OUTER HOUSE, COURT OF SESSION

[2021] CSOH 24

AD26/19 & AD27/19

OPINION OF LADY WISE

In the petitions of

CITY OF EDINBURGH COUNCIL

Petitioner

for

Permanence Orders under section 80 of the Adoption and Children (Scotland) Act 2007 in respect of the children AMDS and SDS

against

LL

Respondent

Petitioner: Inglis; City of Edinburgh Council
Respondent: Aitken; Lisa Rae & Co

5 March 2021

Introduction

[1] This is a single opinion in respect of two applications for permanence orders both at the incidence of the City of Edinburgh Council. The two children who are the subject of the proceedings, AMDS and SDS are both girls. I will give them fictitious names to help give them identities as individuals for the purpose of this opinion. The elder girl is 7½ years old and I will refer to her as Amy. The younger girl is 6½ years old and I will refer to her as Sarah. They are both children of the respondent to whom I will refer as either LL or the

respondent. I presided over a proof in this matter although unusually the principle of a permanence order being granted was not opposed. The issue of principle raised was whether or not, in the particular circumstances of these cases, the Compulsory Supervision Order ("CSO") in respect of each girl should be revoked as it normally is on the granting of a permanence order. There are also issues about how best to regularise the information to be given to the respondent in future as part of managing any future contact between her and the girls against a background of her mental health challenges.

Undisputed facts

[2] The parties lodged a detailed joint minute of admissions (number 106 of process) summarising the undisputed factual background. What follows is taken largely from that helpful agreement. Amy was born in April 2013 and Sarah in August 2014. The respondent is mother to both girls and her former partner was their father. He died in 2018. The respondent has a son by a previous relationship to whom I will refer as Simon. He was born in October 1998. Simon's father was a man to whom LL was married at the time. Simon was accommodated by the petitioner between 2006 and 2011 due to his parents' misuse of drugs. Both Simon's father and the girls' father died as a result of drug abuse. LL herself has reported beginning to take unprescribed drugs at the age of 14 years. Her relationship with Simon's father involved chaotic drug use, frequent separations and violence. In 2003 she sought social work support with Simon's alleged violent behaviour. Simon was subsequently accommodated by the petitioner with the approval of the children's hearing due to parental drug abuse, poor parenting, lack of stability and consistency and behavioural needs. After the death of her husband in 2010 LL began a relationship with the girls' father, PS, which was also characterised by drug abuse and allegations of domestic

violence. LL was referred to social work in November 2012 during her pregnancy with Amy. At the time of referral, she appeared to be consuming only methadone and diazepam prescribed to treat her drug addiction. By early 2013 she tested positive for heroin. Amy was born with Neonatal Abstinence Syndrome Score. She was discharged into LL's care with monitoring and support by a team working with drug using mothers. When Sarah was born, PS was present and he was registered as the father on her birth certificate.

[3] In July 2015 a social worker visited LL in response to concerns about PS's role with the children. LL denied that he was Sarah's father. On 26 January 2016 LL attended her general practitioner and alleged to him that Amy had been sexually assaulted by LL's own father. A medical examination was inconclusive. LL gave assurances that she would allow no further contact between Amy and her own father. When interviewed by the police on 24 July 2016 LL alleged that Amy's father (PS) had sexually assaulted Amy. On 3 August 2016 Amy was medically examined but the outcome of that examination did not support any allegation of sexual assault. Amy and Sarah's names were entered on the Child Protection Register in August 2016. In consequence of increasing concerns about LL's mental health a Child Protection Order was sought and obtained on 14 August 2016 and both girls were placed with foster carers. In December 2016 the children were removed from that placement because the carers could no longer manage their behaviour. A new placement was found. LL was admitted to hospital at 4.00am on 21 March 2017 with a suspected overdose. She claimed to have taken a friend's medication in error. On 30 March 2017 a toxicology screening of LL showed positive results for cocaine. LL refused to participate in any further tests until 7 November 2017.

[4] LL was assessed in or around May 2017 by a consultant psychiatrist who concluded that her behaviour was caused by drug abuse rather than a diagnosable mental health

condition. On 16 June 2017 a sheriff at Edinburgh having heard evidence found the grounds of referral established in respect of both girls. On 16 June 2017 LL contacted the Child Exploitation and Online Protection Command. She alleged that her phone was being hacked and she was being sent images of children being mutilated. A few days later she alleged to a worker that her children had been cloned and those who the local authority were saying were her children were not in fact hers. She repeated that she had been sent graphic images of child abuse which she claimed the police were not pursuing seriously. On 20 July 2017 LL attended a police station where she showed officers images of her children and alleged that their eye colour had been altered. She alleged also that she was being sent pictures of dead children.

[5] The children's hearing removed a requirement that LL's contact with her children be supervised in November 2017 so that an assessment could be made as to whether rehabilitation of mother and daughters was viable. The following day LL underwent a toxicology test which disclosed dihydrocodeine and cocaine as well as prescription medication. She was observed to be smelling of alcohol when attending the surgery. Later that month during a home visit the social worker, Maya Cronin, observed a pipe of the type used to smoke crack cocaine, a lighter and a razorblade all within reach of the children. LL claimed that these had been used by visitors after she had retired to bed. A subsequent toxicology analysis was positive only for prescription medication. In December 2017 Maya Cronin and the girls' foster carer discussed a planned rehabilitation of the children with LL. Later that month Amy was delivered to nursery by LL carrying a tin of lip balm which contained a substance that LL later admitted was dihydrocodeine. Amy told a nursery worker that they were her mother's tablets. As a result of this incident LL's unsupervised contact with the children was withdrawn.

[6] On 3 February 2018 LL's mother contacted police because she was concerned about her daughter's mental health, reporting LL to be obsessed with hurt and abused children. LL was admitted to the Royal Edinburgh Hospital that day and remained there for just over a month. She was observed to drink alcohol on the ward and was prescribed antipsychotic medication, methadone and diazepam. About a month after her release from hospital LL contacted police and alleged that her children had been cloned and were victims of human trafficking.

[7] A local authority permanence panel resolved in May 2018 that Amy and Sarah were in need of permanent care outwith their birth family. The following day, the girls' placement with their foster carers ended because the carers were unable to continue to manage their behaviour. New foster carers, Mr and Mrs H, were found. LL's supervised contact was reduced to monthly at the same time. Thereafter, the foster mother reported that Amy was very aggressive towards Sarah and that there was regular fighting between them. Amy's nursery also reported a number of aggressive incidents involving her. At a permanence review on 22 August 2018 on the recommendation of Dr Katherine Edward it was agreed that the children should be placed separately. A few weeks later Amy alone moved to live with Mr and Mrs C.

[8] Throughout 2019 LL uploaded film onto YouTube in which she repeated allegations that the girls had been cloned and trafficked. These posts included pictures of the children who were named, and a medical report from Community Child Health. In March 2019 Mr and Mrs C informed Ms Cronin that they could no longer manage Amy's behaviour and she was moved to another couple for respite care. Sarah has remained with Mr and Mrs H. In April 2019 LL's flat was raided by the police who found cannabis with a street value of £1,000. It appeared that the flat was occupied by her son Simon. LL was taken by police

to the Royal Infirmary of Edinburgh on 25 May 2019 where she was admitted with psychotic symptoms. During her stay in hospital she admitted taking alcohol, cocaine and non-prescribed Valium. She was discharged on 31 May 2019.

[9] The children's hearing approved Amy's long-term placement with a Mr and Mrs CO on 3 June 2019 and contact between LL and both girls was withdrawn. Since May 2019 LL had been prescribed and has been taking an opiate blocker called subutex. She has been randomly tested for unprescribed drug use on seven occasions since then. The results of all those tests have been clear in respect of use of any non-prescription drugs. LL now engages with her community psychiatric nurse once per month. She has engaged with the recovery program "Change Grow Live".

[10] Mr and Mrs CO have advised the social work department that they cannot commit to caring for Amy until adulthood. In September 2020 Mr and Mrs H advised the social work department that they do not wish to be approved as long term foster carers for Sarah. On 30 October 2020 Amy saw her mother LL for a period of direct contact.

Evidence led at proof

[11] The petitioner led evidence from Maya Cronin a qualified social worker since 2006 and a team leader of one of the Edinburgh social work areas. Ms Cronin spoke to her affidavit number 102 of process. After correcting an error as to the contact date in October 2020 she adopted her affidavit as her evidence. Ms Cronin confirmed that she is the author of the statutory reports in this case which she also confirmed were true and accurate. So far as the current situation is concerned Sarah remains with Mr and Mrs H although the social work department is looking for alternative carers for her. Amy remains with Mr and Mrs CO meantime.

[12] Ms Cronin confirmed that the one recent direct contact session between Amy and her mother had taken place following the recommendations made by the two psychologists Dr Katherine Edward and Dr Lucie MacKinlay. The session seemed to benefit both mother and daughter and Ms Cronin thought it was in the best interests of both Amy and LL that, if they continued to be relatively settled, a further direct contact session be arranged. She could not commit to a specific timeframe given that both Amy and LL have been impacted significantly by trauma which could re-emerge at any time. This was all thoroughly documented in the reports and not disputed. The next contact session could take place within a few months if the position remained settled and after she had spoken about it to both Amy and to LL's community psychologist. Maya Cronin was aware that LL has a positive relationship with her community psychiatric nurse Carol Finnigan. LL engages really well with her and this has been a very positive development. Maya Cronin had asked Carol Finnigan if she would give a view on LL's mental health so far as future contact was concerned and she had indicated that she would be happy to do that from time to time. If the social work department was organising future contact the plan would be that about a week before any planned session a view would be sought from Carol Finnigan and from LL herself.

[13] Ms Cronin felt that if Amy and Sarah were left within the children's hearing system it would have a detrimental impact on them and undermine their sense of permanence. She did not want that for them. The social work department had successfully managed to have the girls excused from children's hearings to date but as they get older there would be a greater expectation that they would attend. Ms Cronin was firmly of the view that it would be inappropriate to keep the girls within that system. On the exchange of information post-permanence, the witness confirmed that it was generally considered appropriate and in

the best interests of both the children and any parent for this to happen. She considered that LL had a right to ongoing information and that she genuinely cared about the girls and needed reassurance that they were doing well. Ms Cronin has suggested that LL receives a letter once or twice a year from the allocated social worker updating her on relevant developments in respect of each child including their experiences at school, their contact with each other and also that they have received birthday and Christmas presents sent to them. In recent times, LL has telephoned Ms Cronin occasionally to ask how the girls are and there is no difficulty with that. On other occasions Ms Cronin will take the initiative.

[14] Under cross-examination Ms Cronin accepted without question that each individual child is different with different needs and that bespoke solutions were required. Any outcome had to promote the girls' best interests. The hope was to promote feelings of stability and predictability in the girls and find continuity in their care arrangements such that they will be able to form a secure attachment with future carers. Ms Cronin was not prepared to say that it was atypical that after a break of 18 months contact had resumed within weeks of a proof diet. The background was that Amy and Sarah had originally had a high level of contact with their mother but the 18 month break had made a big difference for Sarah. While LL was in a different and better place than she was in the spring of 2019 the children's views and needs had changed and appropriate action had been taken in their best interests. When Amy had expressed a view to Dr MacKinlay that she would like to see her mother Maya Cronin had been happy to implement that. When pressed, the witness was willing to accept that the situation was unusual. Looking ahead her position was that she and her department would like to see Sarah also having contact with her mother. She accepted that there was an unusual level of uncertainty in relation to their future placements and she would have wanted them to be placed permanently by now. Sarah will of course

have to move on from Mr and Mrs H who had been assessed as permanent carers and had previously given the message to Sarah that she could stay there until adulthood. Sarah has not yet been told of their change of heart because the department does not know where and when she will be leaving. She may have picked up some clues as she is currently quite anxious. She is incredibly invested in her present carers and has claimed them and so it may be difficult to ask her to claim others. The tentative plan is to move her to open ended foster care that has the possibility of becoming long-term.

[15] Unlike Sarah who has been in the same placement since 2018, Amy left Mr and Mrs H in October of that year and then went to Mr and Mrs C and then to Mr and Mrs C O. Both girls have been in several placements and further changes cannot be ruled out. The witness accepted that she was unable to say where Sarah would be living in 4 months' time, whether her educational provision would alter and whether she would be in the same or a different geographical area. The department was very committed to sibling contact. This takes place monthly but there could be an impact on that when Sarah is moved if she is anxious. Possible and future carers for Sarah will be told that there could be parental contact involved.

[16] So far as Amy is concerned she is now doing well and they are very content to keep her until new carers are found. They feel they are too old to commit to her long term care. Amy knows that Mr and Mrs C O are not her carers forever although if she could choose she would want to stay with them. Again the department is actively seeking new carers although Ms Cronin could not provide a clear sense of when Amy would move and whether or not it would be during 2021. They would try not to move her to anyone other than people committed to providing permanent care for her. The placement will be Amy's sixth since 2016 which was far more than the witness would have hoped. On balance Sarah will

be more difficult to place because she is so invested with her current carers. It will be easier to place Amy although difficult to replicate the quality of care currently being given by Mr and Mrs C O. Both girls may have to move school and lose peer groups and friends and extracurricular interests, although ironically this was less of a concern at the moment given the very restricted activities during the coronavirus pandemic. In essence Ms Cronin agreed that she could not say that the children's future is predictable or certain although they do currently have secure attachments.

[17] Ms Cronin was adamant that she had not given up on these girls attaining permanent placements. They were still only 6 and 7 years old and the aim is to provide them with the security and stability that permanent care would bring. While the granting of a permanence order cannot create a placement it will have other benefits. LL's life was still unpredictable although it was very positive that since May 2019 she had been stable in terms of drug use and had fully engaged with workers. Otherwise the recent reintroduction of contact with Amy would not have been successful. Permanence orders for girls of this age contrasted with orders made for much younger children. Amy knows LL as her mother. Ms Cronin thought that both girls would seek out their mother on social media if there was no contact of any kind. In her experience the longing for an absent parent becomes stronger in the teenage years. One of the ways in which they could be helped to understand her mental health was to see her if that was practicable. An exchange of information about what was going on with the girls was important both to LL and to the children themselves.

[18] Ms Cronin had worked in previous cases where parental responsibilities and rights are shared as between the local authority and foster carers. She had a broad understanding of how this worked. When asked what she meant by stating in her affidavit (at paragraph 11) that LL "has a right to information" she confirmed that even after the

granting of the permanence order LL will be provided with written information once or twice a year and verbal information when she needs it. When she used the word "right" she intended to mean that there was no dispute that this will happen. She accepted that the social work department would select or filter the information so that it focused on the different important areas of each child's life. Although LL had not been attending Looked After Children Review meetings ("LAC reviews") Ms Cronin always asks her what she would like to know from those meetings and feeds back the information to her. All of the important things are covered. It was suggested to the witness that if LL received a copy of the child's plan and/or was able to participate in LAC reviews she would have all the information and know of what issues she wanted to raise. Ms Cronin said that she required to prioritise the best interests of Amy and Sarah. Although LL does receives the child's plan in the minutes of the LAC reviews at present the social work department will not do that in future unless ordered to do so by the court.

[19] The local authority's preferred outcome would be that following each LAC review LL will be telephoned with the independent reviewing officer advising her what has occurred. Ms Cronin is open to a flexible working arrangement in future whereby if LL highlights what she wants to hear everything will be done to provide her with the necessary information. For some years LL had a difficult working relationship with the social work department following her son being accommodated. Ms Cronin has built-up a good relationship and feels she can work with her. Ms Cronin had kept the case after becoming team leader 3 years ago and will seek to maintain that continuity. If she requires to hand the case over it will be to a member of her own team. LL had made a lot of complaints against the department and there had often been a reason behind those complaints. On each occasion Ms Cronin had looked at the complaint and if something had gone wrong she had

apologised. It had been a process of gaining an understanding of LL's mental health. Her community psychiatric nurse talks of "fixed ideas" and there had been times when LL had pursued these to the point of "bubbling over" but this was not always meant antagonistically.

[20] Ms Cronin was clear that LL understood that the granting of the permanence orders, which she had now accepted should be made, will be the end of her decision making power as a parent. She still wants to be involved in discussions thereafter but has acknowledged that she will not be the decision maker. It would benefit the girls' welfare for them to have more information about their mother and her mental health. Over the last year or so LL has started to recognise how her mental health can impact on the girls. The hope is to help her understand why the children had to be removed from her care. In 2019 LL had posted YouTube videos claiming that the children had been removed from her unjustly. She could not seem to see how that might be perceived by the girls when they can access social media. She has now removed these from the internet and now wants to understand the impact her mental health can have on the girls.

[21] The witness intended no criticism of LL for wanting to be involved in discussions about her children in future and to receive information. The background however was of uncertainties with the girls' placements and considerable uncertainty about LL's future mental health. Ms Cronin could not accept that it would be in the best interests of the girls for LL to be part of the decision making process. She had explained in her affidavit (paragraph 12) the difficulties that have arisen with LAC reviews. Although LL has made good progress now, there had been police reports in both July and October 2020 with cannabis being found in her home. That should not detract from the overall improvement that LL has made. When the witness reported in December 2019 she could not see that

direct contact between LL and the girls could happen. Then in May 2020 when she spoke to Dr Edward she still was not planning for any such contact but it had not been ruled out. It was in about July 2020 that Amy started expressing a wish to see her mum. She attended a LAC review in August 2020 and expressed that wish. She had received lovely gifts from her mum in April and had been at home during the pandemic and had time to think about things. Then in September 2020 Dr Edward and Dr MacKinlay together had concluded that if LL remained well direct contact could take place. Ms Cronin had found Dr MacKinlay's report really helpful. She recognised that mental health was the primary issue for LL rather than drug use. The drug use had gone alongside her mental health for some years but not really since September 2019. Dr MacKinlay had also assisted Ms Cronin's understanding that LL's mental health issues would not go away and had to be managed. Amy had been given several opportunities to discuss contact and her mum, her brother and her grandmother were often mentioned when she was looking at her memory box. There would be no difficulty with the promotion of contact where appropriate.

[22] The clear position of the local authority was that if the permanence order was granted they would not intend to invite LL to future LAC reviews but she would nonetheless have some input. Ms Cronin would call and speak to her in advance and would also speak to the community psychiatric nurse. The children's hearing system if it continued would be a bit different. LL would be there with legal representation and would give an account of her circumstances. The difference between the two processes was really that the social work department did all the preparation for a LAC review but in the children's hearing system the parent could ask others to prepare reports for submission. For example LL could ask her community psychiatric nurse to prepare a report for the children's hearing. A LAC review took the form of an update on the children's circumstances whereas a

children's hearing was focused on what measures of care the children needed and also took into account what parents sought. The general position was that after the permanence order has been granted the social work department just accepts that they will not have information from the parent for a LAC review. This particular case was different in that the intention would be to contact LL before each LAC review.

[23] It was put to the witness that in essence the social work department wanted to control what LL is asked, what she is told and to deprive her of participation in LAC reviews. The witness pointed out that there is an independent chair for the LAC review who presides over the meeting and the minutes; the purpose is for the local authority to ensure that the children are getting what they need. Ms Cronin had never been involved in a permanence order where the children's hearing was involved after the order was made. If that was to happen, LL would be able to put in her own reports for hearings but if she wanted to do that for LAC reviews as well that could be considered. To keep Amy and Sarah in the children's hearing system would perhaps benefit their mother but not them. The local authority was best placed to make decisions and the children's hearing, comprising panel members who do not know the children, would not be better placed. The children's hearing could not assist in finding carers for two very traumatised children.

[24] Ms Cronin accepted without hesitation that without the present proceedings and the expert witness input there would have been no contact between the respondent and Amy in October 2020. She disagreed, however, that such matters could not be left to the discretion of the social work department in future. It was her department that had commissioned a report from Dr Edward initially and found it helpful and might well instruct a further one in due course. She could understand why the respondent had expressed a view that following the granting of a permanence order she might be shut out and that contact simply would not

happen but she disagreed with that view. Contact between the respondent and the children had been terminated by the children's hearing because it was having a detrimental effect on the girls. By March 2019 the respondent had failed to attend a children's hearing on six occasions. While on at least one of those she was in hospital she had also been in England and able to make the YouTube videos she had posted and on a different occasion had said she was on holiday. In January 2019 the children's hearing had noted her non-attendance and recorded that it was not in the children's best interests to defer the matter again. Ms Cronin was pleased at the progress that the respondent had made over the last year or so, but the position in 2021 and 2022 could not be predicted.

[25] When it was put to Ms Cronin that the benefits to the children of remaining within the children's hearing system were (1) the involvement of independent decision makers, (2) that decisions would accordingly be properly informed by the mother's participation with the benefit of legal representation, (3) that the only real issue for determination by the hearing would be contact and (4) that the children's hearing could control the nature and level of assessment by ordering reports, Ms Cronin disagreed. She stated that it was not just that she was relying on her own input, but the school, the carers and all those involved with Amy and Sarah would feed into discussions about who the girls see and where they live. A number of traumatic changes in the past have left these children with no sense of belonging and so she felt strongly that a permanence order was required for them so that the uncertainty of decision making would be "off the table". Ms Cronin had no experience of there being children's hearings post-permanence but the local authority's duty was to put the children first and they could do that without the involvement of the children's hearing.

[26] In re-examination Ms Cronin reiterated that the professionals currently involved were in her view best placed to make decisions for Amy and Sarah including decisions to

promote their mental health. While a permanence order itself would not help the local authority find families for the children it would mean that there was no need to ask for permission when they require to be moved. Timely decisions could be made. Similarly on the issue of contact, discussions would take place with the carers, the respondent and with professionals involved with the children but the decision should be left to the social work department. It was understandable that the respondent would always want as much contact as possible but what she wants and what the girls need do not always coincide. Having to attend children's hearings would create anxiety for Amy and Sarah because in future they would be expected to participate. It would be very hard for them to express views about contact in the presence of their mother. While in the period up to about 2018 the children's hearing had been the correct decision making forum the local authority was now asking the court to decide who should make those decisions in the longer term.

[27] Dr Katherine Edward, clinical psychologist, also gave evidence for the petitioner. Her first report, dated 2 August 2018 included her résumé. Dr Edward is a psychologist of very considerable experience who has assisted the court on many occasions as a skilled witness. She adopted her first and second reports as part of her evidence. Matters had then moved on and she and Dr MacKinlay had prepared a joint report dated 11 September 2020. Having adopted that third report as part of her evidence Dr Edward confirmed that it had come about after a request to consider a route map for contact with a view to responding to the respondent's concerns and mistrust of the social work department to facilitate contact. Having discussed matters at length Dr Edward and Dr MacKinlay agreed that whatever had happened in the past, moving forward an expectation of direct contact between each of Amy and Sarah and their mother at a frequency of twice per year would be to their benefit. It was acknowledged that this would likely take place sooner for Amy who was older and had

already expressed interest in such direct contact. If contact could be agreed, Dr Edward was aware of the respondent's engagement with Carol Finnigan, her community psychiatric nurse and would expect that Ms Finnigan could give a good response if asked about the respondent's presentation. She would be an extremely suitable person to help inform the social work department about the viability of direct contact on any particular occasion. Dr Edward was confident that the social work department would facilitate contact in a way that coincides with the interests of both girls. The pattern that would be established was that very close to any planned contact an assessment of the respondent's mental health would have to be made. If there was any sudden deterioration, no contact could take place. Dr Edward and Dr MacKinlay had also concluded that following the completion of at least two successful direct contact sessions, an independent assessor would require to be involved in the event the social work department had deemed that direct contact would not be appropriate on any given occasion.

[28] Under cross-examination Dr Edward agreed that when she had prepared her first report she did not envisage direct face-to-face contact would take place between the respondent and her children in the foreseeable future. Such contact as there had been in the past was unsupportive of the girls' placement at that time. Her report in 2018 had indicated that future contact might be possible but no prediction of when or how could be made because the respondent's presentation was really concerning. There had also been the issue of whether the girls should stay together. In May 2020 the purpose of her second report had been to consider what the position was in relation to contact at that time. Dr Edward had not seen the respondent and so was not looking at her presentation, she was addressing the significant shift in the circumstances of both girls. She knew that there had been a number of changes in the respondent's circumstances too but she was focused on the girls' situation.

Dr Edward agreed without hesitation that as Dr MacKinlay had met the respondent on five or six occasions she may have gained more detail than Dr Edward had of LL's circumstances and ability to engage in contact. However Dr Edward remained able to form a view of the needs and presentations of the girls which is the first stage in considering contact. If contact would be detrimental to them the mother's presentation would not matter. Sarah had responded badly to indirect contact and although there was more scope for direct contact with Amy the point where that could actually happen had not been reached by May 2020. Dr Edward had been made aware that Amy was going to ask Ms Cronin if she could see her mother after lockdown but she did not have a sense of when Amy had first expressed that view. There was no suggestion Amy was fixated about seeing her mum and did not speak of it regularly but she had raised it. Dr Edward became aware of it in mid-May when the country was in the middle of a lockdown period and so it did not seem to be an imminent possibility.

[29] Dr Edward was aware by the time of proof that a session of direct contact with Amy had taken place and she understood that it had gone well. It had been a positive experience for both mother and child. While in May 2020 she had not been clinically convinced that it was the right time for direct contact things can change quickly especially for these girls. When Amy said she wanted contact the social worker assessed it and it happened. Dr Edward considered that was an example of the system working. She thought that it would be appropriate to consider a further contact session about 6 months after the first one. If Amy was keen and the mental health professionals were supportive then it could take place. She and Dr MacKinlay had discussed matters and agreed that at least for Amy contact should be going ahead at this stage. What had happened between May and September 2020 was that Amy's placement had been stable and 6 months of stability for

either of these girls was real progress having regard to the background. This resulted in Dr Edward being more confident to recommend moving forward on contact.

[30] The witness agreed that there were some differences between her and Dr MacKinlay on the need for immediate contact as clinical judgment would not always come up with the same answer. Dr MacKinlay felt stronger about contact happening more immediately but by September 2020 there was no disagreement at all as things were looking more positive and contact was more likely to be to Amy's benefit. A section from Dr MacKinlay's first report of July 2020 (number 7/1 of process) was put to the witness where it stated that terminating contact between a child and a parent as a result of the parent's mental illness was inappropriate. Dr Edward agreed with that in general terms but might disagree that such contact should always be direct as opposed to indirect. She described Amy as one of the most disturbed young people she had seen. While some form of contact would always be appropriate where possible, it would require to be carefully assessed and managed. Dr Edward considered that it was exceptionally positive that Amy had now enjoyed one face-to-face contact session and she hoped that this could continue. She would be mindful however of the ever-changing circumstances for these girls when making any recommendations for the future. Dr Edward is a clinical psychologist and she would not draw conclusions based on the last 3 or 6 months but on the girls' entire lived experiences. While she might present a more cautious view than Dr MacKinlay, neither psychologist would promote contact if it was not in the children's best interests. She agreed that a permanent termination of the relationship between mother and children would have a negative impact but indirect contact would keep the relationship going. The issue was whether direct contact could take place.

[31] The witness tended to agree with Dr MacKinlay's view as expressed in her report that it would be better to have contact between the respondent and the girls managed before they choose to access her themselves through social media. Both psychologists had concerns about how the girls would deal with this and felt they needed a good understanding of their situation first. The best way of achieving that would be a lived experience of well-managed direct contact although Dr Edward would not rule out that this could be done indirectly by an explanation from the social work department. She agreed that the case was complex and that it was not simply a situation where a parent who has been unable to care for children has to relinquish decision making to the local authority. These children were traumatised and damaged by parental care as a result of their mother's fluctuating mental health. Their ability to manage placements has been affected by that. Dr Edward's involvement in this case over 2 years suggested that this was not a situation where maternal contact with the children would somehow be overlooked when placements change. She felt that the social work department would continue to have the issue of contact front and centre of their decision making.

[32] There was some discussion about how it came about that Amy did not want to ask Maya Cronin in relation to her desire for contact with her mum. Dr Edward could not explain why Amy might have said to Dr MacKinlay that she did not want to tell Maya (Cronin) but what was clear was that the social work department responded to a request when one was made. She thought it was understandable that the social work department had been cautious about the re-instigation of contact especially because of the issue of the girls not being placed together and the knowledge that Sarah's placement would not be long-lasting. In Dr Edward's view the issue of contact would always have to be based on the girls' needs and presentation at the material time. If that meant contact was

appropriate mum's mental health would then have to be assessed. The shared conclusion of Dr Edward and Dr MacKinlay (paragraph 9 of the joint report) was that it was appropriate that the social work department would assess and facilitate contact but that the respondent required additional assurance. If the court was to put in place a structure that would give her that additional assurance that would be best but only an independent assessor could do that. It could be seen as a check on the exercise of discretion by the social work department although such an assessor would have to understand all of the information and the girls' situation. If the assessor did not have sufficient information that would lead to additional risk. In contrast social workers do not work alone but in a team and so the issue of whether contact happened would not be at the behest of only one person.

[33] In re-examination Dr Edward confirmed that she continued to be of the view that future contact should be managed and controlled by the social work department. Her impression was that the respondent was able to speak realistically about contact when she is well and that she can, in that situation, respect the decision making process. When she is unwell she loses that ability and cannot consider the girls' interests and becomes disordered.

[34] Evidence was led in the respondent's case from the respondent LL herself. She confirmed that she is 46 years old, that she lives in Edinburgh and does not work. She spoke to her affidavit, sworn on 1 December 2020, which she adopted as part of her evidence. LL confirmed that she had attended regularly at LAC reviews other than on occasions when she was not well. That included an occasion just before the proof when she had required to attend her GP. She had attended such LAC reviews as she was allowed to attend for Amy but she had not been allowed to attend others. She received a phone call after a LAC review for Sarah and she did receive feedback after the recent review for Amy. She felt it would be much better to attend these reviews in person.

[35] LL confirmed her view that if the social work department was to decide whether there would be contact the result would be that she would be shut out of the process and no contact would take place. This was based on previous experience. She felt strongly that if Amy had not said to Dr MacKinlay that she wanted to see her mother then the direct contact that had taken place would never have happened. As she had not yet seen Sarah at all she was firmly of the view that if the decision was left to the social work department it might not occur. Disputes would likely arise about whether she was well enough to see the girls and she felt the social work department decision would be "biased". She agreed that it would help if Ms Finnigan gave input into any plan for direct contact although she pointed out that Ms Cronin had regular input from her CPN anyway. LL would prefer that a doctor not attached to the social work department give an independent view. She named two doctors who she sees regularly and considered that it would be more appropriate for them to express a view on her state of mental health. She was conscious that a full 18 months had passed without her seeing either girl and when she saw Amy at the end of October Amy said that she had been asking to see her mum for a long long time. LL was aware that Amy had said she did not want to tell Ms Cronin about her desire to see her mother. The respondent found that quite worrying. She felt that the social worker should be the child's first port of call if she had that desire. She could not say why Amy had felt unable to approach Maya but it added to her concerns.

[36] Under cross-examination Ms Cronin's statement about the positive nature of the recent contact session and expression of desire for a future one in a few months' time was put to the witness. LL agreed that this was a fair statement but she expressed doubt about whether or not future contact would actually happen. If it was left up to the social work department the next planned contact might be postponed or not happen at all. She

reiterated that contact would not have happened on this occasion without Amy having spoken up to Dr MacKinlay. That said, LL accepted that it had been correct for contact to have ceased for 18 months after she had put videos on YouTube without considering the detrimental effect of these on the girls. She described her actions in that respect as "stupid". She also acknowledged that the girls had been very unsettled after contact in earlier times. The real change had come about because Amy was saying that she wanted contact although LL felt that an arrangement could have been put in place earlier if Amy had been able to approach Ms Cronin about it.

[37] The period of direct contact itself was originally planned to take place for 90 minutes but it was so successful that a visit of over 2 hours took place. Ms Cronin had fed back to LL that Amy had not been unsettled with her carers after the contact period which she regarded as great news. She acknowledged that the social work department had ultimately recognised that Amy wanted to see her mum. She confirmed that Carol Finnigan has regular oversight of her mental health and that she saw her at least twice a month. LL did not think the social work department had spoken to Carol at all about the contact that had taken place. The respondent accepted that if she was worried about anything in future she would be able to call Ms Cronin. However, she was not clear whether a prompt decision would be made in such a situation if she made contact about seeing her children.

[38] LL acknowledged also that Ms Cronin had contacted her to tell her of decisions that had been made at LAC reviews. Her worry was that in future the information was likely to be filtered and that she may not get important things like school reports and medical reports relating to the children. She would like to be updated on how the girls are so that she knows what to talk about if she sees them. She felt it would be a pity if she did not receive

information from LAC reviews in the same way as she receives it at the moment. As their mother she would like to know as much about the girls as possible.

[39] In re-examination LL confirmed that in addition to seeing her psychiatric nurse she also attends a group called "Change Grow Live", a community group led by a trained drug worker. She had a 100% attendance record at these sessions although some had now been postponed due to COVID. LL explained that she understood that the effect of the permanence order being made would be that she would lose nearly all of her parental responsibilities and rights and that Ms Cronin would not have any legal obligation to update her after each LAC review.

[40] The final witness led was the psychologist Dr Lucie MacKinlay who had prepared a joint report with Dr Edward. Dr MacKinlay confirmed that she is a chartered clinical psychologist with the NHS working exclusively with looked after children and that she also has a private practice. Dr MacKinlay has extensive experience and has worked for the NHS for over 17 years. She had initially prepared a report for the respondent, number 7/1 of process, in July 2020. That had been both a parenting capacity assessment and contact assessment. She now understood that the parenting assessment aspect was no longer an issue and the focus was on maternal contact on the basis that the children cannot be returned to LL's care. Dr MacKinlay adopted her report in its entirety as evidence.

[41] When the witness had met Amy in her foster placement the child had given her a tour of the farm on which she lives and so information had to be snatched whenever possible. Amy would move away if she did not want to answer a question. On the issue of contact she had said to Dr MacKinlay "if I asked Maya she might organise it she might not I don't know". It had been hard to work out why Amy did not simply ask Maya Cronin to see her mother. She had apparently told her foster carer the same thing. Dr MacKinlay had

found it difficult to ascertain whether Amy genuinely wanted contact at that time because although she was clear that she wanted to see her mum she stated that she had not told Maya that Dr MacKinlay had been made aware that a period of direct contact had taken place after the joint report with Dr Edward. While she had not had feedback, she seemed pleased to hear Ms Cronin's account of the success of that contact. Dr MacKinlay very much hoped that on that basis there could be a further contact session some time in late spring 2021. The purpose would be for the respondent to explain and reassure Amy in relation to her circumstances. She was firmly of the view that direct contact should not be terminated. The available information confirmed that these children were not in their mother's care primarily as a result of her poor mental health. They need to understand and have empathy around that. A direct and indirect relationship will help them understand their history and if they have no such understanding it would cause them significant psychological distress and they would feel abandoned. That said, direct contact can only happen when the respondent is reasonably well.

[42] All of the available research supports a conclusion that these girls are likely to contact their mother anyway when they are in the 15 to 18 year old age category. The respondent's presentation is unusual because she is particularly plausible in relation to her delusions. It can take weeks to ascertain that she is unwell and the children will have to learn to understand this part of her psychosis. Accordingly, they need time to develop an understanding of their mother's ill health before they could have unregulated contact with her. Dr MacKinlay was unsure whether the social work department understood the situation fully before reading her report. Understandably their desire was to protect the children from their mother as she presented outwith the normal range of behaviour, something they would regard as a risk to the girls. However, Dr MacKinlay was clear that if

the children are supported to understand their mother it would help. For example, one of the respondent's delusions is that she is descended from important paternal lineage, a not uncommon delusion which can be safely explained to children. It can be explained that it is the illness talking rather than their mother talking. Of course the respondent also has delusions that could have a negative impact, such as the claim that their department was involved in sexual abuse of Amy or that the girls are cloned. However the respondent tended not to have the same delusions at the same time and she was able to hold the delusions to herself for most of the assessment with Dr MacKinlay. Clearly contact could not take place if the respondent was having a delusion and not able to hold it back. That would occur if she was going through a period of being more unwell.

[43] In relation to the perceived divergence of views between Dr MacKinlay and Dr Edward in relation to the re-instigation of contact, Dr MacKinlay thought that Dr Edward had not seen Amy in her new placement and that could explain the difference. In the joint report, the psychologists had described this case as "complex and multifaceted". (Page 15 of number of 107 process.) This was because there was numerous parts to the jigsaw including the respondent's mental health, Amy and Sarah's different pathways in their placements and the difficulties around managing contact between the children and their mother. It was necessary both that their mother was well and also that each of them was settled for contact to be able to go ahead. It would be hard if this issue was "written in stone" at the moment. There was no guarantee that the girls would have permanent placements. Although more is known about the respondent's fluctuating mental health, the absence of information about whether the girls' future carers would be able to fulfil their needs made this a difficult time to make long-term decisions.

[44] Dr MacKinlay's concern was solely for the children. Once they realise that they are not with their mother because she is mentally unwell they will develop empathy and it would be hoped that they want to see her. It is the foster carers and the social work department who will have to make individual decisions for the children. For example the respondent does not need to know whether they are going to the dentist or getting haircuts. What the children need to know is that their mother is informed about their well-being but not in charge of the decision making. When asked whether giving information to the respondent would be in her interests or in the children's interests, Dr MacKinlay stated that it would be in the respondent's interests. However, having worked with hundreds of looked after children at LAC reviews a consistent theme was that these children worry about the absent parent, usually the mother, and want to know that she has been made aware that they are doing well. On that basis it would be naive to say that the giving of information is solely for the parent because the children benefit as well.

[45] In relation to the joint recommendation for an independent assessor, Dr MacKinlay confirmed that the respondent's mental health is particularly difficult to assess. If she drops in snippets of information about having a twin or money coming to her that can be a signal that she is unwell but it is difficult to identify what is a delusion and what is reality. It takes a trained professional to identify both whether she is exhibiting signs of ill-health and also whether she poses any risk. The recommendation that an independent assessor become involved after there had been at least two successful direct contacts only if the social work department then states that direct contact would not be appropriate was made on the basis that social workers are not suitably qualified to identify the nature of the respondent's ill-health. Only a mental health professional can say whether the respondent is sufficiently unwell to be a risk to the children.

[46] On the issue of whether it was in the best interests of the children for the social work department to manage and control contact, Dr MacKinlay was conscious that it was possible that Ms Cronin would not be involved in future. The safeguard of an additional person with training who could identify the mental health needs of the respondent and the children would be appropriate. Whether or not that would be a psychologist or a mental health professional depended on what issues arose. While the social work department were extremely knowledgeable about the case generally, it was the complexities of how the respondent presents when she is unwell that required some specialist input. The witness did not share the respondent's level of concern about decisions being left to the social work department. However, she considered that it would be fair to the children that a mental health professional decides whether she is well and that such an independent assessment takes place if the social work department decided that there should be no contact.

[47] Under cross-examination, the witness agreed that she and Dr Edward considered that all that could be done at the moment was to put a decision making structure in place and that flexibility had to be built into that. The need for sufficiently informed and timeous decision making supported a conclusion that the social work department should be making the decisions. Dr MacKinlay remained of the view that the social work department would be the appropriate assessors and facilitators of the girls' needs. They could provide information about how the girls are doing to any independent assessor who would then meet with the respondent. When asked who would be making the decisions on future contact, Dr MacKinlay was clear that it would be the social work department with possible additional input from a mental health professional such as a community psychiatric nurse. If there is already a community psychiatric nurse involved that would be the ideal person to perform the independent professional role. While the social work department have been

cautious about re-instigating contact for Amy they were very open to Dr MacKinlay's suggestion after she explained the situation with the respondent's delusions and how they work. She had no concerns about the social work department's approach in this particular case.

[48] On the issue of attendance at LAC reviews Dr MacKinlay agreed that this would be a very stressful situation post-permanence order. If the respondent disagreed with decisions that were being made but had no authority to contradict them that would be difficult. Dr MacKinlay thought that the informal approach of the social work department informing the respondent afterwards of the important aspects of the LAC review was better although the optimal result might be for the review coordinator to convey the information to the respondent.

The applicable law

[49] The provisions on permanence orders are contained in sections 80-89 of the Adoption and Children (Scotland) Act 2007. Section 80(2) defines permanence orders as consisting of (a) the mandatory provision and (b) such ancillary provisions as the court thinks fit. The mandatory provision is defined in section 81(1) as a provision vesting in the local authority both the parental responsibility in relation to guidance appropriate to child's stage of development until the child attains the age of 18 and the parental right to regulate the child's residence until the child attains the age of 16. There are a number of possible ancillary provisions that can be made. These are all listed in section 82 of the act which is in the following terms:

"82 Permanence orders: ancillary provisions

(1) The ancillary provisions are provisions—
  (a) vesting in the local authority for the appropriate period—
    (i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i) and (d) of the 1995 Act, and
    (ii) such of the parental rights mentioned in section 2(1)(b) and (d) of that Act, in relation to the child as the court considers appropriate,
  (b) vesting in a person other than the local authority for the appropriate period—
    (i) such of the parental responsibilities mentioned in section 1(1) of that Act, and
    (ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act, in relation to the child as the court considers appropriate,
  (c) extinguishing any parental responsibilities which, immediately before the making of the order, vested in a parent or guardian of the child, and which—
    (i) by virtue of section 81(1)(a) or paragraph (a)(i), vest in the local authority, or
    (ii) by virtue of paragraph (b)(i), vest in a person other than the authority,
  (d) extinguishing any parental rights in relation to the child which, immediately before the making of the order, vested in a parent or guardian of the child, and which—
    (i) by virtue of paragraph (a)(ii), vest in the local authority, or
    (ii) by virtue of paragraph (b)(ii), vest in a person other than the authority,
  (e) specifying such arrangements for contact between the child and any other person as the court considers appropriate and to be in the best interests of the child, and
  (f) determining any question which has arisen in connection with—
    (i) any parental responsibilities or parental rights in relation to the child, or
    (ii) any other aspect of the welfare of the child."

Section 82(2) confirms the relevant periods for the local authority taking on such responsibilities and rights mentioned above.

[50] Section 87 confirms that the making of a permanence order automatically terminates the parental responsibility and right of a natural parent to regulate and decide the child or children's residence. It is section 84 of the 2007 Act that sets out the tests and considerations that the court requires to apply and have in mind before determining whether a permanence order should be made. There is now no dispute in this case that a permanence order should be made. It is accepted that, in terms of section 84(5) it would be seriously detrimental to the welfare of both Amy and Sarah to live with their mother (84(5)(c)(ii)). Neither child is

sufficiently old enough or mature enough to oppose the permanence order being made. The court must also be satisfied that it would be better for each child that the order be made than it should not be made - section 84(3). In considering whether to make a permanence order, and if so, what ancillary orders should be contained within it, the court must regard the need to safeguard and promote the welfare of each child throughout childhood as the paramount consideration - 84(4).

[51] The position in relation to the existing Compulsory Supervision Orders for the children is relevant in this case. Section 89 of the act provides:

> "(1) Subsection (2) applies where—
> (a) the child in respect of whom a permanence order is to be made is subject to a compulsory supervision order, and
> (b) the appropriate court is satisfied that, were it to make a permanence order in respect of the child, it would no longer be necessary that, for the protection, guidance, treatment or control of the child, the child be subject to the compulsory supervision order.
> (2) The court must make an order providing that, on the making of the permanence order, the compulsory supervision order ceases to have effect."

Finally, there is a provision in section 92 permitting the court making the permanence order to vary such of the ancillary provisions made in the permanence order as the court considers appropriate for so long as the permanence order containing those ancillary provisions is in force.

[52] Indisputably, the possibility of extinguishing any parental responsibilities and rights engages article 8 ECHR. The extinction of parental responsibilities and rights is an interference with the right to respect for family life and so the extent of such interference must be necessary, proportionate and the minimum intervention required having regard to the interests of the child. The Strasbourg jurisprudence supporting that proposition was helpfully recently summarised in the case of *Strand Lobben* v *Norway* (2020) 70 EHRR 14 at paragraphs 202-213. Both the domestic statutory scheme outlined above and the ECHR

requirements support that it is for the petitioner to satisfy the court that it is necessary and proportionate to extinguish any parental responsibilities and rights held by the respondent.

Discussion

[53] As indicated, there is no dispute that the threshold criterion for a permanence order is made out in that it would be significantly detrimental for either Amy or Sarah or both of them to return to the care of their mother. In addition to the undisputed facts set out, the court has the benefit of the local authority reports (No 6/2 of process in each case) and the curator ad litem reports, together with the earlier expert reports from Dr Edward and Dr MacKinlay. Dr Edward concluded in her first report in August 2018 that both girls, and particularly Amy, present with a level of need that is exceptionally demanding even to the most skilled and experienced foster carers. Even if the respondent was well the girls could not be returned to her care. Dr MacKinlay agreed with that and confirmed that if the girls were returned home they would be exposed to poor maternal mental health and associated lack of care which would pose an unacceptable risk to their well-being. Having considered the relevant material I am entirely satisfied that the threshold test for a permanence order is met and that it would be better for each child that an order be made than not. It will best serve their interests throughout their respective childhoods.

[54] So far as the evidence is concerned, it was restricted to the contentious issues dealt with below. I have no hesitation in accepting as both credible and reliable the evidence of the principal social worker Ms Cronin. She impressed as a thoughtful professional who has done her best to manage a difficult situation with two traumatised children. I reject the suggestion that she did not have an open mind on direct contact until she heard that Amy had indicated a desire to see her mother to Dr MacKinlay. It was clear that Ms Cronin had

sought and relied on the advice of Dr Edward and she did not delay in organising direct contact after Amy's views were conveyed. There was no evidence to suggest that Amy did not trust or otherwise had a poor working relationship with Ms Cronin. The respondent has had a difficult relationship with the social work department in the past and is mistrustful of their actions. It seems to me that she has latched onto the idea that contact might never have taken place had Amy not seen Dr MacKinlay. While her concerns are understandable they are in my view overstated. Against a background of the reasons for the cessation of contact previously and the respondent's acknowledgement that her behaviour was inappropriate, the period without direct contact was clearly justified and in the children's interests. The situation was kept under review and although the catalyst for its reintroduction in late October 2020 was Amy's stated desire to Dr MacKinlay, she articulated her wish to her carers too and I conclude that she was able to speak out on the issue as her desire developed.

[55] The two skilled witnesses have been of considerable assistance in this case. It is particularly helpful that they felt able to make joint recommendations on a route to possible future direct contact between the children and their mother. Any difference in views was of emphasis only. Dr Edward was more inclined initially to recommend preserving the relationship in a more indirect way than Dr MacKinlay might have recommended. Both experts are clear, however, that the children must be informed of and understand their mother's mental health difficulties before they become teenagers. The aim now is for that to be achieved through well managed direct contact. If that cannot occur indirect contact would take its place. The respondent should be reassured by the proposed scheme for an independent assessor.

[56] LL is to be commended for the efforts she has made to stabilise her health and to overcome her addiction problems. She seemed well when giving evidence and presented as

an articulate and caring person with something to offer her children. Such insight as she now has into the impact on the girls of her behaviour when she is unwell will assist her acceptance of the removal of her decision making rights in respect of the children. I acknowledge that it will have been difficult for her to reach this stage and I am confident that if she remains well her children will benefit from the level of contact recommended. The absence of a definitive pattern of contact should not undermine the importance of contact taking place if at all possible. While I do not accept that LL will be "cut out" if the social work department is the primary decision maker on contact going forward, I do not doubt that her concern in that respect is genuine.

[57] The central dispute in this case relates to two specific but important matters. The first is whether the Compulsory Supervision Orders ("CSO") should be revoked in this case. Secondly there is an issue about how the respondent should continue to have the responsibility and right to obtain information about the health, development and welfare of each child and in particular whether the court should regulate how that is done following each looked after children (LAC) review. I will deal with each of these in turn.

[58] The petitioner's position is that continuing the CSOs in respect of both girls post-permanence was without known precedent. Mr Inglis contended that the co-existence of permanence and Compulsory Supervision Orders in individual cases is neither consistent with the law nor in the best interests of the children. In particular, the permanence order has as its purpose investing in the local authority the power to make decisions and promote the children's' welfare. In contrast a local authority has a subservient role as the implementation authority when the children's hearing is involved. Mr Inglis submitted that section 89 of the 2007 Act clearly envisages the termination of the children's hearing jurisdiction upon the making of a full permanence order. Where the court is making a

permanence order to enable and require the local authority to perform the relevant parental responsibilities and rights the revocation of the supervision requirement was effectively mandatory. If it was being suggested that the CSOs should be continued so that the hearing could monitor contact, that would unlawfully curtail the powers granted to the children's hearing. Section 83 of the Children's Hearings (Scotland) Act 2011 specifically gives the local authority responsibility for giving effect to all of the measures included in a CSO. That included requirements that the child resides at a specified place, medical and other treatment for the child as well as any contact direction. In essence the children's hearing exercises a different function from the court. That function was no longer appropriate or in the children's best interests on the granting of a permanence order.

[59] Further, it was the petitioner's position that neither of the two skilled witnesses in this case had accepted that the continued intervention of the children's hearing in managing the local authority's conduct of the children's' situation was warranted by the reference to their best interests. Both Dr MacKinlay and Dr Edward had confirmed in their joint expert report that the social work department would be the appropriate assessors and facilitators so far as the girls' needs moving forward were concerned. In her oral evidence, Dr MacKinlay had confirmed that it was in the best interests of both girls that such direct future contact as should take place should be managed and controlled by the social work department. Dr Edward had said in evidence that the recent assessment and implementation of the contact session by the social work department proved that the system worked. In the absence of any evidence that the social worker involved had been in any sense unresponsive or hostile to appropriate contact between Amy and the respondent, it would be appropriate to leave the regulation of future contact to the social work department. The involvement of any independent assessor would only take place in the

circumstances described in evidence. The community psychiatric nurse would in any event be suitable to discharge the function identified by them in their joint report. So far as considering the girls' position on contact, this required to be assessed by someone fully informed about the children's needs. The children's hearing is presided over by those who are strangers to the children. Its procedures do not facilitate speedy decision making. Maya Cronin had confirmed the difficulties with obtaining timely decisions from the children's hearing. It would be inappropriate for the children to require to attend children's hearings in the future, something that would be inevitable if the CSOs were not terminated.

[60] The respondent's position was that while a convention may have developed whereby every time a permanence order is granted the CSO tends to be terminated, that was not what the legislation demanded. The terms of section 89 of the act were clear and required an assessment of whether the CSO should be terminated in every case. Under reference to the report of the Adoption Policy Review that led to the 2007 Act, at paragraph 5.22, Mr Aitken submitted that it was clear that permanence orders were always intended to be as flexible as possible. The only mandatory provision was for the local authority to control the right of residence of the child. In all other respects the court should consider whether the parent involved should retain any parental responsibilities and rights before taking a decision to extinguish these. It was never intended that parental responsibilities and rights should all be removed and a CSO terminated. The onus was on the petitioner as local authority to satisfy the court as to how many parental responsibilities and rights should be taken away and whether the CSO should be terminated.

[61] It was accepted on behalf of the respondent that retaining the CSO was without known precedent but it was submitted to be competent on a plain reading of section 89. While the children's hearing system had many deficiencies there was a basis for retaining its

involvement in this case where the local authority intended to avoid providing the respondent with the children's LAC plan and other relevant material. It was wrong to suggest that there was any inconsistency between making a permanence order under the 2007 Act and having the ongoing involvement of the children's hearing under the 2011 Act. For example, section 67(2)(i) provides that one of the grounds for referral to the children's hearing is that a permanence order is in force and special measures are needed to support the child. Further, sections 126 and 161 of the 2011 Act provide that where there is a permanence order with a condition of contact or with an order for contact and the children's hearing seeks to interfere with that there is an available right of the parent to appeal the children's hearing decision. While the local authority had a different role following a permanence order than it usually did when acting as implementation authority in the children's hearing system that was not problematic. Although the children's hearing had the power to regulate a child's residence it was not mandatory that it did so. The measures listed in section 83(2) comprised a list but not all were necessary. If the CSO continued, the children's hearing would have the ultimate power to suspend the operation of the local authority's parental responsibilities and rights although that would only be likely to happen in an extreme case. While the views of the skilled witnesses on the matter were there for consideration it was not within their skill set to determine what the appropriate forum was for decision making about the children as that was a matter for the court in these proceedings.

[62] Mr Aitken confirmed that he was not seeking to engage the children's hearing in making immediate decisions about contact, rather it was the children's hearings powers of investigation and an assessment that mattered. For example, the applicable rules (Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of

Relevant Person) Order 2013 Rule 61) gave the children's hearing the power to order reports or order such other investigations necessary in the child's interest.

[63] Mr Aitken contended that the benefit in this particular case of the children's hearing retaining responsibility, in addition to the ability to instigate investigations and instruct reports, would be that the respondent would be adequately involved in the decision making process as she would remain a relevant person. She would have access to all information and a right to provide her own reports to the decision maker. She would be able to challenge decisions and so prevent matters drifting. The issue of contact was both complex and fluid. If the CSOs were terminated there was a risk of there being no oversight of that and of decisions such as Amy moving placement and Sarah's future which at the moment was entirely uncertain. The right of review of decisions that would be available to the respondent was also important.

[64] On the second issue of the extent to which the respondent should have a right to continue to be given appropriate information about the children, this was to some extent linked with a decision about the termination of the CSOs. Counsel for the petitioner submitted that the evidence supported an informal arrangement at the discretion of the social work department. Ms Cronin's position in evidence was that the respondent would not be invited to LAC reviews and would simply be given such information as the local authority decided she should have. Mr Aitken contended as the court could not make a properly informed determination on what future contact between the children and their mother should be, there required to be a route for decision making. In the event that the children's hearing was not to be involved, the issue then was about the respondent's ongoing involvement. The petitioner proposed that all but the respondent's residual right of contact should be extinguished but the respondent contended that she should continue to

retain responsibilities and rights restricted to obtaining reasonable information about the health, development and welfare of each child and to be advised of all information provided to each LAC review relevant to that matter. The respondent also invited the court to refuse the petitioner's proposal that the permanence order should state that the operation of contact will be at the discretion of the petitioner. The regulations surrounding LAC reviews do not require that a parent must be invited to or be allowed to participate directly at them but the local authority must consult with and take account of the views of any person with parental responsibilities and rights. It was not in dispute that the respondent will remain a parent for the purposes of those regulations.

[65] Insofar as there was a dispute about the correct interpretation of section 89 of the 2007 Act, I have concluded that Mr Aitken's submissions are to be preferred. There is no rule that the court must terminate a Compulsory Supervision Order on the making of a permanence order. The convention that has developed whereby the CSO is invariably terminated on the making of a permanence order may have evolved simply because the issue has not been focused by parties to proceedings of this type to date. There may have been a tendency to alight on subsection (2) of section 89 which requires revocation of a CSO on the making of a permanence order without appreciating that that is mandated only where, in terms of section 89(1)(b) of the 2007 Act, the court is satisfied that continuation of the CSO is no longer necessary for the protection, guidance, treatment or control of the child. Accordingly, the issue in every case must first be whether the court is so satisfied.

Mr Aitken was correct, then, to contend that the approach should not be to assume that the CSO will cease to have effect but to consider first whether or not it is necessary for it to remain in place. In addition to section 89 of the 2007 Act, certain provisions of the Children's Hearings (Scotland) Act 2011 support this conclusion. In particular,

section 67(2)(i) of the 2011 Act includes as a ground for referral and so entry into the children's hearing that a permanence order is in force and special measures are needed to support the child. This illustrates beyond doubt that a permanence order and a CSO can operate together competently. Where they do, the local authority will be treated effectively as the person with relevant parental responsibilities and rights that may be affected by the imposition of a CSO and would participate in the children's hearing on that basis. It is not difficult to imagine the circumstances in which this might be appropriate. For example, a child who was settled with carers at the time a permanence order was made may subsequently display behavioural difficulties and require to be removed from their accommodation. If the local authority holding a permanence order and so bestowed with the responsibility and right to regulate residence failed to do so satisfactorily such that the child was without proper care, the children's reporter might well have a basis for referral to the hearing. In the present case, where there is no dispute that the local authority is the appropriate decision maker so far as the children's residence is concerned, the arguments for and against continuing the CSOs for these children are not clear cut. The difficulty is how best to regulate for the future in a situation where there are uncertainties both about the children's future placements and also about whether and to what extent their mother will remain well and so able to maintain some form of direct contact with them.

[66] If the CSOs are not terminated in this particular case it is likely that Amy and Sarah would both require to attend children's hearings in future. They have not done so to date because the need for them to be present has been dispensed with due to their relatively young ages. In her affidavit evidence (at paragraph 13) Ms Cronin pointed out that there have been a high number of children's hearings in the past for Amy and Sarah and that six such hearings took place in 2019. The respondent had on a number of occasions requested

children's hearings and then not attended. While the issue of whether to continue the CSOs is one for my determination, I accept the evidence of Ms Cronin and of the two psychologists that it is the social work department in this case who would be the appropriate assessors and facilitators of the girls' needs moving forward (paragraph 9 of the joint expert report). Those needs include but are not limited to, placing each child in suitable and preferably permanent accommodation with long-term foster carers. So far as contact is concerned, the situation is slightly different in that there is a joint recommendation by the experts that a safeguard of independent assessment would be appropriate if the social work department reaches a view that this should not occur even after two direct sessions have taken place. It is not suggested on behalf of the respondent that the children's hearing should continue to be involved solely to oversee contact which it is accepted will be managed by the social work department in the first instance. The issue is rather whether the flexibility of the children's hearing would be beneficial because of the investigations it can direct and to ensure the respondent's ongoing involvement in the decision making process.

[67] I have decided that, on balance, and in light of the other orders I intend to make, that this is not a case in which the children require to continue to be subject to CSOs. I consider that the test in section 89(1)(b) is met in that I am satisfied that it is no longer necessary for their protection, guidance, treatment or control that these children be subject to CSOs. I consider that, consistent with the terms of the permanence order that I will make, the local authority will be best placed to make all decisions relating to the children's residence and related welfare decisions such as education and medical treatment. They should have the flexibility to do so without the need to have each decision scrutinised. They will be the legal parent for those important purposes. In the circumstances of this particular case, where the children have not yet required to attend children's hearings, it would be unfortunate if they

required to do so in the future. That would be likely to be contrary to their best interests and could risk disrupting any settled placement in which they live. The care with which investigations as to how to devise a system for effective contact in this case would also be jeopardised were the children required to attend children's hearings at which their mother would be present. While attempts could be made to provide separate rooms or to avoid the children coming into contact with the respondent at hearings, there is no guarantee that such arrangements would be effective. In my view, the decision in principle that the children should have contact with their mother when she is well enough to see them, militates against the continuation of CSOs. A default consequence of such a continuation would be ongoing involvement of both mother and children in a decision making forum. That is unlikely to facilitate the carefully constructed scheme suggested by Dr Edward and Dr MacKinlay to ensure that direct contact takes place only where certain requirements are met. The situation might be different with children who had already attended children's hearings or where a sustained and uninterrupted pattern of contact was already in place. In the particular circumstances of this case, however the evidence supports the revocation of the CSOs for both Amy and Sarah.

[68] The remaining issue is to determine which of the respondent's parental responsibilities and rights should be extinguished (in addition to the right to regulate the children's residence) and how to encapsulate the evolving situation on contact. As indicated above, there is to some extent a relationship with the decision I have made about terminating the CSOs and this aspect of the case. The context of this part of the discussion is that Amy and Sarah will, in terms of section 17(6)(e) of the Children (Scotland) Act 1995, continue to be "looked after children" following the granting of permanence orders in respect of them. Section 31(1) of the 1995 Act requires the local authority who are looking

after a child to review her case at such intervals as may be prescribed. The Looked After Children (Scotland) Regulations 2009, SSI 2009/210 ("LAC regulations") contain the relevant provisions in relation to the local authority's duties in this respect. Regulations 4 and 5 are of particular interest. Regulation 4 provides that the local authority must make an assessment of a number of factors relating to the child's immediate and longer term needs and proposals for safeguarding and promoting the child's welfare. All matters relevant to the welfare of the child both in the short and longer term require to be covered in that assessment. Where appropriate, the local authority must seek and take account of the views of each child and her parents and any other person with parental responsibilities and rights. An assessment of parental contact is part of the assessment. Regulation 5 provides that following an assessment made under regulation 4 the local authority must prepare a plan to be known as the "child's plan" in respect of each child.

[69] The controversy in this case is about the extent to which the respondent should be involved post-permanence and in particular the amount of information she should receive. Maya Cronin in her affidavit, at paragraph 11, proposes that the social work department writes to the respondent on an annual or biannual basis in order to share relevant information about both girls including about their health and development, their placements and any changes to that and their views on contact. She disputes that sending copies of reports and records of decisions for or following LAC reviews would be appropriate. She cites examples in the past where the respondent has misused written reports about the girls to their detriment during periods of mental instability. Ms Cronin does not consider that the respondent requires the level of detail of information that would be provided in reports for LAC reviews. Clearly anything she did receive would require to be redacted in so far as such reports might contain information about the children's foster families.

[70] Importantly, in terms of regulation 5(4)(b) of the LAC regulations the local authority must provide a copy of the child's plan to the parents unless, in terms of regulation 5(5) taking account of, *inter alia*, the terms of any permanence order, it would not be in the child's interest for a copy of the child's plan to be given to that person. The outline of Ms Cronin's evidence on this point illustrates that the local authority in this case do not intend to provide the respondent with the child's plan in relation to each of Amy and Sarah. It appears that an update by telephone is anticipated. Once children are settled in a placement, the LAC reviews will take place every 6 months - regulation 45(2)(c). Although the petitioner will not require to invite the respondent to participate in such reviews, they will continue to be required to consult and take the respondent's views into account as she will retain some residual parental responsibilities and rights - regulation 45(5)(a). It was central to Mr Aitken's argument in this case that the evidence of Maya Cronin illustrated that the way in which her department would operate the LAC review process going forward rendered it inappropriate as a forum to decide the complex issues surrounding ongoing contact. That was one of the main reasons said to support the continued involvement of the children's hearing. While there is some force in that argument, in my view it does not follow that the inevitable conclusion is continuation of the CSOs for the reasons already given. I do consider, however, that the respondent's responsibilities to safeguard and promote Amy and Sarah's health, development and welfare and to provide direction and guidance to them (with the accompanying right to do so) should not be completely extinguished in this case. It is essential that she is provided with sufficient information to enable her to engage meaningfully with the girls on any occasions of direct contact and also to continue to support them indirectly when she is well enough to do so. As Dr MacKinlay pointed out in evidence, the exchange of information is not just in the respondent's interests in this case but

is in the children's interests. They will feel safer and more secure in their placement if they are reassured that their mother is being kept up to date with their progress and knows that they are alright. In concluding that the respondent's ability to receive information and be advised of each aspect of every LAC review going forward, I do not intend any criticism of Ms Cronin whose professional commitment to the best interests of these girls has been unwavering. My concern is that should she cease involvement for any reason or even leave the department, the important need for exchange of information may be lost. Ms Cronin has clearly over time attained a keen understanding about the mental health background to the respondent's difficulties, but I cannot be satisfied that any new person picking up the case would do so immediately.

[71] Further, I consider that the development of the route map for direct contact proposed jointly by the two experts in this case should be formalised. Again, while Ms Cronin has shown a willingness to arrange and supervise an occasion of direct contact once advised that Amy wanted that to happen, it would be a retrograde step were the momentum not to be maintained. Decisions about if and when Sarah can recommence direct contact with the respondent still have to be taken. The input from the two skilled witnesses in this case has been invaluable in reaching the stage of a firm recommendation for managing future contact. In my view, the recommendations of Dr Edward and Dr MacKinlay in their joint report should be formalised rather than the permanence order leaving the issue of contact solely within the discretion of the petitioner. The respondent accepted freely that no specific order regulating contact could be made at the present time. One of Mr Aitken's contentions was that there was no effective available route for the respondent to challenge any decision of the local authority should contact be in the children's interests but fail to occur. I accept that the respondent would not be able to make a stand-alone claim under section 11 of the

Children (Scotland) Act 1995 nor be likely to be able to raise judicial review proceedings in that event. However, I consider that the route of seeking a variation of the permanence order that I intend to pronounce would not be as cumbersome as Mr Aitken suggested. If an order is made providing that contact will be arranged by the petitioner on the basis recommended by Dr Edward and Dr MacKinaly, the benchmark for any necessary future variation in terms of section 92 of the 2007 Act is set. That order would be an ancillary provision, albeit not quite in the terms proposed by the petitioner. The joint report is lodged in process and sets the parameters for future contact. The safeguard proposed by the psychologists in respect of the independent assessor is important. Should the respondent remain well and, for any reason, contact is denied and either no independent assessment is undertaken or following such assessment a failure to implement the recommendations of an independent assessor occurs, the respondent would be able to return to this court.

[72] It was agreed by all professionals involved that this is a complex and multifaceted case. I am in no doubt that it is necessary to safeguard Amy and Sarah's interests throughout their childhood and for the petitioner now to be given the primary decision making responsibility for them. However, for the reasons given by Dr Edward and Dr MacKinlay, their welfare also demands that they make sense of the circumstances that have led to decisions about their permanence being made. They require as much reassurance as can be given about their mother's state of health and about her desire to have a relationship with them. It is in their best interests to have a relationship with her if they are settled and the respondent's state of mental health allows direct contact to take place. To maximise the potential of such contact it is important that it does not take place in a vacuum. For that reason, I intend to accede to the course suggested on behalf of the respondent to the extent that she will retain some restricted responsibilities and rights for the promotion of

each child's health, development and welfare and provision of direction and guidance (with accompanying right in respect of the latter). The effect of that is for the respondent to retain (1) the responsibility and right to obtain reasonable information regarding the health, development and welfare of each child and (2) in respect of any review of each child's case in terms of the LAC regulations the right to be advised of information provided to the said review relevant to the health, development and welfare of each child. On contact, I will insert a bespoke provision that ongoing contact (the parental responsibility and right of which is retained by the respondent) is in the interests of the children and will progress on the basis recommended by Dr Edward and Dr MacKinlay at paragraph 9 of their joint report. For the reasons given, I have concluded that it would not be necessary or proportionate to remove the residual parental responsibilities and rights from the respondent. I do not accept that it is sufficient to leave it to the local authority to decide what information they provide or indeed whether to provide it all.

[73] I will pronounce an order reflecting the decisions I have made. As I was not addressed on any issue of expenses in this case I will have the matter call in court for a hearing so that any outstanding issues in relation to that can be discussed.