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THE FAMILY COURT AT OXFORD

CASE NO: OX18C00155

IN THE MATTER OF s31 CHILDREN ACT 1989

Date: 11<sup>th</sup> June 2019

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

and

**MZ**

**First Respondent**

and

**FZ**

**Second Respondent**

and

**AZ, BZ, CZ, DZ**

**(Acting through their Children's Guardian)**

**Third to Sixth Respondents**

Vicky Reynolds, instructed by Oxfordshire County Council  
Bhanya Rawal, trainee solicitor of SMQ solicitors for the First Respondent mother  
Stephen Crispin, instructed by Johnson & Gaunt, solicitors for the Second Respondent father  
Michael Trueman of Trueman's solicitors, for the children's guardian  
Alexandra Davey, instructed by Rotherham Metropolitan Borough Council

Hearing dates: 15<sup>th</sup> and 16<sup>th</sup> May 2019

**JUDGMENT**

1. I am concerned with four children; AZ (10), BZ (8), CZ (5) and DZ (2).
2. Their parents were in a relationship for twelve years, from around 2005 to 2017. After their eldest son was born in 2008, the mother worked in the home to care for him and then for their subsequent children, and the father went out to work in the construction industry. Each of the parents has said the other was a good parent, and for many years they had a happy family life.
3. The mother has experienced some mental health issues, and from around 2014 family life became more difficult. The parents' relationship was sometimes turbulent and the family moved a number of times. When AZ was born they were living in Bristol, they then moved to Oxfordshire, close to the mother's parents. In July 2015 they were evicted from their home in Oxfordshire and moved to Rotherham, to be close to the father's mother and step-father. DZ, their youngest child, was born a year later. Following the breakdown of the parents' relationship in May 2017, the mother moved back to Oxfordshire, with all four children. They moved in to the maternal grandparents' home, which became very overcrowded.
4. At this time the mother was self-medicating by misusing drugs and alcohol and she was struggling to manage her anger. Her behaviour was often unpredictable, challenging and sometimes she was violent towards her parents. She was unable to manage the children's needs, and prioritised relationships with risky individuals before family life, which became chaotic, unsettling and very difficult for the children. They saw little of their father during this time, as he remained in Rotherham, and there were some difficulties around contact. On 12<sup>th</sup> August 2018 the mother gave her consent for the children to be accommodated with her parents pursuant to section 20 of the Children Act 1989.
5. Concerns about the mother's presentation and her care of the children continued, and on 20<sup>th</sup> November 2018 Oxfordshire County Council issued these proceedings.
6. Interim care orders were made on 4<sup>th</sup> December 2018, the children remained living with their maternal grandparents.
7. On or around 21<sup>st</sup> December 2018 the mother was violently assaulted by a male acquaintance, allegedly using a hammer. She fled Oxfordshire to [*name of county redacted*]. She has evidently had an extremely difficult time since then. She has not seen her children. She has continued to suffer with significant mental health issues, but has not been able to access treatment locally as she has struggled to get her records transferred from Oxfordshire. She has not engaged with assessments nor attempts by social workers and other professionals to contact her within these proceedings. Happily, she did attend the final hearing and arrangements were made for her to see her children and for further visits to be planned. She had travelled a long way to come to the hearing. Even though she was very fearful of coming back to Oxfordshire, she showed great courage in putting her children's interests before her own anxieties, and showing her commitment to them by making the journey to Court.
8. The maternal grandparents were assessed as long-term carers for the children. While their close relationship with their grandchildren was acknowledged, the overall assessment was negative, and they have not sought to challenge that assessment.

9. The paternal grandfather RZ and his wife SZ had a viability assessment. They have an established loving relationship with their grandchildren, but prefer to maintain that relationship as it is, rather than being considered as potential primary carers.
10. Following the negative assessment of the maternal grandparents, the father asked if the children could move to his care. Following relevant assessments on 16<sup>th</sup> February 2019, by mutual agreement, the children moved to live with him, the paternal grandmother PGM, and her husband, at their home in Rotherham.
11. PGM and her husband were positively assessed. The children have remained in their care, their father also living in the house, since February. The disruptions of the last couple of years have taken their toll, and the children are missing their mother, and anxious about their own futures, but in general they are doing extremely well. AZ and BZ are going to the school they attended before moving down to Oxfordshire, and CZ has also joined reception class there. They are well supported, and well-settled in the care of their father and grandparents.
12. The local authority's final care plan is for the children to remain in the joint care of their grandparents and father, but with a view to them moving to live with their father once he is able to obtain accommodation of his own, and is in a position to take on full responsibility for the children. The local authority invites the Court to make full care orders to enable the family to be supported in this process.
13. The parents agree, and the Guardian does not oppose, the Local Authority's final care plans.
14. As the children now live in Rotherham, Oxfordshire County Council (hereafter referred to as Oxfordshire) invites the Court to find that Rotherham Metropolitan Borough Council (hereafter referred to as Rotherham) is the designated local authority and should take carriage of the care orders.
15. The issue in dispute is whether Oxfordshire or Rotherham should be the designated local authority.
16. On behalf of Rotherham, Miss Davey submits:
  - (i) Although the children are currently ordinarily resident in Rotherham, for the purposes of determining designation, the Court must disregard any period where the children have been provided with accommodation by a local authority. The children were accommodated with relatives first subject to section 20 and then pursuant to interim care orders, i.e. they were at all these times being provided with accommodation by the local authority. The last place the children were ordinarily resident before they were accommodated by the local authority was Oxfordshire, and therefore Oxfordshire should be the designated local authority;
  - (ii) If, contrary to her submissions, I find that Rotherham should be the designated local authority, she invites me to postpone making any care orders in order that Rotherham may have the opportunity to carry out its own assessments of the family and to design its own care plan, alternatively take other steps as it considers would best meet the welfare of the children.
17. Miss Reynolds submits that by virtue of section 22C of the Children Act 1989 (replacing section 23 of the Children Act 1989) the 'disregard', or 'stop-the-clock' approach, does not

apply when children are placed with a parent, as she submits has been the case since February 2019, when these children moved to live with their father and grandparents under one roof. In those circumstances, the children's home with their paternal family in Rotherham is counted for the purposes of determining ordinary residence.

18. If I do not accept that position, then she says that the circumstances of this case are exceptional and I should make Rotherham the designated authority in any event.
19. Save for expressing some regret that this issue has had to be determined at all, the parents and the guardian are neutral on the question of which local authority should have carriage of the care order. From both a practical and a welfare perspective, the guardian's view is that it would be better for the children if social workers in Rotherham had responsibility for putting the care order into effect, but makes no submissions as to the legal position.
20. I have read all the documents in the bundle which include the assessments of family members, statements filed by all parties, psychiatric assessment of mother, guardian's analysis documents and care plans. In respect of the designation issue I have read skeleton arguments filed by Miss Reynolds and Miss Davey and read the authorities upon which they rely.

## The law

### Applications for care orders

21. I must first consider whether the threshold for making any orders as set out at section 31 of the Children Act 1989 is crossed.
22. If so, I must consider what, if any, orders should be made, having regard to all the circumstances of the case and with particular reference to the factors set out at section 1(3) of the Children Act 1989.
23. I should not make any orders unless I am satisfied that doing so would be better for the children than not. Any order I do make should be proportionate; I should not make an order that enables the state to interfere in the children's and their families lives more than is necessary to safeguard the children's welfare.

### Designation of local authority

24. Section 31(8) of the Children Act 1989 states:

*“The local authority designated in a care order must be –*

*(a) the authority within whose area the child is ordinarily resident; or*

*(b) where the child does not reside in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the order is being made.”*

25. Section 105(6) of the Children Act 1989 provides that:

*“In determining the ‘ordinary residence’ of a child for any purpose of this Act, there shall be disregarded any period in which he lives in any place—*

*(a) which is a school or other institution;*

- (b) *in accordance with the requirements of a supervision order under this Act*  
(ba) *in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; or*  
(c) ***while he is being provided with accommodation by or on behalf of a local authority.***”

26. Those parts of the sections with which I am concerned are highlighted in bold. The questions to determine in this case are:

- (i) In determining the children’s ordinary residence in accordance with section 31(8), how does the section 105(6)(c) disregard period operate?
- (ii) More particularly, in what circumstances is a local authority to be regarded as providing the children with accommodation within the meaning of section 105(6), therefore triggering the disregard period?

27. I have been referred to a number of authorities which consider the interplay between sections 31(8), 105(6) of the Children Act 1989, all of which I have read and considered in preparation of this judgment:

*Re C (care order: appropriate local authority)* [1997] 1 FLR 544  
*Northampton County Council v Islington Council* [1999] 2 FLR 881;  
*Re H (Care Order: Appropriate Local Authority)* [2003] EWCA Civ 1629;  
*London Borough of Redbridge v Newport City Council* [2003] EWHC 2967 (Fam);  
*On the application of SA (a child) v A local authority* [2011] EWCA Civ 1303;  
*Sheffield county Council v Bradford Metropolitan Borough Council* 22<sup>nd</sup> June 2012;  
*W (A Child) (Designation of Local Authority)* [2016] EWCA Civ 366;  
*Re H (care order: designated local authority)* [2016] EWFC 39;  
*In the matter of C (children)* [2018] EWCA Civ 900

#### Analysis of case law re designation of a local authority

#### How does the disregard period operate?

28. The leading case is *Northampton County Council v Islington Council* [1999] 2 FLR 881.

29. Thorpe LJ reviewed previous cases, setting out competing interpretations of section 105(6), and ultimately reasoned in favour of the approach put forward by Bracewell J:

*‘I am convinced that section 31(8) was never intended to be a gateway to the extensive judicial investigation of a number of relevant facts and circumstances as the prelude to the exercise of some discretionary choice. It was surely intended to be a simple test to enable the court to make a rapid designation of the authority upon which is to fall the administrative, professional and financial responsibility for implementing the care order and the care plan. Where the child has connections with more than one area ordinary residence determines on the basis that almost every child will have an ordinary residence, if not a presence in some local authority area. In the rare case where a child lacks an ordinary residence in a local authority area the court designates the area in which occurred the events that carried the application over the section 31 threshold.*

*On that approach I lean towards Bracewell J's inclination to hold that the area of ordinary residence immediately prior to the commencement of the stay to be disregarded should be notionally extended throughout that stay. I would not say that the developments affecting the family during the period to be disregarded cannot in any case be considered. But I would say that such cases should be exceptional.'*

30. This case is authority therefore for the proposition that a child's area of ordinary residence immediately before the period to be disregarded is notionally extended throughout that period. The decision is determined on the facts, this is not a case where the judge exercises discretion having regard to welfare considerations. In an exceptional case there may be reasons to depart from that approach, although the particular circumstances which might make a case exceptional were not identified. So in general terms, if a child is living in one area when proceedings are issued but is then placed in foster care or a residential placement in another area, the disregard period would be triggered and the child would be regarded as retaining ordinary residence in the first area.
31. The next question is to consider whether the local authority is to be regarded as providing accommodation to children, when, like the children in this case, they are placed with a parent or relative.

When is a local authority providing accommodation to children within the meaning of section 105(6)(c)?

32. In *Re C (care order: appropriate local authority)* [1997] 1 FLR 544, an issue arose as to designation, and in particular the correct interpretation of section 23 of the Children Act 1989. Section 23(2) provided for the manner in which a local authority 'shall provide accommodation and maintenance, including placing a child with a relative.' Section 23(6) provided that any local authority looking after a child '*shall make arrangements for him to live with .. a relative, friend or other person connected with him, unless that would not be reasonably practicable or consistent with his welfare.*'
33. In that case, a local authority had 'allowed' the child to live with its mother in a second local authority's area. Wall J held a child who was living with his parents was not accommodated by the local authority within the meaning of section 23, and therefore this period did not fall to be disregarded, i.e. the clock had not stopped and the child had acquired ordinary residence in the second local authority.
34. *Re C* was cited with approval by Thorpe LJ in the case of *Re H* [2003] EWCA Civ 1629. In that case a child had moved from Oxfordshire to Norfolk to live with his aunt and uncle. The first instance judge found that the period in Norfolk should be disregarded because the child was being provided accommodation by the local authority. However, the judge found that exceptional circumstances applied so as to justify Norfolk being the designated local authority. Thorpe LJ rejected the judge's finding that there were exceptional circumstances. However, he found that by virtue of section 23(6), the local authority had only been 'making arrangements' for the child to be placed with his aunt and uncle, and was not to be regarded as 'providing accommodation' for him. Therefore the disregard provision did not apply, and the child had become ordinarily resident in Norfolk at the time the care orders were made.

35. In *London Borough of Redbridge v Newport City Council* [2003] EWHC 2967 (Fam), David Hershman QC sitting as a judge of the High Court, summarised what by then seemed to be an established approach to these cases:
- Ordinary residence is determined at the time of the hearing, but the Court must disregard any period where the child was provided with accommodation by the local authority;
  - however, the ‘stop-the-clock’ approach does not apply when the child is living with a parent or relative, friend or other person connected with him, because the child is not being provided with accommodation by or on behalf of a local authority within the meaning of section 105(6);
  - If there are exceptional circumstances, that may justify the Court deciding to disapply the disregard approach and keep the clock running. Moving to a new area and cutting all ties with the first area is unlikely to be regarded as exceptional;
  - If after this analysis the conclusion is that the child is not ordinarily resident in any area, then the Court must determine the designated authority in accordance with section 31(8)(b) by identifying the circumstances that arose which eventually led to the order being made.
36. Subsequently, the decisions in the cases of *Re C* and *Re H* were doubted by Ward LJ, in *SA (a child) v A local authority* [2011] EWCA Civ 1303. Those were proceedings brought on behalf of a grandmother who was looking after her granddaughter with the agreement of the local authority. The issue was whether her granddaughter should properly be regarded as a looked after child, thus entitling her grandmother to a fostering allowance of £146 a week, or whether this was a private family arrangement, pursuant to which the local authority paid her an allowance of £63 a week. To answer this question, the Court had to consider whether the local authority was providing accommodation to the child, pursuant to section 23(2) of the Children Act 1989, or whether it had made arrangements for a family or other placement, pursuant to section 23(6).
37. At first instance, Black J (as she then was) considered that whether pursuant to section 23(2) or section 23(6), a local authority should still be regarded as providing accommodation within the meaning of s105(6). However, she directed herself that she was bound by the earlier cases of *Re C* and *Re H*, which made a distinction for the section 23(6) cases. She dismissed the grandmother’s application, but gave permission to appeal.
38. In his judgment Ward LJ agreed with Black J’s analysis. His starting point was that the child concerned was a ‘child in need’ within the meaning of section 20 of the Act, because her parents could not provide her with suitable accommodation, and therefore that the local authority was obliged to provide her with accommodation pursuant to section 20(1).
39. Section 23 as it was then drafted set out how the local authority should go about fulfilling that duty, namely by striving to keep the child in her family rather than placing her with strangers. However, Ward LJ, was clear that even if a local authority ‘made arrangements’ to place a child with a family member, this was just one means of providing accommodation:

*'Looking at the operation of section 23, subsection (1) deals with the local authority's duty to children they are looking after. If the child is in care, he is a looked after child by virtue of section 23(1)(a) and as a child in care he must be provided with accommodation: section 23(1)(a). Subsection (2) deals with other children being looked after, not being children in care under a care order, often called children 'in voluntary care'. Section 23(2) provides that the local authority shall (not may as in section 17(6)) "provide accommodation" (and let us not forget it, maintenance as well) in three specified ways:*

*"(a) placing him" with a category of persons;*

*"(aa) maintaining him" in a children's home, and*

*"(f) making other arrangements" as seem appropriate.*

*Thus making arrangements under subsection (6) is as much a means of providing accommodation as is placement under subsection (2)(a).*

40. Ward LJ concluded that his own view is that sections 23(2) and 23(6) prescribe *'the preferred batting order'* in deciding where the child is to live – parent, person with parental responsibility, relative, friend, other person connected with the child, then some other family, a children's home, some other arrangement. However, he was clear that a local authority who has made arrangements for a child to be placed in any of these situations has done so in exercise of its duty to provide accommodation for the child. The child remains looked after by the local authority and, relevant to the circumstances of that case, the local authority ought to maintain her.
41. Ward LJ disagreed with Wall J's conclusions in the earlier Court of Appeal case of *Re C (care order: appropriate local authority)* [1997] 1 FLR 544, that a distinction should be made between the language of 'living with' at section 23(5) and 23(6) and the term 'provide accommodation' elsewhere, i.e. that children placed with relatives were not to be regarded as looked after children, and not children for whom the local authority had provided accommodation.
42. Ward LJ also disagreed with the analysis of Thorpe LJ in *Re H (Care Order: Appropriate Local Authority)* [2003] EWCA Civ 1629 for the same reasons. Ward LJ said:

*'Making arrangements to enable the child to live with the grandparents under subsection (6) must be a way of fulfilling that duty to children whilst in care. Arrangements under subsection (6) must be a means of providing accommodation. But, whatever I may think, if I am bound by In re H, then I must give in gracefully.'*
43. Notwithstanding that Ward LJ agreed with Black J's analysis, he held that she had correctly directed herself that the judgment in *Re H* was binding upon her. The appeal was dismissed. Ward LJ's colleagues Lord Justice Rimer and Lord Justice Sedley expressed support for his views, but also considered that the ratio of *Re H* was binding.
44. The Children and Young Persons Act 2008 amended the Children Act 1989. Section 23 was repealed and replaced with new sections 22A to G, which came into force from 1<sup>st</sup> April 2011. New section 22A provides that *'when a child is in the care of a local authority, it is their duty to provide the child with accommodation.'* Section 22C sets out the ways in which



children who are being ‘looked after’ are to be accommodated, setting out ‘the batting order’. By s22C(2) and (3) the local authority must make arrangements for the child to live with a person who is either a parent of the child, or who has parental responsibility for the child, or was the holder of a residence order before the care order was made. That duty does not apply if it would not be consistent with the child’s welfare or not reasonably practicable to do so (s22C(4)). If a local authority is unable to make arrangements for the child to live with a parent/someone with parental responsibility etc. (s22C(5)), then it ‘*must place the child in the placement which is in their opinion the most appropriate placement available.*’ Section 22(6) defines such a ‘placement’ as:

*‘.. (a) placement with an individual who is a relative, friend or other person connected with the child and who is also a local authority foster parent; or  
(b) placement with a local authority foster parent who does not fall within (a); [or]  
(c) placement in a children’s home ... [or]  
(d) .. placement in accordance with [certain other arrangements]’.*

45. Section 22C(7) provides that preference between these options is to be given to a placement with a relative, friend or other person connected with the child who is a local authority foster parent.

46. The first case to consider section 22C was *Sheffield county Council v Bradford Metropolitan Borough Council* 22<sup>nd</sup> June 2012, a judgment of Bodey J. At the time the proceedings concluded, the child was living with his aunt in Sheffield, but at the time proceedings started, he had been living with his mother in Bradford. It was Bradford MBC who issued proceedings. There was an issue about the circumstances in which he went to move with his aunt and the status of that placement.

47. Mr Justice Bodey summarised the Court of Appeal ratio in *Re H*, but then went on to say:

*‘With the repeal of s23 and with the new and different layout of the statutory duties under s22C, the approach adopted in Re H [2004] 1 FLR 534 is in my judgment no longer applicable. This is because the concept of ‘making arrangements to live with’ now only applies to a child living with a parent (as defined by me above). Arrangements made for a child to live with a relative are now specifically referred to as ‘a placement’, which must amount to the provision of accommodation by the local authority for the purposes of s105(6). Thus, placement with a relative is now caught by s 105(6) (which it did not used to be, by virtue of the case law based on s 23) with the result that the ‘disregard’ has to be applied. The fact that the analysis in the Re H [2004] 1 FLR 534 line of authorities was itself criticised in later cases, notably in R (SA) v Kent County Council [2011] EWCA Civ 1303 (CA) has become irrelevant as regards cases governed by the new law, by reason of the repeal of s23.’*

48. *W (A Child) (Designation of Local Authority)* [2016] EWCA Civ 366 is also known as *Medway Council v Kent County Council, Dorset County Council and others*. The child, W, was born in Portsmouth where her mother was undergoing detoxification treatment arranged for her by a drug and alcohol treatment service based in Dorset. Upon her discharge from hospital she went with her mother to the mother’s grandparents in Kent for a couple of weeks and then to a mother and baby placement in East Sussex.

49. Lord Justice Ryder delivered the judgment of the Court of Appeal. The judgment is short on legal analysis because, as he records, there was no issue between the local authorities

concerned as to how a decision about designation should be made, and that the approach in *Northampton County Council v Islington Council* [1999] 2 FLR 881 should be followed i.e. that the courts should construe sections 31(8) and 105(6) to provide a simple mechanism for designation. The court should carry out ‘*a rapid and not over sophisticated review of the history in order to make a purely factual determination of the child’s place of ordinary residence, or, if there was no place of ordinary residence, of the place where the case was carried over the section 31 threshold, and to designate a local authority accordingly.*’

50. In passing he noted and approved the judgment of Mr Justice Bodey in the *Sheffield* case where placement with a family member was found to be provision of accommodation by the local authority, but making arrangements to live with a parent would not be.
51. In *Re H (care order: designated local authority)* [2016] EWFC 39, HHJ Bellamy sitting as a High Court judge had to determine whether to make supervision orders or care orders, and whether designation should be to Coventry City Council or Leicester City Council. Pre-proceedings the family was living in Leicester and following the parents’ separation the local authority provided the mother and children with bed and breakfast accommodation, also in Leicester. Once interim care orders were made they went to live in Coventry for the purpose of a residential assessment. HHJ Bellamy concluded that care orders were necessary and proportionate to protect the children’s welfare. So far as designation was concerned, HHJ Bellamy referred to the same line of authority as that which I have set out above. He concluded that the children were ordinarily resident in Leicester, and that the clock stopped for the period that the children were in Coventry, clearly accommodated by the local authority. After they returned from the residential unit the children continued to be subject to interim care orders, living with their mother. Leicester local authority paid for their accommodation, and entered into a tenancy agreement on their behalf. Although their accommodation was in Coventry, and they were living with their mother, HHJ Bellamy found on the facts that they had nonetheless been placed there by the local authority, saying, ‘*this family has lived where the local authority has decided that they should live.*’ He concluded therefore that the s105(6) disregard continued to apply, the children’s ordinary residence remained in Leicester, and Leicester was the designated local authority.
52. Having had regard to all these authorities, it is clear that the cases of *Re C* and *Re H* are no longer binding, and I should follow the approach of Bodey J in the *Sheffield* case. A local authority whose responsibility to provide accommodation for a child has been triggered is to be regarded as providing accommodation for that child when it places him or her with relatives. The disregard provision applies. If a local authority has made arrangements for the child to live with a parent, within the meaning of section 22C, then the disregard provision does not apply.
53. For completeness, the final case to which I was referred was the Court of Appeal case of *Re C* [2018] EWCA Civ 900. The case concerned a question about whether a supervision order triggered the section 105(6) disregard provision, but by the time of the appeal, all parties agreed it did not. Proceedings were started when the children were living with their father

in Dorset pursuant to a child arrangements order with a supervision order in place. The proceedings concluded with the children in long-term foster care in the Wakefield area, relatively close to their maternal family. In those circumstances, the children's ordinary residence before they came into the care of the local authority was in Dorset, and the clock stopped once interim care orders were made to Dorset, even after the children had been placed in foster care in Wakefield.

### Issues for the Court to determine

54. The children with whom I am concerned were ordinarily resident in Oxfordshire immediately before interim care orders were made. I have to decide whether:

- (i) the time they have spent in Rotherham with their father and paternal grandparents is regarded as time that arrangements were made for them to live with their father within the meaning of section 22C(2), and therefore not being provided with accommodation by the local authority. In that case the disregard period does not apply and they have acquired ordinary residence in Rotherham; or whether
- (ii) they have been placed with relatives, or otherwise been provided with accommodation by the local authority. If so, then the disregard provision applies, the clock stopped at a time when they were living in Oxfordshire, and Oxfordshire remains the designated local authority.

55. This question is to be determined as a finding of fact, having regard to all the evidence.

56. If I find that the disregard provision applies, Miss Reynolds invites me to consider whether the circumstances of this case are so exceptional as to demand that I find that Rotherham should be the designated authority in any event.

### Conclusions

#### Care orders

57. There is no dispute that the threshold for making care orders is crossed. The agreed final threshold document is annexed to this judgment.

58. I have read all the evidence in the bundle which includes the parenting assessments of grandparents and the father, and statements from the children's social worker and the children's parents.

59. Considering first the **ascertainable wishes and feelings of the children**. The younger two children are too young to express their wishes and feelings but are settled and relaxed in their father and grandparents' care. The older two are also seen to share a loving and close relationship with their father and grandparents and are settling well into school. However, BZ and AZ have both felt stressed and anxious by the disruptions to their lives – moving to Oxfordshire, then living in very cramped conditions and exposed to their mother's unpredictable and angry behaviour, then relocating back to Rotherham. BZ, AZ and CZ have

all expressed some sadness and anger that their parents have separated and that they have not provided them with a home. While all the children have been seen to have a close and affectionate relationship with their father, BZ has said that she felt abandoned by him when they were in Oxfordshire and did not see him. She and AZ are both disappointed that he has not so far managed to find his own accommodation so that they could go and live with him as he has promised. At the moment the father generally works away from home during the week and comes to stay for weekends, when he shares a room with the two boys.

60. The **children's' physical, emotional and educational needs** are generally in line with other children of their age and stage of development. Following significant disruption in their lives they need an extended period of settled, consistent, loving and attentive parenting. They need to be supported in their education and social and emotional development. The older two children will be looking ahead to secondary school and will need to be given space to develop friendships and to have their own interests identified and supported through clubs and activities in and out of school. Both AZ and BZ have exhibited angry behaviour when feeling isolated at school, and need support to manage their emotions when under stress. BZ needs support with enuresis, again thought to be stress-related. However, it should be noted that when they are feeling safe and secure both children are noted to be polite and kind. CZ and DZ have some language delay but otherwise no particular additional needs.
61. The **likely effect of change of circumstances**. The children are doing well with their grandparents and father but a further change of circumstances is anticipated, when their father is able to obtain accommodation of his own and it is judged the right time to make a transition to his care. The sooner this can happen the better, to enable the children to feel secure and settled. However, it should not happen before the father is really ready to take on the role of primary carer, not just by finding accommodation but demonstrating he has made arrangements in respect of his working hours and pattern, and developed the skills and understanding that would enable him to parent all four children single-handedly full-time. The transition should not happen until there is real confidence that it will work, as it would be extremely difficult for these children to face further disruption and uncertainty around their living arrangements. They are fortunate however that there is a strong network of three sets of grandparents around them, and there is no doubt that each of them will continue to support these children whatever their situation.
62. There are no **additional relevant characteristics** of the children that I need to take into account.
63. Any **harm which the children have suffered or are at risk of suffering**. The children have suffered harm as a consequence of the care given to them by their mother from which their father was not able to protect them. They remain at risk in my judgment of further emotional harm if either they are not able to move into a home with their father, as they will feel let down and unsettled. They are at risk of emotional harm if the move happens but does not work out, although, as I have said, their grandparents will be on hand to provide support. They are suffering emotional harm from being separated from their mother and from the events which led to that separation. They will need to be able to process those experiences and they need to re-establish contact with their mother in a safe and secure way, so that they can be reassured that she is safe, and that she loves them and cares for them. Their father and grandparents will need support in promoting that relationship and facilitating contact. At the moment the children's father has said he wants to have no contact with her at all, but a way through this will need to be found.

64. **How capable each of their parents, or any other relevant person, is of meeting the children's needs.** The mother has prepared two statements in these proceedings. She gives an honest appraisal of her situation, and does not shy away from taking responsibility for the events that led to her being separated from her children. She emphasises that the children's father is a great dad, and, consistent with what he has said, that they had a good relationship and happy family life until around 2014 when her mental health issues and addictions caused arguments to increase and escalate. She makes clear in her statement that the father has never physically abused her. She explains how difficult she found it to move to her parents' home after the separation and then her difficulties only increased when she became involved in an abusive relationship with someone who encouraged her illegal drug misuse. Those difficulties compounded when she had to move out of her parents' home in May 2018 as part of the section 20 agreement, and became homeless. She is determined now to make positive changes in her life and is working hard to that end. She bravely accepts that she is not currently in a position to look after the children, but hopes to re-establish contact and to play an important part in their life in the future. I wish her well on her journey.
65. The parenting assessment of the father is very positive, describing the warm, calm, loving and attuned parenting that he shows to each of his children, responding to their individual personalities and needs. He has strong networks of family, friends and work colleagues, and is obviously loved and well-respected within those networks. He is judged as well able to meet all his children's physical, emotional and education needs. At the moment he works away for most of the week but returns to his parents' home at the weekends when he takes over sole responsibility for them. He took them away on a holiday over Easter. However, he has never cared for them as a sole parent for any significant period of time. There is some question over his level of insight into the risks posed to the children by their mother at the time of separation in May 2017. The father has said he firmly believed the children would be safe in her care. It is right to acknowledge that she says she experienced an increase in mental health difficulties only after she moved to Oxfordshire, and that the difficulties they experienced beforehand manifested as arguments between the two parents, which both might reasonably assume the children would be better protected from after separation. Nonetheless, the situation is complex, the father saw very little of his children at a time when they would have benefited from seeing him, and in the future he will need to work hard to maintain his relationship with the maternal side of the family so as to ensure that the children continue to have a relationship with their mother, but are also protected from risk of harm.
66. Lastly, considering **the range of powers available to the court**, and reminding myself that the Court should only make orders if the children's welfare requires it and that any intervention in their family life should be proportionate.
67. The realistic options in this case are child arrangements orders, child arrangements order with supervision orders, or care orders.
68. I have considered the risks and benefits of each of these options alongside one another.
69. I have confidence that the father and grandparents are well able to meet the children's needs in the current arrangement and that they will continue to provide the children's physical, emotional and educational needs and protect them from harm. However, a child arrangements order is one which describes the arrangements for the children, and the fact is that at the moment those arrangements are still in flux. The children are loved and well-cared for, and at a school where they are known and supported, but their situation could not be described as permanent; they are staying with their grandparents and the boys share their

room with their dad when he comes back at weekends. During the working week, it is their grandparents who take them to school, provide for all their needs and are on call, for example if one of their grandchildren is ill, or the school is closed for a snow-day. Their father is not yet in a position to take on all those responsibilities and to provide the further care his children need, supporting and helping them with the emotional issues that may arise during a school day and need to be talked through at home, support them with homework, arrange play-dates, take them to out of school clubs and activities.

70. A child arrangements order to the grandparents would be temporary and is not consistent with the wishes of the children, parents and grandparents themselves, that the children's primary carer should be their father, supported by PGM and her husband. A child arrangements order to the father would be premature at this stage because the children are not 'living with' him as their primary carer. 'Living with' child arrangements orders can of course be made to parents where their children spend only a minority of time in their care, but in my judgment a shared care arrangement between father and grandparents dividing up the children's time again does not match the reality of the situation.
71. Care orders last until the children are eighteen or discharged earlier. They represent a very significant intrusion into family life, the local authority continuing to share parental responsibility, regular social work visits and meetings to attend. These are very significant orders to make for children of this age, but I would expect the care plan to set out clearly the expectation that those orders would be discharged far sooner and I would expect the relevant local authority either to make the application for discharge itself, or to support the father making that application in due course.
72. Having regard to all the evidence in the case and the submissions I have heard, I am satisfied that in all the circumstances I should make care orders to the local authority. This family has been through a difficult period and continues to need the support, care and protection of a local authority. That help should be directed towards enabling the children make the transition to the full-time care of their father in a planned way, and to continue to support him as he takes on the role of single parent of four children all of whom have the need for consistent, attentive and attuned parenting. The children's mother needs continuing support to process and recover from the traumatic experiences of the past few years and the loss of her children, as well as receiving care and treatment for her ongoing mental health and substance addictions. She and the children need support to safely re-establish their relationship and to rebuild it on a secure and safe footing.
73. The children's father has many very positive qualities as a parent and a good network of support around him. Nevertheless, it is imperative that the transition to his care has the best chance of success so as to avoid the risk of further disruption or continuing instability for the children, and he and the children need more than just the support of family members to help. In the event that a move to the father is not successful or cannot take place for whatever reason, then the local authority will need to give thought to what is the best plan, for example special guardianship orders to grandparents. The current situation should not continue indefinitely.

#### Designation of local authority

74. The care orders are made to the local authority where the children are found to be ordinarily resident, but in coming to that assessment I must disregard any period during which the

children were accommodated by the local authority.

75. The children were living in Oxfordshire with their mother and maternal grandparents between May 2017 and August 2018, during which time they acquired ordinary residence.
76. Once the section 20 agreement came into play, the local authority was providing accommodation for the children, by following the instruction at 22C to place the children with relatives. Following the *Sheffield* case, the disregard provision is triggered and the clock stopped. The clock continued to be stopped when that placement shifted to being pursuant to care orders to Oxfordshire local authority, they continued to provide accommodation to the children at their maternal grandparents' home, albeit still in Oxfordshire.
77. The issue in the case is the status of the placement in Rotherham with father, PGM and her husband in February 2019.
78. Having regard to all the circumstances, I am satisfied that the children were placed with their grandparents in accordance with s22C(6) Children Act, and therefore have continued to have been provided with accommodation by Oxfordshire County Council within the meaning of section 105(6). The disregard provision continued to apply.
79. In particular, I have found the following matters of weight:
  - the children continued to be subject to interim care orders and the interim care plan was explicit that this was a placement with their grandparents with a view to making a transition to their father's care in due course;
  - the interim care plan provides that the grandparents will be responsible for the children's day to day care of the children, supported by the father 'when he is able to engage in activities';
  - this is the reality of the situation on the ground. The children are living with their grandparents, in their home, and their father is using their house as a base. He stays with them every weekend and when he can in the holidays. The father is looking after the children when he is there, but he is not the one directing or organising their day-to-day care. He is not doing their washing or ironing or the weekly shop, taking them to school, arranging out of school play dates and activities. It is not his permanent home; he is staying in his sons' bedroom when he is there;
  - the placement was put in place by the local authority, following assessments. The father had to seek the local authority's agreement before the transfer from Oxfordshire to Rotherham was made and it was not done so before assessments of both father and PGM and her husband had been carried out. They feature significantly as part of the network of support in father's assessment;
  - The descriptions of the placement within the assessments and social work statements are repeatedly of the children with their grandparents with a view to a transition to their father's care. It is not described as children placed with their father at grandparents' house;

- There is no question that the children would be able to move in with their father without local authority agreement, support and planning. They are where they are because the local authority has directed that they should be there.

80. The disregard period was triggered when the children were placed with relatives pursuant to section 20, and has continued through their placements under interim care orders with first maternal then paternal grandparents. The children's ordinary residence is therefore taken to be the place they were living before the disregard period started, which was Oxfordshire.

81. The care orders must be made to Oxfordshire.

82. I have sympathy with the local authority and guardian's view that on a welfare and practical level it would be far better for social workers local to the children to assist with housing, with finding parenting courses, arranging family group conferences, and other meetings for looked after children, facilitating contact and generally building relationships with the family. I accept that if this work is carried out by a social worker travelling two and a half hours from Oxfordshire for every visit that would represent a poor use of already stretched resource and a risk that the social worker would not be able to provide the same level of support that she would if she were closer.

83. I note that in some cases, for example the most recent Dorset/Wakefield one, the two competing local authorities came to an arrangement whereby Dorset (designated but not local) funded Wakefield (local but not designated) to carry out work on its behalf. It may be helpful if the parties in this case were able to explore the possibility of similar arrangements.

#### Exceptional circumstances

84. The facts of this case are markedly similar to the Oxfordshire/Norwich case. They are not markedly different from many of the other cases to which I have referred in which a family lived in one local authority then moved and settled in another, but, notwithstanding the absence of any continuing geographical, familial or other connection, the first local authority was found to retain responsibility for the care orders.

85. I am not satisfied that there is any basis for suggesting this case is so exceptional that I should exercise my discretion so as to disapply the disregard period and make an order to Rotherham.

#### Delay in the care order

86. Given that I have not designated Rotherham, then Miss Davey's argument does not arise, but I will deal with it briefly for completeness.

87. Had I designated Rotherham, I would not have delayed making the care orders in order to enable Rotherham to carry out its own assessments. The case law is clear that full and early liaison between authorities in dispute over designation should take place. If they are unable



to agree which should be the designated authority, the care plan should be prepared by both authorities, and both should be in a position to implement it at the final hearing *L v Bexley London Borough* [1997] 1 FCR 277.

88. In the circumstances of this case, Rotherham was given sufficient notice of the issue but chose not to be involved. The leading cases stress that local authorities must assume that all other local authorities are working equally well, and there is no basis for refusing to implement another's care plan in circumstances where opportunity to participate in the planning has been given.
89. For the reasons given, although I understand the reasons that Oxfordshire has been pressing for designation to Rotherham, I am satisfied that Oxfordshire remains the designated authority for carriage of each of the care orders that I make.
90. I approve the care plans in respect of each of the children and the proposals for contact therein.
91. Although these children have had a difficult time over the past few years, they are very much loved by their parents and wider family members. Before the recent difficulties, they have received from both parents good care during their childhoods, which has provided them with a solid foundation for the future. I am sure they and their parents are very grateful to the grandparents on both sides of the family for the love and support they have given these past couple of years, and will no doubt continue to give.
92. Although I am making care orders, I have confidence that they will not be required to be in place for a very long time and that these children will continue to receive consistent, loving and caring parenting. I wish the family well.

Joanna Vincent

Draft judgment sent to parties by email: 29<sup>th</sup> May 2019  
Judgment formally handed down in parties' absence (no amendments): 11<sup>th</sup> June 2019

HHJ Vincent  
Family Court, Oxford

Date: 11<sup>th</sup> June 2019

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**MZ**

**First Respondent**

**and**

**FZ**

**Second Respondent**

**and**

**AZ, BZ, CZ, DZ**

**(Acting through their Children's Guardian)**

**Third to Sixth Respondents**

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**FINAL THRESHOLD: 15.05.19**

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The parties agree and the Court finds that as of the relevant date when protective measures were instigated, the children were suffering and/or likely to suffer significant harm and that the harm or likelihood of harm was attributable to the care given to them if an Order were not made not being what it would be reasonable to expect a parent to give:-

Threshold is met as follows:

1. The children have witnessed verbal and physically abusive behaviour between their parents.
2. MZ's illegal drug and alcohol use led to her care of the children being chaotic and the children's needs not being met consistently.
3. MZ has been unable to maintain consistent engagement with mental health services which has further contributed to her chaotic lifestyle and unsafe relationships. She has been unable to maintain a tenancy or stable housing.

4. MZ was unable to support her parents in caring for the children and undermined the boundaries in place in their home.
5. MZ has been unable to maintain consistent contact to the children (although it is noted that she has been consistent with telephone contact over the past few weeks).
6. When the children were in Oxfordshire FZ found it difficult to commit to regular contact visits from his home in Rotherham.
7. FZ was not able to offer the children accommodation or a stable home when it was clear Mother's sole care of the children was not safe.
8. The children have additional needs as a result of the care they have received.

**15<sup>th</sup> May 2019**