys being given another chance and the threat of intervention by the local authority as an effective deterrent for them. She told me, "C has to make things change. The boys have to prove themselves. If they don't change and go back into care, I won't fight for them". The father told me:

"I have explained to C he shouldn't do what he does because the bigger picture is we will be blamed. I have said to him, 'I'm not having a go at you, but you need to understand'."

157 Mr. Merrigan, in cross-examination of the guardian about the effectiveness of the proposed further two year supervision order, also referred to what would happen "if the boys are good".

158 Sadly this view is reflected in the boys' wishes and feelings. C said to Mr. Maingi, "Let me go home, I'll be good, I won't run away". B told Dr. Bourne that his behaviour would be different if he were allowed to return home; he would not talk to people in the street; if he were approached he would

call the police and he said, “I am not going to be vulnerable if I go back home” (E62) which is a poignant and telling remark, as though being vulnerable were his fault. These boys cannot identify anything their parents did wrong or should change. I have set out Dr. Bourne’s explanation for how harmful it is for the boys to believe that their behaviour is the root of their difficulties.

- 159 The parents, the mother in particular, were very apt to blame other people for things. She suggested that the first foster carer gave C a mobile phone, although there is no evidence to support that view. She asked whether the foster carers knew that C had tobacco, suggesting that they might have given it to him. She suggested that C started smoking cigarettes and cannabis in foster care, although C told the police that he was smoking cigarettes and cannabis at the latest by early December 2013.
- 160 Domestic violence remains a concern for the local authority and the guardian. Their view is that the mother minimises the history of domestic violence. In reply to cross-examination by Ms. Perry, the mother gave evidence about the period in 2003 when she left the father and went to a refuge in Portsmouth and said, “He only slapped me, he said nasty things, he didn’t strangle me”. She asserts that there has been no problem since the father took an anger management course. However, the father told me that he last hit the mother in 2010 or 2011, but the Triangle anger management program he took part in subsequently, in Greenwich, had helped.
- 161 I noted the guardian’s view that the father does not strike her as a man who would easily resort to physical violence, but he is very anxious so she would worry about how far heated verbal exchanges could go. She said that the father has acknowledged his domestic violence in the past and she thinks he has accepted responsibility for the physical abuse and he means it. I take the view that that is to his credit and should be recorded in this judgment.
- 162 Finally, both of the parents’ approach to these proceedings has focused on criticisms in particular of the social worker and Dr. Bourne, which I have found unjustified. The mother wished to reopen the previous proceedings which I have not permitted. Their behaviour at contact has not helped their sons. I have noted positive aspects of both the parents and I observe only that it is a pity that they have not taken a more constructive approach to working with the social worker and taking advantage of opportunities to work with professionals.

Other issues

- 163 Before I come to the final part of this judgment, there are some other issues I want to deal with. Firstly, my view of the accounts of contact. I have read all of the accounts in the contact notes and in the witness statements of all the parties. I have referred to some of them in this judgment. I note that the reports are given mostly by David Smith, not by the foster carer although there is one from her, and not by the social worker. Mr. Smith has also written positive contact notes about B talking about enjoying school, making presents for D and E and a pleasant session on 31st May, although spoiled by B running away at the end. He also records B making other things at school, a toolbox and a lovely card in memory of his great grandfather. There are positive statements in the contact notes as well as criticisms. I have also considered the account of Dr. Bourne. On the balance of probabilities I prefer the accounts of the contact supervisor which were not seriously challenged (he was not required to give evidence), and the account of the social worker and Dr. Bourne to that of the parents.
- 164 I think this case is particularly difficult for A and I would not want it thought that I have forgotten him or the difficulties he has in the course of a judgment which focuses largely on the needs of B and C. A is now the only child of five who remains at home. He feels the loss of his brothers and sister very keenly. He gave a very graphic account of the effects the stress is having on him. The therapeutic provision which the local authority will make available to him is very important to him and I hope that he will feel able to engage with it and that his parents will encourage him to do so.
- 165 I now turn to Mr. Maingi. I said that the mother in particular was very critical of him and she could not accept that they have a good working relationship. I find that it is very much to Mr. Maingi's credit that he managed to continue to work with the parents. He impressed me as a thoughtful person, who is genuinely concerned for the welfare of A, B and C and trying to assist parents who did not want to accept his help. One example of this is the meeting which he arranged for 22nd May 2014 which they did not attend. I wish to make it clear that I reject the mother's criticisms of Mr. Maingi.
- 166 Finally, Dr. Bourne and Ms. Hughes. It is unusual for a judge to make any comment about an expert witness or a guardian. I have thought about this and find it is necessary in this case because, in my view, Mr. Eruteyan's cross-examination, on behalf of the mother, of both Dr. Bourne and Ms. Hughes was not just robust (it is perfectly proper to cross-examine robustly) but questioned their integrity. He suggested to Dr. Bourne that he had intimidated the mother and that his report was biased. He suggested to the guardian that she had

betrayed the boys' trust by making her recommendations. Dr. Bourne and the guardian dealt with those questions with dignity and gave clear responses. I want to make it plain that I find absolutely nothing in all the evidence to support any of those suggestions.

The options for the children

- 167 I have considered the options for the children. The first is the parents' plan that B and C should return to their care, with a two year supervision order to the London Borough of Haringey. The parents remind me that the children should be cared for by their birth family, if possible, and as they wish. The basis of the parents' proposal is this: during the currency of the supervision order their parenting was adequate and they were able to acquire new skills. Therefore if the boys are returned home under a two year supervision order they will again be adequately parented. A two year supervision order offers a better chance of change.
- 168 They say the support offered by the local authority during the first supervision order was superficial and ineffective but it is proposed that the family should receive the sort of support that was available previously, with no suggestion that these positions are contradictory. The boys needs have changed because they are older, they will have become more resilient. The parents would undertake classes in parenting teenagers and learn new skills. The boys could be provided with counselling, in particular with regard to the sexual abuse. They further submit that by the time the supervision order expires A will be nearly 18, B nearly 17 and C 15 and so non-statutory services would not be required for long. At the point when the supervision order comes to an end there should be a better, more structured transition.
- 169 The parents should not be left to seek support from services, they should be given greater direction, support and reminders and information about new programs and services. Mr. Merrigan suggested that a little extra push would make all the difference to the maintenance of adequate parenting. I am reminded that B and C fervently want to return home and A wants them to return home and it is suggested that their wishes and feelings should be given a great deal of weight and should carry even greater weight in combination. It is suggested that their experiences of foster care may enable them to change. Mr. Merrigan said, "C's wish to return home may be so strong that he can turn himself around, improve and behave" but if they did not change and they returned to care, the parents would not fight. The father told me it is too hard. This plan will take into account the boys' strong and clearly expressed wishes to return home, while ensuring that they are safe.

170 This proposal was considered by both Dr. Bourne and the guardian. Dr. Bourne said B and C have not had adequate parenting on and off throughout their childhood so that their acute presentation now is the result of longstanding, not recent, parenting. If the parents had benefited from the support provided by the local authority, including during the supervision order, and if they had gained insight, their parenting would not have deteriorated. However, when that support was removed or reduced the situation rapidly deteriorated to the point where the boys were out of control and emotionally disturbed. That is the reason why C and B were removed from their parents' care.

171 In Dr. Bourne's view, the fact that the parents are running their lives and their cases as if the responsibility is the children's shows that the parents have not changed. They would have to be able to work with professionals but they have maintained their view that what happened to the boys is not their fault. They have shown no inclination to change their behaviour at contact. They have refused to sign a contact agreement and have been aggressive towards the foster carers and confrontational with the social worker. He noted that in the past six months they could have shown insight, worked with professionals and behaved at contact. The level of support that they would need to parent these boys does not exist and should not exist. The guardian agreed that we do not have the ethos and the cultural resources to provide that level of support. Dr. Bourne said the parents now require so much support to parent that they would not be doing the parenting, the support would be providing substitute parenting.

172 I noted that the guardian does not entirely agree that the deterioration in the boys' behaviour was directly linked to the expiry of the supervision order and a reduction in support. She suggests that as they have entered adolescence B and C have presented greater challenges which the parents have not been able to meet. Mr. Maingi was also asked about the proposal plan for a two year supervision order and he said:

“We can't keep doing that. We need something constant that secures the children. They need strong boundaries and routines to prevent them from falling back and what was proposed was not within the boys' timeframe.”

173 I remind myself that A is nearly 16, B is nearly 15 and C is 13. There is no room for any misunderstanding of their wishes and feelings but I have to consider those in the light of their age and their understanding. I note the views of both the guardian and Dr. Bourne that they do not have an understanding of what is in their best interests. As the guardian said, they have no understanding

of what it means to be parented. A's situation is different. Wishes and feelings, even for a boy aged nearly 15 and a 13 year old boy, are not determinative.

I have to balance B and C's wishes and feelings against their needs, taking into account the harm they have suffered and the harm they are still at risk of suffering, and the ability of their parents to meet their needs. In doing so I have not ignored the boys' wishes and feelings: they are an important factor to which I have to give due weight.

- 174 However there are other factors. I have found that the parents do not understand B and C's needs and therefore cannot keep them safe. I have found that B and C have suffered harm. The parents have not changed throughout these proceedings. They see no need to change and therefore the risk remains. B and C are now older, they are adolescents and because of their experiences of inadequate parenting, of absconding and of sexual abuse, in my view, their vulnerabilities and their needs are greater than they were in November 2011 when the supervision order was made, nearly three years ago. Now they need not just adequate parenting but very good parenting which will provide them with consistent care, strong boundaries, stability and security. There is not a great deal of time in which to repair the damage so that B and C have a firm basis for entering young adulthood. As Mr. Maingi told me, this is the time to put things right for the children.
- 175 The parents seek a supervision order for two years but a supervision order would not provide support 24 hours a day, seven days a week. If it did, as Dr. Bourne observed, the support would be providing parenting. I accept the views of the social worker, the guardian and Dr. Bourne that the parents' plan is not viable. Even if such resources did exist, they would not provide B and C with parenting, with the security and the protection that they need. In my view the proposal put forward by the parents would not meet C and B's needs.
- 176 The second option is the return of B to the parents' care, with C remaining in long-term foster care. Dr. Bourne and the guardian do not support this because in their view these parents cannot keep either C or B safe. It is not a question of being able to keep one safe but not two, they cannot keep either of them safe. B has needs and vulnerabilities and therefore they do not support his return home. Mr. Maingi noted that whichever boy did not return would think that it was all his fault and the impact on both boys would be very great. He told me that he had not discussed this possibly with B, but C raised it with him, in tears. Mr. Maingi had had to tell C that the local authority was not considering returning B or keeping C in foster care. I have found that the parents cannot keep B or C safe and this would apply equally if one boy was at

home and the other remained in care. The parents do not appear to have considered the effect on C if he remained in care and B returned home.

177 That leaves the proposals of the local authority as set out in their final care plans which they have developed in response to Dr. Bourne's recommendations and with input from the guardian. I accept that in view of all the evidence and the findings I have made the local authority's final care plans as amended are the best, indeed the only, option which will safeguard B and C as they develop into young men.

European Convention of Human Rights

178 In the course of proceedings reference has been made to Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial. Both parents have been represented throughout these proceedings and they have given evidence. They have questioned the witnesses they required and I am satisfied that they had a fair hearing, although I know that they are not happy with the outcome. Similarly, the boys through their guardian have been represented. Their views have been made clear to the court, they have had the opportunity of putting their own views across to me and I am satisfied that they have had a fair hearing.

179 I have also been referred to Article 8 which guarantees a right to family life. Rehabilitation and reunification of families is an important aim of Article 8 but the obligation to effect rehabilitation is not absolute. The principle of proportionality must be applied and the interests of the child prevail. In this case I am satisfied that the interference with the children's and the parents' family life is justified in law and pursues a legitimate aim which is the welfare of B and C and particularly their safety and protection. The interference fulfils a pressing social need and is proportionate to their needs.

180 I make the following orders: A will remain in the care of his parents with a supervision order to the London Borough of Haringey for nine months. In respect of B and C I make care orders to the London Borough of Haringey and I approve the amended final care plans for them.

LATER:

181 I have just given a very long judgment in relation to the local authority's application for orders in respect of A, B and C. I announced my decision at the conclusion of the hearing on 18th July. I explained to the parties and their representatives that because there were a number of issues I had to consider, I

could not give judgment immediately. I was then not sitting for a week and I have given a full judgment this afternoon, anticipating that there would be a number of matters with which the parents might take issue.

182 Mr. Eruteyan now makes an application for permission to appeal. Permission to appeal is not granted unless a judge is satisfied that there is a real prospect that an appeal would succeed. An appeal would have to be on the basis that, as trial judge, I had made an error of law or fact or an error in the exercise of my discretion. It is always an invidious position for a judge who has just given judgment to have to consider the possibility that she has made any mistakes at all. However, I anticipated that there might be an application. I have noted the basis on which it is made and Mr. Eruteyan, at my invitation, has made it immediately after I had concluded giving judgment because generally that is when applications are made to the judge who has given judgment. Otherwise applications for permission to appeal are made to the Court of Appeal.

183 In dealing with the particular issues which Mr. Eruteyan has raised in some detail I would say this:

The weight which I have given to the boys' wishes and feelings

184 I have dealt with this issue, it seems to me, at great length, considering the law, the boys' actual wishes and feelings and the other factors which I have to weigh in the balance. I could not have been clearer about their wishes and feelings. In addition to all the other sources of information, they came to court and told me themselves. I am satisfied that I have dealt with the matter fully.

The question of whether or not the boys should have had an opportunity of instructing solicitors

185 Mr. Eruteyan has said that B and C have no form of disability (in fact, as we know B has learning disabilities) and therefore they should not have been considered to have no capacity to instruct solicitors. It was the guardian's view and it was the view also of Dr. Bourne, the consultant child and adolescent psychiatrist, that B and C did not have capacity and did not understand what is in their best interests, which is very different from understanding what they want. I have no doubt that they know what they want but that is not the issue: the issue is whether or not they understand what is in their best interests and have capacity to instruct a solicitor. Two experts, the guardian and Dr. Bourne, advise that they did not.

186 Mr. Eruteyan says that because the guardian did not tell the boys her recommendation, for reasons which I have explained in my judgment, they did not have an opportunity of seeking alternative representation. However, they would not have had that opportunity even if she had told them her decision, because the court had previously been advised that they did not have capacity to instruct. It is not just a question of saying, “We do not agree with the guardian’s views and therefore we want to instruct solicitors separately”. There are issues which have to be considered. They were considered and the matter was not pursued any further.

The mother says aspects of her relationship with the social worker, Mr. Maingi, have not come through the proceedings

187 I do not know what that means. It is clearly a reference to something not before me. If it is not before me, I cannot consider it. I have dealt with the evidence before me.

The evidence of the contact supervisor

188 I have accepted his accounts of contact. He was not required to attend court. There were no serious challenges other than that the parents did not agree with his account in the contact notes.

The mother’s approach to Dr. Bourne’s report

189 I think I have dealt with this in detail. I have set out the main findings of his report and the main recommendations. I have set out at some length most, if not all, of the mother’s objections to Dr. Bourne’s report. I have noted that she made those objections earlier in the proceedings and she made an application, with the father, for an alternative expert report of an assessment by a psychologist. I rejected that application as being not necessary and not adding anything to the information before me. That was on 29th April 2014 and there was no appeal against that decision.

190 All of the matters which are now raised about Dr. Bourne’s report I have dealt with. I do not accept that he should have analysed or evaluated the evidence. He told me that he had read all the documents, as had Ms. Farrar. I accept what he said. The fact that he could not, several months later, recall every single document does not prove, to my mind, that he had not read them. I challenge anybody to remember every single page of all the documents in these bundles.

The mother considers Dr. Bourne’s report unfair and unbalanced