



Neutral Citation Number: [2020] EWFC 107

Case No: ZC18C00400

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2020

Before:

MRS JUSTICE THEIS

Between:

A Local Authority	<u>Applicant</u>
- and -	
Mother	<u>1st Respondent</u>
- and -	
Father	<u>2nd Respondent</u>
- and -	
A, B, C and D	<u>3rd – 6th</u>
(through their children’s Guardian Ms M)	<u>Respondents</u>

Ms Sally Bradley (instructed by **A Local Authority**) for the **Applicant**
 Ms Saiqa Chaudhry (instructed by **Edwards Duthie Shamash**) for the **1st Respondent**
 Mr Chris Stevenson (instructed by **Avadis & Co**) for the **2nd Respondent**
 Ms Caroline Budden (instructed by **TV Edwards**) for the **3rd – 6th Respondents**

Hearing dates: 3rd – 10th July 2020

Approved Judgment

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MRS JUSTICE THEIS

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

Mrs Justice Theis DBE:

Introduction

1. This matter concerns what orders provide for the future care of four children, A 13, B 11, C 9, and D 6. The children were removed from their parents' care in June 2018 and placed with their current foster carer. They have remained with that foster carer, save for short periods of respite care.
2. The local authority, supported by the Children's Guardian, seek final care orders with a plan for the children to remain placed long term with their current carer and regular contact with the parents. The parents seek orders that will result in the children being restored to their care and accept the need for a supervision order.
3. It is a matter of very great concern that this case has been the subject of such significant delays. Although the family had been the subject of local authority support for a number of years, the situation undoubtedly became more difficult when the family were made homeless and the local authority were unable to maintain consistent contact with the family. The children were removed as a result of the three younger children testing positive for gonorrhoea, with no explanation by the parents as to how that could have happened. An initial fact-finding hearing took place in late 2018, the conclusions reached by the judge were successfully appealed in March 2019 when the matter was allocated to me for re-hearing.
4. As a result of the subsequent disclosure of relevant information, it was necessary to join XA as an intervenor as it transpired it was likely he tested positive for gonorrhoea during the time when the family were staying in the same home. This resulted in inevitable delays in the fact-finding hearing being able to take place, which was finally listed in December 2019 and January 2020. As set out in the detailed judgment given at the conclusion of that hearing the court made findings that the three younger children are likely to have been infected with gonorrhoea by sexual contact between those children and one of the adults in the home where the family were staying. A number of other findings sought by the local authority regarding the parent's care prior to the children becoming infected were accepted by the parents, and the court made findings about the father's over chastisement of A.
5. Although some welfare assessments had been undertaken prior to the fact-finding hearing, they needed to be updated and the assessment by Dr Helps (Consultant Psychologist and Systemic Psychotherapist) could proceed.
6. Unfortunately, the Covid-19 pandemic caused further delay in the assessments being completed and for this hearing being able to take place, in part caused by the inability of the parents to be able to effectively join any hearing remotely. This hearing has taken place as a hybrid hearing, with the parents and their legal representatives in court, being joined by counsel for the local authority and children's guardian when the allocated social worker and parents gave evidence in person. All other witnesses gave evidence remotely.
7. Before turning to summarise the court's decision, I would like to pay tribute to both parents in this case. Throughout this difficult and lengthy process, they have maintained their contact with the children, attending weekly at a contact centre that is some distance

from their home but convenient for where the children live. They have had to manage extended periods when they have not been able to see the children. The first in the four months after the children were removed, due to delays in securing appropriate intermediary support for ABE interviews to be conducted and then, more recently, due to the Covid 19 restrictions. During the recent period they have maintained their relationship with twice weekly phone calls, lasting up to an hour each time. The description given by the father in his oral evidence of how these calls are managed displayed enormous sensitivity and empathy for the children's position and the steps he took, with the support of the mother, to make these telephone contacts work was entirely child focussed. They each spoke of their children with obvious love and pride. As I have made clear during this hearing, whatever the outcome, these parents will remain a very significant part of these children's lives. It is imperative they do, and in the event I make a care order I expect the local authority, under the active oversight of the allocated IRO, Ms J, to make sure this is done in a proactive and imaginative way that is commensurate with the welfare needs of the children.

8. I have reached the conclusion, for the reasons I have set out in more detail below, that the court should make final care orders for each of the children and approve, subject to some further amendments, the care plans that will provide for the children to remain in the care of their current foster carer. This is a decision that I have reached with some hesitation as I have some real concerns about whether the court had all the information it needed to enable final decisions to be made. In particular I was concerned about whether the parents had been given a fair and real opportunity to access the support and assessments the evidence supported them needing to better equip them to be able to care for the children. Also, it is a matter of some concern that the Children's Guardian, who has been allocated for two years, last saw the children in person in March 2019, over 15 months ago and had not been able to observe contact. Whilst she had been able to communicate with them more recently by WhatsApp, she rightly acknowledged that was not an appropriate way to gain and report on the children's wishes and feelings, so she has had to rely on the views of others.
9. After careful consideration I reached the conclusion that the evidence demonstrated that these children's particular needs requires them to have some security now about their future care, they each need specialist therapeutic intervention which is likely to require consistent support in the home environment which is most likely to be provided if a care order was made. In addition, I accept the evidence about the mother's need for therapeutic intervention, which is likely to last 1 – 2 years, before she would be in a position to provide, with the assistance of the father, the level of physical and emotional care these children require. Whilst I have anxiously considered whether the father, who requires less support, would be able to provide the care the children need, as well as support the mother, I have reached the conclusion that such a proposal puts the children's welfare needs at an unacceptable risk.
10. I am very conscious that the children have at times expressed the wish to return to their parents care, particularly D, but I have to look at their wider welfare needs and carefully balance what order will meet their needs for security and stability going forward. A significant factor in the balancing exercise is the importance for these children of being able to maintain their existing relationship with their parents and for all those responsible for their care to creatively, proactively and effectively keep under very active review the frequency, type and quality of contact, with practical steps being taken

to build on and encourage the skills the parents have, particularly the father, to make sure the contact remains child focussed, as well as keep under active review the possibility of these children being able to return to their parents care.

Relevant background and evidence

11. The detail in relation to the background of this case is set out extensively between paragraphs 8 – 58 in the judgment given on 30 January 2020. I do not propose to repeat those matters in this judgment and refer to what has previously been set out there (attached as Annex A to this judgment).
12. The fact-finding hearing was listed in December 2019 but had to be adjourned part heard to January 2020 and judgment was given on 30 January 2020. The findings set out in the order made that day and in Annex B to this judgment.
13. Case management directions were made on 30 January leading to a final welfare hearing in May. That hearing was subsequently adjourned until early July to enable a hearing to take place where the parents and their legal representatives could attend. This hearing has proceeded as a hybrid hearing with Dr Helps, Ms Hughes and the Children’s Guardian giving evidence remotely and Ms K and the parents giving evidence in person. The parents have been present in court throughout with Ms Chaudhry and Mr Stevenson, Ms Bradley and Ms Budden attending in person when Ms K and the parents gave their evidence.
14. Following the fact-finding hearing the parents continued to have weekly contact with the children based at a contact centre convenient to where the children lived.
15. Unfortunately, this direct contact had to stop during the Covid-19 restrictions and twice weekly telephone contact was established, which continues. This is supervised by the foster carer. Neither parent is able to access the technology to enable them to have video calls with the children but it was clear from the father’s oral evidence the efforts the parents have made to ensure this sub optimal form of contact is beneficial for the children.
16. Whilst the children have remained living with the same foster carer there was a period of respite care for about four weeks following the Covid restrictions due to the foster carer having to manage the loss of two close friends. The children were placed separately, with the younger three children in one placement and A in a separate placement. A in fact returned to the foster carer a week before his siblings and that was considered to be a helpful structure to manage the transition of the children back to the foster carer.
17. Prior to the fact-finding hearing Ms Hughes, Independent Social Worker, had been instructed to undertake a parenting assessment. Her first report dated 30 September 2019 followed 4 appointments in August 2019 with the parents (each lasting between 2.5 – 4 hours) and her observations at contact. She recommended, subject to the findings, a gradual rehabilitation home to the parents. Prior to that taking place she recommended the parents needing to attend a parenting class to update their understanding and knowledge of child development and give them greater skills in managing the children’s behaviours. In her report she made it clear she may need to revise her recommendations in the light of any findings and whether the parents

accepted those findings. In addition, she recommended therapy for the mother to address her suspected OCD, wider family therapy and the need for the father to take a greater role in the parenting. In her report she noted the pride with which each parent talked about the children but was concerned to note what she observed at contact, with the parents being somewhat passive in their interactions with the children.

18. With that recommendation of possible rehabilitation it appears little was done between October and January, until the allocated social worker, Ms K, gave the parents a large hardcopy booklet of all the courses the local authority offered, with a steer on which ones should be considered. The father made some enquiries but the initial appointment was offered on the day the fact finding judgment was given, then for reasons that are not entirely clear they did not get any further than an initial phone call before the Covid 19 restrictions were put in place in March 2020.
19. Following the fact-finding judgment directions were made for Ms Hughes' assessment to be updated and for an assessment to be undertaken by Dr Helps. Dr Helps had been instructed in October 2019 and first met the parents in January 2020. Dr Helps delayed meeting the children until they had been informed of the outcome of the fact-finding judgment. This was done by the allocated social worker, having previously discussed the letter and her approach with the parents. Dr Helps met the children in late February and also observed a period of contact with the children and their parents. Dr Helps offered a further appointment with the parents which did not take place.
20. Dr Helps' first report is dated 6 March. She concluded the mother would benefit from specialist long term psychotherapy by a therapist who specialises in complex trauma and that such work would enable the mother to be able to better meet the children's needs. Dr Helps considers that the mother's psychological profile does impact on her ability to provide the children with the care that the children's needs require. In particular as the mother is at the early stages of discussing and processing her own background, she is unlikely to be in a position to meet the children's needs until she has had the specialist intervention Dr Helps outlines. As Dr Helps sets out in her report

“The three oldest children have some degree of learning and cognitive difficulties. D appears to be developing along ordinary lines. All children have been detrimentally affected by their experiences to date. The mother presents with emotional, physical, psychological and possibly neurodevelopmental difficulties. The father does not present with significant difficulties. Based on the information that I have, I am not convinced that either parent currently has the knowledge, skills or abilities to resume the care of the children.”

21. Dr Helps was instructed to prepare an addendum report that looked at the issue of whether the children should be placed together or apart. In her addendum report dated 16 May she stated

“The question of whether A should be separated from his sisters and placed is complex. Overall I do not think that any final decisions should be made about this until a package of therapeutic and life story work has been put in place to ascertain whether and how the sibling relationship can be improved and the children's understanding of their past and current situation can be bolstered.”

22. Prior to giving evidence Dr Helps was able to have an appointment with the parents and update herself regarding their position.
23. In her oral evidence Dr Helps acknowledged that the father has a good understanding of the impact on the mother of her own life experiences but she considered what was less clear was his understanding of how those difficulties impact on her parenting which raises the issue of whether he is able to provide the compensatory care for the children, whilst the mother manages undertaking the therapeutic intervention. As Dr Helps observed she considered the mother's difficulties are so marked they are not something the father can make up for. Dr Helps was concerned about the delay by the mother in taking steps to secure therapy which she had discussed with her in January. She did not consider the time gap of 6 months was fully explained by the Covid restrictions.
24. Dr Helps was asked why the children could not be returned to the mother's care before she commences therapy she stated

"The process she will need to undergo will be incredibly painful and destabilising for her and it would not be commensurate for her to look after these children who have complex needs..... I think it's a false impression that someone could be living in the same home and experiencing huge psychological difficulty and it not having an impact on the children. It would be destabilising for the children."
25. She did not accept that 3 months would be sufficient time for the father to undergo parenting work to assess whether he would be able to address the mother's deficits whilst she undergoes 1 – 2 years of psychotherapy.
26. At the stage of her updated assessment dated 13 March 2020 Ms Hughes notes that the mother was uncertain whether she wanted to remain in a relationship with the father, which led her to conclude that the parental relationship would need to improve before consideration could be given to the children returning to their care. Having considered each of the children's particular needs she did not recommend any of the children return home to the care of their parents together. In her report she did raise the possible plan of the father being the sole carer for D due to her having less additional needs than her siblings but recognised it would require the father to separate from the mother, which he had shown no willingness to do, and would involve D being separated from her siblings.
27. In her oral evidence having considered the updated position of the parents that they remained in a committed relationship and the addendum report of Dr Helps, which did not support the siblings being separated, Ms Hughes did not support the children being returned to the care of their parents. She said Dr Helps' assessment of the children helped her understand the complexity of their respective needs and how that impacted on the timescales needed for the parents to demonstrate the necessary changes.
28. Ms Hughes noted the father to be very committed to the mother and that his focus was very much on her. She considered that for the father to successfully take on the role of primary carer it would require him to acknowledge the mother's parenting difficulties, which currently he is unable to do and for him to have a better understanding of each child's individual needs. She did not regard either parent as having the necessary skills to provide the good enough parenting for all the children. She was clear that once the

mother has completed her psychotherapy and the children have had therapeutic support the family would benefit from systemic family therapy.

29. Ms K has been the allocated social worker for two years. That continuity has been a considerable benefit for the children and the parents. Whilst Ms K has a good working relationship with the parents she has concerns about their ability to meaningfully engage with professionals and take on board the advice and support offered. She considers the court needs to take into account the longer-term concerns about the parenting as well as the events that led to the children being removed from their parents' care.
30. In her evidence, she set out the areas the parents need to address before consideration can be given to the children returning to their care. This includes the mother attending and accessing the therapeutic support recommended by Dr Helps, the parents demonstrating they can improve the quality of contact and seek and act on advice as to how it can be improved. She considers the children's needs are too complex for the parents to be able to meet them. Whilst she recognises the positive aspects of the father's parenting the combination of meeting the needs of each of these children together with the mother's difficulties in her parenting and the impact on her of the therapy she is going to undertake means that the father will be unable to mitigate these risks for the children.
31. Both parents filed statements after the fact-finding hearing. Both parents accept the findings made in January and actively engaged with Ms K in discussions about how the children should be informed of the findings made.
32. The mother accepts that she needs the therapeutic intervention recommended by Dr Helps although struggled in her oral evidence to explain the delay in seeking such a referral. It appears that she has only contacted her GP recently and has an appointment in a couple of weeks. She referred to needing to get the home sorted before she should start such work without perhaps showing any understanding of the need to have started this process earlier to help support the children returning to their care.
33. The father in his oral and written evidence accepts the need for the mother to undertake the work recommended but did not consider the need for the work to be done to delay the children being returned to their care. He considered that he would be able to take on the primary caring role, with the assistance of Ms C (the mother's cousin), which would enable the mother to have the time and space to manage the therapy she requires.
34. There remained some evidential uncertainty about the parents' housing position and the father's immigration status. In relation to housing in their recent statements the parents confirm they remain in their current accommodation under what has been described as a rolling tenancy agreement. However, it appears from a recent email from their landlady that her intention is to commence possession proceedings, although the father confirmed in his evidence that if the children were in their care she has told him she would not seek to enforce any order until they have alternative accommodation.
35. In his most recent statement, the father stated he applied for indefinite leave to remain which was granted. In his oral evidence that appeared not to be the case. He said he arrived in the UK in 2003 and at some stage has made an application, possibly not until quite recently, to regularise his status here. He was informed he has leave to remain

here pending that application being determined and attached to his statement the document that supports that, with a restriction that he is unable to work. He agreed his immigration solicitors should be asked to confirm the current position but despite requests that has not been possible.

36. The Children's Guardian provided her report on 1 July 2020. It sets out her analysis of the issues and the options for the future care of the children. She concludes, having considered the alternatives, that a care order will meet the children's welfare needs. She has been allocated since June 2018 so has the benefit of having been involved throughout the case. In her oral evidence some concern was raised about the fact that she had only seen the children three times during this period, with the last occasion being in March 2019. She explained that she was due to see them with their solicitor which had to be cancelled due to the Covid restrictions. She said part of her role is to explore the wishes and feelings of the children but that needs to be done in the context of knowing what the options are. Her plan was to visit once the evidence had been filed but due to the restrictions was unable to. She was able to speak to the children via WhatsApp although accepted that was not an appropriate medium to explore the wishes and feelings of the children in a case such as this. It also transpired that she had not observed contact between the parents and the children. Her explanation was that the contact took place at the weekends, and whilst she had tried to arrange for contact to take place during the week, she had been unable to attend the dates offered.

Relevant legal framework

37. The parties have submitted an agreed note on the law.
38. The court must consider each child's welfare as being the courts paramount consideration in accordance with s1 Children Act 1989, having regard to the welfare checklist in s 1 (3). The court must make sure any order it makes is proportionate having regard to the Article 8 rights of both the parents and the children.
39. The court needs to undertake a holistic evaluation of the placement options for the children but guarding against any comparison of the experienced foster carer's ability to meet the children's needs with the parent's capacity to do so.
40. In this case the court also needs to keep in mind the words of Hedley J in *Re L* of being willing to tolerate very diverse standards of parenting and the reminder in *Re BS [2013] EWCA Civ 1146* paragraph 26 of the benefits for the child of being brought up in the birth family unless such a course does not meet the child's welfare needs.

Submissions

41. The court is extremely grateful for the detailed written submissions from each of the parties. They cogently set out their respective positions.
42. Ms Bradley, on behalf of the local authority, relies on the expert evidence of Dr Helps and Ms Hughes, supported by the evidence of the allocated social worker Ms K and the Children's Guardian who all conclude that the children's welfare needs are best met by care orders being made. In her submissions she focusses on the need for the mother to undertake the extensive therapeutic support recommended that is expected to take 1 – 2 years, is likely to be very unsettling for the mother to manage bearing in mind the

issues that will need to be addressed. She raises concern about the delay in the mother starting the process to secure such assistance when it was discussed with her at length in January. She submits this needs to be looked at in the context of the children's particular needs now, the long terms concerns about the deficits in parenting and the fact that the children are going to require therapeutic support too. She submits in the light of the background of the case and the concerns about the parents' ability to effectively engage with the local authority and other professionals the father is not going to be able to step into the primary parenting role in a way that will safeguard the needs of these particular children.

43. Ms Chaudhry submits the mother is committed to undertake the necessary therapy, she is anxious not to prolong the time the children are away from home and would accept the father taking on the primary caring role for the children. The mother has been assessed by Drs Castle, Campbell and Helps and whilst it is accepted she has capacity, it was recognised that she can at times have difficulty in following what is going on. Continuity of representation for the mother has been a very great assistance in this case. Dr Campbell undertook a psychological assessment and advised on certain strategies to assist the mother's understanding. In her oral evidence Dr Helps identified the mother's communication difficulties are partly due to her neurodevelopmental profile and was a multifactorial issue. Dr Helps acknowledged the mother was in a difficult position as she does not have a diagnosed learning disability to be able to access appropriate support and services.
44. Ms Chaudhry reminds the court of the evidence about the parents' commitment and engagement with professionals. She sets out the history of the parents' involvement with children's services since 2011, the gaps there have been and the difficulties the parents have experienced in seeking to navigate services between different local authorities and the consequences of any disruption in financial support. She submits the court needs to consider the mother's position in the light of her own background involvement with social services having been in the care of the local authority herself since she was a young child. The impact of that was apparent when she described in her oral evidence the impact on her of her own children being taken into care. Ms Chaudhry rightly refers the court to the positive references in the earlier records of the care the children received from the parents and the description in the letter from the head teacher of the school the children attended describing the children as happy, settled with good attendance. She submits in the circumstances of this case where the parents are in a committed and stable relationship, where the mother accepts she should seek the support recommended for her and the children and a package of support would be available as outlined in the evidence (including that of her cousin) the parents are able to provide good enough parenting to meet the needs of these children. She rightly stresses the court must guard against comparing the care provided by the foster carer with the parents relying on the well-known passage in the judgment of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050 para 50.
45. Finally, she submits that when the court undertakes the holistic analysis of the options it is necessary to factor in the needs of each child. Due to her young age D could be subject to a care order for the next 12 years, she has found it the most difficult to settle in foster care and the foster carer has already flagged up her age as D gets older. That submits Ms Chaudhry is a risk factor the court needs to consider. In addition, A's conflicting views about whether he wishes to return home, his relationship with his

siblings again creates risks of possible breakdown the court needs to consider. At different stages the children have all expressed the wish to return to their parent's care as Ms Chaudhry has listed in her written submissions which, she submits, should be given some weight.

46. In his written submissions Mr Stevenson, on behalf of the father, sets out the commitment these parents have shown to the children over the long time these proceedings have been going on despite the anxiety they must have felt about the findings that were wrongly made against the father in October 2018. He submits the father is able to assume the primary care of the children whilst the mother undertakes the therapy that she accepts she should have. The father described in his oral evidence how he was going to do that which he said would provide the mother with the space to seek the help she needs. He submits any suggestion that the father may not have been entirely candid about certain aspects of the case, notably the housing and immigration position, that needs to be looked at in the context of the high level of co-operation by the father during this case which demonstrates their level of commitment to secure the return of the children to their care.
47. He reminds the court that it must consider what the parents propose on the basis of considering the parents' ability to meet the children's needs with the support that is required. He submits in this case there are effective avenues that have not been properly explored, such as the convening of a Family Group Conference, which would explore the parents' support network, such as Ms V, the mother's cousin who has filed a statement. He submits the court can have some confidence in the father's parenting capacity through the way he has co-operated to date with all the assessments, his ability to be reflective, his acceptance of the need for support and advice and his sensitivity to the children's needs. This is underpinned by the strength of the parents' relationship, as described by Dr Helps in her oral evidence. In relation to the weight to be attached to the conclusions of the Children's Guardian he submits the court should exercise caution due to the failure to observe any contact between the children and the parents and the limited times she has had direct contact with the children.
48. Mr Stevenson relies upon the fact that there is limited criticism of the father's parenting capacity, his ability to be able to take on the role as primary carer is untested and unassessed and more should have been done by the local authority to enable the father to access such support he needed to build on his existing parenting skills. He submits that unless and until any intervention has been tried it is not possible to say with confidence that the father would be unable to make sufficient progress within the agreed timescales of 3 – 6 months in order to allow the children to return to the parents' care.
49. Ms Budden on behalf of the Children's Guardian reminds the court of the difficult path this case has taken and the particular role of the Children's Guardian. After the fact finding hearing the children were having to manage being told of the outcome of that hearing, appointments with Dr Helps and notes that the IRO decided not to meet with the children prior to the LAC review on 13 February but to rely on the social worker to present their views. In the circumstances of this case she submits she was able to set out the wishes and feelings of the children as described in her final report.
50. Ms Budden raises the concern about the lack of clarity in the evidence about the housing and immigration position. She submits the court needs to consider whether it highlights that despite the high level of co-operation with the professionals there remains a

concern about lack of engagement and a willingness to be open with professionals which is so important going forward.

Discussion and Decision

51. It is matter of very great concern to the court that these proceedings have gone on for so long. Whilst that concern is in part ameliorated by the fact that the children have been able to remain in the same placement and have the benefit of continuity of social worker that does not diminish the impact of the delay and uncertainty for these children and the parents.
52. In considering the realistic options for the future care for these children I am rightly reminded that the court must guard against a comparison of the ability of this experienced foster carer to meet the children's needs with the parents' capacity to do so. The foster carer has not only had the training that comes with that role but has also, as she has had the care of the children, had direct contact with the school and other agencies who are supporting the children. It is not for the court to consider which is the best placement for the children but rather to evaluate whether as a starting point the children's needs would be met to a good enough standard by their parents.
53. The parents' love, dedication and motivation to seek the children's return to their care is not really in doubt. It has been their position from the start of the proceedings. Over the last two years they have attended all contacts offered to them, have had to endure periods when that contact couldn't take place and have co-operated with extensive assessments that have taken place regarding their ability to meet the children's needs. An insight into the way they can be attuned to the children was demonstrated by the father's oral evidence of the way the phone calls are managed with the children since the Covid-19 restrictions have been in place. They were entirely child focussed, sensitive to the respective needs and ages of the children and displayed enormous empathy and understanding of the difficult position everyone was in having to manage contact in such a way.
54. To their very great credit the parents accept the professional advice of the therapeutic support that is required for the mother and children. They take issue only as to the sequence of events. They press for the court to conclude that with that acknowledgement of that advice, the ability of the father to meet the primary caring responsibilities for the children and the availability of support if the children returned to their care would mean they could provide good enough parenting to meet the children's needs.
55. The children's current needs are comprehensively described in the papers. The sibling relationship has been described as complex and the relationship between A and D has required careful management.
56. A remains confused about why these proceedings were started, despite some work being undertaken with him about that. He and each of the children will require carers to be able to answer his questions with child focussed factual responses commensurate with his level of understanding. He has experienced parenting that has involved physical chastisement and has expressed differing views about his wish to return home and live with his siblings. Dr Helps has assessed A to have a complex presentation with an anxious attachment style. He will need a care environment that provides him with

security and stability, is attuned to his difficulties so that other aspects of his needs can be met. He has an education plans that is reviewed each year.

57. B is about to move to secondary school. It is likely that she, like her two younger siblings, have experienced trauma from sexual abuse as well as emotional harm from physical chastisement and significant changes in her life. The clear advice is that she would benefit from access to therapeutic support to understand what led to these proceedings and a safe space to explore her emotions and understand her experiences. If that was not available for her she would be at increased risk of mental health difficulties. Her wishes and feelings have been difficult to ascertain although she has said she liked seeing her parents. She has been assessed by Dr Helps to have borderline to low average cognitive ability and has received a package of support through the school to help her transition to her new school in September due to concerns that she may struggle in a new school environment.
58. C has been assessed with obvious cognitive, speech and language and learning disabilities. She will continue to need significant support both in the home and at school, with regular engagement of her education support plan. Her wishes and feelings are less clear and she tends to divert the conversation to issues she feels more comfortable discussing.
59. D has remained consistent in her views, wanting to go home to her parents. The contact notes demonstrate the closeness of her relationship with her parents and she tends to get the most attention. She has not been assessed as having any learning or development needs. Like her sisters she is likely to have experienced trauma through sexual abuse and, as with her sisters, has not made any disclosures. Due to her age she has limited understanding as to why she is in foster care and will need careful support in understanding what has taken place. If she has access to that reliable consistent support now it will reduce the risk of future emotional harm.
60. For the children to be able to return to their parents' care would have the undoubted benefit of them being brought up by their parents, they would remain living together and, arguably, not have the inherent risks and instability of being in long term care particularly bearing in mind the young age of D.
61. The question is whether the parents now, or in a time frame commensurate with the needs of these children, have the parenting capacity with the appropriate package of support to meet these particular children's needs. Having considered the wide canvas of evidence the court has available to it I have reached the conclusion that they do not. I have reached that conclusion for the following reasons:
 - (1) The love and commitment the parents have for their children is palpable. This has been demonstrated by the high level of co-operation they have provided during these proceedings despite the anxieties they must have endured as findings were made against them, overturned on appeal, sought again and then as the evidence developed further amended.
 - (2) However, the court needs to look wider than that and evaluate their ability to meet these children's needs now. These are children who have each experienced inconsistent parenting in the past which has caused them significant emotional harm, in A's case it has resulted in him suffering physical harm and in the case of

the three younger children they have suffered a serious infection that is likely to have been a result of sexual harm. It is accepted that each of these children require therapeutic intervention and whilst that is taking place will require a secure and stable placement to enable them to benefit from such intervention.

- (3) The parents to their credit accept the findings made by the court in January, have participated in discussions about how the children were informed of the findings but found it difficult to look at how questions from the children about these issues would be managed in the future.
- (4) The parents accept that the mother requires the long-term therapeutic intervention that the experts recommend. The mother was informed of that need in January, for reasons which are not child focussed she took no steps to seek to secure such assistance until very recently. Even making all allowances for the recent difficulties it shows a concerning inability by the parents to take steps that had been signalled would assist them to secure the children's return to their care.
- (5) I accept the evidence that due to the long standing nature of the mother's difficulties due to her background, which to her credit she is only just beginning to discuss, any therapeutic intervention is going to be very difficult for her to manage with the real risk that during such time as she is receiving that support she would not be emotionally available to the children if they were in her care.
- (6) Whilst it is right that the father's parenting capacity has been the subject of less concern and there were many positive aspects of the way he engaged with the school and professionals in the past, he remains untested as a full time carer for a considerable period of time, even before the children came into care. It is right his capacity to become the primary carer remains currently untested. In my judgment, whilst he has many strengths he has underestimated what it would involve for these children, with their particular needs both in terms of their educational and psychological needs at the same time as the mother is undergoing therapeutic intervention.
- (7) The combination of these features creates in my judgment a very real risk of the children suffering significant emotional and psychological harm if they return to their parents' care in these circumstances. This is not because of any deliberate act by the parents but even with the package of support outlined in the papers the parents in my judgment would not be able to provide the stability and security of care these children need at this particular time. That would, in my judgment, increase the risk of the placement breaking down and the children being unable to effectively access and benefit from the therapeutic support they require.
- (8) I have recognised and balanced the inherent risks of the children remaining the subject of a care order, in particular for a child as young as D. In my judgment those risks are mitigated because this is a sibling group, they have remained in the same placement, the care plan is for them to remain in that placement and they will continue to have regular contact with their parents who will remain a consistent and important part of their lives going forward. To their credit the parents have remained supportive of the foster carer and there is no suggestion that, in the event the court makes a care order, that position will change.

62. For the reasons set out above I have reached the conclusion that each of these children's welfare needs are met by the court making a care order endorsing the plan for the children to remain placed with their current carer. I will hear submissions on the precise level of contact, whether an order is required and the terms of the care plan.

Annex A

Background from judgment dated 30 January 2020

1. The parents have been together for a number of years. From the matters that have been agreed between the parties it is clear they have lived a transient lifestyle for some time, in particular following their eviction from their home in August 2017.
2. Prior to that there had been previous referrals to the local authority around such matters as the lack of consistent attendance at appointments for speech and language therapy, the children's poor school attendance and concern about their low weights.
3. An initial child protection conference took place in 2011 on the grounds of neglect. Social work support continued in 2012 and the category in the child protection plan was extended to include emotional abuse. In late 2012 the family moved to another area and the child protection plan was transferred to that local authority, which concluded the children should remain under a child protection plan under the category of neglect.
4. This was continued in 2013, with concerns being raised about allegations by one of the children about the parents' behaviour towards him (including taping his mouth), which the parents denied. In January 2014 despite continuing concern about the children's school attendance and at appointments with professionals the decision was taken to change the structure to a child in need plan, with the parents agreeing to work with professionals.
5. In July 2016 there was a referral to the Family Service with home visits being undertaken by a family support worker in July and August. After that there was no engagement by the family with the Service and they closed the case in October 2016.
6. During 2017 there were several referrals to the local authority raising concerns regarding the welfare of the children. These referrals did not result in any further action being taken by the local authority. During a visit by the health visitor in June 2017 the parents said they did not need support.
7. In August 2017 the mother and children were evicted from their property with rent arrears of over £6,700. The family were placed in temporary accommodation in in another area by the local authority, whilst further investigations were completed. In November 2017 the mother was informed that she had made herself intentionally homeless and that she would need to vacate the temporary accommodation by November 2017. In fact, they didn't leave that property until February 2018. During this period the children's school attendance was erratic, in part caused by the long journey from the temporary accommodation although the school sought to liaise with the parents.

8. In early March 2018 the mother and children moved to the family property of the friend of the mother's called, G. She lived there with her sister, F, and their two children, XA and E respectively. The property was owned by G's parents, who also lived there. The parents each had significant health and care needs, which were provided for by G and F, and the wider family. The mother had known G for a number of years as they had previously worked together and had remained in touch. G had initially agreed for just the mother and the three girls to stay there but in fact did not prevent A staying as well. G thought it was only for a few days, in fact they stayed about three months until early June. The mother and children slept in E's bedroom on the second floor of the property, where they shared two single beds
9. G and F had bedrooms in the basement, on the ground floor there was a sitting room, bathroom, separate toilet and G's father's bedroom. On the first-floor landing there is a kitchen and on the first floor a dining room and two bedrooms occupied by XA and G's mother respectively.
10. The father stayed in another part of the city between two addresses he was able to stay at. Initially there was some uncertainty (due to the inconsistent accounts given by the parents) about whether the father stayed over at the mother's address and/or whether the children divided their time between the father and the mother's addresses. As the evidence unfolded it became clear that between March and June the children were based with their mother at her address, with the father visiting regularly, either to take them to school or to spend time at the home. According to G at the start he would move around the home until she asked him to limit himself to remaining in the sitting room, which he did. Also, the evidence points towards the visits becoming less frequent over time. During this time inconsistent information is recorded as being given by the parents to the professionals, for example to the school on 28 March the parents state they are staying at a friends' address. There remained concern about the children's poor school attendance and in April 2018 the family were allocated a family support worker, Ms W.
11. At a meeting with the school on 9 May 2018 the father is recorded as informing the school that he will need to ask the mother for the details of the address where the children are living. The following day he is recorded as informing the school that his address should be used on any referral to social services.
12. On 11 May 2018 there is a record of the father informing Ms W that the children were living between two addresses, his and the mothers. In his oral evidence the father sought to explain away these accounts by saying that he was describing what arrangements the parents were hoping to make for the children.
13. On 15 May 2018 the mother noticed a discharge in D's underwear and described her as itching and being uncomfortable. She said she told the father on the same day. When he visited later, he looked at D and said the position should be monitored. It did not improve, and the parents agreed the father would take D to the GP.
14. On 17 May 2018 the father took D to the GP they were registered with near his address. He said he arranged to meet the mother after the GP visit so she could take D back to her address and informed her of the need to arrange a follow up appointment. Vulval swab and urine tests were taken. The urine sample was, in fact, insufficient for testing.

The father is recorded as informing the GP that the family are living with friends as they have been evicted from their home.

15. Gonorrhoea was grown on the vulval swab and the GP contacted on 21 May 2018. This results in a referral being made to Dr P, Safeguarding Lead at A Hospital and Children's Services, who in turn referred the matter to the police to try and establish where the children were living. On 21 May the mother failed to attend a pre-arranged appointment with Ms W and there was no record of the father having informed Ms W of the trip to see the GP.
16. On 23 May 2018 DS T contacted Dr L to ascertain the likely causes of transmission of gonorrhoea including non-sexual. In an email exchange she stated that whilst sexual transmission was the most common route, there had been an increasing number of cases resulting from overcrowded and unhygienic living conditions.
17. On 25 May 2018 the mother and D attend the GP when the mother was informed of the results of the test and that repeat swabs were required. The mother was recorded as responding that whilst she knew gonorrhoea was an STI she stated the children were living in shared accommodation with shared toilets with four other adults and on one occasion D used the seat before the mother had wiped it. Repeat urine, vulval, low vaginal rectal and throat swabs were taken from D by the GP, which were shown to be positive for gonorrhoea (save for the urine test which was insufficient). The physical examination of D showed some redness of the vulva and minor discharge. The mother was not willing to disclose the address she was staying at, saying it is her friend's home and she doesn't wish to disclose it. The mother gave a different address for correspondence. Urine testing of the mother was negative for gonorrhoea. The oral evidence was unclear as to what, if anything, the father knew of this appointment, although the school records indicate the father had taken the older children to and from school that week, so he would have collected the children from and returned them to the mother's address and seen the mother.
18. On 31 May 2018 the records show Dr P, safeguarding lead, contacted the father by telephone to inform him of the positive second tests for D and arrange for the other children to attend to be tested on 4 June. This step followed decisions made at a strategy meeting on the same day.
19. In her oral evidence the mother said she did not inform the father of the tests being positive for gonorrhoea prior to the father being informed of them by Dr P on 31 May 2018. Her reason for not doing so was that further testing was required. The father in his oral evidence said he had spoken to the mother after his telephone call from Dr P, although this was not referred to in his written statements. In his subsequent police interview in early June he stated he did not know about the children being infected with gonorrhoea until after their arrest on 4 June.
20. On 4 June 2018 the mother attended the GP surgery with all four children. Dr P was present. In her evidence she described the mother being about an hour and a half late for the appointment and the steps she took in speaking to the mother away from the children, speaking to the children on their own and informing the mother of the steps taken to inform the local authority. Throat and vulval swabs were taken from B and C, as well as urine tests. A gave a urine test and throat swab but refused genital swabs. B

and C were examined, both had some redness to the vulval area and B had a white discharge in the vulva. According to the mother in her oral evidence she noticed a discharge from B and C on 3 June and informed the father. This was not mentioned in written statements by the parents. The mother and children returned back very late that evening to the address she was staying at, when the mother was arrested on suspicion of sexual assault. The police established the address through surveillance. The father was also arrested on the same grounds and both parents were bailed to their respective addresses. The children were placed with foster carers, where they remain living. Both parents deny sexual assault and were interviewed by the police, each gave a prepared statement and thereafter gave no comment interviews. The mother returned back to the address she had been staying at for the next two weeks, then joined the father at the accommodation they now both reside at.

21. On 6 June 2018 the father was tested for gonorrhoea, the results on 8 June were negative.
22. The results of the tests from the three girls confirmed the presence of gonorrhoea on all sites tested. The tests for A were both negative.
23. The local authority issued care proceedings on 5 June 2018 and following the making of an emergency protection order on 7 June 2018, the children were made the subject of interim care orders on 13 June 2018.
24. On 13 June 2018 permission was given to instruct Dr Ghaly and on 30 August 2018 permission was given for a psychological assessment of the mother.
25. B, C and D were ABE interviewed on 25 July 2018 and A on 12 September, no allegation of sexual abuse was made by any of the children.
26. On 17 September 2018 the local authority contacted the police to ask what further investigations were being undertaken in respect of the residents at the address where the mother had been staying and to raise the unsatisfactory nature of the ABE interviews.
27. Two days later, on 19 September 2018, PC N attended the address where the mother had been staying at and spoke to F. From the description she gave PC N formed the view that there was little opportunity for someone to be alone with B, C and D as they were always either with their mother or playing with the neighbour's cat in the front garden. No police statements were taken from the occupants at that stage.
28. On 22 September 2018 contact was reinstated for the children with their parents, once every two weeks supervised.
29. A three-day fact finding took place before HHJ Meston Q.C. from 1 – 3 October 2018, with the judgment being given on 24 October. Findings were made that B, C and D had been sexually abused, and the father was placed in the pool of perpetrators. The judge concluded the mother did not fail to protect them.
30. On 14 December 2018 B, C and D underwent repeat urine testing to ensure treatment had been effective; all tests were negative.

31. On 28 February 2019 the father was granted leave to appeal. On the same day the police took a statement from G.
32. On 26 March 2019 the Court of Appeal allowed the appeal and remitted the matter for re-hearing.
33. Following that hearing the local authority sent a letter to each occupant of the address where the mother had been staying at to see if they could be a source of information.
34. The matter was listed before me on 4 April 2019 and I have dealt with the 16 direction hearings since then. I gave permission to the father to instruct a microbiologist, Dr Rothburn, and the mother to instruct Dr Castle as to whether the mother required an intermediary and fixed the fact-finding hearing in August.
35. On 17 April 2019 the mother issued an application to terminate the instruction of the Children's Guardian, which was refused on 10 May 2019.
36. On 10 May 2019 the court granted the application for an assessment by an independent social worker, Julia Hughes, and Dr Butler, child and adolescent psychiatrist. Dr Butler was replaced by Dr Helps, consultant psychologist, on 9 October 2019 to assess the parents and the children.
37. On 19 June 2019 an experts' meeting took place between Dr Ghaly and Dr Rothburn, chaired by the children's solicitor. A Schedule of Agreement was signed by them on 4 September 2019.
38. XA attended court on 5 July 2019 and the court was informed he had had gonorrhoea last in 2017 in accordance with an email from the sexual health centre where he was being treated. He was directed to file a statement answering specific questions set out in the 5 July order.
39. On 23 July 2019 the local authority informed XA of their intention to seek findings against him and he was invited to intervene in the proceedings. The order dated 25 July directed him to be an intervenor with the result that the hearing in August had to be adjourned until October.
40. On 26 July 2019 XA was arrested and interviewed by the police in respect of a recently made historical allegation by the complainant to a social worker. XA was interviewed by the police; he gave a no comment interview.
41. On 7 August 2019 an agreed list of documents was disclosed to the Metropolitan Police Service (MPS) from the family proceedings to assist them in their investigation of how the children became infected by gonorrhoea. The local authority was granted disclosure of information from another local authority and the MPS in relation to the recent historical allegation of sexual abuse against XA.
42. On 14 August 2019 at the LAC review A is reported to have informed the IRO, Ms J, that he wants his parents to divorce and for him and his sisters to live with his mother. When asked why, he said as his father used to 'whip' him with a wooden spoon on the

palm of his hand and make him face the wall for a long time. The parties in these proceedings were sent the statement from Ms D on 29 August.

43. On 16 August 2019 the complainant was video interviewed by the police, during which he alleged XA sexually abused him and that they would watch indecent material on XA's computer.
44. The complainant's mother provided a police statement on 5 September 2019 where she described an occasion when she visited the address where the mother was staying at, met the mother and asked her where the children were, and was informed they were in XA's room. She went in the room and saw B and C there. As a result of continuing disclosure delays and the likelihood that the girls were going to be further ABE interviewed the order dated 4 September adjourned the October hearing to December.
45. On 7 November 2019 a report by Ms O, intermediary, concluded XA required the assistance of an intermediary and a ground rules hearing took place on 14 November.
46. On 23 November 2019 B, C and A were ABE interviewed. An interview with D was planned but did not take place. None of the children said anything of significance although they referred to visiting XA's room and C referred to being scared by XA.
47. Although permission was given for a consultant paediatrician to report on three discrete matters, it transpired that was not possible in time for the hearing and the parties agreed the order could be discharged and the issues dealt with by evidence already available.
48. The hearing started on 10th December 2019 and was timetabled to conclude on 20 December. XA was due to give oral evidence on 16 December; he did not attend court that day. He attended the following day. The court was informed that XA had taken drugs over the weekend and his counsel and the intermediary did not consider he was in a condition where they could get instructions they could rely upon and he was not in a position to give oral evidence. That position remained the following day (18 December) and they raised concerns as to whether XA had capacity and sought an assessment by Dr McClintock. After evidence was given by the social worker and foster carer (about matters that did not impact on XA), it became clear the hearing could not proceed and directions were made to complete the evidence in the four days from 21 January 2020.
49. Dr McClintock provided a certificate stating he considered XA had capacity and provided a fuller assessment in his subsequent report.
50. XA gave evidence on 21 and 22 January 2020, followed by the parents. The evidence concluded on 24 January. Directions were made for written closing submissions and the judgment hand down was fixed for 30 January. Further disclosure was sought from the sexual health clinic on the 24th January 2020 to clarify an outstanding issue and a further hearing was reserved on the 28th January 2020 if any party wished to ask further questions of the Intervenor, but in the event the other parties indicated on the morning of the 28th January 2020 that such a further hearing was not needed.

Annex B

Findings made on 30 January 2020

THRESHOLD FINDINGS

Agreed Findings

- 1 **The parents have failed to consistently meet the children's medical, health and educational needs and their engagement with professionals in meeting those needs has been variable and inconsistent.**

Particulars

- 1.1 From 23 September 2011 to December 2012, the three older children were subject to Child Protection Plans to the Local Authority A, under the category of neglect (emotional abuse added on 21 May 2012 [H18]).
- 1.2 The family moved on the 9 November 2012 and the case transferred to Local Authority B with the children remaining subject to Child Protection Plans until 1st October 2014
- 1.3 The reasons for CP registration were the children's non- attendance at medical appointments, A's poor school attendance, children being below average weight, and the parents' failure to follow professional advice and effect changes to their parenting despite intensive support.

(i) In the 2017/18 school year, B's and C's attendance at their primary School fell substantially because of the family's housing situation which included being evicted on 8th August 2017 due to financial difficulties and subsequently being placed in temporary accommodation in another area.

(ii) A and C's chronic asthma also impacted on their attendance at school.

(iii) Whilst the family were living in another area in Feb-March 2018 the parents failed to make adequate arrangements for the children to attend school.

(iv) Between 16th April 2018 and 11th May 2018 B and C missed 2 days of school each week.

- 1.4 A, C and D suffer from asthma and food allergies; the combination of which significantly increases the risk of a severe asthma attack [L77] and were being treated at an Allergy Clinic. C also suffers with eczema. The parents have been inconsistent in attending appointments and attending on time.

2. **The parents have struggled to work openly with professionals.**

Particulars

- 2.1 In the case of the father due to his reluctance to discuss sensitive matters outside the immediate family. The mother's own experiences in care have led her to find it difficult to trust social care professionals. The parents have disengaged with services.

Findings made by the Court

3. The children, C, B and D were infected with Neisseria gonorrhoea, isolated from the vulva, low vagina and throat.
 - 3.1 D tested positive from the vulval swab taken on 17 May 2018 and in relation to the rectal and throat swabs taken on 25 May 2018.
 - 3.2 Both B and C tested positive in relation to throat, vulval, lower vaginal and urine samples taken on 4 June 2018. A's throat and urine samples taken on 4 June 2018 tested negative.
4. C, B and D were infected with Neisseria gonorrhoea at some time from early March 2018 to mid-May 2018 whilst residing at an address with the mother.
5. The mode of transmission of C, B and D's infection is more likely than not sexual.
6. XA was infectious at the time of the family's stay in the address and, after 10 April 2018, he knew about this and failed to take steps to be treated
7. XA had the opportunity to infect the girls with gonorrhoea; they were regular visitors to his bedroom, the door would be closed, and there was little by way of monitoring of the girls when they were inside
8. XA has sought to mislead and conceal that he was infectious with gonorrhoea when the girls were living in the same house as him
9. On the balance of probabilities, XA infected the three children with gonorrhoea.
10. The mother was untruthful in her initial accounts about her supervision of the children during the relevant time.
11. The father has not been truthful and has provided inconsistent accounts, including to professionals, about the care arrangements for the children and his own living arrangements from 24 March to 5 June 2018 and sought to minimise his attendance at the address where the mother was staying.
12. The mother has not been truthful about the care arrangements for the children and the extent of her supervision of them when they were residing at the address she and the children stayed at.
13. The mother has failed to provide any reasonable explanation for how the three children became infected.
14. In failing to inform professionals as to the extent of XA's contact with the children the mother has hindered and delayed the investigation into how and by whom the children came to be infected.
15. The parents hindered and obstructed the investigation by failing to give reliable information about the children's address.

- 16 The father has physically chastised A by ‘whipping’ him on the palm of his hand with a wooden spoon on numerous occasions and making A face the wall for a long time. The father accepts he developed the strategy of making A stand by the wall until he agreed to behave.
17. The mother has failed to prevent the father from mistreating A and has thereby failed to protect A from emotional and physical harm.