Case No: BM15C07019, BM14Z09592, FB13C00181, BM14C00153

Neutral Citation Number: [2015] EWHC 2846 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Birmingham Civil Justice Centre

Date: 08/10/2015

Before :

MRS JUSTICE ROBERTS

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Re: The D Children

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Miss Vanessa Meachin (instructed by **Anthony Collins Solicitors**) for the **First Applicant**
Mr Guy Spollon (instructed by **Brendan Fleming Solicitors**) for the **Second Applicant**
Miss Ruth Cabeza (instructed by **Birmingham City Council)** for the **First Respondent**
Miss Rhiannon Davies (instructed by **Osborne and Co)** for the **Children**

Hearing dates: 27th to the 30th July 2015

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Judgment

Mrs Justice Roberts :

1. These proceedings concern an appeal brought by the parents of two children, L and T, against both findings and orders made by a judge in the context of care proceedings initiated by Birmingham City Council.

2. The appellants have been in a relationship since September 2012 (or shortly before that date). The first appellant ('the mother') has five elder children from her previous relationship with Mr S. The second appellant ('the father') has three children from a previous relationship. Together they have two children of their own. L, a girl, was born on 15 May 2013. She is now just over 2 years old and lives with her potential adopters following care and placement orders made on 27 June 2014. Whilst no adoption order has yet been made because of the currency of this litigation, L has now lived with her potential adoptive parents for some 10 months since the beginning of October last year. That is a significant period for a child of this age. She has never lived in a home with her birth parents, the appellants in these proceedings, having been removed from their care when she was nearly three weeks old. T, her brother, was born on 6 May 2014. He is now 15 months old and is currently living in a foster placement pursuant to orders made at the conclusion of a further hearing on 28 October 2014. He has never shared a home with his parents, having been removed from their care at birth. If the parents' current appeals are unsuccessful, L's prospective adopters remain open to the local authority's plan to place T with them in order that the two siblings can be adopted together and grow up in a shared home. Contact between L and her parents and wider sibling group (to whom I shall come shortly) ceased when she moved to her current placement. T continues to have contact with his parents and half-siblings three times a week.

3. This case has already been the subject of appeals to a circuit judge sitting in Birmingham and to the Court of Appeal in London. The litigation has now been before the courts for in excess of two years without a final resolution. Time is running for these children, each of whom needs the security of knowing who will be looking after them and where they will grow up. Of equal importance is the need to bring this long-running litigation to an end in order that the heavy burden of stress currently placed on the shoulders of the parents and the children who remain at home with them can be lifted. For the most part, the appellants have sat through several days of this hearing together. Whilst I did not hear evidence from them given the nature of these appeals, I want to say at the outset of this judgment that each has shown great restraint and courtesy to the court as they have been forced to relive the evidence given during a number of previous hearings. Many of the submissions made by counsel will have been difficult and painful to hear, but they have remained stoical throughout despite the distress they must have been feeling. That is very much to their credit and I wish them to know that I have thought long and hard about this case since I reserved judgment. That was a course which I had to take because of the manner in which the hearing unfolded. At an early stage, it became apparent that an important case management direction in relation to the preparation of some of the evidence had not been complied with and, rather than abandon the hearing, I allowed counsel extra time to make good that deficit. As a result, the two days which had been set aside for judgment writing were absorbed in concluding submissions.

The appeals before me

4. Before me have been the following matters :-

   i. the parents' appeal against findings of fact made by District Judge Maughan on 25 October 2013 at the conclusion of a two day hearing held in the context of ongoing care proceedings launched by the local authority in June 2013. That appeal is now long outside the permissible time limits laid down in the Family Procedure Rules 2010 and thus they need the court's permission to appeal out of time;

   ii. in the event that such permission is given, the substantive appeal against the District Judge's 2013 findings of fact;

   iii. the parents' appeal against the care and placement orders made in respect of L at the conclusion of the full welfare hearing on 27 June 2014; and

   iv. a similar appeal against the care and placement orders made in respect of T at the conclusion of a full welfare hearing some four months later on 6 November 2014.

5. In respect of the appeals against both care and placement orders, permission to appeal has already been granted by His Honour Judge Plunkett in the context of an earlier hearing conducted over two days on 21 November and 5 December 2014. Whilst the orders which he made on that occasion setting aside the care and placement orders have since been overturned by the Court of Appeal on 30 April this year (2015), s 54(4) of the Access to Justice Act 1999 provides that there is no route of appeal against a decision to give or refuse permission to appeal. Hence his order giving the parents permission to appeal the care and placement orders made in respect of both L and T stands, despite the reinstatement of the previous care orders secured previously by the local authority in June and October 2014.

6. There was also before me a fifth application by the parents to adduce fresh evidence. That evidence consisted of updating statements they had made since the last court hearings and a third party statement which concerned alleged retractions by three of the mother's elder children of some of the allegations which were before the court during the fact finding hearing in October 2013. I dealt with this application during the course of the hearing. On 11 June 2015, Roderic Wood J had given the parents' permission to adduce evidence from their legal advisers in relation to the advice which they claimed to have received about the timing of any appeal against the fact finding decision. Although

privilege was expressly waived by the parents in respect of any such attendance notes or witness statements, none was produced at the hearing before me.

Background – the family and the litigation history

7. Because of the length and delay in achieving a resolution of these matters given the respective ages of the children, I need at this point to say something about the history of this litigation. The appellants' counsel, Miss Vanessa Meachin and Mr Guy Spollon, have produced a very detailed narrative chronology for which I am most grateful. It has been of much assistance to me in understanding the background to a complex piece of litigation. Together with counsel for the local authority and for the children's Guardian (respectively Miss Ruth Cabeza and Miss Rhiannon Davies), they have also prepared a schedule of the retractions which it is said the children have made to various third parties at various points in time. This has enabled me to navigate through the nine bundles of detailed documentation which were produced for the purposes of this hearing. Included within that material were transcripts of each of the three hearings before District Judge Maughan (including a full transcript of the evidence given by various parties on each occasion[1]). I have also been provided with written copies of the judgments delivered at first instance and appellate level on both interlocutory and final matters. Several of these transcripts only became available at a late stage of the appeal proceedings. Thus, unlike HHJ Plunkett who dealt with the first appeal, I have had the benefit of knowing exactly what evidence was before the court at each stage of the hearings before District Judge Maughan. I have had the opportunity to revisit each day of the three substantive hearings which she conducted in relation to fact-finding and welfare disposals. In all, I have read what transpired over the course of the eight days spent in court considering the futures of these two young children. This has included the evidence, advocates' submissions, various judicial interjections and – finally – the judgments, delivered on both an extempore and reserved basis.

8. As I promised the parties I would, I have re-read more or less all the written material contained within the court bundles, together with counsel's detailed written submissions. I had a separate bundle containing twelve authorities, most of which were already familiar to me. I have reread all the authorities and will refer to them where appropriate during the course of my judgment. I cannot hope within the reasonable confines of my judgment to rehearse all the evidence in order to test the previous conclusions and decisions made in relation to these children, nor do I consider it appropriate to do so. However, because of the importance of the decision to both the children and the parents, I would wish them to know that I have carefully considered everything which was put before me before reaching my own conclusions in this matter.

[1] I have also had the benefit of full transcripts of the exchanges between the advocates and the judge before, during the course of, and at the conclusion of these hearings.

9. The mother was born in October 1978. She is now 36 years old. The father was born in August 1980. He has just celebrated his 35th birthday. The mother gave birth to her first child, D, a boy who was born in 1995 when she was still 16 years old. The following year, she moved with D from her own mother's home. She formed a relationship with Mr S. That relationship was increasingly characterised by domestic violence and abuse which she suffered at the hands of her partner over a number of years. Over the course of the next three and a half years, four more children were born into the family. N, a girl, was born in February 1998; she is now 17 years old. Her sister, C, was born in March 1999; she is now 16 years old. Two brothers, B1 and B2, followed within eleven months of one another in 2000 and 2001. They are now respectively 14 and 13 years old.

10. It does not take a huge leap of imagination to see the stresses and strains which were inevitably placed upon this young mother as she struggled to cope with a family of five children in an increasingly unhappy home environment which was characterised by domestic violence. Her confidence and self-esteem were at a very low ebb when, to her credit, she finally found the strength to leave the relationship. For many months after its eventual demise, Mr S refused to leave the family home. During that period, she became friendly with the father and they began a relationship during the summer of 2012. By August 2012, he had become her full-time partner and moved into the household within a matter of weeks after Mr S moved out. That household then consisted of four children who were aged between 10 and 16 years old, N having decided to move out to live with her father, Mr S. By September 2012, the mother was expecting their child, L.

11. Prior to the mother's relationship with the father, these children had been the subject of various referrals to the local authority as a result of missing school and other concerns. As long ago as the beginning of 2002, a child protection conference was convened and the four elder children were registered as being in need of protection. The mother left Mr S for a brief period in 2003 but they later reconciled and there were further problems in the family. There were more issues over domestic violence fuelled on at least one occasion by excessive alcohol consumption. The family was referred to the police as a result of D's anti-social behaviour and this led to a further multi-agency meeting in 2008. At that time, the children were all said to be sleeping in one bedroom. By October 2008, there were serious concerns about neglect and all five children were made the subject of a safeguarding plan which remained in place for the next two years.

12. In 2011, the local authority was informed that the family was about to be evicted because of anti-social behaviour. Further areas of neglect were identified but no further action was taken at that stage. A further interim Child Protection case conference was convened in August 2012 when the two girls and their younger brothers were made the subject of child protection plans. The areas posing risks for the children at that stage were identified as including the following **[LB1/C:302]**:-

i. domestic violence perpetrated by Mr S against the mother and dating back to 2001;
ii. the mother's inability to stop Mr S from returning to the family if he wishes to resume living in the household;
iii. the mother's low self-esteem which has had an impact upon the children;
iv. the mother's lack of any support networks;
v. concerns over conditions within the home and the mother's inability to maintain it to a reasonable standard;
vi. poor school attendance;
vii. the mother was then subject to a behaviour order which might have resulted in the family's eviction;
viii. the mother's pregnancy (with B2) which enabled Mr S to exert increased control over her.

13. In the meantime, long before his relationship with the mother, the father was expressing concerns to the local authority about the circumstances in which his own children were being raised by their mother. He reported that she was living with a maternal uncle who was a class A drug user. There were reports that the children's mother's (then) partner had touched one of the children in an inappropriate manner.

14. His three daughters eventually moved to live with their paternal grandparents and now have a permanent home with them, with the father's consent. He has supervised contact but there is an issue as to the reasons for that supervision and his commitment to those children. This became an issue which was explored in some depth during the currency of the proceedings in relation to L and T before District Judge Maughan.

15. In November 2012, during the early stages of the parents' relationship but at a time when the mother was pregnant with L, there was a further Child Protection Review at which it was decided that all the children should remain subject to child protection plans. The risks on that occasion were identified as including the following **[LB1/C:307]** :-

i. the mother was in a relationship with a man (the father) who posed a risk to children (PPRC status) and who had refused to sign a working agreement to say that he will not reside in the family home. It was not known how safe the children were in his presence and the relationship had been established very quickly at a time when the mother knew little about him or the risks he might pose;
ii. Mr S was then unaware of the father's PPRC status and there were concerns the children might become involved in any response if and when he found out;
iii. the children had presented as unkempt and smelly which had the potential to impact upon their self esteem;

iv. the mother was perceived to be putting her own needs above those of the children by not working with the local authority in respect of her new partner;
v. home conditions remained a concern;
vi. the family had been known to social services for some time for the same concerns and none of them seemed to have been addressed;
vii. the mother had a history of not co-operating with agencies, saying she would undertake work but never actually engaging in the programme of work put in place. This was a concern because of its impact upon the children;
viii. the mother was pregnant.

16. By that stage, N had voted with her feet and left the mother's home to rejoin her father, Mr S. To her credit, the mother recognised the local authority's concerns and agreed that the children should remain subject to the local authority's proposed protection plans.

17. Towards the end of 2012, Emma Spensley was appointed as one of the children's social workers. In one of her statements, she has recorded a confrontation which took place at the beginning of December 2012, shortly after the father moved in to the family home, when Mr S had attended at the property for contact. He attempted to kick the door down and the police were involved. N, who had accompanied her father, was encouraging her siblings not to listen to their mother. This appears to have been characteristic of her behaviour at the time. The papers are littered with many references to her being verbally abusive towards her mother and encouraging her younger siblings to show the same disrespect. By this stage, it seemed that contact between B1 and B2 and their father had all but broken down. There was a further incident when he attended at the property and attempted to force an entry which involved another police attendance. There is evidence that C (then almost 13 years old) was smashing up her bedroom and calling her mother a "slut". Importantly, by the beginning of 2013, Emma Spensley had formed a view that the mother had the potential to change and become a good parent if she received appropriate help and support. She made a referral to a local Family Centre.

18. Despite that indication, the situation at home remained chaotic. N was refusing to repair her relationship with her mother. D, the mother's elder child who had been living away from the family home, moved back in in January 2013 and revealed that he had experienced sexual thoughts and feelings towards young girls. His presence within the home was considered by the local authority to be another risk factor for these children. The father and the mother were asked to ensure that the children were supervised at all times whilst D was present in the house.

19. There were continuing problems between the mother and Mr S which impacted upon the children. She was obliged to obtain a court injunction to prevent him from returning to the property.

20. On 17 January 2013, whilst this state of affairs was ongoing, the father was convicted of common assault against his previous partner. He did not attend the hearing and was sentenced in his absence to a 12 month supervision order and a requirement during his probation to undergo a course in relation to domestic abuse. It became clear during the course of his oral evidence to District Judge Maughan that illness had prevented him from attending on that day. It was the joint case of both the mother and the father that this conviction was secured against the background of a relatively trivial incident which involved nothing more than the father stepping on his ex-partner's foot and causing minor bruising. Nevertheless, it warranted a formal conviction although the mother had explained to the District Judge in her evidence that the father had been open and honest with her about the incident before they commenced their own relationship.

21. By the beginning of 2013, the local authority had completed its core assessments in relation to each of the four children who were then the subject of child protection plans. N was living with her father, Mr S. Her relationship with her mother was hostile and she continued to refer to her in highly derogatory terms. Her younger sister, C, and her two brothers, B1 and B2, were living under the roof now shared by the father and mother who was four months pregnant with unborn baby L.

22. These assessments provide some support for the mother's case that, with Mr S now out of the home, she had been able to start putting in place rules and boundaries for the three younger children. In this, she had the support of the father. B1 was reported to be happy living with his mother and her current partner. Miss Spensley reported that she had observed B1 in his home environment on a few occasions when he appeared settled and was observed laughing and joking with both the mother and the father. He said that he was enjoying school and had lots of friends. The school had voiced some concerns about his general presentation; at times he appeared 'scruffy'. B2 was said to be happy at school and getting on well with his siblings, his mother and the father. There were still concerns surrounding C's temper outbursts but these appeared to be manifest on occasions when she had spoken to Mr S or there had been issues over contact. There were concerns that the flat was overcrowded now that D had moved back in and other concerns over his sexual disclosures. Miss Spensley noted that the mother needed to become more pro-active in relation to her parenting and it was hoped that a course which she was undertaking in relation to domestic violence might address some of these issues. Sibling contact would continue to be supervised in order to ensure that N did not have inappropriate conversations with C, B1 and B2 and did not pass on messages from Mr S. The local authority remained concerned about the potential risk to the children posed by the father because of his PPRC status. He had explained to them that he had been involved in two robberies when he was younger and acquired that status as his victims were under 16 at the time. There were also concerns about his propensity for domestic violence.

23. Nicole had a different view of her mother's new partner. She did not like him and felt that he controlled her mother and the other children.

24. Nevertheless, whilst there was an element of concern that the mother and father were relying too heavily on social services, these core assessments did indeed appear to suggest the first positive glimmer of light for this family. There are references to 'a noticeable improvement in [the mother's] capacity to ensure safety and safeguard her children' and her apparent willingness to share information with the local authority (e.g. **[LB1/C:78]**). There are also references to the children missing their father, Mr S, and wishing to have more contact with him. There did not appear to be any particular financial concerns although the family was entirely dependent upon benefits, the father being then unemployed but in receipt of disability living allowance as a result of chronic ill health involving epileptic seizures. The fact that these improvements were being undertaken in circumstances where the fabric of the family home was in a pretty poor state is, perhaps, testament to the mother's willingness to make changes. There were no internal doors inside the property since Mr S had vandalised them during his occupation. These had been replaced with curtains across the doorways. There was a large hole in the ceiling which was allowing water to penetrate and several of the electric sockets had live wires exposed. In March 2013, Miss Spensley made a referral to the local housing department because of conditions within the home. It was anticipated at that stage that the family might need to move into temporary accommodation because of the work involved in repairing the leak to the ceiling.

25. Later that month, the mother was arrested at the home and charged with cruelty to the dogs she had kept whilst she had been living with Mr S. (She has always maintained that it was Mr S rather than she who mistreated the animals.) D, her eldest son, had by now left and appeared to be living rough on the streets. N was not attending regularly at school and social workers could not gain access to her father's home when they called to investigate her absence.

26. At the beginning of May 2013, there was a further child protection review which, this time, included a review of the arrangements for unborn baby L. The mother by this stage was about to give birth. D appeared to have moved back into the family home for a brief period although he was due to be accommodated separately by the local authority. Neither the mother nor the father had completed their courses although their failure to do so appeared to be the result of the mother's late stage of pregnancy and the father's recent hospitalisation rather than as a result of any deliberate inaction on their part. The father's probation officer was present at the meeting and reported that he had engaged well with his order, despite missing an odd session. He was then assessed as being a medium risk of harm towards women and children. Whilst he had never physically harmed a child, it was felt that he posed a risk of emotional harm to a child in the context of possible domestic violence. Potential triggers for reoffending were identified and his health was a further area of concern.

27. Reports from the school in relation to C and the two younger boys were much more encouraging both in terms of their school attendance record and their academic attainment. N appeared to be between school moves and her old school was sending homework to Mr S's home. There was no cooperation at all from Mr S who appeared to be telling N she should not attend school if she did not wish to be there.

28. Against the background of life for this family as I have described it, L was born three weeks later on 25 May 2013. When a health visitor attended at the family home a fortnight later, she told the mother that it was not appropriate for the family to remain in the property with a small baby whilst the hole in the ceiling remained unrepaired. On the same day, the family was moved to temporary bed and breakfast accommodation at a local hotel. When the father complained that it was filthy, they were moved to another hotel.

Precipitating events for L's reception into foster care on the basis of voluntary arrangements with her parents

29. Just over a week later, Miss Spensley organised a sibling contact for the children at a local McDonalds restaurant. It was, as before, a supervised session. It was the first sibling contact for some months because of N's earlier refusal to attend any more sessions. Miss Spensley had formed the view that her absence was having a negative impact upon the other children emotionally. It was on the way back from that contact session, having dropped the other children off at home, that N told the social worker that she was concerned about her sister and brothers. At first she was reluctant to share those concerns for fear of repercussions for her siblings. Once she was reassured, she told Miss Spensley that C had told her that if B1 and B2 misbehaved, they were forced by the mother or the father to sit naked in a cold bath or made to stand by the bedroom door for hours on end as a punishment. These were not comments which were overheard by the social worker at the time.

30. As a result of that conversation, Miss Spensley and another social worker made an unannounced visit to the children's school the following day. Each of C and B1 were spoken to separately. (B2 attended a different school and he was not spoken to on this occasion.) C reported that if B1 or B2 were cheeky at home or misbehaved, they were made to strip and forced into a cold bath naked. She described feeling angry and upset on these occasions and described how B1 cried when he was put in the bath. She described feelings of helplessness and being unable to assist her brothers. She said she had shouted at her mother and told her to get B1 out of the bath because of his evident distress. Both the mother and father had refused to do so. On the contrary, they left him in the bath and prolonged the punishment until he had calmed down. C could recall

one occasion when B1 was allowed out of the bath. She thought this had happened on about three occasions and described the last time has having occurred the previous week at the bed and breakfast accommodation at which the family was staying. She also described occasions when the two boys were forced to stand for hours as a punishment. She said that on one occasion when B1 had been forced to stand by the bedroom door as soon as he arrived home from school. He was made to stand there for between six and twelve hours. If either of the boys complained, they were made to stand for longer periods. C specifically referred to B1 being too tired to compete at his recent sports day; he had apparently had to drop out of a race as his legs were aching so much from standing for hours the previous night.

31. C told the social workers that she wanted L's father to stop controlling the family and to give the family a break. She felt that her mother was unable to make any independent decisions of her own.

32. When he was spoken to on that occasion, B1 described feelings of panic when he was made to get into the cold baths. He said he shouted and screamed in protest. He confirmed that B2 was also subjected to the same punishment but "does not cry or dither like me" (i.e. B1). He said these punishments were handed out when he was rude to his mother and were normally carried out by the father.

33. Events unfolded swiftly after those initial disclosures by C and B1.

34. The local authority decided that all the children were in need of emergency police protection. This was avoided when the parents agreed to the children being accommodated on a voluntary basis pursuant to section 20 of the Children Act 1989 whilst matters were investigated further. They were removed from the temporary bed and breakfast accommodation on the same day, 13 June 2014.

35. Later that day, B1 reported to his foster carer that he and his younger brother had been punished by his mother's boyfriend because of an incident 'when someone ate a banana but refused to own up to having done so'. He said the father had given them a cold shower and made them stand against the wall all night. Two days after being removed from home, B1 also told his foster carers that the punishments he had described had happened at the hands of the father on about five occasions. There was talk of D having stolen £200 worth of "weed" from the father. B2 had been placed with his brother in the same foster placement and confirmed what his elder brother had said. Copies of the foster carers contemporaneous notes are within the material placed before the court. These contain references to the children "constantly eating"; B1 was to ask his foster carer to adopt him within three days of being received into voluntary care.

36. The day after her sister and brothers were removed from the home, N revealed to Miss Spensley that Mr S had been hitting her over a prolonged period. She was medically examined and was found to have a mark on her right cheek which was consistent with her allegations. With the mother's agreement, she was removed from Mr S's home and accommodated in temporary foster care.

37. Before the court was evidence from the female police officer who attended at the bed and breakfast accommodation when the children were removed on 14 June 2013. She said that the mother had become emotional and grabbed L from her pushchair running for the doorway. The father was then fairly immobile on crutches. L was removed from her parents care when she was not quite three weeks old. She has remained with her foster carers ever since.

38. On 18 June 2013, the local authority applied for care orders in relation to N (then 15), C (14), B1 (12), B2 (11) and L (1 month old). Interim care orders in respect of all five children were made in the local Family Proceedings Court on 26 June 2013. The mother and the father attended court and were legally represented. The mother consented to a care order in respect of her middle three children but sought the return to her care of N and L. The father, too, opposed the removal of L. By that stage, N had walked out of her foster placement and had been returned home under a working agreement with the local authority. Both parents denied the allegations about the use of cold baths as punishment. They said that 'luke warm baths [had] been used out of necessity when [B1] was very dirty and the heating was not working properly' **[LB1/B:29]**. The judgment delivered by District Judge McGarva on that occasion records that 'Mother is of the view that [the father] has been a positive influence in the house and he has imposed rules and boundaries which had previously not been in place. Mother feels the children have at times reacted badly to this and believes the allegations may be a plot by the children collectively to get them placed together'. The District Judge made the interim care orders sought on the basis that the disclosures made by the children were very serious. The parents sought to persuade the court that L was not at risk of the sort of chastisement about which the boys were complaining. However, in circumstances where, as a tiny infant, she had no voice of her own, the court decided the risk of harm was sufficiently serious to warrant her removal from the parents' care.

The ABE interviews

39. Full transcripts of the children's ABE interviews were before District Judge Maughan when she conducted the fact finding hearing. She confirmed to the parties that she had watched the DVDs of each interview overnight before commencing the hearing and as part of her preparation for it. Her impression of these children and what they were then saying was thus very fresh in her mind.

40. I do not propose to dwell at any length of these interviews. The material is within the bundles which were placed before me and which I have read. However, the following evidence can be collected from the material.

41. Nicole was interviewed for just over one and quarter hours on 18 June 2013. A good part of the interview was taken up with the abuse she had suffered at the hands of her father, Mr S. When she was asked about punishments meted out to her brothers and sister by L's father, she started to explain what C had been telling her whilst they communicated through Facebook. There was an incident over Christmas when the father had bought pellet guns for each of B1 and B2 as presents when B1 had been shot close to his eye. She said C had told her that, in relation to B1, the father had 'hit, like, like you know where you, like get that with a towel and then whacking'. Of the previous contact visit some six days earlier, she said this :-

> "But then on Wednesday when I've seen them at McDonald's contact they was all telling me stuff abut, [B2], for, er, instance, he, he put [B2] in a cold bath. I don't, I can't, I don't know what he done, but because [B2] suffers with asthma and like that could like shock his system, and he, he, he put [B2] in a cold bath and he had to stay in there. I don't know if he's done anything to [C], she hasn't told me anything but, but with [B1], on the Tuesday, I was seeing them on Wednesday, Tuesday, like, night he made [B1] stand, he wasn't allowed to sit down or , he had to stand up and he wasn't allowed to go to sleep or anything. And then [C] goes, erm, that, er, that they don't get fed at home, that they all only have their school dinners, and then because when we had McDonald's, [B1] like really ate the, erm, ate his like, because [the social worker] took us to MacDonald's because her, erm, manager paid for it or, I think and, erm, [B1] like ate his McDonald's.' **[LB3/K:93]**

42. By the end of June 2013, C had joined her two younger brothers at their foster placement. Neither of the boys had been interviewed at that stage. However, on 2 July 2013, B2 told his foster carer that on one occasion he had been made to stand against the wall all night, that the father had fallen asleep and "my legs started wobblying and shaking and I fell onto [the father] and when I walked I was bumping into things" **[LB2/C:364]**. This was something which he had not said previously.

43. When C was spoken to by the police at her school about a fortnight later, she confirmed that she had told N about the cold baths and how the boys were made to stand for long periods of time. She also recounted to the female police officer the episode to which N had referred involving B2 being shot in the eye with a pellet gun which the boys had been given by the father as a Christmas present. She said that B2 was made to stand by the wall as a punishment because he was misbehaving and would not listen. This had happened whilst they were living in the emergency bed and breakfast accommodation. She said that there was very little space and the family was living in two rooms. The boys

had been running around and this was annoying the other residents. B2 was made to stand by the wall for about 20 or 40 minutes although it had seemed like an hour.

44. The boys were interviewed on 30 July 2013 by a social worker. By that stage, both they and C were asking to go home.

45. B1 was then some two months away from his 13th birthday. B2 was just over 11½ years old.

46. B1's interview lasted for half an hour. Miss Spensley, the children's social worker, was present at the police station albeit not in the room at the time. B1 was reassured that he had not done anything wrong. He confirmed that he knew why he and his brother had been brought to the station because of what he had said about his mother and L's father in relation to the cold bath and standing up. When he was asked to explain what had happened about the cold baths, he said this :-

> "Erm, I know one, a couple of the times was because me and [B2] was, erm, acting like, erm, babies, mentally anyway and then we just, then when they'd started treating us like babies and that and then started putting us in like baby baths and that, elbow temperature and then, erm, started feeding us like babies and I, I know that was another couple of times. I think a couple of other times because of punishment because, er, every time they sent me to my room and that, because I said it weren't fair and that. Erm, I just got, erm, and they couldn't find another way of punishing me, so I think that's why." **[LB3/K:13]**

47. He repeated the phrase 'elbow temperature' and explained it was like a baby's bath although he was referring to the bath in the main bathroom. He nodded when asked to confirm that he had been physically put in the bath as he had refused to get in. He said he was left to sit in the bath for perhaps 20 minutes and that the mother and L's father would keep coming in to check that he had not got out of the bath. Perhaps tellingly, when he was asked what he meant by his repeated reference to 'elbow temperature', he said that he understood that it was the temperature at which a baby had to have a bath but "to me it was cold and I said to, erm, my mum's boyfriend, how can this be a erm, elbow temperature bath, I can't see [L] getting in this" **[LB3/K:15]**. He said he would 'shout' and 'rave' when he was put in the bath and say that he wanted to get out right away. He described feeling very cold in the bath and said that the first time this had happened was about a couple of months after L's father had moved into their home. He described how this punishment happened after he had smashed up his room and they could not think of another suitable punishment as he had not cared about smashing up his room. He said his mother could not lift him and so it was L's father who had physically put him in the bath. He was kicking and kicked L's father who then just picked him up and put him in the bath. He was standing up and saying 'no' and tried to get out of the bath but L's father just kept him in the bath. He said this form of

punishment (which had happened on about four or five occasions) only happened to him and his brother and he had started kicking and asked why this never happened to C. He complained that it was not fair that she appeared to be treated differently.

48. He was asked about the times he had been made to stand by a wall. He thought he had been made to stand for a couple of hours. They would stand in the hallway but, if it were night time, they had to stand in the room which their mother shared with L's father so that they could make sure they did not sit down. If it was day time, they would be made to stand in the living room or hallway where someone could watch them. When he was asked to describe how long they had been asked to stand in the bedroom, he said that there was no clock in that room but that it had felt like a long time. Sometimes one of them would stay awake. L was also sleeping in the same room at the time. B1 described his feelings of anger and explained how he would 'sneak to sit down' if the adults fell asleep. He described how B2 would sometimes fall asleep but normally they woke before the adults. If they were caught sleeping during the punishment, they would have to do another night. He was asked how he felt facing school the next day. He said, "Sometimes I'd feel knackered and that, but sometimes I'd feel okay and that, because normally I wake up early for school anyway, like six o'clock, five o'clock and that" **[LB3/K:23]**. He confirmed that C had seen him being punished by standing in the bath. He went on to describe how it was the father who did this. "My Mum normally just used to say just send them to their room and that, but then [the father] used to say it doesn't work, it, it doesn't work for them, so they've tried thinking of a new punishment, but I think it was my mum's boyfriend that say, thought of erm, standing up and that" **[LB3/K:23]**.

49. B1 explained how he would sometimes be woken from his bed and made to stand against the wall as a punishment. He recalled an occasion when this had happened and his mother had allowed him to go back to bed after half an hour although she was subsequently overruled by the father who made him get out of bed and stand again. He described again how angry this made him feel. He pointed again to the different way in which C was treated. Whenever she had 'kicked off', the father tended to 'sticked up for C' and she would be sent to her room or have her lap top removed. He described how his mother had tried to 'stick up' for him and B2 when the father punished them in this way. She had tried to argue that it was not fair for them to be treated differently 'because [C] was let off lighter than all of us' **[LB3/K:26]**.

50. When the social worker once again returned to his description of the bath water being at 'elbow temperature', B1 said he thought he had read a book about bathing babies and that was the provenance of his understanding that babies have to be bathed at elbow temperature : "But to me, el-elbow temperature, to me I don't know how a baby can get in that; that felt cold to me in there" **[LB3/K:27]**. On a scale of one to ten, he described the temperature as being "about a nine in there".

51. B2's interview on the same day was shorter. It lasted for about 20 minutes. When he was asked to tell the social worker what had happened, B2 said this :

> "We had to move into a hotel when we, after we went on holiday because we had all like these cracks in the wall, in the ceiling and then we had to, they had to take down the whole of the ceiling. We had to, we moved to this first hotel, I've forget the name of it, but it was all rusty and, erm, the, when we had [L], the, the cot was all broken, and then we had, then we moved to, er, the, oh I've forget the hotel as well, then it's the next hotel and, er, when it was like a real hot day, er, I, I went and had a cold bath and once when I, I when I was like about, well, it weren't a hot day, I did go in the cold bath when I, when I did something wrong." **[LB3/K:34]**

52. He said that he had only been in a cold bath on two occasions. He thought that once was when it was a hot day, his eczema had flared up and he had asked if he could put cold water on it because it 'used to be under my legs and all that'. But the second time he did not want to go in the cold bath; this time he was put in a cold bath because he did something wrong. He said that it was L's father who who had done this on a weekend when he was staying at the hostel accommodation. When asked what he said, B2 said,

> "Oh, I didn't want him to, but, but he just, well, he like, I, he just like, er, like get in the bath or like I would *[sighs]* get in the bath or you'll stay in there longer, because we only used to stay in there for like ten minutes, but he said you'll stay in there longer if you didn't, like, if you didn't get in, like an extra five minutes." **[LB3/K:36]**

53. He described getting in himself. He described the water in the bath as being just like the cold water that comes out of a normal tap. He described the water as being 'freezing'. He said he could not speak or say anything because he was too cold to speak. He sat in the bath for about ten minutes. He demonstrated to the social worker how full the bath had been (she interpreted his gesture as indicating that the bath was about half full). He described feeling really upset and angry and thinking in his head why had he been placed in this cold bath. He demonstrated how his teeth were chattering with cold, despite the fact that it was summer. When asked what his mother had thought about this, B2 replied that she had agreed because he was being naughty. He described how L's father had returned to the bathroom and told him he could get out now, how he had thrown a towel onto the sink. "I just got out and dried myself" **[LB3/K:38]**. He thought that probably both B1 and C would have known that this was going on.

54. B2 then described how he and B1 were made to stand up as a punishment, sometimes after his bedtime ("my bedtime was at half eight, [B1's] was at quarter to nine"). Sometimes he would stand for an hour but only for half an hour if it was after his bedtime. That had happened two or three times if he had been naughty. It was L's father who would decide how long they had to stand. B2 never felt able to say he did not want to do the punishment because L's father would simply make it longer.

Sometimes he and B1 were made to stand together. He described feeling angry and upset. When asked how he felt when he was made to stand after his bed time, B2 said, "Erm, my legs, well, well my legs where I was tired, I just wanted to go to bed. I'd just fall asleep straightaway". He described how he was allowed to go to bed once he had done his standing up. He said that sometimes his mother would argue with the father and tell him she had only agreed to make them stand for half an hour but he would make them stand for a full hour. He described how C was never put in cold baths although she did sometimes lose her lap top. When asked about his new sister, L, B2 said she was not punished as "she couldn't really say anything could she ?" **[LB3/K:43]**.

55. He told the social worker that D used to steal from the father because he smoked "fags and weed" but now the father only smoked "fags" because "he's trying to change his ways".

56. I have recorded the substance of the children's interviews at some length for two reasons. First, because all of this information was before District Judge Maughan in October 2013 when she dealt with the fact-finding hearing. She, unlike me, also had the benefit of watching and listening to the full DVD recordings. She had done that a matter of hours before she gave her judgment. Secondly, that evidence has to be weighed and balanced against the subsequent retractions which the children (or some of them) were to make as the litigation progressed through its various stages.

57. In this context it is significant, in my judgment, that the children (and the boys in particular) were not simply 'parroting' a version of events which was internally consistent. There were inconsistencies as each described what happened. But they were also describing what they were feeling, sensations they were experiencing and the physical reactions their bodies had to those sensations.

58. However, before dealing with the retractions, I return to the litigation chronology which followed the children's removal and the first interim care order in respect of each.

59. By this stage, a programme of work had started with the family through a local organisation called Action for Children. C had returned to her mother's home at the end of July and refused to return to her foster placement. B1 absconded from his placement with the same foster carers about a week later and returned to his mother's home. Thus, when the matter returned to court on 22 August 2013, only B2 and L were in foster care. Supervision orders were made in respect of the older children and the interim care order for the two younger children was renewed. The matter was listed for a fact-finding hearing on 24 October 2013 with a time estimate of a day.

60. District Judge Maughan dealt with the pre-trial review on 9 October 2014. By that stage, the local authority's parenting assessment was being undertaken by Family Action. According to the local authority, the mother and father were not engaging in that assessment. That was a position which was not accepted by the mother; the father said his absence from some of the sessions was due to his ill health. Whilst legally represented, they had not yet filed their response to the local authority's evidence including its revised statement of threshold facts.

The fact-finding hearing on 24 and 25 October 2013

61. As I have already indicated earlier in my judgment, I had before me in the appeal bundles complete verbatim transcripts of the entirety of this hearing. I have had access to all the material in the bundles which were before the court on that occasion. The schedule of the findings made following the delivery of judgment on 25 October 2013 is in my bundles at **[LB1/B:55a]**.

62. In broad terms, the District Judge found that the children's allegations of over-chastisement were true. She found that each of B1 and B2 had been placed by force in a bath of cold water by the father as a punishment which lasted for no less than 10 minutes. She accepted that on more than one occasion the father had made each of the boys stand for an excessive period of time in excess of an hour. She found that the mother had failed to protect the children on these occasions. She accepted that B2 had suffered emotional abuse by being woken and made to stand as a punishment. C was found to have suffered emotional abuse and harm as a result of witnessing these punishments. She found that the mother and the father had coached B1 in respect of the evidence he gave in his ABE interview insofar as he used the expression "elbow temperature" to describe the temperature of the bath water which was, in fact, cold. She found that N had been physically assaulted by her father, Mr S, both on 14 June 2013 and on other occasions as a result of rough handling during physical altercations between them.

63. The mother and father were legally represented on that occasion, albeit separately. In addition to reading papers, the District Judge heard oral evidence from the social worker, Miss Spensley; from Miss O'Donnell, the social worker who had conducted the ABE interviews; from the female police officer who was the child abuse investigator at the local police station; and from each of the mother and the father.

64. N's solicitor confirmed that she had indicated that she did not wish to give any evidence in the case. She had asked her solicitor not to play an active role in the fact-finding process.

65. The father's solicitor confirmed that his client was denying all the allegations save that he accepted that the children were standing in the hotel accommodation for a period of up to half an hour as a punishment. He denied placing them in cold baths and denied performing sexual acts with the mother whilst the children were present in the home. (This last allegation was rejected by the District Judge. It formed no further part of the case against the parents.)

66. The Guardian did not attend court for the fact-finding hearing although he was represented (indirectly) by the children's solicitor, Miss Hope. Also before the court on 24 October 2013 was a contemporaneous note which he had made of a discussion which he had with C whilst at court on 1 August 2014. That was two days after the boys had given their ABE interviews on 30 July 2013. A copy of that note was before District Judge Maughan and it is within the material before me at **[L3/G:1]**. On that occasion, C told the Guardian that, whilst she had told N at the MacDonald's contact in June 2013 that things were bad at home, she did so in the hope that she [N] would come home "to protect us". She said that she and B1 had argued. She had not wanted to remain in foster care and wanted everyone to be back together. She wanted to see L at weekends. She said that they did not get punished but just sent to their room. There were no cold bath punishments and they did not have to stand for long periods of time. They just said they did to get N home. When asked why they wanted her home, C said "To make sure we are okay. She looks after us. Cheers us up".

67. Of course, part of the complaint made by B1 and B2 was that C appeared to them to be singled out as the one child who did not get punished in the way the boys did. They made frequent references in their ABE evidence to the fact that they felt that unfairness keenly. Unfortunately, there is nothing more to be collected from that note save for the fact C said they were getting on better with the father.

68. When she addressed the court on 24 October 2013 at the start of the fact-finding hearing, the children's solicitor told the District Judge that the Guardian supported the fact-finding enquiry notwithstanding that partial retraction by C because B1 and B2 appeared to be consistent in the accounts they had given to a number of professionals.

69. Thus, the District Judge was well aware before she began to hear the evidence in relation to fact- finding that there had been an element of retraction by C. However, at that stage there was nothing to suggest that B1 and B2 were resiling from their accounts of the punishments.

70. Emma Spensley was asked about some of the internal inconsistencies in the accounts given by the two boys. She accepted that being made to stand as a punishment for half an hour would not by itself take a case into the realms of public law and state interference. The District Judge interjected at various points and asked her if she really thought it was possible for a child to stand for between six and twelve hours at a stretch. Her view was that C was a bright girl who had a good understanding of matters and she thought that her reportage of these events might well be accurate. She said that N had herself asked for a foster placement earlier that month but she had then absconded and returned to her mother's home.

71. As to the findings of collusion on the part of the parents, Miss Spensley's evidence was that she had received a telephone call from one of her colleagues who had said that he felt the family had been colluding. N and C had specifically asked to be excused from going to family contact sessions because they could not cope with the discussions which were taking place within the family **[AB1/1C:20]**. She also gave evidence of what she had collected from the sibling contact notes. There was a suggestion that B2 had been told to "play up" although she could not be sure whether it was the mother and/or father who had said that. What she did have was a statement made by one of the contact workers who was clear that the parents were colluding with the children. She said that whilst this entry did not appear in the contact notes, she had telephoned his manager to request that he made a separate statement to that effect since the contact worker had also confirmed the position in relation to evidence of collusion with his line manager.

72. Miss Spensley told the children's solicitor in cross-examination that she was surprised that the boys had not retracted their allegations about the punishments given that they had returned home by this stage. It would in all probability have made things better for them at home. She believed the children and she believed the things which the children had told their foster carer. She also believed that they had been put under pressure. In terms of collusion, she said :

> "Well, as I have said, from speaking to the contact workers, the contact workers have said there has been a lot of collusion. There has been a lot of whispering between parents and the children, which has then led to the children trying to speak to the younger children that are in care, trying to get them to leave care to go home. Also, from speaking to [N] when I went to see [N] at her father's property on 8th October, N was saying that in contact herself and [C], because they had already returned home, they were told to try and get the boys back home but ……notwithstanding that, apart from [C], who has obviously retracted some of her allegations, they boys have been consistent in what they have said." **[AB1/1C:282-29]**

73. That the District Judge was well aware of C's retraction on that occasion is plain from the exchange with Miss Spensley which she herself initiated. Having asked where C was now living, and having confirmed that she was back at home with the mother and father with N, C and B1, she asked about the retraction and received the following reply :-

"She did because after she said that she did say that mum was giving the boys cold baths or giving [B1] and [B2] cold baths, it was for a different reason, but it was in contradiction to what mum had told us. Mum had told us that she was giving cold baths because of the heating and [C] was saying it was because the boys were hot. Mum was saying there was no heating and it was cold, that is the reason the cold baths were given, whereas [C] has retracted now because she has come out with a different version of events to Mum." **[AB1/1C:29]**

74. The social worker who conducted the ABE interviews gave evidence and was cross-examined by the parents' representatives, in particular, about B1's repeated reference to the words 'elbow temperature' and her attempts to explore that with the boys.

75. The mother gave evidence about her relationship with the children and her feelings that "there's no pleasing them at the moment" **[AB1/1C:37]**. She denied that she had told N at one of the contact sessions to tell B1 to lie about what he had said with reference to cold baths being used as a punishment. She rejected the suggestion that N had said on more than one occasion that she and the father had told her (N) and C to tell B1 to say that the cold baths did not happen. She denied the account which N had earlier given to the social worker that she was threatening to kill herself and blaming N, C and B1 for the fact that B2 and L were in the care of the local authority. She rejected N's account that whilst she was out looking for her mother by the canal, her mother was sending text messages to the father blaming the children for the fact that she wanted to kill herself. She confirmed that she was finding N very challenging to deal with at that time and felt that she was being disruptive to get her full attention. She said that she had never seen the father put the boys into baths of cold water and the longest time which either had been made to stand as a punishment was for a total of 30 minutes with a break in between.

76. The mother was questioned by the solicitor for the local authority as to whether there were any reasons she could think of to explain why the children were making these allegations if they were not true. Various passages from the boys' ABE interviews were put to her. She thought that it might be down to everything which her children had been through in terms of her previous relationship with their father and the shock of discovering that she had a new relationship which, at first, they were unwilling to accept. "Nobody can answer these questions but my kids" **[AB1/1C:43]**.

77. She said that in relation to much of what N had been saying recently, she had so much going on in her own head that she did not know what she wanted and was 'making up stuff'. When it was put to her that N had also said that she, C and B1 had wanted to leave the house and had packed their bags but the father was dragging the shoes off their feet, the mother said she had invented that account **[AB1/1C:44]**.

78. These are simply isolated references which I have extracted from the mother's cross-examination. It is fair to say that most of the detail in the material from the children's ABE interviews was put to her in cross-examination and she denied that the allegations were true and could offer no further explanation for why they should be making up stories other than the explanation she had provided earlier during the course of her oral evidence.

79. At the end of her evidence, the District Judge asked several questions of her own. The mother was asked about B1 smashing up his bedroom. She was asked how she would discipline the children. She said that the boys had shared a bedroom so if they misbehaved one would be sent up to his room while the other would be made to stand up for a little bit of time in the hallway. Had she sent them both to their room, it would not have been a punishment because they would be laughing and 'playing up' even more. She confirmed that she would make them stand for 15 minutes and that '[B1] ended up doing half an hour in the hotel' but he was given a break after 15 minutes. The District Judge asked several probing questions about the dynamic of her relationship with L's father and who controlled the benefits received by the family and/or managed the family's budget. The mother confirmed that when she first started a relationship with him she did not know how to control money because Mr S had spent most of their benefits on 'bookies and stuff'. The father had helped her to learn how to shop, to show her what to buy. This, she said, was not done to control her but to give her appropriate advice as to how she should manage by herself.

80. Finally, the District Judge heard evidence from the father. He denied the children's allegations and supported the mother's case in relation to N's account of her having sent messages blaming the children for wanting to kill herself. He said he had never pulled shoes off the feet of the children when they wanted to leave the house, although he did admit to standing in front of the door to bar their exit from the house so that they could not get out when their mother had been telling them they could not go to their father's home **[AB1:1C56]**. He agreed that he had moved into a difficult household and that the children appeared quite disturbed. He accepted that there were no boundaries in place when he had arrived and no discipline.

81. He was asked about the allegations concerning the cold baths. The father explained that whilst they had been staying in the hostel accommodation, B1 had returned from his sports day with an injured ankle. When he himself had been to hospital a few days before with a dislocated knee, he had been told that he should have put ice on the joint. Because the family was then living in emergency accommodation and had no facilities to make ice, he was advised in the alternative to run it under cold water to stop the swelling. He had therefore told B1 to put his foot in some cold water in the bath. He said that he had remained downstairs smoking whilst B1 had done this **[AB1/1C:59]**.

82. He was asked about the children being made to stand for long periods of time. This was his response :-

> "Well, mum was asking the children to stand up for long periods of time and I just made sure that they've done the 15 minutes that she gave them. If mum ever doubled the time, I'd just make sure that they done what time mum gave them." **[AB1/1C:62]**

83. He, too, was asked why the children should be making these allegations. He said,

> "Truthfully, I don't know. I do not know whether it is they want their dad back home with mum, I can't answer something for them, you know what I mean. They do throw mum a, "Get rid of him and dad'll be back" and things like that, "F him off and all the kids will be back quicker" and all this. It's all I hear off them [inaudible]." **[AB1/1C:65]**

84. He continued to deny that there was any truth in the allegations which the children had made insofar as he had no role in determining their punishments. He said that he had never made them sit in cold baths nor had he made them stand for periods of time.

85. Once again, the District Judge took the initiative at the conclusion of the cross-examination and asked a number of questions of her own in relation to the manner in which the children were being disciplined when he arrived in the home and what he would regard as acceptable in terms of imposing discipline in the home. In response, he told the court that he had never intervened at any point with the mother in relation to discipline save for those occasions when N had been completely out of control and was attacking her mother. Then she would be told to go up to her room to calm down whilst the mother telephoned the police who attended at the property to speak to N.

86. Following the conclusion of the evidence, the District Judge had the advantage of hearing comprehensive oral submissions from each of the lawyers. I have no intention of repeating them here. They are transcribed verbatim in the appeal trial bundles from **[TB1/1C:67 to 80]**. Her attention was taken once again to the relevant evidence, to the consistency of the children's allegations and to the extent to which their accounts lent corroboration to each other's evidence. She was taken to the discrepancies in the accounts given by the mother and the father on various occasions when they had been asked about these events. She was taken to the detail in the accounts which the children, including N, had been able to give. The mother's solicitor very properly set in context the reasons why she had not been able to compete her work with Family Action. That work had to an extent been superseded by the work which to be undertaken by a local women's centre called Anawim as part of her probation order following the conviction for animal cruelty.

87. The court was reminded by her solicitor how these allegations had originally emerged following N's conversation with the social worker on 12 June 2013. Those allegations were described as being "so farfetched as almost to be part of a soap opera plot". When the District Judge reminded that she was dealing with threshold and would need his specific submissions on the allegations, Mr Bean very properly turned to a forensic examination of each of the allegations and reminded the court of appropriate inconsistencies or the absence of any rational explanation for what the children were saying. The judge engaged at various points with that forensic analysis and Mr Bean was allowed to develop his points from the foot of her interventions.

88. When he came to make his closing submissions to the court, Mr Ravshand, the father's solicitor, conducted an equally comprehensive review of the evidence. He provided the judge with appropriate page references for his various submissions in order that she could consider the matter properly overnight. He highlighted the fact that other contemporaneous evidence available to the court appeared to suggest that the children were doing reasonably well at that time and that improvements had been made since the father arrived to live in the home. In relation to L, in particular, he stressed that there was no evidence to support a finding that she had suffered any physical harm. He argued that none of the children had suffered physical harm. When the judge asked him about emotional harm, Mr Ravshand submitted that, if the findings were made, he questioned whether the threshold of emotional harm would be crossed. He invited the court to look at the subsequent actions of the children in returning to the family home. He submitted that their actions spoke louder than words in terms of any exposure to harm

89. In relation to collusion, he invited the judge to take note of the fact that, despite what was said by the various social workers, the mother and father had cooperated with the local authority and the police in order to try to persuade B1 to return to foster care when he had absconded. He pointed out that they could simply have done nothing to assist.

90. Finally, the District Judge heard submissions from Miss Hope on behalf of the Guardian. Whilst acknowledging that his role was very limited in relation to fact finding, she reminded the court about the consistency of the accounts given particularly by B1 and B2 to a number of professionals, including the foster carer. (The judge had available, and had read, all the foster carer's notes which were included in the bundles put before her for the fact finding hearing.) Whilst there were some discrepancies, the Guardian's position was that, if true, the punishments meted out to the boys were totally inappropriate. Whilst B1 had absconded from care and returned home, he had left his foster placement very early in the morning by climbing out of a window and walking a significant distance without any shoes on. That was why the Guardian had felt there were real repercussions for his safety were he to abscond again. These concerns had led him to endorsing his remaining with the mother and father despite the fact that he did not support the placement in that home and in their care.

91. In relation to L, the Guardian's position was that she was the most vulnerable of all the children given her very young age.

92. Having reserved her judgment, District Judge Maughan reconvened at midday on 25 October 2013 in order to deliver it.

The fact finding judgment delivered on 25 October 2013

93. A copy of a transcript of the judgment is in the appeal bundles at **[TB1/1B:13]**. It bears a manuscript annotation in the bottom right hand corner which appears to indicate that the judge had approved the transcript and signed it. Unfortunately, the date which appears under her signature is partially obscured and no one was able to provide me with a better copy.

94. I mention that at this stage because, on the first day of the hearing, a further copy of her judgment was delivered to me and to counsel in the case. This copy bears the formal title, 'Approved Judgment' on its front page. It has been inserted in the appeal bundle at **[TB1/1B:43 – 54].** It is a slightly fuller version than the original version as transpired from the exercise which Miss Meachin and Mr Spollen carried out from a comparison of the two when the new version was received. I caused enquiries to be made of District Judge Maughan as to the circumstances in which this second version came into being. She responded by telling me that she had recently been asked to approve the fact finding judgment and had done so the previous week. As I told the parties, I subsequently received an email from the judge. It came via my clerk and is dated 27 July 2015 and was sent at 13:26. In that email, the District Judge informed me that she had spoken by telephone to the transcribers who confirmed to her that they did not have any other versions of the October 2013 (Fact Finding) judgment. Accordingly, she had amended the version which was sent to her and approved it on the Friday before our hearing began. It appears that the version which was sent to District Judge Maughan on 30 June 2015 was the version which we had in our appeal bundles. The fact that she had previously 'signed off' on that version had escaped the judge's mind (and she must be forgiven for that, given the period of time which has now elapsed since she delivered judgment and the two further substantive hearings in this case with which she has dealt since then). She is, of course, familiar with the case given her long involvement with it and, despite the fact that she did not have access to the trial bundles and was relying on her notebook, she has given her seal of approval to the amended version. Thus it seems to me that this is the version which falls to be considered for the purposes of the first application for permission to appeal out of time against the findings of fact.

95. In reality, the amendments which were made to the original 'approved' version are not substantial. Thus, although counsel formulated their written arguments in relation to the permission application from the foot of the first document, I do not consider that any prejudice arises to any of the parties since there has been adequate time to consider the final 'Approved Judgment' and counsel have been able to supplement their written skeleton arguments by extensive oral submissions over the course of three and a half days.

96. Before dealing with that application for permission, I need to say something about the manner in which events unfolded in the aftermath of the fact finding hearing.

97. By her order, District Judge Maughan timetabled the next hearing for 18 November 2013. In relation to threshold, her order of 25 October 2013 records the fact that she has found the s 31 threshold for the makings of her orders to be made out in accordance with the schedule of findings annexed to the order. I have already set out the substance of these findings in paragraph … of my judgment. In terms of the key issues in the case, these were identified as :-

    i. the fact that the children had suffered significant harm;
    ii. what assessments were required before consideration could be given to returning the children to the mother, the father or Mr S;
    iii. whether care plans for B2 and L should be changed to a single track plan of adoption;
    iv. whether N, C and B1 should be accommodated by the local authority;
    v. whether the mother's elder child, D, posed a risk to the children when staying at or visiting the family home; and
    vi. whether the parents were able to work with Family Action and/or other professionals.

98. In advance of the next hearing, the mother's solicitor filed a position statement on her behalf. It is dated 15 November 2013. The headline opening paragraph in that document reads as follows :-

> "The First Respondent Mother has had the opportunity of considering the findings made by District Judge Maughan on 25 October 2013. **The First Respondent Mother does not accept the findings. She does accept that the findings are there and that she cannot go behind them**. The Firsr Respondent Mother would like the opportunity to show that she can care for the children and protect the children appropriately." **[LB2/D:11-12]** (my emphasis)

99. One has to assume that this was the positon adopted by the father at that time because he, too, was independently represented by his solicitor for the purposes of the next

hearing on 18 November 2013 and there was no reference to or mention of any appeal against the fact finding decision on that occasion. By this stage of the proceedings, the local authority no longer supported the return of B2 and L to the family home. Because, on its case, the mother and father had failed to engage properly in the assessment process, there was no support for a further assessment. Whilst a referral had been made to CAMHS[2] to ascertain whether or not the whole family might be a suitable candidate to undertake ongoing multisystemic therapy, there was then no indication as to whether or not this resource was likely to be available. L's parents argued that there was a gap in the evidence and that further work by Action for Children was necessary given the absence of any further input since the fact finding hearing. The Guardian remained opposed to the return of B2 and L to the parents and felt that further assessment would not assist the court to reach its conclusions in relation to a final welfare decision.

100. Whatever view might have been taken by the Guardian, District Judge Maughan did not close her mind to the possibility of engaging the parents in some further work. Action for Children was directed to prepare an addendum assessment of both the mother and the father.

101. Over the course of the next four months, the situation for this family continued in a state of flux. N was moving between her mother's and father's home and continued to report to social workers her mother's various shortcomings including an allegation that she told lies and create a misleading impression of the home environment. By this stage, the mother was in the early stages of pregnancy with unborn baby T. N was aware of the position and appeared to feel that her mother was prioritising the interests of her unborn baby over those of the other children. She went missing from home and had to be returned by the police who were involved on several occasions with the family over this period. On one occasion C was reported to be smashing up the family home and the police arrived to find chairs broken and clothing strewn around the property. As a result she was removed from the mother's home and taken to Mr S's property. The father's health had not improved and, at the beginning of the New Year (2014), he was admitted to hospital with seizures. This impacted on his ability to attend one or more of the sessions which had been arranged with Action for Children. It became necessary to obtain a medical report to confirm whether or not he was well enough to attend further sessions.

102. A further position statement was prepared on behalf of the mother for the IRH on 3 March 2014. This was the final hearing before the ultimate welfare disposal hearing for B2 and L on 24 June 2014. Both N and C attended court on that occasion. Once again, there was no indication from either the mother's or father's legal representatives that the fact finding hearing was being challenged or that either of L's parents was seeking to appeal that decision. They were fully aware, as were all the other parties in the case, that the lengthy and detailed directions as to assessments and other matters which were made at both subsequent hearings were underpinned and informed by those findings.

[2] Child and Adolescent Mental Health Services

103. T was born on 6 May 2014, a matter of weeks before the final hearing in relation to L. On the day of his birth, the local authority made an application for a care order. The interim care plan which they produced at the time was for his adoption. The mother was released from hospital on 10 May 2014. Baby T was discharged two days later and was placed in foster care. To this day, he has never been cared for by his parents.

104. Matters had not improved with the older children during this period. There were further allegations made by N of an assault by her father, Mr S. He was arrested and bailed. N went missing. The police reported that she was refusing to stay in the home of either parent and wished to live alone albeit supported by the local authority. B2, who was still in foster care, was telling his social worker that he wanted to return home because "my brother and sister have told me that it is better at home now; [the father] treats us better" **[LB2/C:713]**. Five days later, at the end of May 2014, he went with his elder brother, B1, to the lavatory during a period of family contact and both absconded from the centre. He was eventually found by the police at 8pm that evening in the mother's home. According to her account, B2 had told her during contact that the social worker had spoken to him and "something had hit him like a bomb" **[LB2/D:15]**. That 'bombshell' appears to have been the news which was relayed to B2 by the social worker the previous week that L and T were to be adopted and he would not see them again until they were 18 years old. The mother explained that B2 was particularly close to L and T and this news had affected him deeply.

105. It appears that B1 had a similar reaction when he had been told this news some weeks before. In the position statement which the mother's solicitor had prepared for the hearing on 3 March 2014, she had said this :-

> "18. [B1] first became aware of the Local Authority's care plan in relation to [B2] and [L] on 25 February 2014. The Guardian visited him to tell him that the plan for [B1] is long term foster care and the plan for [L] is for her to be placed for adoption. To say that [B1] was distraught, the First Respondent Mother would say was an understatement. [B1] was extremely distressed to hear this as he was under the impression that both [B2] and [L] would be returning to the family home. This is what he desperately seeks to happen. He misses eing a family. He is very close with [B2] and, as already stated, he has built a bond with [L] over the last few months. He is disappointed now that contact is not enough and to reduce that further and for them not to return home is extremely distressing for [B1]. [B1] was awake on 26 February 2014 at 6.20am and he could not stop crying." **[LB2/D:13d-13e]**

106. On 16 June 2014, the local authority filed its final care plans for B1, B2 and L. The Guardian's final report was filed the following day. He was of the view that B1 and B2 should remain in the care of the mother and father under supervision orders since anything else was likely to result in further absconding and heightened concerns for B2's safety. He supported the local authority's plan of adoption and a placement order for L.

107. The final hearing in relation to B1, B2 and L took place over 4 days between 24 and 27 June 2014. I shall need to return to the substance of this hearing at a later stage since the orders made at its conclusion are the subject of a separate appeal for which permission has already been given (the Court of Appeal having no power to review that element of His Honour Judge Plunkett's decision which stands, despite his substantive orders having been overturned).

108. Of note, the father's written evidence (a statement dated 9 June 2014 which was prepared specifically for that hearing contained) contained the following passage :-

> "6. Whilst I do not accept the findings that were made in October 2013, I nevertheless can understand why they were made and I accept that everyone will see these events as having happened. I do accept that [B1] and [B2] were made to stand as a form of punishment, but this would only last for approximately 15-30 minutes. I know in the light of the findings made, we will need to prove to the Court that we can care for [B2] and L, in addition to the other children.
>
> 7. I do understand why punishments such as making the children take cold baths and making them stand for excessive periods of time could have a negative effect on them. I think that these sorts of punishments could frighten the children and make them feel extremely uncomfortable." **[LB2/E16-17]**

109. As I have said, both the father and mother were separately represented throughout by counsel. The proceedings were then in their 54th week, almost twice the length of time recommended in the Protocol guidelines **[check].** I have read the entire transcript of those proceedings. It occupies a full court bundle and runs to 246 pages. As the District Judge herself remarked during counsel's opening remarks, "There is a huge amount of information; it is a very, very long running case" **[AB2/2C4]**. At no stage during that hearing or the exchanges which preceded it was there any mention at all of the possibility of a formal challenge to the previous fact finding hearing. The parents themselves had acknowledged as much in their written evidence and presentations to the court. At one point, when counsel for the mother, Mr Calway, was cross-examining the author of the report prepared by Action for Children, the following exchange occurred :-

> "MR CALWAY : You have raised, in answer to the question before last, you raised the fact finding hearing and the response to that, if I could ask you a few questions about that….. Would it be fair to say that overall your biggest concern was the parents' response to those findings ?

MISS OVERTON: I think it is one of the big concerns, yes.

MR CALWAY : Did there come a point when you felt that because that was the response it is plain as a pikestaff, is it, **or the point has been made very clearly that those findings the parents accept that they cannot go behind them**, they do not accept that they are true, that once you knew that was their position which was not changing that had effectively made your mind up for you, that fact without any other considerations we might discuss ? [my emphasis]

MISS OVERTON : I think that has to be a consideration, yes. The voice of the child needs to be heard, we come from a safeguarding perspective …." **[AB2/2C:21-22]**.

110. By that stage, there was some evidence of the children withdrawing or distancing themselves from the allegations they had previously made. I shall deal with the detail of these retractions at a later stage of my judgment. For present purposes in terms of the journey of this litigation through the courts, it is sufficient to note that, even in circumstances where L and T's parents had made it abundantly clear that they did not accept the findings, neither had sought to raise any formal challenge to them. The final order made by the court in a form agreed by all the parties and their representatives recorded the position. In relation to 'threshold', paragraph 10 of the order made by District Judge Maughan on 27 June 2014 reads as follows :-

"**10. THRESHOLD**

The s.31 threshold for the making of orders was established by the court on 25 October 2013 following a two-day finding of fact hearing. Findings were made against the first and second respondents. **The first and second respondents do not accept that the findings are true, but they accept that the findings have been made**." **[AB1/2A27]** [my emphasis]

111. Almost a month later on 22 July 2014, the mother (now acting in person) lodged at court an application to revoke L's placement order. She referred in that application to the fact finding hearing but made no application to appeal that order. Instead, she gave as her reason for the application a series of events which had unfolded since the placement order was made, together with a reference to what B1 had said to the Guardian at the time of the June 2014 hearing. In essence, C and B1 had told one of the school teachers and their social worker that they had told lies to get their mother and father back together. As I said, I am going to return to the substance of what they said shortly.

112. That application came before District Judge Maughan on 22 September 2014. She took the view that what the mother was actually seeking was permission to appeal the

final care and placement orders. There was no mention of appealing the fact finding hearing at that stage. The order she made on that occasion records the mother's agreement to withdraw her application for revocation on the basis that the court agreed to treat it as an oral application for permission to appeal the 27 June 2014 orders, such application being made out of time. It was refused on the basis that (i) it was made out of time, and (ii) the application had no real prospect of success.

113. On 8 October 2014 the mother and father sought permission to appeal that refusal by District Judge Maughan. This gave rise to the intervention in this case by His Honour Judge Plunkett, to which I shall come.

114. On 28 October 2014, District Judge Maughan heard the local authority's application for care and placement orders in respect of Trevor. Some two weeks earlier, on 7 October 2014, L had moved from her foster home to her adoptive placement.

115. At the beginning of that hearing, the District Judge made it plain that she was aware of the pending appeal in relation to L. The two cases not having been consolidated, counsel for the local authority told the judge that HHJ Plunkett had felt that it was a matter for District Judge Maughan whether the case in relation to Trevor should proceed in the absence of a resolution of the appeal in L's case. Having heard submissions for counsel for both the mother and the father (each of whom was advocating an adjournment), the judge ruled on the application and determined that the case could proceed. I have a full transcript of the proceedings on that day and I have read both counsel's submissions and exchanges between the Bar and the Bench and the extempore judgment on the application to adjourn. It is in the appeal bundles at **[AB3/3C: 144]**. The District Judge took the view that there was still no formal challenge to the outcome of the October 2013 fact finding hearing; that T was almost 6 months old and had a potential placement with L's potential adoptive parents; and that a proper balance had to be struck between the Article 6 rights of the parents and T's welfare which was the court's paramount consideration. She also took into account the fact that the Guardian's evidence had been that B1's retraction was only made when he learnt that L was to be placed for adoption at a time when he himself had been placed back in the family home and within the sphere of influence of his mother and father. He did not consider that this was a significant feature and should not destabilise the timetable for T. Indeed, he felt it was an opportunity which had presented itself to the parents as a reason to go behind previously acknowledged findings.

116. Delivering her judgment in relation to T, the judge said this at paragraph 47 :-

> "It has been suggested by Counsel for Mother that the [independent social worker] could revisit the issue of [B1] retracting the allegations against [the father] in May2014 and thereby carryout some forensic exercise as to whether the fact finding-exercise (of October 2013), should be reopened. I am satisfied with

the findings of the Guardian that [B1's] wanting to retract was an emotional response to discoveringin May 2014 that the plan for [L] was adoption. I am entirely satisfied that no cogent evidence has been put before this court to warrant any reopening of the fact-find or reinvestigation by an ISW." **[AB3/3B:14]**

The intervention by HHJ Plunkett

117. On 21 November 2014, the appeal was listed before HHJ Plunkett. Very shortly before that hearing, the mother and father had issued a Notice of Appeal in a proper form seeking to challenge the decision in relation to T which was reflected in District Judge Maughan's order of 6 November 2014. Whilst this latest appeal was not formally before the court on that day, HHJ Plunkett was told of its existence. The grounds in T's appeal made it clear that the District Judge was wrong to dismiss the application to adjourn those proceedings and to refuse any further investigation into the children's retractions. No direct attack was made on the 2013 fact finding determination.

118. At this point, it must be said, and clearly, that on 21 November 2014 the judge had before him a very limited amount of information about this long running case. Whilst he had a transcript of the judgment which District Judge Maughan delivered in October 2013 (the fact find), he only had an abbreviated note of her June 2014 judgment (the welfare disposal in L's case). He did not have the full transcripts of either hearing and did not know the nature or ambit of the evidence which had been given during the course of those hearings. He did not know the extent of the District Judge's own interventions during those hearings and the questions which she had put to the various witnesses at the conclusion of cross-examination. It is probably fair to say that a simple reading of her two judgments would not have provided him with a proper understanding of the extent to which the hundreds of pages of written evidence before the court had been forensically examined during the course of the hearing. He certainly did not have the benefit, as I have had, of reading the written evidence and the transcripts of the hearings themselves. Indeed, the lack of detailed analysis within the judgments is one of the pivotal reasons relied on by L and T's parents in their current appeal.

119. None of the advocates who had been present in October 2013 and/or June 2014 were in attendance on 21 November 2014. The judge was thus treading his way through the appeal on the basis of limited information with unrepresented applicants.

120. At the conclusion of the case on 21 November 2014 the judge adjourned the case to a further hearing. At that juncture, it appeared to be his intention to hear additional submissions or, alternatively, deliver his judgment. He directed that the parties were to file any further written submissions by 2pm on 25 November 2014. Each of the local

authority and the Guardian duly filed their submissions but neither document touched upon the grounds which were ultimately the basis for HHK Plunkett's decision to overturn the care and placement orders in respect of both L and T. When the case came back on 5 December 2014, he handed down a written judgment prepared in the intervening period. In that judgment, he concluded that the findings of fact made by District Judge Maughan in October 2013 were not sustainable. His main concern was her unwillingness to consider whether there should have been evidence from the children in relation to the alleged retractions. That failure was compounded in his view by her subsequent failure in T's hearing (almost a year later) to examine in any more detail information about those retractions and/or adjourn the case to enable that course to be taken.

121. Significantly, the judgment handed down by HHJ Plunkett was predicated upon the basis that the threshold facts related entirely to the complaints of the children. He said, at paragraph 2(i) of his judgment that "the case depended almost entirely on what they had said – there was little or no objective evidence to support their complaints" **[AB1/1B:19]**. He went on to observe that there was little weight accorded to the opinion of the investigating police officer that the punishments complained of were 'slightly over the top however understandable'. Whilst he referred to the fact of the subsequent ABE interviews, he had no proper understanding of the evidence given by the children on those occasions nor the reach or extent of the cross-examination in respect of that evidence. In short, his judgment is an overall critique of the two earlier judgments which he found to be thin on detail, analysis and reasoning. He referred to the fact that it was the parents' failure to accept those findings which was the primary cause of their failing the subsequent assessments but he did not refer to (and probably did not know about) the occasions since the fact finding hearing when each of the parents' lawyers had acknowledged their inability to go behind those findings in the absence of a timely appeal. He referred to the fact that it was the L fact find which had provided the threshold for T's case. That was inaccurate since a separate threshold document had been prepared by the local authority for the October 2014 hearing. Whilst T's threshold document made reference to the October 2013 findings, those findings related to only one of the two facts relied upon. He took the view that a parenting assessment which had ostensibly 'failed' on the basis of parents refusing to accept the facts found could not be an adequate assessment for the purposes of a *B-S* compliant holistic analysis of the children's welfare needs. The final paragraph of his judgment alluded to the fact that this might well be a case more properly founded on neglect if, in fact, the case relying upon unusual punishment fell away. In this context, he invited further submissions from the local authority in terms of the future conduct of the case and, if appropriate, a reappraisal of the way they put their case in front of the District Judge. By subsequent order dated 5 December 2014, the care and placement orders in respect of both L and T were set aside.

The journey of the case to the Court of Appeal

122. The local authority appealed that decision. The thrust of its attack was twofold : first, a criticism of the procedure which the judge had adopted in truncating or ignoring altogether the requirements of Part 30 of FPR 2010 and, secondly, his interpretation of the law in relation to the 'duty' imposed on a judge to consider calling a child to give oral evidence.

123. The case was heard by the Court of Appeal on 4 March 2015. Judgment was handed down on 30 April 2014. Lord Justice McFarlane gave the leading judgment which is reported at **[2015] EWCA Civ 409**. The appeal was allowed on both grounds.

124. I shall not quote extensively from the judgment here. However, apposite to the first issue which I have to decide (permission to appeal the findings of fact out of time) are the words of McFarlane LJ in paragraphs 26 and 42 during his consideration of the 'due process' grounds of appeal. His Lordship said this :-

> "26. In relation to the appeal in L's case, the process adopted by HHK Plunkett did not come close to that which is required by FPR2010, Part 30. The D11 notice filed by the parents did not contain any grounds of appeal, other than the bare assertion that the children had retracted allegations. The Notice was stated to be challenging the judge's decision regarding L's adoption and the judge's refusal to allow the parents to apply to revoke the placement order (ie the 2014 determinations) whereas the judge moved on to allow an appeal aganst the order made on the 2013 fact-finding hearing. Other than to note the point, at no stage did the judge engage with the fact that this un-pleaded 'appeal' was over a year out of time. The grunds upon which the judge eventually came to allow the appeal emerged in the process of the free-flowing to-and-fro communication between the judge and counsel during the hearing on 21st November …. ."
>
> And later,
>
> "42. The lack of due process also caused the judge to by-pass the need to consider whether or not to extend time to permit an appeal against the fact-finding decision nearly 12 months prior to DJ Maughan deeming the parents' application to be an application for permission to appeal. In the present case the parents had been legally represented at the fact-finding hearing, yet the issue of calling the children to give oral evidence had not been raised with the district judge and it was not, apparently, considered a matter to be brought on appeal immediately following the fact finding hearing. The question of whether the parents should be given an extension of time a year later to bring the point by way of appeal therefore plainly arose. In the absence of a process that required the parents' appeals on this point to be properly pleaded, the issue of an

extension of time, it would seem, never sufficiently crystallised so that it was addressed by the parties or the judge."

125. The order made by the Court of Appeal dated 1 May 2015 provided for the discharge of the order reversing District Maughan's care and placement orders in both the L and T cases. Since there was no appeal against his decision to grant them permission to appeal the welfare disposal orders, the effect is that they proceed to those appeals as of right and without requiring any further permission from me. The Court of Appeal remitted those hearings for further directions before the designated Family Judge in Birmingham. In the meantime, the care and placement orders in respect of L and T made on 27 June and 6 November 2014 were restored.

126. HHJ Thomas dealt with those directions on 15 May 2015. That order and the order made subsequently by Roderic Wood J on 11 June 2015 expanded the ambit of the appeal hearing to include the appellants' notice in relation to the findings of fact made on 25 October 2013. The intention had been that Roderic Wood J would have dealt with the application for permission to appeal those findings out of time. A whole day was allowed for that purpose. By the time the case reached him, it was clear that the preparation of the appeal was deficient in a number of respects. Accordingly, his lordship used that occasion to 'case manage' the hearing which was to come before me on 27 July 2015. The time estimate was expanded and the appellants were directed to prepare a detailed schedule of "alleged retractions" and criticisms of the judgments setting out references to the documents and transcripts included within the eight bundles which were then in circulation. The intention was that the respondents would reply to the schedule with a view to lodging the composite document, cross-referenced, by 10 July 2015. Directions were given for obtaining a full transcript of the June 2014 hearing (L's case) and the October 2014 hearing (T's case). In terms of the delay in bringing their appeal, the parents agreed to waive legal privilege in relation the legal advice they had received post the fact finding hearing as to whether an appeal could be pursued against that decision and, if so, when that could be done. Each of the mother and the father has said that their understanding from the foot of advice received was that there was no avenue of appeal against fact finding decisions until the case had concluded after the welfare disposal hearings.

127. The clear intention underpinning these directions was that by the time the hearing commenced on day one, this court would have a clear road map (with references) as to exactly who had said what, to whom, when, and what action had been taken as a result.

128. As I have already said, that was not the position in which we found ourselves as the case was opened on 27 July and I have had to allow the parties to use time earmarked for judgment writing to make good the deficiencies in preparation.

129. It is against that background, and with the factual matrix of this case now set out, that I can turn to address the issues which I have to decide.

A. Permission to appeal out of time against the fact finding decision and the order made by District Judge Maughan on 25 October 2013

130. I bear well in mind that we are not far from the second anniversary of the original fact finding decision in this case. L has been in care for almost her entire life and in her adoptive placement since October last year. She is no longer having contact with her parents or her half siblings. T has never been cared for by his parents and has spent the entirety of his young life in care, albeit that he is still having contact with his birth family.

131. I turn first to consider the law which I must apply in the context of the application for permission to appeal out of time.

Delay

132. Lord Justice McFarlane dealt with the proper procedural requirements which should have been complied with in the judgment to which I have already referred. FPR 2010, r 30.4 provides that an applicant for permission to appeal must file an appellant's notice within 21 days of the date of the decision complained of. The local authority invites me to consider whether this was a case management order which would have abbreviated the window of appeal to 7 days. In my view, findings of fact involve a judgment reflecting the court's determination of discrete but substantive issues. Whilst that determination is but one of the building blocks in case which is ongoing, it is nevertheless in my judgment a final determination of threshold and not simply a decision anchored to future case management. Miss Cabeza on behalf of the local authority concedes that not much turns on this point since even the parents accept that they are 20 months late in issuing this appeal.

133. Neither has sought to put before me any evidence in relation to the advice which they were given in relation to their ability to contest the findings by way of an appeal. I have already referred to the fact that each has been separately and independently represented by both solicitors and counsel. I was told that there was no material which could properly be put before the court in terms of the waiver referred to in the order made by Roderic Wood J. I remind myself about the specific references in the transcripts and written evidence where it has been accepted by the parents, or on their behalves, that they cannot go behind the findings notwithstanding their unwillingness to

accept them. On each of those occasions, the time for an appeal had expired. I am therefore proceeding on the basis that there is no credible evidence to substantiate what the parents have said about their knowledge or understanding as to the timing of an appeal.

134. In my judgment, it is stretching the bounds of credulity beyond acceptable limits to suggest that, if it was uppermost in these parents' minds, the issue of an appeal against the findings was not raised at some stage during the intervening months, even if it was raised in the context of an application for permission to appeal out of time. There were two further substantive welfare hearings in June and October 2014. On each occasion, the parents were represented. On each occasion, the issue of their non-acceptance of the findings was canvassed as an issue before the court with an express or implied acceptance that the door was now closed. Mr Spollen has specifically confirmed to me that he did not advise his client that he could not appeal before the full disposal of the case. However, he was not instructed until the issue of the appeal in T's case arose.

135. The mother has filed a further statement in which she deals with the issue of delay. She states that she spoke to someone after the fact finding hearing about 'arguing against the decision' although she cannot recall whether it was her own solicitor or the father's solicitor. She says she was advised that there was not enough evidence to appeal the findings and she should 'wait until the welfare stage when it would be looked at again' **[NB:2]**[3]. Whilst she believes that it was her own solicitor who gave her this advice, the files have been checked and there are no notes or other material which support what she says. Further, her solicitor at the time has confirmed that he did not give her any advice about either the prospect of an appeal or the timing of such an application.

136. The father has also made a statement about these matters. He says that after the fact finding hearing, he accepted that the findings were likely to be accepted by everyone involved in the case despite his denial of having administered the punishments. He says he told his lawyer that he was unhappy with the outcome and that the judge had 'got it wrong' **[NB:8]**. He accepts that he did not ask his lawyers to appeal the decision and simply assumed that he could not appeal until after the conclusion of the welfare hearing. Again, no material has been produced from his solicitors' files to support this explanation despite the waiver recorded in the order made by Roderic Wood J on 11 June 2015.

137. I accept that shortly after the conclusion of L's proceedings, the mother did put a document before the court in which she sought to draw attention to what she had been told by the children (the revocation of placement application). However, on the basis of everything which I have heard and read about this case, I take the view that there was an element of opportunism in the parents' willingness to adopt the procedural door opened

[3] Reference to 'New Material' bundle

for them by HHJ Plunkett in terms of their present attack on the findings of fact. They have now secured their permission to appeal the substantive orders in relation to both L and T and I shall deal with those appeals at a later stage of my judgment. My focus at present is the issue of whether or not I should consider those appeals on the basis that the findings of fact stand or whether, as the parents contend, the final care and placement orders fall away completely once the findings of fact are overturned.

138. In paragraph 39 of the judgment delivered by the Court of Appeal, McFarlane LJ confirmed that the decision in *R (Dinjan Hysaj) v The Home Secretary* [2014] EWCA Civ 1633 applied in family appeals just as it did to all other forms of civil appeal. That case confirmed that CPR, r 3.9 (relief from sanctions) applied to applications to extend permission to appeal in a civil case. Its equivalent in FPR 2010 is r 4.6 which provides :

> '**4.6 Relief from sanctions**
>
> (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –
>
> (a) the interests of the administration of justice;
> (b) whether the application for relief has been made promptly;
> (c) whether the failure to comply was intentional;
> (d) whether there is a good explanation for the failure;
> (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any pre-action protocol;
> (f) whether the failure to comply was caused by the party or the party's legal representative;
> (g) whether the hearing date or the likely hearing date can still be met if relief is granted;
> (h) the effect which the failure to comply has had on each party; and
> (i) the effect which the granting of relief would have on each party or a child whose interests the court considers relevant.
>
> (2) An application for relief must be supported by evidence.

139. R. 4.6(2) envisages that the court will need evidence as to the explanation for the failure to comply with the FPR (r 4.6(1)(d)) and as to who was responsible (r 4.6(1)(f)). In relation to the other matters listed, it may be possible to establish the facts by argument based on the existing papers.

140. Quite by chance, on the day upon which Roderic Wood J was considering this matter in the context of future case management directions, the Court of Appeal handed down its judgment in the case of *Re H (Children)* [2015] EWCA Civ 583. As McFarlane LJ explained, the case raised a point which had not arisen before at appellate level in a family case : "When considering an application to extend the time for appealing a family

case relating to children, what regard, if any, should be had by the judge to the overall merits of the proposed appeal ?.

141. In paragraphs 28 to 35, his lordship made a number of important observations about the impact of delay on child-centric proceedings and the importance of timely appeals in public law cases. At paragraph 34, he stressed that the fact that an application for permission to appeal which relates to a child in public law proceedings is out of time should be regarded as a very significant matter when deciding whether to grant 'relief from sanctions' or an extension of time for appealing.

142. The case of *Re H* was not wholly dissimilar on its underlying facts from this case. The principal attack upon the care and placement for adoption orders was a judgment which was devoid of any proper evaluation or analysis in terms of that which is required following the decision of the judgment handed down by the President sitting in the Court of Appeal in *Re B-S (Children)* [2013] EWCA Civ 1146. That case had highlighted the more general concerns, shared by other judges, about the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and in a number of first instance judgments. That was a situation in respect of which the President said very clearly that "it is time to call a halt" (para 30).

143. *Re BS* concerned the proper approach to be taken when the court was faced with an application under s 47(5) of the Adoption and Children Act 2002 and the conditions for making adoption orders. Where a court has determined that the parent's or parents' consent should be dispensed with, a parent may only oppose an adoption order if the court is satisfied that there has been a change of circumstances and has granted leave to oppose. Even in these circumstances, the child's welfare must be the paramount consideration when deciding whether or not to grant leave. The President made it clear that the exercise at the second stage is more appropriately described as one of judicial *evaluation* rather than one involving mere discretion. At paragraph 74, in a ten point 'road map', his lordship spelt out the detail of the evaluative process which was required in terms of a 'balance sheet' approach and the careful consideration which is required taking into account all the positives as well as all the negatives. At paragraph 74(vii), his lordship made it clear that the mere fact that a child had been placed with prospective adopters cannot be determinative, nor can the mere passage of time. On the other hand, the older the child and the longer the child has been placed, the greater are likely to be the adverse impacts of disturbing the arrangements.

144. These are all matters which I shall need to consider in the context of the two substantive appeals in relation to the June and October 2014 welfare hearings in relation to the futures of L and T.

145. In relation to the application for permission to appeal out of time and following *Re H*, Miss Meachin and Mr Spollen make their submissions within the context of an overarching consideration of the merits of the parents' appeals. They point to the fact that the picture was not one of a dysfunctional household at the time that the allegations were made but actually one where the children were well and happy within their mother's care. Having set out the background to the fact finding hearing in October 2013, I am unable to agree with the breadth of that submission. Whilst I accept that there were certainly positive indicators which suggested that home life was improving with the absence from it of Mr S and the chronic domestic violence which had characterised the mother's relationship with him in that household, there is in my judgment ample evidence to suggest that the children had significant problems and issues with which to deal. The evidence which was before the District Judge in October 2013 included accounts of C and B1 smashing up their bedrooms. The mother's relationship with N was plainly dysfunctional and there was much coming and going between the two homes despite the disturbing picture of what life for N was like in her father's home after she had voted with her feet and left. L's father confirmed that when he arrived in the home the previous year, it was chaotic and devoid of any boundaries or discipline. Improvements were made in terms of the children's attendance and progress at school and I have no doubt that, once free of an unhappy relationship with Mr S, the mother was indeed making efforts to effect changes to make life better for the family. What I cannot accept is the picture which is painted on behalf of these parents as one where these allegations emerged out of the blue and from nowhere against the background of a happy and contented home. In terms of the siblings' perception, this was a fractured household. It is common ground that the allegations emerged after N spoke to the social worker after the first sibling contact for many months.

146. Miss Meachin and Mr Spollen then turn their sights to the fact finding judgment itself which they contend was devoid of the evaluative analysis which lies at the heart of the judicial function. They criticise the District Judge for her failure to address the underlying evidence of the children in reaching her conclusions in relation to threshold. This, they submit, created a faulty 'building block' which provided an unstable foundation for all that followed.

147. In this context, it is important to remember what the judge said in paragraph 7 of her judgment[4]. She made it absolutely plain that she was dealing only with matters of fact finding and that it was not part of her judicial function at that stage to predetermine the eventual disposal of the matter and the outcome for the children. She then reminded herself correctly as to the law which she had to apply. She made it clear that the onus was on the local authority to prove its case to the required standard, i.e. on the simple balance of probabilities : *Re B (Care Proceedings: Standard of Proof: Past Facts)* [2008] UKHL 35.

[4] As I indicated earlier in my judgment, I intend to adopt the paragraph numbers as they appear in the second Approved Version of the judgment at **[AB/1B:43-54]**.

148. In paragraph 11, she said this :

> '11. In reaching my findings today, I have read the trial bundles. As I have indicated, I have seen the DVDs of the ABE interviews of the three children. I have heard live evidence, as I will describe shortly. I have received helpful submissions from all of the advocates. I have taken into account the totality of the evidence before me and I have considered carefully my findings. I have borne in mind that the burden of proof rests with the Local Authority and it has to satisfy me as to the truth of its assertions, again on the balance of probabilities test.'

149. I turn now to their specific grounds of appeal.

Grounds 1 and 2 : The judge failed to carry out any evaluation of the children's evidence herself; no evidential basis set out for the findings

150. In paragraphs 12 to 19 of her judgment, the District Judge sets out the evidence she heard from the witnesses who were called. She deals, first, with the evidence from Emma Spensley, the allocated social worker. The judge does not rehearse verbatim the evidence which she gave but she refers clearly to the lengthy statement which she had read in addition to undertaking a review of the notes she made when she interviewed C and B1 about the allegations. She commented upon the manner in which Miss Spensley gave her evidence. She took into account the fact this witness had seen the children (including N) on a very regular basis. She referred to the fact that Miss Spensley did not believe that the children had colluded over the allegations but reminded herself that this was only Miss Spensley's opinion. She commented upon the view which the social worker had formed about the truth of what she was told by C and reminded herself that C was then 15 years old. She alluded to the fact that Miss Spensley had amended her typed notes of her interview with C in order to ensure that her record of events was an accurate record of what she had said. She was present for the ABE interviews and confirmed that she was confident she had understood what each of the children were saying in relation to the allegations they were making.

151. The judge fund Miss Spensley's evidence to be 'entirely cogent' but did not simply endorse and adopt what she said. It is important to recall that the judge was not present to assess the initial disclosures which N, C and B had made to Miss Spensley but she did observe the DVDs of the ABE interviews before she delivered her judgment. Since Miss Spensley appears to have been in an adjoining room when the two boys were interviewed and watching on a television monitor, the judge was in the same position as the witness when it came to an evaluation of the truth or otherwise of what they were saying. She saw, in effect, what the social worker saw. Miss Spensley was able to express her views and opinions about that evidence from the foot of knowing the children well. The judge

was entitled to place reliance on those views and opinions in addition to forming her own views about what the children had said and the manner in which they had expressed themselves. However, there was no wholesale adoption by the judge of Miss Spensley's evidence. She had obviously considered and evaluated C's evidence because she did not accept the witness's opinion of everything which was said about the length of time during which the boys were made to stand. She found that there may well have been some exaggeration on C's part on this aspect of the evidence. This was clearly an evaluative exercise on the part of the judge because she questioned whether it would have been physically possible for a boy of that age to have stood for six to twelve hours. Insofar as the judge accepted that the children had been genuinely frightened by the treatment she found them to have experienced, she placed reliance on the social worker's evidence because she formed an independent view that Miss Spensley was in the best position as the key witness in the case to relay that fear as it was communicated to her.

152. She dealt with the evidence of Gemma O'Donnell in paragraph 14 of the judgment. She had conducted the face to face ABE interviews with B1 and B2. Before placing reliance on her evidence, the judge reminded herself that this witness had come to the case 'particularly "fresh"' having only seen the boys briefly in the office. She had never met N. She had not read the papers. In my view, the judge was perfectly entitled to find, as she did, that this witness came to these interviews with no preconceived or predetermined views of the truth. The judge found that to be 'very helpful in this case'. Miss O'Donnell had given evidence about her surprise to hear B1 use the phrase 'elbow temperature'. The judge recorded the fact that she was an experienced social worker who was fully qualified to conduct ABE interviews with vulnerable children. If and insofar as that surprise was a factor shared by the judge in her evaluation of whether a boy of that age would use such a phrase, I do not think she can be criticised for importing it into her evaluation of the evidence. The judge, too, had watched the interviews unfold although she did not have the advantage which Miss O'Donnell had of sitting opposite the children in the same room.

153. The judge dealt in fairly short order with the factual evidence of DC Francis. Her role in the fact finding was limited and, as the judge remarked, was 'fairly straightforward factual evidence' which related to conversations she had had with C on 15 July 2013 very shortly after N had expressed her concerns to the social worker for the wellbeing of her sister and brothers. Those expressions of concern were second hand; DC Francis' role was to investigate those concerns at first hand from C. She recorded what happened during her visit to see C at her school in a statement to which she was taken during the hearing. C had confirmed to her that she had told N about 'the bath and standing up for ages'. She did not say that the cold baths had not happened; instead she accepted the suggestion put to her by DC Francis that there may have been a good reason for the cold baths. She said she had told N that B2 had been made to stand by the wall as punishment because he was misbehaving and not listening. She described this punishment as having taken place when the family was living in hostel accommodation in circumstances where the boys had been running around causing other residents to complain. She did not withdraw the allegation that the boys had been made to stand but said she thought the period may have been about forty minutes. When she was cross-examined about C's demeanour, DC Francis said she had appeared very open. In her judgment, the District

Judge highlighted the conflict between that evidence and what she said on another occasion that B2 was made to stand for six to twelve hours. She had clearly evaluated that evidence and reached a conclusion. The fact that the police decided not to prosecute the parents is not a determination by the police that the punishments complained of did not happen. The police would have been very well aware that there were ongoing care proceedings in relation to these children who were immediately removed from the family home for their own protection.

154. She then turned to the mother's evidence. Having noted the mother's denials in respect of the over-chastisement, the forced standing up and the use of cold baths, the judge appears to have been particularly struck by the mother's over use of the expression "everything was fine, everything was fine" to describe life at home. She said that it was very clear having heard live evidence that the mother had at best minimised what was going on in 'this much fractured family'. In the light of all the evidence put before the court for the purposes of the fact finding hearing, I take the view that there was more than sufficient evidence to enable the judge to reach that conclusion; indeed, it is one which I share.

155. In her assessment of the credibility of the mother's denials, the judge's function was to assess all the evidence and to highlight any particular areas which she found helpful in pointing in one direction or the other. She gave clear examples of aspects of the evidence which had persuaded her that she could not place confidence in everything she was told by the mother.

(i) In her response to the local authority's revised threshold document, the mother had admitted that on two occasions the father had, at her request, woken the boys as they slept to take them to the toilet so as to avoid wetting their beds **[LB1/AA:20]**. In cross-examination she confirmed that was what she had said. The judge recorded in her judgment that the mother had said that neither B1 nor B2 suffered from any bed-wetting problems. In fact what the mother had said at **[AB1/1C:46]** was that she had not mentioned it to the social workers either for the purposes of the child protection minutes or in preparation for the core assessments because they were embarrassed and did not want any reference to bed-wetting to appear. She accepted as a matter of fact that there was no such record in the papers. She justified that response by saying that she felt as their mother she should have been able to deal with the problem without running to social services to ask for help. Nevertheless, she accepted that this was not something which had ever been mentioned to the social workers and, further, that there had never been any problems in relation to bed-wetting since the boys had been staying in foster care **[AB1/1C:47]**. In the approved version of her judgment, the judge went on to refer to problems highlighted in the foster

carers' evidence about 'inappropriate toileting' but this related to what the judges recorded as "a behavioural fear of using the toilet in their premises for whatever reason" **[AB1/1B:50]**. (I take this to be a reference to the boys urinating behind chest of drawers in the bedroom or having to 'pee into a bottle'.) The judge was clear in her conclusion that there was insufficient evidence to persuade her that the boys had a bed-wetting problem and she therefore felt unable to place any weight on the explanation which the mother had given in her amended response to the threshold document by way of purported explanation for the father's reasons for getting the children out of bed at night once asleep.

(ii) Similarly, the judge pointed to the fact that she had used as an excuse for cold baths the fact that there was a lack of hot water in their accommodation at the time as the only explanation for the boys' allegations. The judge was entitled, in my view, to reach a conclusion that this would not explain the graphic description by B1 of his teeth chattering with cold to the extent that he could not speak.

(iii) The mother had denied throughout her evidence that the father controlled her. She said that he merely helped her with budgeting and that she dealt with the discipline in the home, only calling on him as a remedy of last resort. The judge considered this evidence and weighed it in the context of what all four children had said about the extent to which they had seen the father exert control over her. The judge acknowledged that C's account might have been exaggerated but she had nevertheless considered this aspect of the mother's evidence and concluded that she was not telling the truth.

(iv) The judge said that she had been unimpressed by the mother's ability to accept that things were going badly wrong within the family. She concluded that she was 'very comfortable' having heard her evidence to find that she was prepared to lie to the court to protect the father. I consider that was a conclusion which she was entitled to reach on the basis of the evidence before her.

156. The judge then turned to deal with the evidence of the father (paragraphs 18 and 19).

157. We now have within the bundles the transcript of the evidence which he gave, an advantage which neither Miss Meachin nor Mr Spollen had when they prepared their

skeleton argument. In essence the father's case amounted to a bare denial of the allegations. In these circumstances, all that the judge could do was to look at the totality of the evidence before her, at what others (including the children) were saying and doing, and form a view as to his truthfulness as a witness. She had the opportunity to see and hear him as he gave his evidence in court. She was able to observe his demeanour and the manner in which he answered the difficult and searching questions which were put to him in cross-examination. She reached the conclusion that he was 'a little more honest than the mother in that he eventually acknowledged that things were going badly wrong in this family'. In weighing her conclusions about the father, the judge found that he had sought to minimise the description of the assault on his former partner which had formed the factual basis of his criminal conviction. She found that he had been involved directly in imposing discipline on a family which was devoid of even elementary boundaries at the time he began living with the mother. The mother herself had accepted, as the judge found, that she had been completely subjugated by the violence which had characterised her relationship with Mr S.

158. The judge had considered the evidence of the social workers, the foster carers and the reportage of all four children. She found it to be reliable and truthful. She was entitled to weigh this finding in the balance when she came to consider the father's denials. She found him to be an untruthful witness. She found that he had minimised the controlling and negative impact which he had had on this family. She found that he had minimised the extent of his involvement in disciplining the boys and that he had been prepared to lie in rejecting the truth of their descriptions of his behaviour towards them. She was aware, even if she did not spell it out in clear terms in her judgment, that each of the boys had given a different yet detailed account of how they had been placed by the father in cold baths and made to stand against the wall. She was aware, because she had seen the DVDs, that whilst B1 said he had kicked and resisted being placed in the bath, B2 had not "dithered" like him and had merely sat silently. She would have heard B1's account of telling the social worker that "<u>they</u>" had said it was elbow temperature but he could not see L being placed in a bath that cold. He had been able to contextualise that comment by explaining to the social worker that, on a scale of one to ten, the water had felt as cold as a '9'. The judge was aware that this was not mere reportage or a simple allegation of a child being placed in a cold bath. This was a clear and lucid description of what had happened and how the child had experienced what had happened to him. In a similar vein, B2 had been able to describe his teeth chattering and being too cold to speak. The judge did not specifically refer to this evidence from the children in her judgment but there is no doubt that she was fully aware of it having watched it and heard it very shortly before delivering her judgment.

159. Miss Meachin and Mr Spollon criticise the judge's finding that there had been coaching by both the mother and father as a method of trying to persuade the children to return home and by way of rebuttal of the allegations. In their written submissions, they point to the absence of a transcript of the fact finding hearing and their inability to point to this allegation being put to the parents. With the transcript now available, we know it was put to Miss Spenseley and we have, as did the District Judge, the evidence which she gave about the report of another social worker who had contacted her specifically to relay his concerns **[AB1/1C:20, 23]**. We know, too, that the allegation was put directly

to the mother in cross-examination on two separate occasions **[AB1/1C:37, 44]**. This evidence was plainly before the District Judge. She said that she had considered the entirety of the evidence before reaching her conclusions. In my view, her findings in relation to the parents' attempts to coach or influence the children cannot be impugned even if she did not rehearse within the body of her judgment the specific evidence which informed her conclusion. There was an evidential foundation for that conclusion and she had given reasons for rejecting the evidence of the parents in terms of their overall credibility.

160. The judge is criticised by Miss Meachin and Mr Spollen for not carrying out an independent assessment of the cogency of the children's evidence. It is said that she simply adopted the social worker's assessment. For the reasons which I have given, I do not accept that the judge adopted what she was told without more. She was aware of the respective ages of these children. She had recorded their dates of birth as a headline introduction to her judgment. She noted Miss Spensley's description of C as being 'fairly well educated and knowing her own mind'. She had accepted B1 and B2's accounts of what they, as children, had experienced when being placed into the cold baths. She had reminded herself that it was for the local authority to prove their case on the balance of probabilities. She had acknowledged contradictions in some of the accounts given by the children and had specifically rejected part of those accounts as exaggerated.

161. The judge is criticised for failing to deal with the children's retractions which included C's conversation with the Guardian in August 2013 to which I have referred in paragraph …. In fact, we now know from the transcript of the fact finding hearing that the District Judge had specifically asked Miss Spensley about whether or not C had made any retraction **[AB1/1C:29]**. It was at this point of her evidence that Miss Spensley told the judge that C had said B1 and B2 had sometimes been given cold baths by the mother when they were hot whereas the mother had told the social workers that the baths were cold because there was no hearing. The judge was aware there had been a partial retraction by C which was inconsistent with the explanation given by the mother.

162. The District Judge was also addressed specifically on C's retraction to the Guardian during submissions made at the conclusion of the evidence by Mr Bean, the mother's advocate. She was taken to the page reference for the document in the bundle. She was aware that on 1 August 2013, C had told the Guardian that they had not been punished in the way she had described but simply sent to their rooms. She had gone on to tell the Guardian that they had made the allegations "to get [N] home; to make sure we're okay". Mr Bean took the District Judge through the differences between what C had said to the police officer on 15 July and what she had said to the Guardian on 1 August 2013. Mr Bean went on to take the District Judge through a careful exposition of the differences in the accounts given by B1 and B2 in relation to the length of time they were made to stand as punishment. She was also taken through the children's account to their foster carers **[AB1/1C:71-73]**. In a similarly thorough way, Mr Rashvand, the father's advocate, had taken her to what he described as the "eight key documents which highlight the children's perspectives in relation to these allegations" **[AB1/1C:75-77]**.

163. Neither the mother's nor the father's legal representatives had required the Guardian to attend the fact finding hearing in order to deal with C's retraction. At that stage, neither B1 nor B2 had made any retractions. Their evidence was available from the ABE interviews.

164. I accept that there is some scope for criticism of the judge's analysis in relation to the brevity of her reasons for accepting the accounts of the children in relation to her findings about the inappropriate punishments they received. However, I do not accept that there was an insufficient evidential platform from which she might have reached those conclusions.

165. In *Re A (Children) (Judgment: Adequacy of Reasoning) (Practice Note)* [2011] EWCA Civ 1205, [2012] 1 WLR 595, Munby LJ (as he then was) stressed in para 16 that:

> "… it is the responsibility of the advocate, whether or not invited to do so by the judge, to raise with the judge and draw to his attention any material omission in the judgment, any genuine query or ambiguity which arises on the judgment, and any perceived lack of reasons or other perceived deficiency in the judge's reasoning process."

166. None of the advocates who appeared at the fact finding hearing took that course. Indeed, we know from subsequent events that not only the parents but also the advocates had accepted in principle that the findings stood, notwithstanding the parents' continuing denial that they were flawed. We are now almost two years down this road and the consequences of further delay for L and T are immense.

167. Fact finding hearings are often difficult exercises for a judge, particularly in circumstances where the parents' case is a bare denial of allegations made by children. I reflect on what Lady Hale said so wisely when delivering her judgment in *Re L and B (Children)* [2013] UKSC 8 :

> "43. … the disconcerting truth is that, as judges, we can never actually *know* what happened: we were not there when whatever happened did happen. We can only do our best on the balance of probabilities, after which what we decide is taken to be the fact: *In re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2009] AC 11, para 2. If a judge in care proceedings is entitled simply to change his mind, it would destabilise the platform of established facts which it was the very purpose of the split hearing to construct; it would undermine the

reports, other evidence and submissions prepared on the basis of the earlier findings; it would throw the hearing at the second stage into disarray; and it would probably result in delay."

168. I am also conscious of the words of Lord Hoffmann in *Piglowska v Piglowska* [1999] 1 WLR 1360 at page 1372:

> "First the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. If I may quote what I said in *Biogen Inc v Medeva plc* [1997] RPC 1:
>
> > "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."
>
> The second point follows from the first. The exigencies of daily courtroom life are such that reasons for judgment will always be capable of having been better expressed."

169. Finally in relation to these two grounds, the Appellant parents through Miss Meachin and Mr Spollen rely on the case of *Re J (A Child)* [2014] EWCA Civ 875. In that case, the focus of the challenge to the findings of fact lay in the trial judge's reliance on a list of points which supported her finding without any weight being given to factors which might point in a different direction. McFarlane LJ described that case (which concerned allegations of sexual abuse) as "an exquisitely difficult case". He identified what he described as "serious detriments" in the judge's analysis of the facts. That analysis, as I have said, had ignored a number of crucial pieces of evidence which were not weighed in the scales as a counterbalance to the evidence on which the judge underpinned her conclusions. That failure was held to have resulted in a defective outcome and the findings of sexual abuse were set aside.

170. I have already indicated that I do not agree with Miss Meachin's and Mr Spollen's analysis that, despite the changes which the mother had started to make, the future for these children looked positive at the time the allegations originally surfaced. The District Judge took a similar view. Whilst I accept that the analytical content of the fact finding judgment cannot be said to be full, I am not aware of any specific piece or pieces of evidence which the judge should have taken into account but failed to take into account. She knew about the retraction which C had made to the Guardian because she had asked

about it. She did not refer to it in her judgment but she plainly had it in mind because she had heard detailed submissions about it from the mother's advocate. That must lead to the conclusion that the judge felt she could place little weight on that piece of evidence which did not arise until the child was back at home with her mother in an environment where she had already found there to be collusion or coaching.

171. I bear in mind that this was a very experienced full time District Judge who had then been sitting as such for eight years and who dealt on a frequent and regular basis with care cases. As I was told during the course of the hearing, she had been sitting for five years before her full-time appointment as a deputy judge.

172. Miss Davies on behalf of the Guardian relies on *Re B (Appeal: Lack of Reasons)* [2003] EWCA Civ 881, [2003] 2 FLR 1035, a decision of the Court of Appeal in which Miss Meachin appeared with Michael Keehan QC (now Keehan J) for the appellant mother. That case concerned the final disposal of a care case with orders for the removal from the mother at birth of a new born child. Thorpe LJ approved the dictum of the Court of Appeal in a recent civil case reported as *English v Emery Reimbold & Strick Ltd & Others* [2002] EWCA Civ 605, [2002] 1 WLR 2409. The critical paragraph reads thus :

> "If an application for permission to appeal on the ground of lack of reasons is made to the trial judge, the judge should consider whether his judgment is defective for lack of reasons, adjourning for that purpose if necessary. If he concludes that it is, he should set out to remedy the defect by providing additional reasons refusing permission to appeal on the basis that he has adopted that course. If he concludes that he has given adequate reasons, he will no doubt refuse permission to appeal. If an application for permission to appeal on the ground of lack of reasons is made to the appellate court and it appears to that court that the application is well founded, it should consider adjourning the application and remitting the case to the trial judge with an invitation to provide additional reasons for his decision or, where appropriate, his reasons for a specific finding or findings."

173. I bear in mind that this was a judgment delivered by the District Judge with little more than a morning of court time to consider its formulation. In *Re A & L (Fact-finding Hearing: Extempore Judgment)* [2011] EWCA Civ 1611, [2012] 1 FLR 1243, Munby LJ (as he then was) said this of a fact finding judgment which had been criticised for being sparse in its forensic analysis:-

> "**[47]** ... [the judge] found himself faced with the dilemma, familiar to any family judge, of adjourning to prepare a written judgment, with all the further delays that might cause, or delivering an immediate extempore judgment so that plans for the children could be moved forward with minimal delay. [Counsel]

submits, and I agree, that such extempore judgments should not be discouraged. On the contrary, the safeguard is the ability – indeed the duty – of the parties to seek further elaboration or explanation from the judge if they feel that something is missing.

[48] Thorpe LJ has emphasised the virtue of brevity. It would be worse than unfortunate if the impression were to gain ground that experienced judges who have the gift of brevity should be deterred from displaying it by an inappropriate readiness on the part of appellate courts to interfere."

174. I accept that this guidance has to be seen in the later remarks made by his lordship in *Re B-S* but I have to consider all these factors against the facts in this particular case and consider whether the appellants have made out their case for relief from sanctions under FPR r 4.6

Ground 3 : Reversal of the burden of proof

175. Next, Miss Meachin and Mr Spollen submit that the judge appears to have considered that it was for the mother and father to disprove the allegations which the children had made rather than for the local authority to prove the case to the requisite standard.

176. I do not accept that as a valid ground of criticism. Both were asked in cross-examination whether they could provide any explanation as to why the children should be making these allegations to social workers and foster carers. The mother's response was that "Nobody can say anything within kids' minds. They're at the ages nobody knows" **[AB1/Ic:41]**. She then made an attempt to blame N for "making up stuff" **[AB1/1C:44]**. She also thought that the children might have been shocked at seeing her in a new relationship **[AB1/1C:43]**. The father said in cross-examination that the children might have said what they did to get their father back home **[AB1/1C:65]**. The judge did indeed remark that the mother had been unable to provide a cogent explanation as to why the children might be saying these things if they had not happened; she remarked that the father could offer no plausible explanation as to why the children should lie. Those statements of fact, in my judgment, do not amount to a reversal of the burden of proof. The judge had referred to the correct position in relation to the burden and standard of proof not once but twice in her judgment. She had cited the relevant authority. She had assessed their overall credibility and found them to be untruthful witnesses.

Ground 4 : No Lucas direction

177. The judge did not give herself a *Lucas* direction. However, she did not expressly use the finding that the parents had lied as direct proof of culpability in relation to the allegations of inappropriate punishments. For those findings, it is clear that she relied upon a much wider canvas of evidence. Even though it might have been prudent to do so, she did not in these circumstances need to give herself a *Lucas* warning (*R v Lucas* [1981] QB 720).

Ground 5 : No assessment as to how the threshold was crossed

178. Miss Meachin and Mr Spollon challenge the judgment on the basis that, whilst findings were made in relation to B1, B2 and C, she did not explain how those findings related to the satisfaction of the threshold criteria in relation to those children. It is accepted that L was not referred to in the judgment.

179. The District Judge referred specifically to the threshold document which was relied upon by the local authority in paragraph 21 of her judgment. It is in the original bundles at **[LB1/AA:7-12]**.

180. The assertion being made by the local authority was that the children were suffering, or were likely to suffer, significant harm and the harm or likelihood of harm was attributable to the care being given to them by the mother and the father. Each of the findings sought was then set out by way of a general allegation (e.g. the father has physically abused B1) with sub-paragraphs following with particularised incidents / examples. In delivering her judgment, the judge not only accepted the generic categories of physical and emotional abuse; she also particularised her findings as to the detail and, where her findings were in conflict with the threshold document, she highlighted where those differences lay. In relation to the cold baths, she found that these had been administered as a punishment against the children's will. In relation to the periods when the children were made to stand, she rejected C's account of standing for six to twelve hours but found it to have been in excess of one hour. She said this was a period of time which she found to be excessive and abusive. She declined to make a finding in relation to inappropriate sexual activity in the presence of one or more of the children and explained why she had done so. This allegation was based on reportage from N whom the judge described as "a young person in need of emotional support and professional help". It was not an allegation which had been reported by any of the other children whom she had seen and heard on the DVD evidence and whom she described as "children who were not shy in coming forward to voice their concerns about Mr D [the father] and their mother" **[AB1/1B:54]**.

181. I was taken to the decision of the President in *Re A (A Child)* [2015] EWFC 11. Having set out a number of basic principles, his lordship dealt at paragraphs 12 to 15

with the need to consider threshold from the foot of an evidential platform which feeds through to a conclusion that the child or children concerned are at risk of significant harm (in that case the case was advanced on the basis of general neglect).

182. At paragraph 12, he said this:

> "**[12]** The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate *why*, as the local authority asserts, facts A+B+C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of the types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect….". [my emphasis]

183. I have already referred to the facts as the District Judge found them to be. The local authority's concerns in *Re A* were of a very different order of magnitude from the facts found in this case. There, the father was said to be immature with a tendency to act irresponsibly. He was said to lack openness and honesty on occasions. He was said to lack insight regarding the child's needs. It was said that on occasions he drank to excess. As the President found having conducted the fact finding part of the exercise as a first instance tribunal, and having heard evidence from the father and his mother, "taking account of all the evidence, and surveying the wide canvass, the real picture is very different from that which the local authority would have had me accept" (para 95).

184. I was taken to *Re J (A child)* [2015] EWCA Civ 222 where both McFarlane and Aikens LJJ agreed with and endorsed what the President had said in *Re A*. However, that case involved an appeal against a care order authorising the local authority to place an eight month old child for adoption. The appellate process therefore involved a consideration of the proportionality of the welfare disposal against the background of the threshold findings. The passage from *Re A* which I have quoted above was specifically approved and adopted by the Court of Appeal. The importance of establishing a linkage between the facts relied upon and the actual harm suffered or the risk of significant harm being suffered was repeated by their lordships.

185. As the President himself recognised, where the fact relied on involved the infliction of physical harm on a child, that linkage will more often than not be obvious. It is worth looking again at the schedule of findings made by the District Judge on 25 October 2013 **[AB1/1A:41A-C]**. In the context of establishing significant harm suffered by both B1 and B2, those findings include physical punishments involving the use of force whereby both boys were placed in baths of cold water and made to sit in cold water for no less than 10 minutes. Those findings were expressed as constituting "physical abuse". There

were further findings of over-chastisement by requiring the children to stand for periods in excess of an hour. There were further findings of emotional abuse particularised as waking the children from their sleep and forcing the boys to stand as a punishment. There was a specific finding that C had suffered emotional abuse as a result of witnessing this physical abuse and being exposed to the boys' associated anxiety and distress.

186. I accept that the findings did not relate directly to L who was then a baby and living away from the home in which this abuse was being perpetrated. I shall come on to deal with the threshold and the proportionality of the District Judge's disposal of the case when I deal with the substantive appeals in relation to L and T. For present purposes I am dealing with the application for permission to appeal out of time the fact finding judgment.

187. Miss Meachin submits that the District Judge did not specifically explain how being placed in a cold bath by force amounted to significant harm. True, she did not. But she had heard evidence as to how B1 had kicked and struggled to avoid being put in the cold bath and how he felt "panicked" when he was told this was going to happen as his punishment. She had heard how B2's teeth had chattered so much he was unable to speak as he sat silently in the cold bath with the father on occasion coming in periodically to check he had not got out. For my part, I do not find the absence of an explanation at this stage of the evaluative process to be a compelling feature. No one asked the District Judge to explain her reasons for concluding that these findings amounted to significant harm. I suspect that was because it was obvious to all the advocates sitting in the court room who had listened to the evidence. That was a step which could have been taken had it been considered necessary. It was not, either at the conclusion of the fact finding hearing in October 2013 or at the conclusion of the welfare hearing in L's case in June 2014. Accordingly, I reject it as a ground of appeal in relation to this permission application.

Relief from sanctions

188. I turn now to the issue of relief from sanctions and the factors set out in FPR 2010, r 4.6.

(a) The interests of the administration of justice

189. On behalf of the appellants, it is said that the passage of time cannot make a bad decision sound in law. That submission presupposes that the findings made by the District Judge were bad decisions in relation to the facts. For reasons which I have set out already, I take the view that there was a sufficient evidential platform to have entitled the judge to reach her conclusions. She looked at the "wide canvass" before her which is

exactly what she was required to do. She heard oral evidence and made an independent assessment of the reliability or truthfulness of the witnesses from whom she head.

190. On behalf of the local authority, Miss Cabeza makes the point that if local authorities are to act with reasonable expedition in giving effect to care plans approved by the court at final hearings, it is essential that local authorities and adopters have confidence that, once the period for permission to appeal has elapsed, a court will not lightly allow an appeal against care and placement orders. That was a view endorsed by McFarlane LJ in ……. Nothing was said or done by these parents for well over a year after these findings of fact had been made. No one had thought to ask the District Judge to revisit her judgment or to provide any further explanation for her conclusions in relation to the facts or their linkage to threshold. The cases in relation to both L and T had proceeded over the course of the following 12 months without any indication that the fact finding process had been flawed in any way.

191. Miss Cabeza makes the further point, which I accept, that a court is entitled to depart from findings of fact made at an earlier stage in the proceedings if new evidence comes to light which causes the court to reach a different conclusion in relation to threshold : *Re L-B (Children)(Care Proceedings: Power to Revise Judgment)* [2013] UKSC 8, [2013] 2 All ER 294. Thus, she says, it is not necessary to allow an appeal against a fact finding decision in any event. I agree with her to the extent that it seems to me that the real issue in this case is whether or not District Judge was wrong in June and/or October 2014 to refuse to reopen her findings of fact in the light of the parent's evidence with regard to retractions by the children and/or her unwillingness to test her earlier conclusions against the reliability or otherwise of what they then appeared to be saying.

(b) Whether the application for relief has been made promptly

192. There is little more which needs to be said under this head. In the light of the inaction of the parents and the statements made by their respective advocates at subsequent hearings that they recognised they could not go behind the findings, I find that this is a case where the delay has been unacceptable in terms of its repercussions for the children. There is no evidence to support the mother's statement that her solicitor or the father's solicitor advised her in specific terms that she had to wait until the conclusion of the welfare hearings. Indeed, what I am told about her solicitor's recollection is to the contrary.

(c) Whether the failure to comply was intentional

193. This is dealt with above. I have already expressed the view that there was an element of opportunism on the part of the parents in 'jumping onto the bandwagon' following the finding by HHJ Plunkett that the fact finding exercise performed by the

District Judge had been flawed. He did not have the full facts before him when he reached that view and his orders have, in any event, been set aside.

(d) Whether there is a good explanation for the failure

194. I take the view, in the light of what I have said above, that had it been the parents' intention to appeal the October 2013 fact finding judgment, there is no good explanation for their failure to do so in time and in accordance with the FPR 2010. Had that appeal been dealt with promptly, the findings could have been re-examined and the local authority might then have been invited to put its case forward on the basis of an alternative threshold if that had been felt necessary. It is difficult to imagine at this point in time how there could in any event be an effective reopening of the facts as they stood in June 2013 (which is the relevant date for L) and in May 2014 (which is the relevant date for T). Everything which has happened since October 2013 has been shaped by the findings which were made and, whatever the deficiencies in the depth of the forensic evaluation, they were findings which, in my judgment, were supported by an adequate evidential foundation.

(e) The extent to which the party in default has complied with other rules, etc.

195. I accept that once the parents' first application was presented in July 2014, the issue before the court was considered to be an application for permission to appeal out of time rather than a revocation of the placement order which had been made in respect of L. That was not in the correct form but the parents were then acting as litigants in person. The fact of the matter is that the proper procedure was not followed in relation to any proposed appeal and those deficiencies attracted the criticism of the Court of Appeal.

(f) Whether the failure to comply was caused by the party or the party's legal representative

196. It is plain, as the parents appear to accept, that they made no serious attempt to appeal the fact finding judgment and neither asserts that it was the fault of his or her legal representative. They had been represented throughout the course of the hearing and, had they been minded to pursue an appeal at that point in time, they could and should have sought advice as to the procedure to be adopted. The fact that they acknowledged subsequently that they could not go behind those findings (and such acknowledgment was made not by them but by advocates acting on their instruction) reinforces my view that there is no exculpation under this head.

(g) Whether the hearing date or the likely hearing date can still be met if relief is granted

197. The answer to that question must be yes, since I proceeded to hear the substantive appeals on their merits notwithstanding that the absence of preparation in accordance with the directions made has inevitably meant I have to reserve judgment.

(h) The effect which failure to comply had on each party

198. Miss Meachin and Mr Spollon submit that the failure to challenge the fact finding has had significant disadvantages for each of the parents and for their two children. They point to the fact that the subsequent welfare hearings *'proceeded on one basis which had an inevitable outcome namely adoption for both children'*. I find that a slightly illogical submission since counsel frame their respective cases on the substantive appeals on the alternative basis that the District Judge's findings, even if they stand, did not necessarily warrant the imposition of care and placement orders.

199. In my judgment, the more persuasive submission is made by Miss Cabeza on behalf of the local authority. The passage of time and the changes in circumstances for each of these children since they made their initial allegations in June 2013 will make it extremely difficult for a court to simply revisit the fact finding process which was undertaken in October 2013. That would not have been the case had thee appeals been made within time. L has had a home in her adoptive placement since October last year. T has spent his entire life in a foster placement at a time when urgent decisions need to be taken about his future.

(i) The effect which the granting of relief would have on each party or a child whose interest the court considers relevant

200. I accept that the stakes for these children could not be higher. The process of a rehearing of the evidence relating to the fact finding is likely to require the elder children to revisit the events which were the subject of their earlier allegations. Their positions may or may not be in harmony. There is already ample evidence before the court of their disturbed behaviour and a difficult family dynamic. It would be extraordinarily difficult for a judge to undertake that process afresh after the passage of over two years. It would inevitably be a stressful position for the elder children whether a further enquiry proceeded by way of further local authority interviews, the instruction of an independent social worker or the children's attendance at court. The court already has some evidence about the boys' reaction to the news that the two younger children would not be returning to the family. One can only imagine the anguish which must have been felt by B1 and B2 in believing that they had somehow precipitated that final fracture within the family.

<u>Conclusions in relation to the application for permission to appeal out of time</u>

201. In conducting my own analysis I have, I hope, stepped back from an overly narrow focus on the forensic structure of the fact finding judgment and looked at the wider canvass of everything which had been placed before the District Judge in terms of evidence. I have conducted an holistic overview of all the evidence in order to consider properly the overall merits of the proposed appeal against the findings of fact as I am required to do following the guidance given in *Re H*.

202. I have considered whether it might be appropriate to invite District Judge Maughan to revisit her own conclusions and expand upon them to the extent that she considered it necessary. However, I bear in mind that the 'Approved Judgment' is, in fact, a slightly amended version of the transcript which she originally approved on a date which our collective investigations have been unable to identify. This 'Approved Version' of the fact finding judgment was considered by the judge as recently as the week before the hearing before me commenced. It is a version which she has approved by reference to her notebook and the contemporaneous notes of evidence she made at the time. I do not see what further benefit or clarification will be achieved by asking her to repeat that task again, nor, for reasons I have explained, do I consider it to be necessary. In any event, Miss Meachin made it clear in her submission in reply on the permission aspect that neither she nor Mr Spollen were contending that this was a 'lack of reasons' case.

203. I have considered with care the submissions advanced by Miss Meachin and Mr Spollon on behalf of the parents who should know that their advocates have truly left no stone unturned in their collective efforts to present in the most positive light possible this application for permission to appeal and the factors relied on in support of the substantive appeal.

204. However, I have reached a clear conclusion for all the reasons which I have considered and set out above that I am not going to allow the application for permission to appeal out of time against the fact finding judgment made in October 2013. Had they been minded to challenge the outcome of the fact finding hearing, these parents could and should have sought advice and taken steps to issue an application in a timely manner following the correct procedure. The fact is, they did not take that course and my conclusions are supported to a significant extent by the subsequent representations made by their advocates at further hearings. Even if I had reached different conclusions in relation to the question of relief from sanctions (and my view on that is quite clear), I am not persuaded that the conclusions reached by the District Judge in her fact finding judgment can be said to be wrong. There was some dissent between counsel as to whether or not, following the decision of the Supreme Court in *Re B (A Child)* [2013] UKSC 33, [2013] 2 FLR 1075, the test to be applied on any appeal (had I allowed it to proceed) was whether the decision of the lower court was 'wrong' or 'plainly wrong'. Having reviewed all the evidence which was before the court in October 2013, I am satisfied that the judge was entitled to reach the conclusions which informed her findings of fact and thus an appeal held little prospect of success in any event.

205. I have set out my reasons for reaching these conclusions at some length, but I want each of the mother and father to understand that I have looked at their case on the findings very carefully indeed because I am only too well aware of the significance it has for them, their older children and for L and T. In this context, this case can be distinguished from *Re H* which concerned an application for permission to appeal out of time where the merits of the underlying appeal were 'strikingly clear'. The father in that case was acknowledged to be providing 'very good care' to his three elder children. Because the judge at first instance had failed to provide any acceptable analysis of why it had been proportionate or necessary to remove their baby sibling for adoption, the Court of Appeal gave permission to appeal out of time. In that case, counsel for the local authority conceded that the underlying merits of the appeal were such that it would be likely to succeed were the father allowed to proceed, a concession which McFarlane LJ said was properly made.

206. Thus, I turn now to deal with the substantive appeals against the care and placement for adoption orders made by District Judge Maughan in respect of L on 27 June 2014 and in respect of T on 6 November 2014. The parents proceed with permission granted by HHJ Plunkett in both cases. In respect of each, I am proceeding on the basis of the facts as the judge found them to be in October 2013 at the conclusion of the fact finding hearing.

Events after the fact finding hearing

207. Following the conclusion of the fact finding hearing, N moved back to live with her father, Mr S. On 5 November 2013, Action for Children produced its final report. Its author was Jane Overton. In her conclusion she noted that at this stage of the work, concerns outweighed the strengths. Paragraph 6 of that report reads:

> "Whilst observations of contact are very calm, life outside of the contact centre could be described as chaotic with difficulties arising each day. This suggests the home is not at this stage a safe or stable environment for the younger children, [B2] and [L] to return too *[sic]*.
>
> I feel the safety of [B2] and [L] may be compromised if they were to be rehabilitated to [the mother] and [the father]; more so given the outcome of the fact finding hearing. In order for a positive outcome for the younger children at this stage I feel they should remain in their respective foster placements.
>
> With regard to the older children… I feel in order to ensure they remain safeguarded, whilst [N] is residing with her father and [C] and [B1] continue to reside with their mother [and the father], work should be undertaken with the children around helping the to recognise risk; strategies to protect themselves, as well as steps they should take if they are subject to abuse at home."

208. The recommendation at that stage was for further work to be undertaken in terms of intensive family support with a psychological assessment of the parents. In November 2013, the family was referred for multi-systemic therapy (MST). On 18 November 2013 the District Judge made further directions at the conclusion of a case management meeting. By that stage, it was clear (and was recorded in the order) that the local authority no longer supported the return of B2 and L to the family and neither did the Guardian. However the referral to MST had been made and the local authority was waiting to hear whether or not the family was a suitable candidate. The mother was now pregnant with T.

209. There was a further hearing on 3 March 2014. Shortly before that hearing, B1 had been told by the Guardian that the plan for B2 and L was adoption and they would not be returning home. The Guardian produced his report. In it, he stated that his agreement to N, C and B1 remaining in parental care did not mean that he regarded their home environments as being satisfactory since all of them remained at risk of exposure to physical abuse, neglect and domestic abuse. Because of previous absconding, it would not be possible to keep them in a care setting unless they were placed in secure accommodation which he did not recommend. B2 and L should, in his view, remain in their foster placements. At that stage, he did not feel able to express a view about arrangements for L because he had not seen a placement application from the local authority or considered the parents' response.

210. On 6 May 2014, T was born. Three days later, B1 was seen at school by a social worker, Linda Evans, to conduct a 'safe and well' check. He was asked about his wishes and feelings. He told the social worker that his sisters had made up allegations against the father. When it was suggested to him that he, too, had made allegations about him, B1 said, 'Yes, but people change'. He said that since he had been spending time with the father, things were better. At no stage did B1 say that the matters he had reported as happening to him were untrue. He simply said that things were 'better now'.

211. During the hearing in respect of L on 26 June 2014, it emerged from the Guardian's evidence that B1 had also spoken to the Guardian shortly after T's birth. He said he had wanted to withdraw his statement about the father. He was anxious about the outcome of the hearing for his two younger siblings and he wanted L to come home because he was worried about the impact of what he had said on the outcome. He had also spoken to B2 in his foster placement about the findings. B2 did not make any form of retraction but simply said that he wanted to go home.

212. B1 was plainly anxious and preoccupied during this period by the plans which were being put in place for the two younger children. On 13 May 2014, the day after T had been discharged from hospital into foster care, he told social workers during a home visit that he wanted the mother and father to be assessed in a residential setting with a view to his younger siblings returning home.

213. B2 had his first meeting with baby T on 16 May 2014. A week later, when he saw Linda Evans, the social worker, he told her he wanted to return home. He said his brother and sister had told him that that it was better at home now and that the father "treats us better". This was shortly before the contact session from which he absconded and returned home to tell the mother that something the social worker said "had hit him like a bomb". I have referred to this episode earlier in my judgment. It led to the local authority's application for a recovery order of the child. On 2 June 2014, during a discussion with B2 when he attended court, he had told the social worker that he felt able to trust his mother no because "there are new rules and punishments" **[LB2/C:714]**.

214. On 30 May 2014, the local authority lodged its placement application in respect of L. At a child in care review meeting on 3 June 2014, the independent reviewing officer (IRO) had made it clear that she did not endorse the plan of adoption for T and considered that there should be a residential assessment of his parents before any final decision as to his future was taken. Emails circulating at the time show that there was disagreement between her view and that of the local authority.

215. On 16 June 2014, in preparation for the final hearing in L's case, the two lead social workers filed a statement. In it, they referred to a continuing lack of engagement by the parents with the services which they were being offered. There was concern about missed sessions with Action for Children because of the parents' absence with the children on holiday. It subsequently transpired that the local authority knew about the holiday plans and the missed sessions arose because of the father's illness and the mother's inability to attend because she was then in the late stages of pregnancy. Concern was expressed about a return of L and T to the family home because of the authority's "total inability to protect these children" **[LB2/C:711]**. The statement spoke of the parents' inability to acknowledge the abuse which they had been found to perpetrate against the children and the local authority's lack of support for any further assessment.

The hearing in relation to L on 24 to 27 June 2014 (4 days)

216. B1 had written a letter to the court which is amongst the material which was put before the court at the final hearing for L. In it he said that he wanted L and T to come home. He referred to a 'big lie because the social worker say stuff to me'. He wanted the social workers 'to stop messing everyone around' **[LB2/C:717(a)]**.

217. Before the court on that occasion were three bundles of documents which contained all the core material. As the District Judge herself commented, "There is a huge amount

of information, it is a very, very long running case" **[AB2/2C:4]**. Mr S took no part in the hearing and his advocate was without any instructions. He was represented because decisions were to be made about C, B1 and B2. Since I am only dealing with the substantive appeal in respect of L's case, I need say no more about the evidence and submissions made in respect of the older children. Supervision orders in respect of B1 and B2 were agreed.

218. The District Judge heard from Debbie Gray, the IRO. By that stage, she was supporting the local authority's plan for adoption and did not support any further assessments in relation to T. She had seen a copy of the section 7 report which had been prepared in connection with the court proceedings relating to the father's other three children who were living with their paternal grandparents. She had expressed concerns about his commitment to his own biological children and was cross-examined at some length about her views.

219. The next witness was Jane Overton, the family support worker who had prepared the report from Action with Children. She had undertaken work with the family from August 2013 and January 2014 when she produced her main report. Her central concern had been the parents' non-acceptance of the findings but she also expressed significant concerns about the mother's ability to effectively manage the behaviour of the older children and the impact of that on the younger children. She confirmed that when she visited the home, she did not have any concerns about cleanliness and tidiness. She was asked about her inability to complete her work with the family because of the holiday taken in April 2014 prior to T's birth and she confirmed that she had tried to alert the parents to the difficulties which their absence would present in finalising a report. When cross-examined by the Guardian's advocate, she confirmed that she had significant concerns about the parents' insight and their commitment to change. She was worried about their ability to manage five children within their home and, in particular, about managing the behaviour of the elder children whilst trying to care two much younger children. She was concerned that managing the stress of running a large household of five or six children might lead to repeat behaviours of domestic abuse and she pointed to the vulnerability of the L and T in the context of those family dynamics. In her view, the previous findings of fact were but one aspect of wider concerns over the safety of these children within that family dynamic.

220. The court heard from Naomi Allen, the social worker who had prepared the care plan for L. She gave evidence about the therapeutic support services which had been considered appropriate for the family. She was asked several questions about the progress of contact between L and her siblings and confirmed that they had developed a close relationship with her over the twelve months she had spent in foster care. She said, "They love their little sister" **[AB2/C:63]**. She gave evidence of the support which had been offered to the older children in relation to the potential loss of this relationship. It was her view that, had the family engaged with Action for Children, it could have made a difference in terms of the family staying together. She accepted that there had been difficulties of communication between Action for Children, the local authority, the

parents and their solicitors and she accepted that one of the meetings had to be cancelled because of the mother's pregnancy. She had known about the holiday to Cornwall.

221. Miss Allen was cross-examined at some length about the prospects of managing the risk for L if she were returned home. She accepted that if there was therapy and ongoing support from social workers, there might well be a more positive outcome for the elder children which could bode well for the younger children. However, she remained of the view that the mother's ability to parent five or six children on her own would give rise to concerns and she was worried about the father's ongoing health problems and his unwillingness to engage with the services being provided. As the social worker responsible for the care plan for L, she said that in balancing all the factors, she had to take account of the family make up and the dynamics of the relationship between the parents in order to decide whether they could meet L's needs. She said she had looked very carefully at the prospects of maintaining L within her birth family and had considered seriously the prospects of support through MST. She had considered a possible placement with the father's parents so as to maintain a familial link but they were already caring for his three elder children and the relationship between those grandparents and the mother was 'non-existent'. She said she had also considered long term fostering so as to maintain links with the family but had rejected the option because of L's age. She had ultimately rejected the possibility of a further assessment for the parents because of concerns over their ability to change within the younger children's time frames. There were obvious worries about the chaotic household and the possible risk posed by the mother's eldest son given the previous breaches of the working agreement which prevented him from coming into the home. She did not believe that the parents were capable of caring safely for the two younger children.

222. On the second day of the hearing, the District Judge heard from Miss Julia Fiellateau, Miss Overton's manager, who had supervised the work undertaken by Action for Children. She was cross-examined about the two outstanding sessions of work which had resulted in the failure to complete the report and the court's sanction in April 2014 of the discontinuance of that work. Her evidence in response to questions from the Guardian was that she supported the recommendation of adoption for L because he could see no solid evidence of the parents' commitment to make the necessary changes and to maintain a commitment to change within the timescales for the younger children.

223. The local authority's last witness was Linda Evans. She had been the social worker allocated to B2, L and T since 23 April 2014. She spoke of her grave concerns for the two younger children if they were returned to the parents' home. She was cross-examined at some length by the mother's advocate about the need to draw a balance and assess carefully all the risks for L. She said that the services which the local authority could provide to the family were all time limited and it was not in a position to provide intervention and support for the duration of the children's needs. She did not believe that even an intense level of support would safeguard two young children in the chaotic home environment which was known to exist. The history of the mother's parenting of all her other children had been problematic and neglectful throughout their lives

regardless of the level of support which had been put in by the local authority and other agencies **[AB2/C:109]**.

224. When cross-examined by the father's advocate, Miss Evans accepted that the risks which had to be the focus of concern were those based upon the findings of fact made in October 2013. She was asked about L's relationship with her siblings and confirmed that the children interacted well. She accepted that the elder children would go through a grieving process if L was adopted and she gave evidence about some of the work which could be done to help them with their feelings of loss. She was asked whether she believed the risk could be managed with the family home so as to mitigate the severity of the consequences of adoption. Her evidence was that the risk was too great to be managed effectively and there remained serious concerns about the parents' ability to work effectively with support services. The environment within the home remained chaotic and the parents had failed to manage the behaviours of the older children. She confirmed, when cross-examined by the Guardian's advocate, that there were global concerns about the family which went beyond concerns for L and T over inappropriate methods of chastisement as they grew older. She was concerned that their inability to accept the findings might mean that the children felt unable to report any further instances of abuse or harm because they had not been believed before. There was also the risk, in her view, of coaching by the parents. These were concerns which Miss Evans described as "extremely significant" **[AB2/2C:120]**. She said she was concerned that the elder children remained at risk notwithstanding the supervision orders which were to be put in place. Despite the "robust package of support" she had striven to provide, she remained unconvinced that it would be sufficient to safeguard the older children. Despite the work which she intended to do with them to verbalise their wishes and feelings, she had doubts as to whether they would feel confident in coming forward now. She confirmed that adding to the family dynamic two children under two years old and entirely dependent upon their parents for their needs would represent "a huge risk".

225. In terms of the sibling attachment, Miss Evans said that she agreed with the assessment of the Guardian that losing the two younger children was likely to have a profound effect on the older children who would be distraught. However, she had carefully balanced all the options before formulating her care plan for L and decided that she needed a 'forever' family which she would not have if placed in long term foster care. Adoption, in her view, was the only viable option.

226. The mother then gave her evidence. She confirmed that N had very recently moved into semi-independent accommodation and was still struggling and finding life hard at times. C was back at home, as was B1, who was having a few problems at school although both were settled. She gave evidence about the contact she was having with L and T. She confirmed that she accepted findings had been made although she refused to accept they were true. She spoke about the courses she was undertaking in parenting and domestic violence and she descried her relationship with the father. She accepted that life in the household had been chaotic when they first got together and the children had little respect for her. Things were much better and she had a strong relationship with L

and T's father. When cross-examined about the findings on behalf of the local authority, she accepted that she believed the children had been telling lies. Nonetheless, she accepted that neither she nor those trying to work with the family could go behind them. She understood that the social workers had concerns for L apart from the specific findings and recognised that there were times when she had prioritised N's needs of B1's. She was not prepared to accept that she was being naïve about the reality of life or her ability to cope if L returned home. She accepted that she had been remanded overnight in prison because of poor compliance with her probation requirements but she told the court that this was because her legal team had not been present and the judge did not have any of the paperwork. If L could not return, her preference was for her to be placed in long term foster care rather than in an adoptive placement.

227. When cross examined by the father's advocate, the mother gave a detailed account about his illness and the seizures which had previously had a debilitating effect upon him. She described how he was able to recognise when he was about to have a seizure and would take himself upstairs and lie down so that there was no chance of hurting himself. She dealt with a number of searching questions about her own criminal conviction, the domestic abuse she had suffered over 16 years in her previous relationship with Mr S and the father's conviction for assault on his previous partner. She said that she had not been prepared to end her relationship with him after the findings had been made against him in October 2013 because she did not believe those things had happened to the children. She gave evidence about the support she was receiving from the Anawim centre and told the court about the improvements she felt she had been able to make in her parenting of the children. She was asked about the level of stability she could provide for L if difficulties arose in the future with D and N. She said that D would often pop in while the children were at school to bring washing round but he knew he was not allowed to come to the property when they were home. When it was put to her that N had said D had been staying at the property, the mother said she was not telling the truth. If L and T were returned home, she would not take them round to see him until he had competed his own assessments and it was safe to do so. It was her view that there was no risk if L and T were returned home because "it can all be supervised to stop any risk happening to them" **[AB2/2C:165]**. She just wanted to be given the chance to prove that she could be a good parent.

228. The father gave evidence on the second day of the hearing. He explained how he had been able to control his epilepsy through increased medication. He said he had only had one blackout since his last admission to hospital. He spoke about his relationship with his three older children who were living with his parents. He explained that when he separated from their mother, they had remained with her but were subsequently removed from her care by the police. The local authority was about to start care proceedings when they came to live with him at his parents' home. He secured a tenancy of his own property and moved in with his former partner (not the children's mother) but his health declined and he was having regular seizures. Having spent six weeks in hospital, he decided it was not fair to have the children under his care and they went to live permanently with his parents. When cross-examined by the Guardian's advocate, he gave the court a great deal more information about his health problems and the contact he was now having with his daughters.

229. He described L as his "world". He told the court about how she interacted with him during contact sessions. He said that he wanted to undergo a further assessment with a view to both L and T coming home.

230. When cross-examined by the advocate for the local authority, the father confirmed that it was his view that N had been the root cause of many of the problems at home. Whilst there were still issues, matters had improved a lot since she moved out. He maintained that the children had been lying about the punishments they said they had received at his hands. He was not able to say how B1 and B2 might be able to approach him if there were further issues in circumstances where they had not been believed. He wanted an independent social worker to be appointed so that he or she could look at their parenting of all the children as a family. In the context of the broader concerns for the children, he accepted that changes needed to be made and confirmed that the improvement in his health meant that he was much more available to assist the mother with the children. He recognised that the proceedings could not go on indefinitely and he was able to accept that all the evidence relied on by the local authority appeared to point to the fact that L could not safely be placed in his and the mother's care.

231. He was unwilling to accept that having two children under two years of age was likely to be extremely hard work. And he did not believe that the mother would find it stressful. He did not think she would struggle to manage the three older children's needs alongside those of L and T. He said they would cope as a family **[AB2/2C:202]**. He was asked a number of questions by the District Judge in relation to a typical day in the household he shared with the mother. She asked him whether or not he had thought about how they might cope if L and T were returned to their care. He said that they would share all the care and housework between them. He was quite happy to change nappies and knew how to look after young children although he accepted he needed "a bit of improvement with teenagers". He dealt with the judge's questions about the holiday to Cornwall and that he was now considered fit again to drive.

232. The Guardian gave evidence on the third day of the hearing. He had produced two reports for the court, both of which were included in the material in the bundles. The District Judge had read those reports, as have I. He was asked about the significance of the findings which had been made in October 2013. His evidence was that they related to L's parents' capacity to manage behaviours coming from all the children. The issues which faced the court were not simply confined to their ability to manage behaviours of children of B1 ad B2's ages. There was a much wider issue which involved their capacity to provide stability and security for two very young children whose needs were different from, but no less demanding than, the needs of 12 and 13 year old children. He said that the totality of the situation facing the court could not be defined simply by the findings although they were important.

233. He confirmed in his evidence in chief that B2 had spoken to him whilst in foster care on an occasion when he did not retract his previous allegations nor repeat them. He simply said he wanted to go home. B2 had said he wished to withdraw his statement about the father. He was anxious about the outcome of the final hearing and wanted L to come home. (I have referred to this evidence earlier in my judgment.)

234. It was his view that the package of support which the local authority was proposing to put in place to support the older children at home was unlikely to produce meaningful long term change and not the fundamental changes that would be required to enable them to safely meet the needs of infants of L and T's ages. He was asked about the balancing exercise he had carried out in his report before making his final recommendations. That had included an assessment of the relationship which L enjoyed with her older siblings. The Guardian explained that he hd considered this aspect carefully. Because he did not consider that her parents could safely meet her needs at home, he could not see any means by which that sibling relationship could be maintained. If she was placed in permanent foster care, the local authority would remain her corporate parent throughout her life until she was 18 years old. She would not have a family of her own to meet her needs. It would not be a stable upbringing for her. In his view, adoption would provide her with permanence and stability which was more important than preserving her relationship with her older half-siblings. He did not support further assessment of the parents and believed that the package of support for the older siblings was as much as could reasonably be expected of the local authority.

235. The Guardian was cross-examined by the mother's advocate at some length about the findings of fact. He repeated his view that the parents' failure to accept the findings was not the only stumbling block. Whilst important, it would be a mistake to define the issue of concern purely in terms of those findings which were part of a wider picture of concern **[AB2/2C:212]**. He felt that the parents had failed to engage sufficiently in the help that was being offered around the issues of domestic abuse or by Action for Children. He said that the proceedings had been ongoing for a year which was twice as long as most parents would usually be given to prove they were able to parent safely. L had been in care for about a year and she was getting older all the time. She was reaching developmental milestones and it would become increasingly harder to find a placement for her and for her to manage the transition to a different placement.

236. When cross-examined by the father's advocate, the Guardian was once again asked to address the findings which had established that threshold was crossed in L's case such as to justify her removal from the family home. When asked whether he accepted that it was important not to conflate[5] that risk with other lesser concerns which would not justify removal of the child from her family, the Guardian replied that in his view the totality of the situation had to be considered. He said that there were other concerns which he had identified which were an important part of the equation if the interests of

[5] The question was put to the Guardian in terms of the need not to "conflict that risk with other lesser concerns" although the father's advocate, Miss Buxton, plainly meant conflate" **[AB2/2C:220]**

the children were to be treated as the paramount concern. When it was suggested to him that the abuse perpetrated against B1 and B2 could be seen at the lower end of the risk spectrum, the Guardian said this :

> "I think looking at what was found to have happened, I think [B2] and [B1] would have experienced it as a very upsetting and very unpleasant experience. I think it would have been upsetting for their older siblings, [N] and [C], My memory is that [N] felt a need to draw the attention of the authorities to what had happened. So I think what has happened was – may not have left physical injuries, but it was – it would have been emotionally very upsetting for the children and would have been damaging for them. Mother has been described by Probation as still being a medium risk." **[AB2/2C:220]**

237. He went on to speak about his concerns for the children in circumstances where the parents had been unable to understand their failings and acknowledge what had happened so that they were able to empathise with what the reality of the abuse was for the child. He said he felt this was lacking with these parents. In his view, the greatest indication of future behaviour was past behaviour rather than what a person was saying. Here, the father had neither admitted that he behaved as he did nor had he sufficiently engaged in the process of assessment.

238. When asked whether there was any purpose in a further assessment for T whose time scale was different from L's, the Guardian said that there was little point in his view since the problem was not with the child but with the parents.

239. With the evidence in the case concluded, the District Judge heard submissions from the parties' advocates. When Miss Buxton, the father's advocate, addressed the court in relation to threshold, she accepted at the outset and without reservation that, in relation to L, threshold had been crossed **[AB2/2C:232D to E]**. The focus of her submissions was the proportionality of the court's response in those circumstances. She said, quoting from *W v Neath Port Talbot Council* [ref]

> ""The process of deciding what order is necessary involves a value judgment about the proportionality of the state's intervention to meet the risk against which the Court decides there is a need for protection. In that regard, one starts with the Court's findings of fact and moves on to the value judgments that are the welfare evaluation." So, ma'am, it is very important, in my submission, not to lose focus of threshold being the trigger for intervention.'

240. She went on to address the court about risk management and reminded the judge that courts were frequently having to deal with an assessment of risk "in the teeth of denial of findings". Here it was not "an impossible hurdle". She pointed to signs of progress (which I do not reiterate here since they are set out in the material at **[AB2/2C:233-236]**. She pressed upon the curt the need for a further assessment in both

L and T's cases. The mother's advocate had previously addressed the court during his closing submissions about the availability of an expert who could provide an independent social work report in relation to both children. The mother had accepted that a residential assessment was not practical or achievable.

241. Miss Pritchard, who appeared for the Guardian, resisted that application on the basis that it would not assist the court in answering the question whether it was safe to return L and T to the parents and would introduce another layer of delay for the two children. In terms of the proportionality of the placement order which was supported by the Guardian, she addressed the court on the law. She confirmed that the court must not lose sight of what the threshold for intervention was in this case. In dealing with the perceived risks for L, she said this :

> "So what is the feared harm for [L] ? In my submission, where harm is perhaps less tangible than physical injury, broken bones or profound abuse of a child, it is sometimes harder to evaluate that harm. The Court has the benefit of a very clear picture of what the harm to [L] could be and could produce were she returned home. Because we have a picture of [N] aged 16, having lived within the family home all her life and now being a child demonstrating difficult, damaged and unsettled behaviour, whose lifestyle is itinerant, historically unsupported, with her toing and froing between her parents. The feared harm for L and in turn T is chronic neglect of their physical and emotional needs. It is harm that in my submission would be significant and would directly impact on their life chances to have a secure, stable routine of care free from harm.
>
> But not just considering the feared harm, the Court has to evaluate, is there a real risk of that ? It is not simply sufficient to say there has been harm to other children, therefore there will be harm to [L]. In my submissions, the evidence that assists the court in answering this question is as follows. There is a real risk to [L] of experiencing the same harm. The real risk is well beyond, in my submission, the threshold of likelihood. Why ? There is no acceptance by the parents of past harm. There is no acceptance of the Court's findings or an understanding or insight into the reasons for past neglect and where the responsibility for that lies. Without that insight and acceptance, in my submission, the Court does not get to considering the first hurdle that was outlined by the President in the case of *Re S* which I have referred to. Because the first element is the commitment to change. Well, before we get to commitment, we need insight and acceptance."
>
> ……. The Court, notwithstanding that, must go on and consider then whether or not the plan for these children is proportionate and necessary, having regard to the children's but the parents' also right to a family life where what is being recommended to this Court is the permanent severance of that family tie. In my submission, in order for the Court to be able to make that decision, it must be satisfied that, first of all, parents cannot provide the safe care that is required, and I have dealt with that. But after that, that there has been a global holistic evaluatin of the other alternatives of care for [L]. And it is only if so satisfied that

it can and should go on to make the order of last resort." **[AB2/2C:240H – 241F]**

242. The court reconvened at 2pm the following afternoon (27 June 2014). The District Judge announced her decision and gave time for the parents to speak with their advocates, telling them that they need not stay for the judgment if that was their preference. They chose to go home and no criticism can be made of them for taking that course. The judge then proceeded to deliver her judgment.

243. A full transcript of her judgment appears in the bundles at **[AB1/2B:1-11]**. I do not propose to rehearse its contents separately since I am going to deal with the issues arising in the context of the grounds of appeal advanced by Miss Meachin and Mr Spollen on behalf of the parents.

B. Substantive appeal against the care and placement orders made in respect of L on 27 June 2014

244. It is to those Grounds I now turn. There is a degree of elision between them and, in my consideration of them, I propose to take them together where I consider it appropriate.

Ground 1: The Judge wrongly considered that threshold had been met in this case when she had set out no evidential basis for such finding in relation to L

245. Miss Meachin and Mr Spollon submit that the Judge was wrong to conclude that, for the purposes of the welfare hearing in relation to L, she had already made findings that threshold was met under s 31(2) of the Children Act 1989. They contend that she had made findings simpliciter but had not referenced those findings to the threshold criteria.

246. I do not accept that submission for the following reasons :-

i. The order made at the conclusion of the fact finding hearing on 25 October 2013 records on its face in paragraph 9 that "the s 31 threshold for the making of orders is found to me (i.e. District Judge Maughan) made out in accordance with the Findings set out in the Schedule of Findings made annexed hereto" **[AB1/1A:40]**. The schedule to which she refers appears immediately after the order at **[AB1/1A:41A-C]**.

ii. L is specifically referred to in paragraphs 10 (Key issues in the case). Para 10(c) refers to "whether the care plans for ….. [L] is to be changed to Single Track Plan of Adoption". She is also referred to in para 11(a), (b) and (c) in terms of realistic possible options for placement.

iii. Whilst the Schedule of Findings does not state by way of preamble the names of the children in respect of whom the findings have been made, L is included, along with all her siblings, as a named party in the proceedings.

iv. As the transcript of the fact finding judgment shows, the judge made it plain that the case had been listed for fact finding and concerned all five children of the family (T not then having been born).

v. The mother's solicitor, Mr Bean, confirmed at the outset of the fact finding hearing that it was an effective hearing in respect of the allegations contained in the amended threshold schedule **[AB1/1C:3]**.

vi. At the outset of the welfare hearing on 24 June 203, neither of the parents' advocates sought to advance the parents' cases on the basis that threshold was not met in respect of L. Each of the mother and father had properly accepted that they would need to be assessed in the context of those findings and made an application for the instruction of an independent social worker to carry out that assessment. The finding that threshold had been met was the gateway to the need for assessment. L was specifically the subject of the welfare evaluation on that date.

vii. Threshold was not a live issue at the welfare hearing for L and the findings were not disputed. As was clear from the cross-examination of the parents and the submissions made at the conclusion of the evidence, the issue for the court was whether or not the parents' refusal to accept the findings was an insurmountable hurdle.

viii. As I have explained earlier in my judgment in relation to the fact finding hearing, the judge made findings that threshold had been met in October

2013 on the basis of the likelihood of harm at the relevant date for the children which was 13 June 2013 (being the date upon which they were removed from the parents' care the day after N had made the social worker aware of the matters C had raised with. There had been no appeal against those findings as at 24 June 2014 and neither parent had at any time sought to suggest that threshold was not crossed as a result of the findings.

ix. Those findings and their basis as the threshold having been met in this case was the legal basis for the supervision orders which had been made by consent in respect of N and C on 3 March 2014. Neither of those orders had been the subject of an appeal. The order made on that date specifically refers to threshold in paragraph 8. The Guardian's report dated 17 June 2014 confirms that proceedings in respect of N and C ended on that date when supervision orders were made **[LB3/G:15]**.

x. The judge made it abundantly plain in her judgment that she was dealing with the welfare stage of the proceedings **[AB1/2B:1-11]**. She states in paragraph 4 of her judgment that she has already made findings that the threshold was met under s 31(2) of the Children Act 1989. She then states in paragraph 5 that the issues for determination at this hearing relate to the care plan and related issues for L and the application for a further assessment in T's case.

247. In the circumstances, I do not accept that ground 1 is made out and cannot be the basis for overturning final orders made in relation to L.

Ground 2: The Judge failed to address what she had found in relation to L and whether the risk of it occurring was still present

Ground 4: The Judge failed to ask herself against whatever facts she had found about the threshold being crossed in relation to L whether L could be returned to the care of her family

Ground 5: The Judge wrongly concluded that adoption was in L's best interests
Ground 7: The Judge was wrong to consider that there had been adequate assessment of the parents
Ground 8: The Judge wrongly identified that there was this very real risk that the parents would not be able to prioritise the younger children's needs

248. In my judgment these grounds have to be considered in the light of everything that the judge heard and read for the purposes of the June 2014 hearing. I have set out above several relevant extracts from the transcript of that hearing. The Guardian was cross-examined at some length in relation to the overall risk to L and the judge heard submissions from Miss Pritchard on this point. By this stage she was very familiar with the case having case managed it since its transfer at the beginning of October the

previous year. In paragraph 7 of her judgment, she set out a lengthy exposition of the circumstances behind the "chaotic living" within the family and the children's current circumstances. She refers at the end of that paragraph to the fact that N and C had already been placed under supervision orders at home on 3 March 2014 on the basis of the findings which had been made. She went on to record in her judgment much of the evidence to which I have referred earlier in this judgment and identified the salient aspects of the evidence which each of the witnesses had given.

249. In relation to Miss Overton's evidence, she said at paragraph 10 of her judgment,

> "She too cannot recommend a return of [L] to her parents' care. Whilst she agreed this was primarily because of both parents' inability to accept the findings of fact made, this was not the only factor. She referred to the chaotic home life and the failure to maintain discipline and boundaries which, in her view, is another major factor in this case."

250. She goes on to quote from her written report and the concern held by the social worker that the mother would not be able to manage challenging and abusive behaviour by the older children whilst prioritising the younger children's needs. This, the judge said, "is a very real risk highlighted in her evidence" **[AB1/2B:5]**.

251. She recorded in paragraph 11 of her judgment Miss Allen's evidence. In relation to the evidence she had given in relation to MST, the judge found it relevant that an "extremely high threshold" was required to be crossed before such a referral could be made. She found Miss Fiellateau to be a reliable and effective witness. Her evidence had plainly informed the judge's conclusions in relation to concerns about the father's health and the fact that neither parent had displayed an effective commitment to change. That concern was reinforced in the judge's mind, as she made clear, from the evidence she heard from Linda Evans whose evidence she set out in paragraph 13 of her judgment.

252. The judge analysed in some detail the evidence she had heard from the mother (paragraph 14). She was plainly concerned about the content of some of the mother's responses to questions put to her in cross-examination. Her lack of insight into the underlying causes of the chaotic dynamics within the home, her tendency to blame N for the problems, and her absence of any concern as to how she would cope with two very young children added to the mix were clearly addressed as risks for L in the judge's mind. She expressed very clear concerns about the quality of parenting which was available to the children at that particular time and factored in the risks of two young babies being returned to the home in circumstances where the mother had no insight into the additional stress factors which would thereby become engaged. It is true that she placed reliance on the failed assessments which reflected in part the parents' failures

to accept the findings and thereby demonstrate the capacity for empathetic acceptance of what the children had suffered. However, I have found in my refusal of permission to appeal those findings of fact that there was ample evidence before the court to reach the conclusions that it did in October 2013. There is thus something of an internal tension in the parents' position as I pointed out to Miss Meachin during the course of her submissions. In circumstances where the findings of fact stand undisturbed, the mother and father must be taken to be wrongly in denial about their failures vis à vis these children. The judge did not ignore the positives in her judgment. For example, she gave the mother full credit for recognising the need of all the children, including L, for stability. She accepted that the proceedings could not go on indefinitely and that, too, the judge found to be a positive response.

253. In her analysis of the father's evidence in paragraph 15 of her judgment, the judge found that he, too, lacked any insight into the needs, wishes or feelings of the children. She found he had minimised his own shortcomings as a parent and gave specific examples of aspects of the evidence which had persuaded her to this view.

254. The judge then spent some time dealing with the evidence of Mr Pashley, the Children's Guardian. She referred to his reports, the most recent of which had been prepared only a week before the hearing. She referred to the full child impact analysis which he had carried out in relation to L. That analysis was set out over eight pages of his report. His analysis as it related specifically to L occupied four of those pages. In relation parenting capacity, the Guardian had been quite clear in his views which he had formed on the basis of all the information available to the court. He did not consider that either the father or the mother would be able to provide a standard of parenting for L which would be good enough to ensure that her needs were safely met. He went on to explain precisely why he had formed that view. He dealt with the relationship which L had formed with her parents and her siblings as contact had developed. He referred to the option of placement as being a Draconian step but recognised it as one which was proportionate to L's need for a family of her own where she would receive good enough parenting. He had looked at the only alternative options of a placement with the maternal grandmother and/or the paternal grandparents. Both assessments had been negative. In paragraph 9 of his report he set out in tabular form a permanence analysis for L in terms of the range of orders which might be considered and gave his reasons for his recommendation of adoption.

255. In the context of her assessment of the written and oral evidence of the Guardian, the judge specifically found that any further attempt at assessment would result in a potential delay of some six months. She extracted from his oral evidence three points which had informed her own conclusions as to the outcome for L :-

i. the assessment by Action for Children had been negative in terms of the capacity of the parents to change in order to meet L's needs;

ii. the history of domestic violence in the father's relationship with his previous partner which he had minimised and which had resulted in a supervised contact order to his three elder daughters;

iii. the non-acceptance by the parents of the findings of abuse and harm to the children and the real lack of any commitment to make the necessary changes. This last factor was, in the judge's view, "particularly important".

256. The judge said in her judgment that she accepted the Guardian's evidence "and adopt it in this judgment". I have no doubt that the judge chose her words carefully. She did not say simply that she accepted that evidence. She said that she adopted it in her judgment. Can she be criticised for not rehearsing it verbatim on a line by line basis ? It is the obligation of the court to give an adequately reasoned judgment which grapples with the competing options and gives them proper focused attention. The judge was aware of that requirement since she had specifically referred to *Re B-S* at the start of her judgment. However, I remind myself of the decisions of the Court of Appeal in *M, GP and AK v Suffolk County Council* [2014] EWCA Civ 942 and *Re R* [2014] EWCA Civ 1625. In the former, the judge at first instance had placed significant weight on the assessment of the social work expert instructed in the case and who had undertaken two of the core assessments. In delivering judgment, the judge had extracted from the report produced by the social worker the positives and negatives of the applicant grandparents' case. The Court of Appeal took the view that it was a sufficient analysis for the judge to be able to conclude that the grandparents would not be capable of protecting the children from the perceived risk of emotional harm from their parents. At paragraphs 19 and 20 of his judgment, Ryder LJ expressed his views about the ground of appeal which concerned the error of form (i.e. the absence from the judgment of a neat balancing of the welfare factors described in *Re B-S*). His lordship said this :

"19. No one suggests that the judge undertook the neat balancing of welfare factors comparing one option with another that is described in *Re B-S (Children)* [2013] EWCA Civ 1146 at [41] to [46]. The local authority and the guardian submit that despite that error of form, the substance is plain on the face of his judgment. They rely for their submissions on this court's decision in *Re W (A Child); Re H (Children)* [2013] EWCA Civ […] where Sir James Munby P said:

"[16] Plainly, in the case of judgments given before Re B-S the Court of Appeal must have regard to and make appropriate allowance for that fact. The focus must be on substance rather than form. Does the judge's approach as it appears from the judgment engage with the essence ? Can it be said, on a fair and sensible reading, not a pedantic or nit-picking reading – that the judge directed his mind to and has provided answers to the key questions.

> [17] […] Nor, to take another example, will the mere fact that the judgment does not engage with matters referred to in paragraph 74 of *Re B-S*. What is crucial is the effect of the judgment read as a whole."
>
> 20. The local authority and the guardian submit and I agree that the judge engaged with the core long term welfare decisions and addressed them in an holistic way in his judgment……"

257. In that case, Ryder LJ concluded that, on an appeal, the court's primary function is to review the welfare analysis and proportionality evaluation and decide whether those value judgments were wrong within the meaning of that phrase as described by Lord Neuberger in *Re B* at [93]. He came to the conclusion that the judge's analysis and evaluation were not wrong and most certainly were not insupportable. Accordingly the appeal was dismissed.

258. Similarly, in *Re B (A Child)* [2014] EWCA Civ 565, Ryder LJ identifies the task of an appellate tribunal in the following terms (paras 29 to 32):

> i. Identify the error of fact, value judgment or law sufficient to permit the appellate court to interfere. In public law family proceedings there is always a value judgment to be performed which is the comparative welfare analysis and the proportionality evaluation of the interference that the proposed order represents and accordingly there is a review to be undertaken about whether that judgment is right or wrong.
>
> ii. Armed with the identification of the error identified, the judge then has a discretionary decision to make whether to re-make the decision complained of or remit the proceedings for a rehearing. The judge has the power to fill gaps in the reasoning of the first court and give additional reasons in the same way that is permitted to an appeal court when a Respondent's notice has been filed provided the process is procedurally regular and fair.
>
> iii. If the appeal court is faced with a lack of reasoning, the appeal court should look for substance not form. The essence of the reasoning may be plainly obvious from reading the judgment as a whole. If the question to be decided is a key question upon which the decision ultimately rests and that question has not been answered, then the proceedings may need to be remitted to be reheard. In this context the appellate court will need to consider in particular whether evidence is missing or the credibility and reliability of witnesses already heard by the first court is in issue.

iv. The two part consideration to be undertaken by a family appeal court is heavily fact dependent.

259. Further guidance was given by McFarlane LJ in *Re R (A Child)* [2014] EWCA Civ 1625 where the principal assault on the first instance judgment was the judge's failure to carry out a *Re B-S* compliant welfare analysis in making an adoption order for a two year old girl who had been in care for just over a year when the placement order was made. Having considered the welfare factors within the structure of the Adoption and Children Act 2002, the judge had concluded that the child's welfare required the court to dispense with the consent of each of the two parents and to make a placement order "because an adoptive placement will provide for [the child's] need to have a secure and permanent placement".

260. In dismissing the appeal, McFarlane LJ pointed to the danger of attacking a judgment or process of judicial analysis as "linear" (i.e. based upon a stepped approach through the welfare checklists in the 1989 and 2002 Acts) simply because as a matter of structure the judge considers and then expresses a conclusion upon one particular option for a child before moving on to consider another option. He said, in para 18 :

> "The concern at which this court's judgment in the case of *Re B-S*, and the cases that preceded it, was focussed upon what was the substance of the judicial analysis, rather than its structure or form."

261. Counsel for the appellant in *Re R* had sought to argue that, whilst the judge had identified the risk to the child, he had not gone on to undertake an assessment of the risk, nor consideration of whether the risk could be managed or reduced. Those submissions are echoed in the grounds which Miss Meachin and Mr Spollon have put before me in relation to the appeal with which I am dealing. Having read the judgment as a whole, McFarlane LJ was unable to agree. He considered that the judge had indeed made his own assessment of risk, albeit not using any formal structure to conduct that analysis. Given his findings as to the deeply entrenched nature of the mother's choice of partners and the pattern of her alcohol abuse (in that case), the judge was entitled to conclude that the risk of harm could only be managed or neutralised by the introduction of a round the clock professional carer, a proposition which was "obviously unrealistic". The question for the judge in that case, as he made plain in his judgment, was whether the mother could make sufficient progress in a timescale that was compatible with the needs of her young child. McFarlane LJ considered that the judgment in relation to his findings of fact and the entrenched nature of the mother's behaviour and the related underlying problems led inevitably to the conclusion that there was no other avenue open to him as an option for the child (para 34).

262. With this in mind, I return to District Judge Maughan's judgment. She had already made her findings in October 2013 in relation to the abuse and over-chastisement of B1

and B2 and their mother's failure to protect them from that harm. She found in her June 2014 judgment that the parents' failure to accept those findings was "a significant fact" because that failure constituted evidence of their inability to change and embrace the work which would be required to rectify many of the parenting defects which had been identified throughout the body of evidence which was then before the court. She was very mindful of the time frame for L and reminded herself that the proceedings had been ongoing for 53 weeks, more than twice the length of time normally permitted. She accepted the evidence of the principal social workers and made further findings that the parents' inability to accept the findings made in October 2013 were not the only factors which gave rise to concern for L. She identified the chaotic home life and the failure of the parents to maintain discipline and boundaries as another major factor in the case. She accepted that there was "a very real risk" that the parents would be unable to prioritise the younger (and wholly dependent) children's needs if the older children continued to display the challenging and abusive behaviours which had featured as a regular occurrence in the evidence which was before the court. Those behaviours were not challenged by the parents as having occurred. Both B1 and C had reacted to attempts to discipline them by smashing up their bedrooms. The judge referred to the highly dysfunctional relationship which N had with her mother, a relationship which had led in the past to abusive behaviour towards her mother which included not simply a complete lack of respect but physical altercations involving kicking and biting. The judge referred to the "extremely high threshold" which was required before a family could be referred for consideration for MST. This type of intervention involved 24 hour assistance for parents struggling to manage their children. It was the type of intervention which McFarlane LJ rejected as being "unrealistic" as an option in *Re R* (above). The family had in any event been turned down as candidates for this type of intervention, a fact which perhaps speaks much about the perceived level of dysfunction within it. The judge found specifically that the mother showed insufficient insight into the work which had been done by Action for Children and that she currently lacked insight into the need for change. She found as a fact that the mother had failed to recognise the needs of the children by taking control of issues of discipline primarily by herself (paragraph 14). Similarly, she found that the father had failed to prioritise his contact with his three elder daughters; that he had failed to demonstrate any or any sufficient insight into their needs, wishes and feelings' that he had minimised his own shortcomings as a parent; that he had failed to accept responsibility for the domestic violence perpetrated against his former partner on the single occasion it had happened; that he had a propensity to 'play the victim' in these proceedings and had moved no further forward in his parenting abilities or his appreciation of the situation from the time of the October 2013 fact finding hearing (paragraph 15).

263. The judge was entitled to consider all the evidence which had been put before her in order to assess the situation in the home to which the parents were seeking the return of L. That evidence went beyond the concerns which had been identified in relation to L in terms of the parenting generally and of B1 and B2 in particular. The cumulative evidence of the risks to L of being returned in June 2014 were found by the judge to be too high. That was her analysis and evaluation of risk within the final disposal hearing; it went beyond her previous evaluation of risk in terms of the threshold analysis which identified the risks at the relevant date. In my view, the judge would have exposed herself to proper criticism had she not taken full account of all the evidence before her in relation to the <u>current</u> risks to L for the purposes of the final disposal of her case.

264. The District Judge identified as "a very important issue" the negative assessment of the paternal grandparents. She reminded herself that she needed to be satisfied that every alternative avenue for L had been explored.

265. I am entirely satisfied that the District Judge had indeed analysed the risks for L as at the disposal date in June 2014. She was looking at proportionality on the basis of the body of evidence which had been put before the court and in the light of the then prevailing conditions in the family home. The focus of her judgment was the quality of the parenting which was likely to be on offer for L if she were returned to the care of her two parents.

266. In paragraphs 18 to 31 of her judgment, she was drawing together her conclusions in terms of welfare evaluation. She correctly stated the law. She said that she had as her paramount consideration the welfare of the children and, of course, L in particular since this hearing related to her. She had at the forefront of her mind the welfare checklist within the Children Act 1989 and for L in relation to the Adoption and Children Act 2002. She cited the cases of *Re B-S*, *Re P* and *Re W*. She took as her starting point Article 8 of the European Convention and the right to respect for private and family life. She quoted from the judgment of Lady Hale in *Re C* and reminded herself that:

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

267. She reminded herself that the test of necessity was and extremely demanding and stringent test and referred herself to the case of *Re B* and, in particular, the judgment of Lord Neuberger.

268. I remind myself about what Lord Neuberger said in para 93 of his judgment in *Re B*. Where Convention questions such as proportionality are being considered on an appeal, it should be allowed if, after reviewing the trial judge's decision, the appellate court takes the view it was wrong. He went on to say in paragraphs 93 and 94 :

> "93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, (iv) a view on which she cannot say she was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong,

or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge's view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if after such anxious consideration, an appellate court adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal."

269. In my judgment, District Judge Maughan's decisions flowing from both her welfare analysis and proportionaility fall within Lord Neuberger's first two categories. Having conducted my own review of the evidence with the benefit of the full transcripts, I take the view that her decision in relation to placement and dispensing with the parents' consent to adoption, although difficult decisions for these parents to reconcile, were not only right but the only possible view which she could have taken in the circumstances. Accordingly, grounds 2, 4 , 5, 7 and 8 cannot in my view be a proper basis for interfering with her decision.

Ground 3: The Judge failed to revisit her fact finding conclusions once she knew that B1 and B2 had had conversations with the Guardian about their allegations

270. This ground warrants separate consideration since it involves, in part, the retraction which B1 is said to have made to the Guardian. I have referred to this already in paragraph … of my judgment and will not repeat the factual evidence which the Guardian gave to the court on 26 June 2014. It appears in the transcript at **[AB2/2C:210]**. In my judgment, the District Judge cannot be criticised for not revisiting her fact finding conclusions. First, in his conversation with the Guardian, B2 did not retract anything he had said previously. He simply said that he wanted to go home. Secondly, the Guardian's view (as the person who had spoken to B1) was that his wish to withdraw what he had said about the father was an emotional response to learning that placement was the preferred option of the local authority for L. B1 had by then become attached to his baby sister. We know that he was anxious about the outcome of the pending June 2014 hearing. He wanted her to come home and he was concerned about the impact of the findings on the outcome. I have analysed in some depth the evidence which was available to the District Judge in the context of her original findings of fact about the cold baths and the excessive punishments meted out to B1 and B2. There was cogent and reliable evidence, as I have found, available to her as the basis of or platform for those findings. In my judgment, she was entitled to accept and adopt the Guardian's view as to why B1 had said what he did. She was entitled to find that explanation sufficiently persuasive in the light of the holistic evaluation of all the other evidence

which was put before her. Accordingly, on that basis, and because no one asked her at the time to revisit her findings, I decline to adopt ground 3 as a reason for disturbing either her findings or her orders.

Ground 6: The Judge wrongly admitted a section 7 report and wrongly placed reliance on it

271. In my view there is no merit at all in this ground. I accept the submissions made by Miss Cabeza and Miss Davies on behalf of the local authority and the Guardian in this respect. The report was relevant because it was the catalyst for the IRO's change of position in relation to the need for a further assessment of the parents. The criticism made in the report of the father is confined his lack of commitment to his three elder daughters, his lack of engagement in the contact arrangements, his failure to liaise effectively with his parents (to whom their primary care had been entrusted) and his failure to engage with work being undertaken by the author of that report.

272. Miss Gray, the IRO, had been required to attend court by the parents who wished to cross-examine her. She confirmed in her oral evidence that she had changed her position after reading the report. It was inevitable in these circumstances that the District Judge would need to have read the report if this witness was to be cross-examined on its contents. The judge dealt in her judgment with her reasons for rejecting any further assessment of the parents. Her views coincided with those expressed by the Guardian and she adopted those views for the purposes of her judgment. She considered and applied her mind to the appropriate test under s 38(7) of the Children Act 1989 and applied the appropriate case law (paragraph 17) **[AB2/2B:8]**.

Ground 9: The Judge failed to consider the difference in care plans for the boys and C who had on the Judge's determination been harmed by their experiences but who were remaining at home as opposed to the care plan for L who had not been harmed but was at risk of harm but was to be adopted

273. This ground is dealt with in part by my consideration of earlier grounds relied on. Nevertheless, I reject it as a specific ground for disturbing the judge's findings and/or her disposal of the case in relation to L. The judge did not find that the placement of the elder children with the parents was without risk. On the contrary, she had heard the evidence of the Guardian (which she adopted) and other professional witnesses that a placement with the parents was fraught with risk. The Guardian viewed it as the least detrimental option for C, B1 and B2 because of the history of their absconding behaviour from previous foster placements. The Guardian dealt specifically with the risks to B1 and B2 of further absconding and the option of placing the elder children in secure accommodation was rejected at an early stage. On balance, the judge accepted that a supervision order was the least harmful outcome for the elder children. The risks to L as a two year old child without a voice and without the means to remove herself

from a potential situation of harm were very different and required a different response in terms of the level of protection required. The judge was satisfied that placement was the only realistic option if L was to receive safe parenting over the remaining years of her minority.

Ground 10: The Judge carried out no evaluation as to what adoption would mean for L including the loss of her sibling relationships

274. I reject this ground as being a basis for interfering with the District Judge's evaluation of welfare or proportionality. She made specific reference in her judgment to the issue of sibling attachment in paragraph 16 of her judgment **[AB2/2B:7-8]**. The analysis carried out by the Guardian in his written report and his oral evidence on this point were specifically adopted by the judge as part of her own analysis and evaluation. She was well aware of the bond which had developed by that stage between L and her half-siblings. It was referred to in the oral evidence of the social workers who confirmed that she was loved by them as a little sister. She accepted the Guardian's analysis that the achievement of a stale upbringing which the permanency of adoption would bring is a more important consideration for L than preserving her relationships with her older half-siblings, sad though that situation was.

Ground 11: The Judge was wrong to dispense with the parents' consent

275. The judge dealt with this issue in paragraph 29 of her judgment **[AB2/2B:11]**. She applied the correct statutory test under s 52(1)(b) of the 2002 Act and reminded herself that the consent of the parents could only be dispensed with if the welfare of the child required it. She directed herself appropriately in terms of the stringency of that test and that what was required meant that which was necessary rather than that which was merely optional or reasonable. In reaching her conclusion in relation to this issue, she said that she had borne in mind all the reasons which she had set out in her judgment in terms of the holistic evaluation she had undertaken. She made a specific finding to the effect that L's welfare required the dispensation of her parents' consent to adoption. In these circumstances, and in the light of my dismissal of the grounds concerning the judge's lack of reasons and failure sufficiently to evaluate the options which were then available, I reject this ground of appeal as a basis for overturning her decision to dispense with the parents' consent and/or for interfering in the orders which she made.

276. For these reasons, the substantive appeal against the orders made in respect of L on 27 June 2014 is dismissed.

277. I turn now to the substantive appeal in relation to T. Because the two cases were inextricably linked in terms of the evidence about the historic deficiencies in the mother's and father's parenting of the older children and the findings which had been made in June 2014 as to their abilities to safely parent L, I can take this appeal in shorter order. I do so not because it deserves and requires any less analysis and investigation but because much of the evidence relied on in informing the court's conclusions in relation to T was itself informed by and predicated upon previous findings and the body of evidence which was then available to the District Judge. Having said that, there was a separate threshold document in relation to T for the purposes of the final hearing in October 2014. In addition to recording the October 2013 findings and the fact that the mother was asserting that the children had lied to professionals, there was a new limb :-

> "There is a risk of harm due to the first respondent mother's vulnerability to domestic violence/abuse in the household and her failure to meet the requirement of counselling pursuant to her suspended sentence." **[TB:AA:1]**.

278. The father accepted that the threshold was crossed because of the findings which had been made against him.

C. Substantive appeal against the care and placement orders made in respect of T on 6 November 2014

279. By this stage, N and C were living with their father, Mr S and the mother's evidence at the final hearing for T was that they would not be returning to her home. B1 and B2 remained at the home she continued to share with the father under the supervision orders which had been made in June 2014. L had moved to her adoptive placement on 7 October 2014 and a 'goodbye' contact had taken place with her parents and half-siblings shortly after the hearing in June. T was in his foster placement; he had never been cared for since his birth by the parents. He was then just six months old. The local authority had at that stage identified a placement for T with his sister, L, and was anxious to expedite the placement of T. However, by the time she came to deal with this hearing, District Judge Maughan was well aware that, despite the absence of any appeal in relation to the fact finding hearing, there was a pending appeal in relation to the welfare disposal of L which was due to be heard by HHJ Plunkett on 21 November 2014, some six weeks hence. The local authority had confirmed that it would take no steps to place T prior to that appeal hearing if care and placement orders were granted and would not arrange "goodbye" contacts prior to that date.

280. The grounds of appeal relied on in respect of T are as follows :-

i. the District Judge wrongly refused to adjourn the hearing despite being informed that :
   a. her findings made in October 2013 might be flawed as some of the children had wished to retract their allegations;
   b. the father had effected significant changes and improvements with regard to his ability to parent adequately which justified and necessitated a proper re-assessment;
   c. the parents were in any event seeking leave to appeal the earlier decision made on 27 June 2014 in relation to the placement order in respect of L;

ii. the District Judge failed to pay adequate regard to the fact that:
   a. the local authority social worker admitted in cross-examination that she had closed her mind to the possibility of anything other than an adoptive placement for T as early as April 2014 and was not fully aware of improvements made by the parents in recent times;
   b. the Guardian had stressed in his evidence that as far as he was concerned the refusal of the parents to accept the findings against them limited their capacity to learn from their mistakes with a view to altering their approach to parenting.

iii. the District Judge should have allowed a further assessment of the parents and adequate enquiries to be undertaken as to the reliability of the evidence upon which the fact finding in October 2013 was principally based.

What had happened since the final disposal of L's case on 27 June 2014 ?

281. In order to set this appeal in context, I need to record developments in the parents' case in terms of what the children had said to various third parties. This evidence is collected, in part, from the permission which I gave the appellants to adduce fresh evidence for the purposes of their appeals.

282. In a statement made by the mother on 25 June 2015 (nearly a year after the hearing in respect of L), she says that shortly before L's hearing B2 had said to her at a family contact session that he had discovered from Miss Evans, his social worker, that the plan for L was adoption. He had been upset about this and, according to the mother, had said it was not fair that L was going to be adopted because of something he had done **[NE/1:2]**. This was at about the same time as he had absconded from foster care which had necessitated the application for the recovery order. The mother says that once he was allowed to remain in the home, he kept asking about the chances of L being able to come home. She further states that B1 and C would sometimes blame each other for L not being at home and C had said to B1 that it was his fault for going along with it. She says that on 11 July 2014 B1 had said to his mother that it was his fault that L had been placed for adoption. He said they had wanted the father to leave the home and had made up the allegations in the hope that Mr S would return. She told him to speak to Adele Johnson. She was the assistant vice principal and child protection officer at his

school. This conversation prompted her to issue her application for revocation of L's placement order.

283. Within the new evidence is a statement from Miss Johnson. It is a very short statement dated 17 July 2015 which consists simply of a statement of truth. Exhibited to it is a letter or memorandum addressed to no one in particular but dated 15 July 2015 **[NE/1:22]**. It confirms that she spoke to B1 on 7 July 2014 (about a fortnight after the final disposal in L's proceedings). He was extremely upset about a letter which he had written to the judge which he did not believe had been passed on to the court by the social worker. (I have referred to this letter already. It was before the court and is in the bundles at ……). He told Miss Johnson that he and the other children had made up "the stuff" about the father. When asked what he was talking about, he said, "things like having to stand in the cold bath and all that". The memorandum goes on to confirm that on 11 July 2014 a social worker had come to the school to see C but C had refused to speak to her. C also said they had lied about the father but no one was listening so there was no point in speaking to them. On 19 September 2014, Miss Johnson had spoken individually to C, B1 and B2 as "a catch up from the summer holidays and to confirm that they were okay". C confirmed that there were lots of arguments because they had lied about the father and it was mainly her idea. B1 stated that he had told social workers that they had lied but they kept saying that it was too late or they could not talk about it. B2 said he was upset about L and T and said he felt sad because they had lied. He did not elaborate.

284. Exhibited to Linda Evans final statement in T's proceedings is the care application under the revised PLO dated 7 August 2014 **[TB/C:48-66]**. At **[TB/C:49-50]**, the following is recorded :

> "Since the conclusion of recent proceedings involving [T's] siblings the Local Authority have experienced difficulties with regard to [the mother's] and [the father]'s willingness to engage with the agreed plan of support with regard to [T's] siblings who remain at home, [C], [B1] and [B2]. After a child in need meeting on 04/08/2014, the allocated Social Worker for [T's] older siblings, Amina Ahmed, spoke with both [B1] and [B2] upon [the parents'] request. [The mother] had informed the Child in Need meeting that the children had disclosed the allegations made against [the father] were untrue. During Ms Ahmed's conversations with [B1] and [B2], [B1] shared <u>that the reported abuse by [the father] had taken place but that the version of events was exaggerated</u>. After Ms Ahmed had finished her conversations with the children, [the father] became verbally aggressive and hostile towards Ms Ahmed. Due to this incident and the fact that [B1] and [B2] are now stating they will not work with Ms Ahmed, a decision has been made by Ms Ahmed's team manager to change the allocated Team Worker to a male Social Worker due to the level of hostility and disengagement.

> There has been no significant change of circumstances or any progress made since the conclusion of the final hearing on 27/06/2014 and concerns remain with regard to [T's] siblings who remain at home in the care of [the parents]. [They] continue to demonstrate their inability to work with the Local Authority and are unable to prioritise the needs of the children who remain in their care. Therefore it remains the opinion of the Local authority that should [T] return to [their] care he would be subject to a chaotic home environment, inconsistent and neglectful parenting and would be placed at risk of significant harm." [my emphasis]

285. To one of the father's statements in T's proceedings is exhibited a copy of a letter from the local authority to the parents confirming the change of social worker; Mr Tad Ukai would in future be working with the children. The letter confirms that following all social work visits, Mr Ukai would go through the visit and clarify the conversations he has had with the parents and the children so as to ensure that all parties were clear on what had been said **[TB/E:14-15]**.

286. There is no further evidence of any retractions by the children from Mr Ukai.

287. On 17 August 2014, the police were called to the family home because there had been a further confrontation between the parents and C. The argument had started over a bowl of breakfast cereal and had degenerated to the point where the police had to be called to intervene between C and her mother. Within the material placed before the court is a copy of the police log from that call out. It reads as follows :-

> "Mother called police to report father shouting outside the address. Officers found there had been an argument with [C] when mother ate the last of the Weetabix, the boys began arguing also and the subject moved to mother's partner's treatment of [B1] and [B2]. The boys were saying they want to live with [Mr S]. [C] phoned [Mr S] who came to the address with elder sibling [N] to make sure the children were okay.
>
> [C] was saying the boys tell professionals that they are happy at home because they have been brainwashed and threatened with going into care by mother and [the father]. The children were saying they hate [the father] and mother doesn't care about them because she is still with him.
>
> Officers calmed the situation, [Mr S] and [N] left the address, none of the children made any new allegations of abuse. The children are hoping that the new social worker will agree for the boys to live with [Mr S].
>
> Soon after, the police received another call from mother reporting [N] shouting outside the address. Officers attended and she was initially volatile and refusing

to leave until she knows the boys are safe. Police told her to leave and she broke down in tears outside, she told officers she is afraid for her brothers while they are living with mother and the partner. ……

It was noted that mother and her partner presented as reasonable and caring. [C] and [N] said they were very different before the police arrived and were putting on a front for the officers. PC Higgins felt that the children were being truthful." [my emphasis] **[TB/C:89]**

288. It is perhaps worthy of note that N was continuing to express concerns for the safety of her brothers over a year after she had first reported those worries as a result of what she had been told by C in June 2013.

289. Two days later, on 19 August 2014, there was a scheduled meeting between the parents and the local authority. It was a pre-placement adoption review which was to have been chaired by Mr Denham, T's IRO. The meeting was aborted because of the father's aggressive and accusatory tone towards the allocated social worker which was described by the IRO as being "wholly unreasonable" **[TB/C:90]**. Of concern, the parents had taken B1 and B2 to that meeting and they had witnessed this behaviour on the part of the father.

290. Exhibited to an updating statement made by the mother on 23 October 2014 (the day before the commencement of the final hearing for T), is a handwritten letter which she says was given to her by C which she had asked to be shown to the judge. It is in the bundle of material which was placed before District Judge Maughan for the purposes of the final hearing for T in October 2014 **[TB/D:40-42]**. It is a letter in which C says that she and "all my siblings" had told the social worker and the guardian that the allegations against the father had been made up. She says that she and N had made a plan together to make up the allegations to get rid of the father and reinstate Mr S in the family home. She speaks of not appreciating the outcome for L. She says she was emotionally hurt saying goodbye to her sister because of the allegations she had made. She tells the judge that she had recently moved into [Mr S's] home with N because of the stress she was experiencing in her mother's home. She described herself as being "emotionally hurt, depressed, constantly mournful and unconcentrated *[sic]* within school". She speaks of her mother as being "a great mother" who "deserves to have both [L] and [T] back into her care". This account, of course, is wholly at odds with the account which N originally gave to Miss Spensley, her social worker, in June 2013 and which C herself had given to the Guardian in August 2013.

The hearing on 28 and 29 October 2014 in respect of T

291. All parties were legally represented for the hearing. Mr Spollon and Miss Davies appeared respectively for the father and the Guardian, as they have for the purposes of this appeal. Miss Aston appeared for the local authority and Mr Messling represented the mother as Miss Meachin's predecessor.

Ground 1 : The judge wrongly refused to adjourn the hearing

292. Before the hearing commenced, the District Judge made it clear that she was aware there was a pending appeal in L's case which was due to be heard the following month. On behalf of the mother, Mr Messling sought an adjournment of the proceedings in relation to T in the light of that pending appeal. The transcript shows that Mr Messling was at that stage unaware that the Guardian had given oral evidence about B1's retraction. The application was opposed by the Guardian who was anxious that delay for T should be minimised. The court was reminded that there was still no extant appeal against the fact finding judgment notwithstanding that 12 months had by that stage elapsed. The local authority's case in submissions was that the concerns for T went beyond the October 2013 findings. Specifically, the threshold for him included the risk of harm flowing from the mother's vulnerability, her volatile relationship with N and C and her inability to offer appropriate parental control or set boundaries **[AB3/3C:21-22]**.

293. A transcript of the judgment in relation to the application to adjourn is within the material which I have read at **[AB3/3C:144-147]**. The judge reminded herself that there was evidence within the witness statements of the parents which confirmed their acknowledgement that they could not go behind the findings. She noted that HHJ Plunkett's directions did not relate to any appeal against the October 2013 judgment but only to the care and placement orders in respect of L. She made specific reference to the balance which was required between the Convention rights enshrined in Articles 6 and 8 and the inevitable lengthy delay for T in circumstances where he was then 6 months old and had a potential placement with L's adoptive parents. She reminded herself that it was within the context of that balancing exercise that she had to examine the quality of the evidence which was being relied upon in terms of a change of circumstances. She recorded in her ruling the Guardian's evidence from the June 2014 hearing as to his views about why B1 sought to recant his accusations having been placed back in the home after he learnt that the plan for L was adoption. She recorded the views of the local authority and the Guardian that this might be seen as an opportunity for the parents to go behind previously acknowledged findings. Having weighed matters in the balance, the judge decided that the hearing should proceed so that final decisions could be taken about T whose welfare was her paramount consideration. She noted that the appeal hearing had already been listed before HHJ Plunkett on 21 November 2014 and said that if either of the parents wished to appeal any decision made in relation to his long term future, it was in T's interests for any further appeals to be dealt with by that judge on 21 November on the basis that transcripts should be expedited.

294. This first ground of appeal has to be seen now in the light of my own decision to refuse the parents permission to appeal the fact finding hearing. I have explained earlier

in this judgment why I took the view that there was ample evidence before the court in October 2013 to justify the findings of fact which were made. I have not disturbed those findings, and they stand. However, if and insofar as it may be relevant, I also take the view, as did District Judge Maughan in her substantive judgment on the welfare issues for T, that B1's retraction was on the balance of probabilities an emotional response to discovering that the plan for L was adoption. The judge declared herself "entirely satisfied" that "no cogent evidence has been put before this court to warrant any reopening of the fact-find or reinvestigation by an ISW" **[AB3/3B:14]**. The children had been placed back in the family home in an environment which was, on any view, emotionally febrile and unstable. There is ample evidence in the papers to suggest that B1 and B2 were suffering emotionally as a result of carrying what they perceived to be the guilt of responsibility for the potential loss to the family of L and T. I have found that the accounts of the treatment they received at the hands of the father as they described it during their ABE interviews was likely to have been true on the balance of probabilities. They could not then have appreciated the consequences of what they were revealing to the social workers but they came to appreciate only too well what the consequences were. The Guardian has described B1's reaction to that news because he personally told him. B2 had said that something had "hit him like a bomb" and caused him distress when he had a discussion with one of the social workers. Whilst I accept that these reactions might equally be said to be the reactions of children who have come to realise the far reaching consequences of lies, I have not found these children to be lying. The accounts of these alleged retractions are inconsistent. B2 did not make any retractions at all until very late in the day. All he said was he wanted to go home. He later said he could trust his mother as there were new rules and new punishments. It was only after he had spent time with B1 and C that he finally said he had been telling lies. Even while she was purporting to write to the court supporting her mother's case for the return of the two younger children to her care, she was telling police officers (who were completely independent third parties unconnected with the care proceedings) that that the boys were being brainwashed by the mother and father and threatened with being returned to care. The judge had previously made findings that the children had been coached or influenced by their mother. N did not deviate throughout the 12 months from her initial expression of concern for the boys that she was worried about them. Despite the contents of C's letter to the judge, she had by that stage voted with her feet and gone to live with Mr S because she was so unhappy in the home she shared with her mother.

295. At the end of the day, the decision as to whether or not to adjourn the hearing was a case management decision for the judge. It was a decision she took in circumstances where there was not only no appeal against the fact finding, there were specific acknowledgements from the parents that they were bound by the findings despite the fact that they did not accept them. The father had accepted only for the purposes of T's welfare hearing that threshold was crossed and the District Judge was well aware that, if they thought it appropriate to do so, the parents would have an early opportunity to challenge any decisions made in relation to T in the context of the appeal which was then pending in L's case.

296. In relation to the second limb of ground 1 of the appeal (the judge's refusal to adjourn in order that there could be a proper reassessment by an independent social worker), I look to paragraphs 41 to 48 of the judgment **[AB3/3B:12-14]**. The judge directed herself impeccably as to the law in relation to section 38(7A) of the Children Act 1989. She set out in detail the factors to which she must have particular regard. She reminded herself about the guidance which had been given recently by the President in *Re S (A Child)* [2014] EWCC B44 (Fam). She set out the three questions which must be addressed, as explained in *Re S*. By reference to her findings in the June 2014 judgment in respect of L in relation to the parents' capacity to make the necessary changes within the children's time frames, she found that there was no solid evidence based reason before her then to change that view. She pointed to the existence of the work already undertaken by Action for Children and Anawim. She referred to the mother's unwillingness to undergo a psychological assessment and to the content of the updated report from her probation officer as well as the fresh evidence from the social workers. She found that there was no function for an ISW in terms of interviewing the children again because of the absence of cogent evidence to warrant any reopening of the fact finding process. She agreed with the evidence of the Guardian that there was no reliable evidence before the court which pointed to a basis for believing that either of the parents had the necessary commitment to making changes such as to justify postponing the timetable for T.

297. For all these reasons, I reject this ground as a proper basis for appeal.

Ground 2 (a): The judge failed to pay adequate regard to the fact that the local authority social worked admitted that she had a closed mind in relation to anything other than an adoptive placement for T as early as April 2014 and was not fully aware of parents' improvements

298. The District Judge heard evidence from Miss Linda Evans, T's social worker. I have a full transcript of that evidence, as I do of all the evidence given during the course of the welfare hearing for T. She had not been involved in his pre-birth planning since the social worker responsible during that period had been Miss Naomi Watts. She was cross-examined by Mr Messling on behalf of the mother. She accepted that the local authority's plan for T had been adoption from his birth **[AB3/3C:31]**. She confirmed that she had seen no evidence of significant change on the part of the parents. Whilst she went on to say that, as a social worker, he had always attempted to maintain an open mind, she did not consider that the parents had engaged in the opportunities given to them to work with the local authority towards an alternative option of rehabilitation. She disagreed that the local authority had a closed mind in relation to planning. She said:

> "I think what we have to take into account is that [T] was born in May. We were concluding [L's] care proceedings very close to [T's] birth, and we were very clear that [L] should have a plan of adoption and we had the evidence to support that, and it was only because we couldn't … [T] could not have his permanency

medical in time to allow him to join the proceedings with [L], because we had to wait six weeks for him to have his permanency medical, otherwise the local authority would've joined the proceedings together. There was enough evidence with regards to [L] that obviously is transferable across to [T] and to support the local authority's decision." **[AB3/3C:32-33]**

299. When it was put to her that what she meant was that there was a proper evidential foundation which enabled the local authority to have a closed mind, Miss Evans agreed. Thus, her agreement was slightly more nuanced than an unqualified admission that the local authority's mind was closed.

300. When Mr Messling moved on to the issue of the opportunity to assess change, Miss Evans confirmed that there had been no work beyond that undertaken by Action for Children although she had been the author of the referral of the family for MST which she hoped might assist in working with the family on an holistic basis to address the concerns around the deficits in the parenting capacity and the volatile home situation. She explained that when the family was turned down as a suitable candidate, she herself had initiated an appeal against that decision as a result of which the manager of the MST team had gone to the home to meet the parents face to face. That visit appears to have nothing to change situation since we know that they were not offered these services.

301. The District Judge gave a comprehensive summary in her judgment of the evidence which this witness gave. She referred to her having witnessed the volatile and aggressive behaviours towards professionals, in particular in front of B1 and B2 at the review on 19 August 2014 when the IRO was obliged to terminate the meeting. She recognised that the mother had attended the Anawim domestic violence and parenting course but had not observed any improvement in her parenting capacity. She referred to the incident on 17 August 2014 when the police had to be called out to the home twice in relation to the dispute over breakfast cereals. The judge noted that the social worker had denied having a closed mind in relation to T's care plan, her response reminding the court of the mother's lack of positive engagement on the Action for Children programme from October 2013 until January 2014 **[AB3/3B:6]**. She also referred to Miss Evans' disappointment that the family had not qualified for MST therapy or TESS[6] bereavement support which she had vigorously pursued on its behalf. The judge concluded that Miss Evans had not closed her mind to the possibility of change for this family. She accepted her evidence that she had worked hard within very difficult family dynamics to advise on the best outcome for T **[AB3/3C:7]**.

302. The judge is criticised for accepting that evidence. Miss Meachin and Mr Spollon submit that there was insufficient evidence before the court of a proper balancing exercise as required by *Re: B-S* to ascertain what positive steps had been undertaken by the parents to see whether T could have remained within his family.

[6] Therapeutic Emotional Support Services

303. When the Guardian gave his evidence about the parents' capacity to change within T's time frame, he was asked about whether he believed the local authority had a closed mind with regard to planning for T. He said that he agreed with their planning and gave his reasons for doing so. He thought that the work they had undertaken might well help them with their parenting of B1 and B2. He was concerned by the anger displayed by the father towards social workers. Whilst acknowledging that anger was not unusual when parents were facing the prospect of a child being adopted, what concerned him was whether that anger was associated with the father's denial of the legitimacy of the concerns being expressed by the local authority. He was asked about his view had the local authority been prepared to contemplate a return of Trevor to his parents and the likely success of that placement. He said this :

> "Well obviously [T] is an infant, he was born in May. He needs stability. He needs a calm atmosphere in which to be nurtured. Now I feel that historically this household has not been calm and stable. [N] and [C] have come and gone from the home, they're not there now. Limitations placed on how welcome they are to spend lengthy periods of time there. There was recently an incident when the police were called. So I feel it's an unstable household which – and it's that instability which is likely to have a negative impact upon the atmosphere within which [T] would be raised. I mean, I'd also point out that [B1] and [B2] are soon approaching the age that [N] and [C] were at when they left, so there's still quite a long way for [B1] and [B2] to go before they reach adulthood. And I am concerned that the parents may have similar issues with them as they had with [N] and [C]." **[AB3/3C115].**

304. Miss Meachin urges me to consider whether or not the Guardian had made any or any sufficient attempt to analyse or link with this evidence his assessment of the perceived risk for T. In this context, it has to be borne in mind that threshold had not been opposed in T's case. In any event, the District Judge set out in her judgment an analysis of the evidence she had heard during the course of the hearing as to the events which had taken place since L's hearing in June that year. In my view, she was entitled to conclude that there had been no reduction in the risk presented to a small infant within that household from the previous occasion when she had determined that L should be placed for adoption. Miss Meachin further submitted that this analysis by the Guardian came very close to the proscribed exercise of "social engineering" if the only concern was that this small child would not be afforded an opportunity to grow up in a calm and stable household. I do not agree. The analysis of both the Guardian and the judge was rooted in their respective conclusions about each of the parents. In paragraphs 31 to 39 of her judgment, the District Judge reviewed the totality of the evidence she had heard from the Guardian. She makes specific reference to the full Permanence Analysis which he carried out and his confirmation that all other avenues for placement have been explored. She noted the positives he had drawn to the court's attention such as the improvement in the father's health and his attendance, with the mother, on a parenting course. Equally, she notes his concerns about the absence of any change or improvement in their parenting since the fact find and the aggression being displayed by the father. The judge said that she accepted that evidence and his detailed analysis in its entirety and effectively adopted it as her own as she had done in the

previous hearing for L. In terms, she was adopting that analysis as her own. I cannot accept that there was insufficient evidence available to the court to reach a determination that those conclusions were wrong.

305. In my judgment, this ground of appeal is not made out. First, the social worker's admission that the local authority had a closed mind was a qualified admission as I have explained. It was an evidence based assessment informed by what was already known about the defects in the parenting abilities of the mother and the father. It was informed to an extent by the findings made in October 2013 and, at that stage, the findings still stood. As was made abundantly clear by the evidence which had been put before the court in L's hearing some four months before, there was a range of concerns outside the specific findings of fact. The IRO had agreed with the placement option of adoption for T. There was a considerable body of evidence available to the judge by that stage to support the local authority's concerns that these parents were not fully engaged with or committed to the process of change within a time frame acceptable to a 6 month old baby. When the father was cross-examined by the Guardian's counsel, he was unable to identify any aspect of his parenting which he would wish to change. When asked the specific question as to whether he felt there was anything he had done wrong or which he was still doing wrong, he stated, quite simply, "no" **[AB3/3C:107-108]**.

Ground 2(b): The Guardian's evidence was that the parents' refusal to accept the findings made against them limited their capacity to learn from their mistakes with a view to altering their approach to parenting

306. I have already dealt with the evidence which the Guardian gave on this point. I agree with the local authority's submission that it is wrong in principle to assert that because the October 2013 fact finding exercise was the starting point, the rest of the evidence before the court becomes irrelevant to the analysis which was conducted by the Guardian and/or the judge. Each explained (the Guardian in his oral evidence and the judge in the course of judgment) how information gathered and assessment of that information had informed their respective evaluations. The District Judge directed herself properly as to the law which she had to apply in undertaking the welfare evaluation in relation to T (paragraphs 49 to 56). I am satisfied that she did carry out a sufficient weighing and balancing exercise to reach a position where her placement option evaluation (paragraphs 57 to 65) was sound. She directed herself impeccably in relation to the law she had to apply in relation to placement and no criticism is made of her judgment in that regard. Having reached a conclusion on the basis of all the evidence before her that T's welfare required the making of care and placement orders (paragraph 64), she went on to balance once again the disadvantages of that course with the advantages which becoming a full member of a family with his sister, L, would bring (paragraph 65). In the circumstances, I see no proper basis for challenge under Ground 2(b) of this appeal.

Ground 3: The judge should have allowed a further assessment of the parents and adequate enquiries to be undertaken as to the reliability of the evidence on which the fact finding hearing was based

307. This is ground which I have already covered in dealing with the first ground of appeal, and I do not propose to repeat it here.

Conclusion

308. I recognise that this is a lengthy judgment. I have wanted to ensure that these parents should know that I have considered all the evidence which was put before me before reaching my final conclusions that there is no merit in either of the substantive appeals which are before the court. My decision will be a difficult one for them to accept because I accept that each loves L and T and will suffer as a result of their loss. However, I would encourage them to continue to engage with whatever assistance and support is made available to them in terms of the future for N, C, B1 and B2. I hope that, with support, some of the concerns for these children can be ameliorated and the emotional toll of this lengthy litigation can be put behind them.

Appeals dismissed : order accordingly