QQ

Jurisdiction:	Jersey
Judge:	Pamela Scriven, Jurats Morgan, Fisher
Judgment Date:	03 December 2010
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Text

[2010] JRC 217E

ROYAL COURT

(Family Division)

Before:

Pamela Scriven, **Q.C., Commissioner, and** Jurats Morgan **and** Fisher.

In the Matter of QQ

And in the Matter of the Children (Jersey) Law 2002

Between
The Minister for Health and Social Services
Applicant
and
(1) A
(2) B

and

(3) C

and

(4) D and (5) E (acting through their Guardian ad litem F)

and

(6) G

and

(7) H (acting through Guardian ad litem F)
Respondents

Advocate E. L. Hollywood **for the Minister.**

Advocate P. G. Nicholls **for A.**

Advocate E. J. Le Guillou **for B.**

Advocate D. A. Corbel **for C.**

Advocate R. E. Colley **for D, E, H and F.**

Advocate C. L. Nicolle **for G.**

Authorities

Children (Jersey) Law 2002.

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

Re C and B [2001] 1 FLR 611.

Re C and B (Care Order: Future Harm) [2001] 1 FLR 611.

Re V (Care: Interference with Family Life) [2003] EWCA Civ 786 [2003] 2 FLR 813.

Re LA (Children) (Care: Chronic Neglect) [2009] EWCA Civ 882.

Re B (Care Proceedings: Interim Care Order) [2010] 1 FLR 1221.

Re M (Interim Care Order: Removal) [2005] EWCA Civ 1954 [2006] 1 FLR 1043.

In the matter of CC [2010] JRC 174.

THE COMMISSIONER:

1 This case concerns three children. All the subject of care proceedings. D was born in 2004, and E was born in 2006. Their mother is A, and their father is B. The third child with whom we are concerned is H who was born in 2010. H's mother is A, and the father is C. D and E were the subject of a detailed fact finding hearing in June 2010.

2 The history of this case is set out in the judgment handed out to the parties in draft in July 2010 and handed down on 17 th September, 2010. We shall not repeat it here. The contents of that judgment should be read (*In the matter of CC* [2010] JRC 274). This Court found that the threshold criteria under the Children (Jersey) Law 2002 Article 24(2)(b)(i) were satisfied in relation to D and E and in relation to two children of C (L and M) who had lived with C and A during the Summer of 2009. The findings of fact set out there provide the factual matrix upon which the decisions we have to make today are founded and we have them well in mind. This judgment cannot be understood without reading that judgment.

3 Since the last hearing D and E have remained in foster care. They have continued to have supervised contact with A and C three times a week. They have also had supervised contact to B. Their case was listed for final hearing in September 2010 but, just before that hearing was due to take place, a question arose from B's medical records as to whether he was the father of D and E and the case was adjourned to allow DNA testing to take place. Amongst other reasons it was important to establish paternity because B's sister, G, was being assessed as a kinship carer for D and E and it was not known how she would feel about caring permanently for the children if in fact she was not their aunt. In any event the DNA tests established that B is indeed the father of D and E. B's contact with D and E was suspended during the period whilst the DNA testing was taking place but resumed after the results were obtained. It takes place once a fortnight and is supervised. D and E have had unsupervised contact to G each Saturday for the day from March 2010 to the present time.

4 Following H's birth, the Minister issued care proceedings in relation to him on 31 st August, 2010. On 3 rd September, 2010, an interim care order was made. At the time of that hearing it was anticipated that the final part of the hearing in relation to D and E would be heard in September 2010. As a holding measure for what was thought likely to be only a few weeks, the Minister proposed that H should live with A and C until the conclusion of the proceedings in relation to D and E, after which H's future could be further planned in the light of the decisions which were taken in relation to D and E and the recommendations of the jointly instructed experts, as to what placement would be in H's best interests. An arrangement for close monitoring was put in place which provided for some professional supervision during the day on each weekday and for visits from family members during the evenings and at weekends. The Children's Service put those arrangements in place having concerns about the physical safety of H in his parents' care but also mindful of the draconian nature of the separation of new born baby and mother. In fact, because the September hearing was adjourned, those arrangements have continued for longer than

originally envisaged by Children's Services.

The issues

5 It now falls to us to decide what is to happen to all three children.

D and E

6 As far as D and E are concerned this is the welfare stage of the proceedings. We are being asked by the Minister to the final care order in relation to them. The care plan proposed by the Minister is that they go to live on a permanent basis with their paternal aunt, G. It is proposed by the Minister that they should continue to have supervised contact to A and C, although on a reduced basis and at a level which will allow them to settle securely with G. It is proposed that they also should continue to have supervised contact with their father and their paternal grandparents; we shall set out those proposals in more detail later in this judgment.

7 A, supported by C, seeks an order that D and E return to live with them. Both have told the Court that they would be willing to undertake an extensive programme of therapy proposed by Dr Briggs, a clinical psychologist jointly instructed by the parties, and would do so whilst D and E were in their care. That is their primary wish, but, if the Court does not consider that it is in D and E's interests to return home immediately, A asks that D and E should stay in foster care until Dr Briggs carries out a review of the progress that they have made in therapy in three or four months time, so that, if they have made progress, the option is retained of D and E being able to return to their care.

8 B took no part in the proceedings before us in June 2010 but has appeared and been represented in these proceedings. He makes no claim to look after D and E and accepts he cannot do so. He wishes to continue to have contact with them which he accepts must be supervised.

9 G has become a party to these proceedings and has appeared in Court and been represented. She supports the proposal of the Minister and wishes to care for D and E. She would support any contact arrangements for family members which were approved by the Children's Service and by the Court.

H

10 As far as H is concerned the first question for us to consider is whether the threshold criteria are made out. If the Court finds that the threshold criteria are satisfied, all parties are agreed that the Court should not make a final order in relation to H today. The Minister and

Guardian propose that A and C embark upon the substantial and lengthy therapeutic process recommended by Dr Briggs. The parents agree that they will do so although they do not think that it is necessary. All parties agree that there should be a report to the Court by Dr Briggs after the therapy has been in place for three months to see whether the parents have begun to engage with the process. Until the Court can review the progress of therapy, A and C want H to remain in their care and accept that if H does so there should be a similar level of monitoring to that in place at the moment, or higher if more professional involvement could be provided by the Children's Service. The Minister and the Guardian take the view that the risks of physical harm to H if H remains living in the parents' care during that period are too great, and propose that H should now move to live with foster parents whilst having supervised contact to A and C five days a week for three or four hours a day.

11 All parties accept that whatever the course the Court decides should be adopted, it should be put in place under the framework of a care order or interim care order. The Minister has made it clear that the Children's Service will cooperate with whatever course the Court thinks best and will amend the care plan or plans to accommodate the Court's decision as to what is in the children's best interests. Alternative care plans have been filed at the Court's request so that the Court has had a chance to scrutinise in detail what would be planned for each child depending upon which course the Court decides is appropriate.

The Law

12 There is no issue between the parties as to the law that is applicable in this case. In relation to the threshold conditions in relation to H, the judgment of 17 th September, 2010, sets out our approach in considerable detail and we apply the same tests and approach here.

13 As far as the welfare issues are concerned, our approach is governed by the factors set out in Article 2 of the Children (Jersey) Law 2002. In relation to the decisions for each child, that child's welfare is the Court's paramount consideration. We have regard to the general principle that delay in determining any question which arises with respect of the upbringing of a child is likely to prejudice the welfare of the child. We have the factors set out in Article 3(2) (often referred to as the welfare checklist) firmly in mind, as we do the principle that the Court should not make any order or orders in relation to a child unless it considers that doing so would be better for the child than making no order.

14 We should also make it clear that our starting point is that if at all possible it is in the best interest of the child to live with its natural parents. We bear in mind that under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 both the children and parents have the right to respect for their family and private life. As Hale LJ, as she then was, said in the case of *Re C and B* [2001] 1 FLR 611 at page 621 paragraph 34 (a case where the adoption of a small child was proposed):-

> ***"There is a long line of European Court of Human Rights jurisprudence… which emphasises that the intervention has to be proportionate to the legitimate aim.*** Intervention in the family may be appropriate but the aim should be to reunite the family when circumstances enable that and the effort should be devoted towards that end cutting off all contact and the relationship between the child or children in their family is only justified by the overriding necessity of the interests of the child."

She made similar observations in the case of *Re C and B (Care Order: Future Harm)* [2001] 1 FLR 611 when she said:-

> ***"The principle has to be that the local authority works to support and eventually reunite the family unless the risks are so high that the child's welfare requires alternative family care."***

We are also guided by the words of Thorpe LJ in *Re V (Care: Interference with Family Life)* [2003] EWCA Civ 786; [2003] 2 FLR 813 at paragraph 34 when he said:-

> ***"…where the application is for a care order empowering the local authority to remove a child or children from the family the judge in modern times may not make such an order without considering the rights of the adult members of the family and of the children of the family.*** Accordingly he must not sanction such an interference with family life unless he is satisfied that it is both necessary and proportionate and that no other less radical form of order would achieve the essential end of promoting the welfare of children."
>
> ***..Where the interests of the parents and child conflict, however, it is the child's best interests which must prevail*** (*Youssef v Netherlands* [2003] 1 FLR 210)."

15 In relation to the issue of H's removal from the parents we also have in mind the guidance of Thorpe LJ in the case of *Re LA (Children)(Care: Chronic Neglect)* [2009] EWCA Civ 882 at paragraph 7 when he restated the proposition expressed in earlier cases that separation is only to be ordered if the child's safety demands immediate separation or, put slightly differently, that "…at an interim stage the removal of children from their parents is not to be sanctioned unless the child's safety requires interim protection". We bear in mind the fact that when considering whether a child's welfare requires immediate removal, safety should be regarded in a broad sense which may include psychological welfare as well as physical harm *Re B (Care Proceedings: Interim Care Order)* [2010] 1 FLR 1221.

16 We also take into account that where the issue is whether or not the child should be removed from home during the interim period, the risk of harm is a "two-sided coin" and the Court must have regard to the detriment in being separated from the home as well as the risk of harm remaining there *Re M (Interim Care Order: Removal)* [2005] EWCA Civ 1954; [2006] 1 FLR 1043.

The evidence in these proceedings

17 We have taken into account all the written material in the bundles. In addition to the written material we heard oral evidence from three experts who were jointly instructed by the parties. They were Dr Harrison, a consultant adult psychiatrist; Dr Briggs, a chartered clinical psychologist whose expertise lies in the assessment and treatment of adults who have problems with parenting; and Dr Young, a chartered clinical psychologist specialising in the assessment of children. We also heard oral evidence from Mr Kean, the social worker in the case; G; P (who is the mother of C and thus the paternal grandmother of H); R (who is the sister-in-law of C); and S (who is the sister of A). P, R and S have visited A and C's home in the evenings and weekends as a part of the protection package since H's birth. We also heard from Miss Winter, a social worker employed by NSPC Pathways, which A has attended with H and who also has been making frequent visits home as part of the protection package. We heard from Mr and Mrs T for whom A had worked as a cleaner until 2009; from A herself; from C; from B; and also, finally, we heard from Miss Green, the children's Guardian.

H: The threshold conditions

18 We turn first to the question of whether the threshold conditions are satisfied in relation to H. Miss Hollywood, on behalf of the Minister, has provided a document setting out the basis on which it is submitted that the threshold criteria are satisfied. In essence, it relies on the findings of fact made following the hearing in June 2010. Clearly, at the relevant date (the date when protective measures were put in place, which was very shortly after H's birth) H had not suffered any actual harm let alone any significant harm. The Minister's case is based on the fact that on the relevant date there was a likelihood in the sense of real possibility that H may suffer significant harm in the future because of the Court's findings about A's treatment of J, D, E, L and M, and C's failure to protect them. A continues to deny most of that ill-treatment (certainly all its most serious aspects), but it was accepted by Mr Nicholls on her behalf that, whilst she could not agree that the threshold was crossed, in the light of the findings it was reasonable for the Court to infer that there was a real possibility that H may suffer significant harm in the care of the parents. No argument was made on her behalf that the Court could not or should not find that the threshold conditions were established. It was accepted on behalf of C that the criteria were made out. The positions adopted on behalf of the parents were, in our view, realistic. We are satisfied that there is a likelihood, in the sense of real possibility, that H would suffer significant harm in the parents' care and we are in no doubt that the threshold criteria are established on the basis set out in the Minister's threshold document.

19 However, that is only the beginning and not the conclusion of the case in relation to H and we shall turn to the welfare decisions about H in due course.

The expert evidence

20 Before and following the fact finding hearing, expert evidence was sought from Doctors Harrison, Briggs and Young.

Dr Harrison's evidence

21 Dr Harrison provided a number of reports for the Court and gave evidence on 17 th September, 2010, because he was leaving the jurisdiction and was unable to give evidence after that date. He had first been instructed as early as November 2009 to advise in relation to A. He was asked to say whether or not A suffered from any psychiatric illness or disorder. His view was that A did not. He was also asked to provide a risk assessment of A which he did by interviewing A and administering a series of questions which form a scheme of assessment known as the Historical Clinical Risk Management 20 (HCR-20). In his oral evidence he explained that this was a tool usually used in the criminal forensic arena for risk assessment, and that it does not allow for a definite prediction of violence, merely an estimate of likelihood. In his view it was the previous episodes of violence which were the strongest predictor of violence. His view was that A did pose a significant risk to children in her care. He said:-

> *"As outlined in my report there are records of physical and emotional abuse by her to her children that she consistently denies.* If the reports are true they would indicate that A has a problem controlling her anger, a tendency to act on impulse in a violent way and also has *problems understanding how her behaviour will affect her children and accepting advice"* (1/ 3/34).

22 He was asked to reconsider the risk assessment he had conducted in the light of the fact-finding hearing. He said that the facts as found by the Court made him more confident in his opinion because there was more evidence supporting his initial assessment. He recommended that further *exploration of any psychological or emotional difficulties including experiences, antecedents, or aetiology that would explain these difficulties, would be best explored through psychological report rather than a psychiatric report*.

23 He was unable to provide a parenting assessment of A because it was outside his expertise. He was asked about work that might help her and expressed the view that effort should be made towards improving her parenting skills and appreciation of how her behaviour affects her children, and to assist her in dealing with difficult emotions including anger. However, he said that:-

> *"The prognosis of her improving in these areas and making a sustained change will require her to acknowledge that there have been problems and making a sustained effort to change.* In my interview with A she consistently denied the reports of concerns".

24 In his view *"The prognosis for change in these areas was compromised by her lack of acknowledgment of the concerns that had been raised"*. (1/3/56). He was unable to give a

timescale for the type of work he thought might help. The reason for that was because she showed no understanding of the concerns and that to be able to make a change in behaviour it is necessary to have the motivation to change. He did not feel she had that motivation.

25 Dr Harrison was also asked to do an assessment of the mental health of B and as to any risk he might pose to the children. He advised the Court that B was not likely to be a risk of harm provided that his mental health was stable. Continuing his medication would be an important factor; without it he might relapse into mental ill health. If contact was supervised and there was proper communication between those supervising and the mental health professionals, there was no reason to be concerned about contact.

Dr Briggs' evidence

26 Following on from Dr Harrison's advice that A's difficulties would be better explored by a psychological assessment, Dr Briggs was instructed to meet A and C and to conduct a risk assessment. He initially did so before the fact finding hearing, but was then asked to report again in the light of those findings and to meet A and C again, which he did very shortly before this hearing. When it became clear that G was being considered as a carer for the children, he was also asked to meet her and to provide a risk assessment of her.

27 In relation to A, having read the findings in the judgment, he reported in September 2010 that “I remain of the opinion that there are highly significant risks of A maltreating any child in her care through acts of physically abusive parenting, this most likely involving her lashing out at a child or children at time of frustration”. In his oral evidence he explained that we all have a threshold at which we lose the ability to regulate our behaviour effectively; a threshold at which we stray from acceptable behaviour into acts of anger or aggression or hostility. He believes that A is a mother whose threshold for moving into those difficult behaviours is probably lower than most and that she has a poorly developed repertoire of skills to deal with stress. The risk was one that may increase as a child grew older and more demanding.

28 Of C he said in September 2010 that “I remain concerned that C does not provide a strong enough counterbalance to any risk presented by A”. He felt there was egocentricity to his presentation, meaning a self-focus. In his oral evidence he amplified this and explained that “my sense of C is that there is passivity to him, that he sometimes opts for a comfort position that suits him and does not necessarily meet the needs of the children”. In that sense, Dr Briggs' view was that C's self focus may lead to a lack of ability or preparedness to protect.

29 He interviewed both parents again in November 2010, very shortly before this hearing. There were some changes in C in November 2010. C told Dr Briggs that his relationship with A had strengthened. He talked positively about H and spoke of being more confident in his parenting. He made sensible comments about the likely strain if there were to be three

children at home. However, when it came to the Court's findings, there were still a lack of acceptance of some of the fundamental matters that the Court has found and there was still, in Dr Briggs' view, a significant degree of minimalisation in relation to them.

30 Dr Briggs was of the view that both parents needed to commit to and complete a very substantial and lengthy programme of therapeutic work if they were to be able to parent safely. The first part of the work was what he described as motivational work. He explained in his oral evidence that at the moment A does not really believe a lot of the concerns of the Court. She does not really believe that she has mistreated the children in the way that the Court has found. If she is to change the way she looks after the children in future, the first part of any work will be engaging her in a way that encourages her to see that there is a need for further work to be done. He explained that we *"need to change her motivation to engage in such work"*. By *"engage"* he meant that she builds a relationship with a worker she trusts and can be open and honest about her failings; that she can sit with the worker and talk about the problems she has had in the past in caring for the children without becoming defensive or blaming other people, and that she tries to understand why she had those problems. It might mean looking back at her history, exploring events from her childhood, for example.

31 In Dr Briggs' view that is the first and essential piece of work which needs to take place in order to help her to see that things have to be different and to help change her outlook and mindset about matters. Her problems are part of her behaviour, are in her character and deeply ingrained. If she is to change she will need to appreciate that this is going to be a long term problem. It is not a simple matter of her going to her parenting class or attending a course for a few weeks. Crucially, he advised that she needs to find people who will help her and who do not agree with everything she says, but are prepared to say "You have got it wrong there. Maybe you could have done it differently". The social support she gets should not be collusive; it should be constructive.

32 He was asked by the Court about the time scales for the therapeutic work that he advised. He thought it would take a minimum of six months to do the necessary work to achieve motivational change. If sufficient change had been made, after that other work should start on relationship issues, and on parenting in the sense of how to respond to a child's emotional and psychological needs, and how to put in place boundaries when the child became demanding, something she finds difficult. Help also needed to be provided in relation to anger management. At the end of the motivational work he advised that there needs to be an assessment to see if progress has been made. The assessment should be conducted by someone independent of the therapist. If Dr Briggs were to do it, it might take a further two or three weeks. If there were sufficient progress to move on, relationship counselling would take around two months. Work on emotional regulation, anger management and stress management could be for up to four months. Work on parenting could be for four months. If those therapies were offered simultaneously it would be for another four months, but Dr Briggs thought that this would overload the parents and some might have to be phased. Being realistic, he thought that there would be about eight months for those other therapies and then there would need to be further assessment at the end.

The whole process would take over a year and realistically was likely to take about eighteen months.

33 Having met the parents only a week or two before the hearing, he was concerned that they remained fairly entrenched, with denial or minimisation of some of the key findings. Until the motivational work had been completed, his view was that it would not be known with any certainty what the prognosis would be, but clinically he was somewhat pessimistic.

34 He was clear that C needed to be involved in the motivational work as well as A and that the time scales were similar.

35 He was asked whether he could review the case after the motivational work had been in place for three months and whether at that stage he would be able to give a realistic picture as to the prognosis. He said that at that stage there would not be enough information to assist with the long term prognosis but what he would be able to see would be whether there were the beginnings of the necessary commitment to the process.

D and E

36 Dr Briggs was asked questions by email after the conclusion of his oral evidence about the stage at which D and E could be returned safely to the care of A and C. He made it clear that he did not think it would be safe for D and E to be returned to their care until all the therapeutic work had been completed, which meant not only the motivational work but also the therapy and/or counselling which he advises should follow.

H

37 Dr Briggs was asked to try to evaluate the risk of physical harm to H if H remains in the care of the parents. He accepted that they have taken good care of H but was mindful of the incident involving J when J was about nine months old. The risk, in his view, is of A resorting to physically abusive parenting practices when she is stressed and challenged in the parenting role and this risk could increase as a child grew older and became oppositional, demanding and defiant. He could not quantify the risk. Given the history he could not say there was no risk; it was significant but difficult to quantify. Later he was asked again specifically about the risk to H if he remained at home over the next six months and clearly struggled to do so. His view remained that it would be very difficult to predict.

38 Miss Colley, on behalf of the Guardian, explored with him potential factors that might increase stress on behalf of the mother. As to whether there would be any stress on the mother from the therapeutic process itself, he said there would be stress on A of having to face up to the issues, to cope with the challenges of therapy, to complete homework assignments and perhaps to start communicating with C in a different way. There is a

possibility she might become angry not only with the process, but with C and with H if H was in her care.

39 In relation to many of the matters put as to potential risk and stress factors, Dr Briggs, in effect, struggled to be able to give a categorical answer. If H was removed, he said it might either provide motivation for A to do the work or, it could de-motivate her. If H was at home it could distract her from the therapeutic work and could create in her a feeling that the Court endorses her care of H, and she may use that to feed her minimisation of the perceptions of her parenting. On the other hand if all the children were removed from her, it could de-motivate her and make it even more difficult to progress work. If the Court decided not to return D and E but to leave H at home it would be less problematic for therapy than if all three children were there, although she would have to address the issue of loss to D and E in the motivational work and working through that might increase the stress and might detract from her focus on H.

40 On behalf of A and C, various positive features were explored with Dr Briggs. He agreed that there were protective factors in place now which were not there when A was caring for J. He agreed that at the time A was caring for J, J's father had died suddenly and tragically during the pregnancy and that A was coping with J in the aftermath of bereavement. She had been looking after a baby without support. She had had no proper home and had financial worries. By contrast, now she is living in good accommodation. She is living with the baby's father who is a supportive partner. He is not working and is making common cause with her to care for the baby. Dr Briggs made the further point that at the time she was caring for J she was a more youthful parent. He also accepted that M and L would not be in the home which would reduce the risk profile, although he made the point that other risks have not been removed and the months to come would create their own stress profile.

41 As to whether the professionals supervising would pick up on stress, his view was that a person observing A would not necessarily observe the tensions but would pick up on any change to the quality of attachment and nurturing of H.

42 He was asked specifically to look at Dr Young's observations about C set out at paragraph 3.6 of Dr Young's report of the 1 st November, 2010. At paragraph 3.6.1 Dr Young said:-

> *"Based on my readings of the recordings of contact, from my limited observation of a recent contact and from his statement of 20th September, 2010, I believe C has recently appeared to be more committed to attending contact, has shown more emotional support to the children and he is actively supporting A in the care of their new baby.* Compared to when I observed C with his own children on 16th March, 2010, he appears to have learnt more practical skills, for example in the contact session I observed he worked collaboratively with A, he was prompting positive reinforcement and distraction".

Dr Briggs agreed that this was very encouraging. It was a positive, in Dr Briggs' view, that H was C's own child and that C may be more protective of H than of D or E, but it had to be

borne in mind that he did not step in to protect L or M.

43 He accepted that there is an argument that the nature of surveillance and intervention at this stage will focus the parents' attention on the need to do what is required of them. So there could be an argument that any harm to H is less likely, but he could not guarantee that there is no risk.

44 He also accepted that A has managed the stress of ongoing proceedings, meeting lawyers, reading reports and the like, all of which were significant potential causes of stress to her, and she had done so whilst caring successfully for H. He made the point that this has been achieved in the context of her not having to care also for D and E.

45 He said that there is a risk that A is simply “talking the talk” and saying things that she is learning the professionals are expecting of her. She says that she would do therapy but does not believe she needs it. On the other hand the fact that she denies all the more serious findings does not mean that she may not be motivated to change. Sometimes denial is a function of shame.

46 He made it clear that he was only advising in relation to the risk of physical harm to H if H remained at home. He was not able to answer questions relating to the impact on H of a move from the parents' care. Questions as to the emotional harm H might suffer were outside his expertise and were for Dr Young to answer not him. He agreed that the risk of physical harm to H was only one aspect of the case and that the Court must also take into consideration and put into the balance any question of emotional harm to H if H were removed from the parents' care now.

47 When asked about the consequences on A of her looking after all three children now, Dr Briggs' view was that she would struggle to do so and that it would increase the risk to any of the three children in the household. He shared Mr Kean's concern that E was placing demands on A in contact and that A was finding it difficult to put boundaries in place. In Dr Briggs' view, this was an example of the type of behaviour which might cause stress if E were returned home and, if stress were so caused, might lead to a loss of control. He was also asked to consider Mr Kean's concern that C has recently been seen in contact to be trying to put boundaries into effect in relation to E and has been succeeding to some extent, but that E was then going to A who gives in to her. He accepted Mr Kean's concerns that potentially that would put the relationship between A and C under strain and in turn have a domino effect on that child. He was asked whether the present surveillance was enough to protect D and E if they were at home. His view was that if D and E were placed there and H remained at home, he did not think he could recommend a level of surveillance that would minimise the risk.

48 Finally he made the point that he had not written off A. His concern was the time scales that would be needed for her to achieve change and whether those time scales are compatible

with the children's needs. He said that he would not have recommended work if he did not believe that she had achieved some starting point. In his view some movement had been apparent and there was at least an express willingness to engage in the work which made the process worth embarking upon.

49 Dr Briggs also carried out a risk assessment in relation to G. He saw her on two occasions, once in May 2010 and later in August 2010. He concluded that she was motivated to care for D and E, was motivated to protect them from any potentially damaging behaviour by A and that she would seek professional help in relation to the children. He was also firmly of the view that the risk of her maltreating the children if they were in her care was low and unlikely.

50 We found Dr Briggs to be a thoughtful, careful and balanced witness.

Dr Young's evidence

D and E

51 Dr Young has prepared a number of reports in which he has been asked to assist the Court with his opinion on D and E's needs, on the quality of their attachment to the relevant adults, and to advise on what placement would serve their best interests. He has seen D and E, A, C, B, G, V and W (D and E's paternal grandparents) and he has attended D and E's school on a number of occasions. He has met two sets of foster parents (the foster parents with whom they were living in March and in August 2010). He undertook his initial interviews and observations in March 2010 followed by a further visit to A, C, D and E and their foster parents, and G in August 2010, and made further visits in October 2010. As well as reading the papers and meeting with Doctors Briggs and Harrison at an experts' meeting in May, he also had the benefit, before he gave oral evidence, of being able to read a full transcript of Dr Briggs' evidence to this Court.

52 In his first report Dr Young said of D:-

> *"9.5 From my reading of the documentation I believe D is likely to have suffered physical abuse and to have witnessed domestic conflict which will have impacted upon D's emotional functioning and particularly upon D's ability to develop trust in adults*.
>
> 9.6 *It must be realised therefore that D and E have experienced a number of significant adverse life events and considerable disruption in their young lives.* Following domestic conflict at home they have had to cope with the departure of their father, B, and the subsequent arrival in their lives of C. I gather they experienced moves between their home and their paternal grandparents, the abrupt introduction of L and M into their family, and most recently, being removed into foster care and also having to move foster placements.

9.9 *I get the impression that D's relationship with W (his paternal grandfather) has been a protective factor…based on the information to hand.* I believe D has a significant relationship with the granddad and this possibly is his most secure attachment.

9.13 *It is difficult to provide a definitive opinion in respect of the strength or security of D's attachment to the mother.* D is now stating D wishes to be returned home and clearly has a significant relationship with A. However, from the documented history and based on my current assessment, I believe on balance that D is unlikely to have developed a secure attachment to the mother.

9.14 By report, D exhibits highly variable and very attention-seeking behaviour in his foster placement. Interestingly this is not evident with staff who impose limits on his behaviour at school. This is very demanding and sometimes quite oppositional behaviour and is apparent at times during contact sessions with the mother and also with G.

9.15 *My impression therefore is that because of the emotionally and physically inconsistent world in which D has found himself, D is striving to develop D's own strategies for regulating emotions and for dealing with relationships.* D appears desperate for adult attention and G has commented that D can place D in inappropriate situations in order to try and gain attention, for example, approaching complete strangers.

9.16 *As noted above I attempted to complete the Bene Anthony Family Relations Test with D and I felt D was finding this task emotionally extremely challenging.* The school comments that D is "watchful of adults" and I felt D was trying to be careful about what D told me about home; for example I am aware from the foster carer that Mr Kean had very recently completed some direct work with D but D denied to me ever having been told why D was not living at home.

9.17 *Therefore on the one hand I acknowledge that D has a strong sense of family identity and that D's attachment to the mother could in theory be improved.* D's attachment to W has I feel to date probably been a protective factor. On the other hand for D, history predicts that some adults in whom you invest emotionally can be unreliable and frightening.

9.18 Given the history in my view it is imperative to attain stability and permanence for D (and E) as quickly as possible in order to enable them to develop more secure attachments. Protracted uncertainty will merely compound the behavioural and emotional problems which D is already displaying".

In relation to E, he said:-

"9.24 *It is difficult to provide a definitive opinion in respect of the strength or security of E's attachment to the mother.* E has a sense of family identity and a significant relationship with the mother. However, from the documented history and based on my current assessment I believe on balance E is unlikely to have developed a secure attachment to the mother. Further assessment would be

required to explore in more details E's feelings towards the father and towards C. I get the impression that V (maternal grandmother) is quite a significant figure in E's life.

9.25 As noted above it is clearly imperative to attain stability and permanence for E as quickly as possible in order to enable E to develop a more secure attachment to the carers".

53 At the time of writing that report, from what he knew of the documented history (particularly Dr Briggs' analysis of significant risk and from his own assessment of the children's needs) he concluded on balance that there would be significant risks associated with attempting to rehabilitate D and E back to the care of their mother.

54 Like Dr Briggs he was very worried that A did not accept nor appear to understand the concerns of the Children's Service. When he met A following the fact finding judgment she denied that she was the perpetrator of the bite on M and did not accept that she employed poor child care management strategies, used inappropriate force when stressed, or had exhibited volatile behaviour to them. She admitted only that she had sometimes sworn and occasionally slapped the children and believed that the allegations were lies and that V was "behind everything".

55 Having considered the judgment, and from his own current assessments, Dr Young has remained of the opinion that there would be significant and unacceptable risks associated with attempting to return D and E to the care of A. He remained of the view that D is likely on balance to have developed an insecure, ambivalent attachment to the mother. By the time of his report in September 2010, E was showing demanding and attention-seeking behaviour in contact which had also manifested itself earlier. It was often difficult for A to manage. At paragraph 4.25 of that report, he said:-

"Whilst E expresses and receives emotional warmth from the mother, in contact E has been observed to often over-activate the attachment behaviour. For example to become very demanding and attention seeking is a way of gaining and sustaining the mother's attention. E has been observed to escalate behaviour if demands are not met and by report, A often struggles to manage E's behaviour. I understand this level of attention-seeking behaviour is not observed in the foster placement nor in the school.

4.26 I get the impression therefore that E has also developed an insecure, ambivalent attachment to the mother. In other words E does not feel a sense of emotional security, that the mother will be consistent or that E will be provided firm boundaries et cetera".

And at paragraph 4.28 he said in relation to both D and E:-

"It therefore remains imperative to establish permanency as quickly as possible so that if the children do not return home they can invest emotionally in a

relationship with a long term carer. Given their relationship history developing a secure attachment will take time and D and E can be expected to significantly test the commitment of any new carers before they invest in that relationship. As noted below the issue of the potential benefit of any ongoing direct contact with the birth family will need to be carefully considered within this context.

56 As far as a possible placement of the children with G is concerned, he said at paragraph 5.17:-

> *"In my view G has demonstrated that she is committed to caring for the children and that she has shown some insight into the possible issues of protecting them from any potentially damaging behaviour by A.* She appears open to support and to working with child care professionals. I note Dr Briggs' comments that G articulated to him strategies if overt conflict were to occur with A.
>
> *5.18 The children have been having regular contact with G, as noted above.* Whilst I am unable to provide any definitive comment concerning the strength of D and E's current attachment to G, I would be optimistic that if over time she can provide consistent, emotional warmth and nurture, the children could develop a secure attachment to her.
>
> *5.21 In my view if a placement with G can be supported and the risks managed, D and E have the potential of remaining with their birth family and in contact with their grandparents, parents and their extended family.* They can also remain congruent with the cultural identity".

57 He was asked about contact by A, C and B to D and E if they were to live with G. He made it clear that ongoing contact would only be in the children's best interests if they could support and not undermine the placement of the children with G. At the time of his earlier reports he had doubts from what A had said that she would be able to do so. There had, however, been some softening of A's attitude to the children's placement with G by the time he saw her again in November 2010.

58 By the time of his last interviews and report in November 2010, D had begun soiling in contact. This had only happened since the birth of H. D has not soiled himself anywhere apart from in contact. Dr Young said at paragraph 3.10 of that report:-

> *"I believe D is desperate to be returned to the mother's care.* D enjoys family contact sessions and has asked several adults when D can go home. However D continues to be faced with the uncertainty about where D will live in the future. D is now faced with having to cope with the knowledge that H is allowed to live at home whilst, at the end of contact sessions, D has to say goodbye and return to the foster carer. Perhaps understandably therefore, at present D feels more threatened and more uncertain about the arrival of baby H into the family".

When asked about the soiling, Dr Young said it could have a number of causes but it was

most likely caused by the fact that D was desperate to be taken from limbo and wants to go home, and is finding it very hard that D is in foster care and H stays at home. He remained of the view that D and E need security and permanence as quickly as possible.

59 When he was cross-examined by Mr. Nicholls, he was asked whether it would be in D and E's interests to wait in foster care for a further three months to allow A and C to commence the therapy advised by Dr Briggs. He said that if at the end of three months there was a definite answer that it was safe for D and E to go home, then he would support waiting that length of time. However, he was at pains to explain that D and E would need some specialist therapeutic input to help them deal with the difficulties they would feel as a result of having to wait another three months before permanent placement. He was clear that he would not advise that it was in their interests to wait any longer. The idea that three months might drift into four months or more filled him with concern. When he was asked if the children could wait eighteen months or so until the therapeutic programme was completed, he was firmly of the view that they could not, and that they needed stability and security in a permanent home now. He was firmly of the view that their best interests would not be served if they had to wait for anything longer than three months.

60 Following on from that question from Mr Nicholls, Dr Briggs was asked by email to clarify whether it was his view that after three months of therapy it might be possible for D and E to return home safely. As already stated, Dr Briggs was firmly of the view that all the therapeutic work would need to be completed before they could return safely. Thus the premise of Mr Nicholls' question falls away.

H

61 Dr Young was also asked about the proposal to move H from the parents' home to foster care. He said that we now have a baby of three months old who has an increasingly loving and significant attachment to the principal carers who are very familiar figures; the mother is breast feeding. He therefore had serious concerns about removing the baby if there is any prospect of the work taking place quickly.

62 In his view there are two trajectories of risk. One is of the baby being unsettled and potentially distressed by removal and suffering separation anxiety. The proposal for contact of three or four hours a day, five days a week if the baby were removed would still represent a disruption in the bonding process. The other trajectory of risk was the risk of physical harm to H if H remained at home. Dr Young was mindful of the findings as to what had happened to J at nine months but was of the view that the angle of trajectory for risk of physical harm at home was probably less severe than the risk of emotional harm if H were removed now. He accepted that there is a risk of physical harm at present, but there is in place a monitoring system, and whilst he acknowledged the view of Doctors Harrison and Briggs that A is a risk to any child, he saw that risk as increasing more slowly.

63 When cross-examined by Miss Hollywood, he explained that the risk of emotional harm seemed to be on a steeper incline because H is of an age where H is increasingly forming an attachment to the carer whereas the risk of physical harm from the mother is a risk but at a further point in time. When Mr Nicholls cross-examined him, he said that H will definitely suffer some emotional harm if removed from the mother now. Here we are seeing three to four months of good quality care from the parents. The decision would depend on the Court's view of what could be ascertained from therapy at the end of three months. If it became apparent at that stage that the baby had to be moved, such a move would be likely to be permanent whereas at present, in his view, moving the baby is trying to prevent damage by factoring in damage. In addition to the impact on the baby of removal from the parents, in his view the emotional bond will change from both parents' point of view; they will find it difficult to cope with which might affect the way they react in contact. There would be a risk that A might not maintain her emotional attachment to the baby over the separation, whilst at the moment she is doing very well.

64 As with Dr Briggs, we were very impressed by Dr Young's evidence which was balanced, careful, fair and child focused.

Andrew Kean's evidence

D and E

65 Mr Kean is the social worker in this case. He has clearly given very careful thought to the issues. He gave evidence before either Dr Briggs or Dr Young; he made it clear that he had high regard for their expertise and advice and that both had expertise which he did not have.

66 As far as D and E are concerned, he was of the view that they should move now to G. He accepted what was in effect the consensus view of Doctors Briggs, Harrison and Young that there is significant risk of physical harm to D and E if they return. They are older and more challenging than H and he did not believe that A could cope with them and H without becoming stressed and being at very high risk of a volatile or violent outburst.

67 He gave evidence of two aspects of behaviour which have the potential, in our view, to be extremely testing to A if D and E went home. In contact, although A's response to both children is warm, as we have already described she has problems putting boundaries in place for E and managing E's behaviour. E becomes whiney, often demanding food from her and refusing to take no for an answer. A then gives in. Whereas recently C has been able to say no appropriately to E and to set boundaries for her, if E does not get her way, she turns to A who gives way to her. The result of E getting her way is to lead her to become more whingey and more demanding. Dr Young has commented on this as an aspect of E's insecure attachment to the mother. We have looked at the contact notes with care. We can see that whilst, as a result of careful advice from the contact supervisor, Miss De Heune, there are occasions when A does manage to say no to E, it is a problem that

recurs and which A has not learnt to deal with consistently. If E went home, this type of behaviour would be likely to continue, and on one occasion A herself accepted the fact that she would find it difficult to manage if E went home.

68 Mr Kean also told the Court of D's recent soiling in contact, about which Dr Young's views have already been recorded. If D were at home with H and the soiling continued, it might also prove to be extremely stressful to A. In this context we bear in mind how difficult she found M's soiling in the summer of 2009.

69 He recognised D's strong wish to go home and that E also wanted to go home, although her views were less consistent. However, he made the point that D had not always wished to do so. Mr Kean thinks that from D's point of view, D believes that if he went home now everything would be all right. D has said to Mr Kean *"Mummy has changed, Mummy has stopped that"*. D's expressed wish to go home must be seen in the context of the present warm and non-abusive contact. In fact, the reality is likely to be that if D returned home there would be problems as there have been before.

70 Mr Kean also gave evidence about G and her commitment to the children. His evidence in relation to G was positive.

H

71 In relation to H, it is only in the two weeks or so before the hearing that the Children's Service had decided to ask the Court to approve a change of the care plan to remove H from the care of A and C. In his statement dated 11 th November 2010, Mr Kean said that the Children's Service was thinking about it but a decision had not been made. Mr Kean subsequently had a meeting with A and C and was unable to detect any significant change in their acknowledgement of what had gone wrong in the past. They continued to deny serious problems. He reached the conclusion that H had to be removed because of his concerns for H's physical safety. He acknowledged that A and C had been wholly cooperative within an intensive monitoring regime. He accepted that A and C's care of H was good, not just in the terms of practical skills of feeding and changing, but in terms of warmth and rapport. He accepted that despite all the stress of the ongoing legal proceedings A had remained calm and courteous as had C, but, at the end of the day, he was not satisfied that the monitoring could prevent an injury to H.

72 He accepted that the risks were probably lower now whilst H was an immobile baby then they would be as he grows, and gets more mobile and oppositional. He accepted the formulation of the issue that had been posed by the Court that the question of the removal of H was in essence a balance between the risk to H of physical harm if he stays against the risk to him of emotional harm if he is removed. Mr Kean agreed that it was a finely balanced decision. He was asked in the witness box whether he could provide a bullet point list of the advantages of H staying and of leaving and also of the disadvantages of

those two courses. He gave an excellent, careful list from the witness box which was then reduced to writing and presented to the Court the following day. It is now part of the Court bundle. I shall not read it out here, but in our view it was a well-balanced analysis. He was also asked to provide a similar document in relation to D and E and prepared an equally balanced and comprehensive document.

73 Overall we were very impressed by Mr Kean's evidence. He is clearly alive to the issues. We may or may not at the end of the day strike the same welfare balance as he has, but we take his views into careful account.

Miss Winter's evidence

74 Miss Winter from NSPC Pathways confirmed the positive picture of the bond between the mother and H. She not only sees them twice a week at NSPCC Pathways but once a week in the home. She has been impressed by the care they are giving to H and also by A's attitude to staff and other mothers.

A's evidence

75 We heard evidence from A. She wants all the children to be returned to her care. We must make it clear that we do not doubt her love for them. What concerns us is that she has shown no insight into the difficulties she would be likely to encounter if all three were living at home together.

76 Others have spoken of her being calmer since the hearing in June 2010. That also manifested itself while she was giving her evidence. She was much calmer than she had been when she gave evidence in June 2010. When she spoke of H it was with real joy and affection.

77 She spoke of the stability of her relationship with C. She agreed that she had not listened to or accepted what he had said in relation to D and E when they were at home because he was not their father.

78 She still showed little acceptance or recognition of the problems she has had in parenting or of the stresses that have led her in the past to volatility and on occasions to violence to the children in her care. She still has a tendency to blame others, confirming, for example, in her oral evidence, that in her view both the school teacher and health visitor had lied to the Court. She said she is willing to undergo the therapy recommended by Dr Briggs but she clearly has no understanding or acceptance, at this stage, of the need to do so. She spoke of being given a second chance with D and E and could not understand why she should not have such a chance. She had clearly not taken on board the fact that the decisions in relation to D and E must be taken with their best interests in mind as the

paramount consideration, not hers. In reality she cannot perceive that it can be in their best interests to be anywhere apart from with her. However, to her credit, when asked in her oral evidence about G in the context of D and E going to live with her, she did so without criticism, making it clear that she had never had any problems with G in the past.

C's evidence

79 Like A, he wants all three children to come home; like A, he has shown little recognition of the problems of the past. As with A, his strong affection for H was obvious. He said *"I've fallen in love with my baby"* and we are sure that he has.

80 He showed some recognition of the need for him to have a more equal role in the parenting of H. He accepted that he had not felt he could intervene with A's parenting of D and E when he had lived with them because they were her children. As far as L and M were concerned, although he was involved with them as babies, he was working at the time and then, after his separation from L and M's mother, she would not allow him to see them for a long time. He accepted Dr Briggs' account of him as passive.

81 He said, we thought with candour, that A has been changing, that she is calmer and that her attitude to him outside or inside the house is different now. He said he could see from the way she looks when he said something about his opinion that she is listening and respects it now. When he says things in relation to D and E her attitude was also better now, although he accepted it had some way to go. He said *"She now listens to me 25% of the time about D and E"*. Once again, we thought this was said with candour and it reflects the picture emerging from the contact notes.

82 In relation to the protection of H he said "If I see her being angry for sure I would take my action and take my kid from the hands of A". We accept that he would do so if he witnessed a violent event.

Family members and friends

83 We heard evidence from a number of family members. P (C's mother) is taking on a lot of the home visits in the evenings and at weekends and is likely to do so over the next few months if H stays at home. She has not read the September judgment and clearly does not see A as a risk. If she saw a problem, she said she would speak to C about it. Her reaction was not that she would immediately contact the Children's Service.

84 R (sister in law of C) and S (A's sister) also gave evidence. Neither had read the September judgment before coming to Court but were given time to do so. Both reiterated that they had not seen any grounds for concern of A's care of children, although S agreed she had seen bruises on M but had not enquired as to their cause. In our view, both

seemed genuinely shaken by what they had read in the judgment. The extent to which they will be able to take its concerns on board remains to be seen.

85 Mr and Mrs T gave evidence. They had employed A as a cleaner. She had, on occasions, brought her children to their home whilst cleaning for them and she had on occasions been a babysitter for their children. Her employment had ceased at about the time that L and M went to live with her. They spoke well of her and had never seen anything that had caused them concerns in their dealings with her. Both were genuinely shocked when told of the findings. Neither had been told by A of the occasion which she admits occurred when she had hit D on the face causing bruising. They were clearly both taken aback to learn of it. Both then took a properly cautious view saying that in the light of what they had been told they would not let her baby-sit for their children. Mrs T's response, whilst protective of her own children, was also sympathetic to A. She said that perhaps a person who did such a thing was under stress and should be offered help.

86 Dr Briggs' view is that A needs people to support her through the therapeutic process who can accept the findings and sympathetically challenge A. At the moment it does not look as if any family member can do this, but it may be that if the family members are not able to accept the judgment, someone at a further distance, such as Mrs T, may be able to do so.

G's evidence

87 We heard short evidence from G. She confirmed her commitment to D and E. She confirmed she had never had any disagreements or personal difficulties with A and hoped contact would work amiably. She was mindful of the need for professional advice to help D and E settle in her care. She described D as bottling everything up and not talking about anything and she was clearly in tune with his need to be able to talk about what was going on in his mind.

88 No one has suggested that she would not be an appropriate carer for D and E should they not be able to safely return to A and C. No-one has suggested she would not do her best to facilitate contact if they were in her care.

B's evidence

89 He also gave evidence briefly. At the time he gave evidence the Children's Service proposal was that his contact should be suspended for three to six months after placement with G to allow D and E to settle there. He gave the evidence to make it clear that he supported the placement with G but that he wanted contact to continue fortnightly without suspension. His proposal was supported both by the Guardian and Dr Young, and the Children's Service has now accepted that there is no reason why his contact should be suspended.

The Guardian's evidence

D and E

90 The Guardian has written a number of reports as well as giving oral evidence. In her proposals for D and E she is at one with the proposals of the Children's Service. She accepts the advice of Doctors Harrison, Briggs and Young that it is not safe for D and E to go home and would not be unless and until the therapeutic process is completed. Their need is for permanent stability and security now and their time scales simply cannot wait.

H

91 As far as H is concerned, she has always believed that H should have been removed from birth because of her concerns that H's physical safety cannot be guaranteed in A and C's care. Since the June 2010 hearing she has noticed some changes in A who does seem more willing to work with the Children's Service, but there is, in the Guardian's view, no change in A's understanding of the concerns.

92 The Guardian was concerned that A was behaving in a way to give the right impression, and the good impression she had made to those at NSPCC Pathways might be an example of that. However, we think there is force in Mr Nicholls comment that A is damned if she does and damned if she does not. We think it would have been hard for A to sustain the good impression she has made there over the days and weeks of successive involvement if it were simply being done for effect. We do however accept the Guardian's point that A has not been challenged in that setting and that she has no more insight now into what went wrong then she had in the summer.

93 In relation to C, on one occasion when speaking of L and M, he asked the Guardian how he could have protected them, seeking examples of what he could have done. In the Guardian's view this appeared genuine and made her think he may be more ready to make use of the therapeutic process than A. As she put it when questioned by Miss Hollywood, he thought he might genuinely be wanting help, and it may be that he is at the point of readiness for work to start in advance of A.

94 H's safety, and the fact that monitoring in the evening and at weekends is the responsibility of family members, has always and continues to cause her concern. But she accepts that if H is moved there will be problems with H's attachment to the parents. She had heard Dr Young's evidence the previous day and fairly said that in her view it was a very difficult decision to be made and one that had to be made on balance. When cross-examined by Mr Nicholls she said she had heard Dr Young's trajectory and that Dr Briggs is not able to predict risk but says it is significant, and she was of the view that the decision was for the Court to weigh up. Her primary focus was on H's safety and the fact that there cannot be any guarantees of safety. She accepted that there are different circumstances between H's

care by his mother now and J's. Whether they are sufficient to conclude that there would be no harm to H she could not say but she did accept that A is in a very different place now from how she was when caring for J and that she now has a very different level of support.

Welfare decisions: D and E

95 We turn now to the welfare decisions in relation to D and E. In considering our decision it is helpful to have reference to the welfare checklist.

(a) The ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding).

96 At the present time there is no doubt that D wishes to return to live with his mother. He has expressed that view to A in contact and also said that to the professionals who are involved in the case. E has also expressed a wish to live with her mother although E's wishes are less certain and are inconsistent. There is also no doubt that if D does not return home, he may well initially be distressed and confused and that if he does not return he may well need help and support, as may E.

97 We also bear in mind the fact that D has not always expressed the clear wish to go home. Whilst D was living with the mother in August 2009, he had expressed a preference for living with his parental grandparents because it was *"so nice"* and said that home was *"not good",* although he was unable to explain what he meant by that. During that time and in the early period of D's placement in care there were times when D was observed to appear indifferent to the mother.

98 Dr Young accepted that D's wishes were important but they were not the overriding factor. He, together with Mr Kean, accepted that D's present wish to return home is expressed at a time when D is no longer living in an abusive environment, and that D's memories of past harm have now been replaced by supervised contact sessions free of physical chastisement or emotionally abusive parenting. We accept there is force in this view. We note that D has said of the mother *"She is not going to do those bad things any more"*. We accept that D's wishes are expressed in the context of D's current pleasant experience of contact and that D does not have the age and understanding to appreciate the difficulties which in our view are likely to arise if he were to go home. We are mindful of D's wishes and feelings; they are one factor amongst others in our overall consideration of what is in his best interests.

(b) The child's physical, emotional and educational needs.

99 Both D and E need a home where there is no significant risk of physical violence to them. It is the view of Doctors Harrison and Briggs that there is such a risk for them in A and C's

home and that the risk will remain unless and until both A and C have committed themselves to, and completed, the long therapeutic exercise described by Dr Briggs as necessary before they could be safely rehabilitated.

100 In relation to their emotional needs, Dr Young's view is that D and E require consistent and committed parents who can provide them with safe and emotionally supportive parenting. Thus far A and C have been unable to provide this. On the basis of the documents and his own assessment, whilst acknowledging that both D and E have a sense of family identity and an attachment to their mother, Dr Young believes that both are unlikely to have developed an attachment to their mother which is secure.

101 We take into account his advice that, whilst D's attachment to the paternal grandfather has to date probably been a protective factor to D, nevertheless, for D history predicts that some adults in whom he invests emotionally can be unreliable and frightening. We have quoted the relevant passages above.

102 The same is true of E; in Dr Young's view it is imperative for E as well as for D that E obtains stability and permanence as quickly as possible. We take into account all of the comments by Dr Young to which we have already referred.

103 We accept that the time scales for D and E are such that they cannot wait a long time before having a secure placement. We accept the evidence from Dr Young about the effect on them of a delay of more than three months. We accept the view of Dr Briggs that it would not be possible after three months of therapy to say that it was safe for D and E to go home and that all of the work, likely to take eighteen months, would have to be completed before they could safely be rehabilitated. We accept the advice that the time scales for therapy do not meet the time scales for D and E who need permanence and stability now. That, in the end, was the universal expert view supported by the Guardian and by Mr Kean, and we have no doubt that it is right.

(c) The likely effect on the child of any change in his or her circumstances.

104 It follows that if D and E were to move to A and C now, or before the therapy has been completed, they are at significant risk of physical harm and of not having their emotional needs met. In our view it is likely that if D and E return home, A is likely to find having to look after all three children extremely stressful. She had difficulty coping with D and E before L and M came to live in the family. The health visitor and school's concerns about that period are set out in the September judgment and we shall not repeat them here. A does not recognise that difficulty, nor does C. Both D and E are likely, after their initial pleasure at being at home, to show demanding behaviour. E is likely to continue to show the demanding behaviour already apparent in contact which is likely to place additional stress on A. In such circumstances of stress we know that A has been unable to cope in the past and there have been outbursts of volatility and violence from her directed towards

children in her care. In our view it is likely that if the children go home before the therapy is completed, there will be similar events in the future.

105 If the children are placed with G, it is likely that they will find it difficult at first; particularly D, since it is not in accordance with D's wishes. Both D and E are likely to exhibit the behaviour that will test their carer. Having considered the assessments of G, which we shall do in more detail later, we accept that she has shown commitment and dedication to the children, that she will be offered and will make use of the appropriate skilled professional advice, and that there is a good prospect of them settling well over time and flourishing in her care. It would be a move to a person whom the children already know and like. Since March 2010 they have been spending every Saturday with her and look forward to and enjoy those visits. They would be able to remain in contact with their paternal grandparents (and the paternal grandfather is of particular importance to D). They will also be able to remain in contact with B, and with A if she can accept and not undermine the placement. They will remain living within their Portuguese/Jersey culture.

(d) The child's age, sex, background and any characteristics of the child which the Court considers relevant.

These matters have already been discussed above.

(e) Any harm which the child has suffered or is at risk of suffering.

106 This of course is at the heart of the case. We shall not repeat what we have already said about the risk of harm to D and E if they return to A and C and also if they are not placed swiftly in a permanent home which can meet their physical and emotional needs. It is suggested that circumstances are different from those that existed when L and M were at home. That is true; but if D and E return home now they would be part of a family of three young children and we do not believe that A would have the ability to look after them safely without recourse on occasion at times of stress to violence or volatility. She will only be able to parent them safely if she is able to commit to and to complete the therapeutic process. Unless C makes the same commitment, it is not possible to have confidence in his ability to protect D and E. It must be borne in mind that whilst Dr Briggs does not rule out the possibility of change in the long term, he is in reality pessimistic about the prospects that the therapy he recommends will achieve the necessary change. If they remain in limbo in foster care until the work with A and C is completed, their urgent need for permanency, stability and security will not be met. If they move to G they are at no risk of physical harm and it is likely that their emotional needs will be met there, particularly taking into account the help that will be available to G from the Children's Service and from CAMHS.

(f) How capable each of the child's parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs.

107 This has already been discussed. We take into account that there has been a history of

concern in relation to all of the children who have been in A's care while she has been in Jersey, J, D, E, L and M. We note that C has failed to be a protective factor to D and E or to his own children L and M.

108 As to G she has been the subject of careful assessment. Concerns arose as a result of comments expressed by her General Practitioner about her panic attacks. Expert evidence was sought from Dr Bill White who did not suggest that they affected her ability to care properly for D and E. That evidence was not challenged. There were also concerns at one stage because she had not told the Children's Service that she visited a man in prison who had previously assaulted her. She has given explanations which have satisfied all the professionals. No party has submitted that she is not committed to caring for the children or that she is in any way unsuitable to do so. Her high level of commitment to D and E has been demonstrated in our view by:-

(i) Her commitment to contact;

(ii) Her commitment to the children even during a time when it seemed she was not being supported by the Children's Service. She sought to become a party at a time when she was standing alone;

(iii) Her being prepared to move from her comfortable home with her son to a larger property in preparation for the arrival of the children. The result of that is that she has had to live there for months without proper carpet because the Children's Service would not provide carpet until the outcome of these proceedings was known. Because she would have to move back from that house to smaller accommodation if the children do not go to live with her, many of her possessions are still in boxes. She has put up with conditions that many others would have found extremely difficult;

(iv) The fact that she is prepared to change her work;

(v) The fact that she has already been prepared to undergo some training which will help her to meet D and E's needs.

(g) The range of powers available to the Court in the proceedings in question.

109 We are satisfied that D and E's lives must be governed by an order of the Court. We are satisfied that the Children's Service must share parental responsibility. We are also satisfied that Mr Kean and the Children's Service will genuinely do their best to promote whatever outcome the Court decides is in these children's' best interests.

110 In conclusion it must be clear from all that we have said above that we are in no doubt that D and E's best interests will be served by going to live with G under the auspices of a care order.

Welfare decisions: H

111 Although we have reached the conclusion which we have in relation to D and E, the case in relation to H is, in our view, far more finely balanced. In reality in H's case, as Mr Kean accepted, there is the balance to be struck between the risk of harm to H of staying in the parents' care and the risk of emotional harm to him if he is now removed. Once again, we shall look at the welfare checklist:-

(a) The ascertainable wishes and feelings of the child concerned, considered in the light of the child's age and understanding.

112 H is a baby. He does not have wishes and feelings he can articulate. H is being well cared for and responding to the mother who is breast feeding him. They are, in Dr Young's view, bonding.

(b) The child's physical, emotional and educational needs.

113 As with any baby and young child H needs to be brought up with physical safety and security and by a carer or carers who are attentive and attuned to H's emotional needs.

(c) The likely effect on the child of any change in his or her circumstances.

114 This is closely linked with the question of any harm which H has suffered or is at risk of suffering and we shall consider this aspect when we come to (e). It is also tied in with the capacity of the parents to care for H.

(d) The child's age, sex, background and any characteristics of the child which the Court considers relevant.

115 H has the normal needs of a young baby.

(e) Any harm which the child has suffered or is at risk of suffering.

116 We are mindful H is at risk of physical harm; but this needs unpicking. At the moment H is immobile. It is likely that the risks will increase as H becomes older, more mobile and more demanding. We have at the front of the our minds the fact that J was thrown by the mother onto a bed when J was nine months old and that we have made findings of A hitting J in the face so as to cause bleeding when J was two and of hitting D in the face causing bruising at a similar age.

117 All parties are agreed that H's case should be reviewed after A and C have been offered

therapy for three months. Dr Briggs would be prepared to carry out an assessment after three months to see if they have begun to engage in the therapeutic process and would be able to report in two to three weeks. All parties agree that the case should come back to Court then.

118 Dr Briggs has said that by that stage he should be able to tell if the parents have begun to commit to the process of therapy. If they have not, the significant risks of harm will remain unaddressed. If the parents have not accepted they have any need of therapy or for change, and if they cannot make the necessary commitment to the therapeutic process, they should be in no doubt that the prospects of any expert recommending that H should live with them look bleak.

119 But what of the interim period? No therapeutic work could be provided before January 2011. Dr Wade has indicated that she will see the parents before Christmas and if she agrees that she and her team can provide the necessary work, it should be able to begin in early January. Therefore, in reality, and assuming that Dr Wade can provide the necessary therapy, no assessment could be made until April and the case would not come back to Court until May 2011. Where should H be during that period? Mr Kean, on a fine balance, is concerned about the risk of physical harm to H and thinks H should be removed. The Guardian shares his views; to her the risk of physical harm is the feature to which she attaches most weight. We understand that.

120 Dr Briggs said there is a significant risk of harm which he could not quantify, which increases as a child in A's care gets older. But he agreed that the question of any emotional harm to H caused by the removal would have to be put in the balance against the risk of physical harm and he could only advise on the risk of physical harm not of emotional harm. Emotional harm was the province of Dr Young.

121 As we have said, we found Dr Young's evidence to be both cautious and thoughtful. In his view there is the risk of harm of physical abuse which increases with age but to be set against that is the emotional harm that would be caused to H if H were moved now from the mother and C's care where all H's needs are met and where H is establishing a bond with them. On balance, Dr Young's advice was that he felt the risk of emotional harm to H outweighed the risk of physical harm over the next few months until the Court considers the case again. Even if the parents were to have contact for up to four hours a day, five days a week, although it would help the disruption, there would still, in his view, be interruption of the bonding process, H would inevitably start to build attachments to any foster carer but that foster carer would not be part of H's permanent life. H would go into foster care, and develop attachments there but on any view in due course H would have to leave, either to return to the parents or to be placed elsewhere on a permanent basis.

122 We have considered this question very carefully. Dr Briggs carefully evaluated those factors which might increase the stress and those which might diminish it; we have set them out fully above and shall not repeat them here. In the end, despite efforts to push him to

evaluate the risk more precisely, Dr Briggs felt unable to do so and recognised that the balance of risk was going to have to be a decision for this Court. Whilst we pay close and careful regard to the views of the Guardian and also to Mr Kean, of all the professional witnesses who have given evidence before us, it is Dr Young who has the particular expertise in the area of emotional abuse, as all the other professional witnesses have readily accepted. In his view not only is there a chance that H will suffer emotional harm if H is moved now, but H will suffer emotional harm. Is the risk of physical harm to H over the next months therefore such as to require that harm be done? We have looked to see whether any factors are present now which may help ameliorate the risk of physical harm to H.

123 There is professional involvement in H's life for part of the day each weekday but monitoring is left to family in the evening and weekends. We are concerned that they do not acknowledge that there is any risk to H, which means that their response to warning signs may be poor. It may be that now having read the judgment, those who have read it will be more alert than previously, but we cannot be confident about it. However, we note that Dr Briggs thought that the professionals would notice a change in the quality of the relationship between A and H if she became stressed which may be a protective element, although it is not one we over value.

124 The monitoring on its own would not provide us with sufficient reassurance about the management of risk, but there are other factors here which enable us to distinguish the present situation from the one that pertained when J, and indeed D and E, were babies.

125 A is in a stable relationship with the baby's father; this is in marked contrast to the position she found herself in with J. As has already been said, J's father had died tragically in the early stages of A's pregnancy and she was left therefore to care for J on her own without support of the father, whilst no doubt struggling with the impact of her bereavement; she had no proper housing; was living in a hostel and other temporary accommodation and had worries about money. A was not able to identify in her oral evidence before us that these were stress factors when J was a baby. In our view that is a reflection of A's lack of insight and defensiveness; she is unwilling to admit any stress factors. However, we are of the view that those factors were, in reality, likely to have substantially increased the pressures upon her in coping with J.

126 When D and E were born she was in a relationship with B, their father, but it was a relationship characterised by domestic violence, with the concomitant instability and insecurity that flows from it. There is no suggestion of any domestic violence in her relationship with C. In the case of H therefore, for the first time she has the care of a baby where she is living with the baby's father, is supported emotionally by him, and where she has a home.

127 As far as C is concerned, there remain concerns about his ability to protect. However, D and E were not his children. Whilst L and M were his children, he had had a long period

when their mother would not allow him to see them, and he had clearly become somewhat detached from them and was not attuned to their needs. He is now at home full time with the mother and H, and is clearly both proud of and devoted to his baby. C has told the Court that although he would wish to go back to work, he will not do so until the therapeutic process is complete. Therefore he will be at home on a full time basis, able to help A when she gets tired or feels she needs a break.

128 There are indications from what C has said to the Guardian that he may now be genuinely wanting help to understand how he failed to protect L and M and that he may be at the point of readiness to make use of therapy. It is also the case that since the hearing in June 2010, A and C have been co-operative with the Children's Service and have a better relationship with Mr Kean than they did then. They have been prepared to allow the Children's Service to have a key to be able to enter their home at any time and indeed Miss Winter uses it to get in when she visits their home each week. They have co-operated fully with the monitoring process. A has been enjoying NSPCC Pathways; it is not somewhere where she is challenged in any way but she has found the time spent there with other mothers and staff pleasant and useful. In the past there have been efforts to persuade her to attend NSPCC Pathways and other resources when it was thought she needed help with her parenting and she either turned down the proposal or made little commitment to attending. Now she is attending regularly two or three times a week and NSPCC Pathways speak positively of her there both in relation to her care of H and her attitude to staff and other parents.

129 The period since the last hearing has been very stressful. In addition to the birth of the baby, A and C have had to deal with professional involvement every weekday and with the ongoing court proceedings, assessments by experts, seeing lawyers and reading papers in the case, which doubtless have contained much material they did not like and which was critical of them. Despite that they have coped well with H's care. They have had contact with D and E during the hearing after Court, which often sat until 5pm in the evening. The contact notes in our view show that they handled what could have been very difficult contact well in the circumstances, when they must have been both tired and under pressure. This includes the recent contact on D's birthday which may be the last birthday that they would be spending with D. They have handled all of these pressures well.

130 We take seriously all the concerns expressed by the Guardian, Mr Kean and indeed by Dr Briggs. All accepted that at the end of the day the decision was one of balance. Mr Kean said that it was finely balanced. The Guardian's approach has been to seek a guarantee that H would not be harmed physically. We accept that there can be no such guarantee if he remains in A and C's care.

131 Ultimately this is a case of finely balanced risk where in our view the emotional harm that H will undoubtedly suffer if H is removed outweighs the risk of physical harm to H in the current circumstances. This is provided that the conditions set out in the alternative care plan in relation to the arrangements for H if he lives with A and C are complied with. Thus in relation to what orders should be made, in our view there must be an interim care order in

relation to H with the structure and safeguards set out in the care plan based on H staying at home.

Contact

132 As far as D and E are concerned, at the outset of the proceedings, the Children's Service was proposing to reduce A's C's and B's contact until Christmas and thereafter to suspend it for some three to six months.

133 Dr Young advised against that proposal; he could see no reason to reduce the contact with B who was not and would not be likely to seek to undermine D and E's placement with G. This was also the view of the Guardian.

134 He advised that A and C's contact should be reduced gradually from its present level of three times a week until Christmas in the way proposed by the Children's Service but there should then be a suspension of contact for a month to allow D and E to settle with G. The level and frequency of contact would have to be kept under regular review. D and E might in fact need to see A within that period or it may be that the contact would need to be suspended for longer. It would have to be governed by D and E's needs at any one time. Thereafter it was to be hoped that the contact would be resumed, although not at too great a frequency, to enable them to consolidate their home with G.

135 Having heard Dr Young's evidence, the Children's Service accepted his advice which is now reflected in the care plan; it was endorsed by the Guardian. We also accept Dr Young's advice. There will need to be flexibility under the overarching plan to meet D and E's changing needs. We are confident that Mr Kean has the sensitivity and skill to manage that contact in a way that will best meet the children's evolving needs.

136 Dr Young advises that it is probably not in D and E's interests for H to be brought to contact at the moment, bearing in mind D's concern that H lives at home and D does not. Once again, we accept Dr Young's advice. From the point of view of H, H is too young at the moment to be particularly affected by not seeing D or E.

137 We therefore approve the Children's Service plan for contact arrangements for all the children and there is no need for us to make any orders in relation to contact.

Review

138 We shall also make an order for an assessment by Dr Briggs after three months of therapy, and for the filing of a report by him. Indeed, as soon as a date for the commencement of the therapeutic work is obtained, the parties are to list a review hearing

allowing three months for the therapeutic work and probably another four weeks for Dr Briggs' report. It cannot hang around.

A final word to A and C

139 A, C, you clearly have a wonderful baby. You are clearly both dotty about H and H obviously is becoming very attached to both of you. Everyone in this Court would like to think that H would be able to stay with you permanently. I do not think anybody in this Court likes taking babies away from mothers and fathers, but really the ball is firmly in your court now. You two are the only ones who can make that happen. You are being offered a package of support which I encourage you to take up, even if you cannot see the need for it at the moment, and even if it is difficult, and even if you do not want to go, because it is only by sticking to it that you are going to keep H. So from H's point of view may I say please do it. This is your chance and you will probably not get another one; so go for it.