

Neutral Citation Number: [2021] EWHC 3615 (Fam)

IN THE WOLVERHAMPTON FAMILY COURT

Case No: WV21C00315

Telford Justice Centre
Telford Square
Malinsgate
Telford
TF3 4HX

Thursday, 16th December 2021

Before:
THE HONOURABLE MRS JUSTICE LIEVEN

B E T W E E N:

ME

and

WOLVERHAMPTON CITY COUNCIL, EG, LG AND RG

MISS V CLIFFORD (instructed by Harrison Clark Rickerbys) appeared on behalf of the Applicant
MR J RUSTON appeared on behalf of the First Respondent
THE SECOND RESPONDENT appeared In Person
MS HOUSTON (instructed by McDonald Kerrigan) appeared on behalf of the Third Respondent
MR S HUGHES (Solicitor) appeared on behalf of the Fourth Respondent
MS A LOCK, (the Children's Guardian) appeared In Person

JUDGMENT
(Approved)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is

strictly complied with. Failure to do so will be a contempt of court.

THE HONOURABLE MRS JUSTICE LIEVEN:

1. This case concerns two boys, LG ('L') aged 16 and RG ('R') aged 14, who are currently placed in foster care under a final care order made on 13 November 2020. I will refer to them on occasions below as "the boys". They were removed from their mother's care, the second respondent, in July 2020 and have been in care since then. L was originally placed in a residential home but moved to the same foster carer as R in September or October 2020.
2. The applications before me were by the father, the applicant. Initially, there was an application to have contact with the children and there was an application by the boys to discharge the care order. As the case turned out by the end, the father was no longer pursuing contact with the boys.
3. The boys, through their representatives, had indicated that they were no longer pursuing their application to discharge the care order. However, for reasons that will become apparent through the course of this judgment, I think the correct course is to adjourn those applications and come back in the New Year to consider what happens to the care orders. Therefore, the only application which is actually before me in this judgment is the spin-off from the application by the father, which is that he seeks that I reduce the contact with the mother.
4. I have to say at the outset I have found this an extremely difficult and troubling case for a whole series of reasons. The father was represented before me by Miss Clifford; the Local Authority by Mr Ruston. The mother acted as a litigant in person. The Guardian, Miss Lock, who long since in this litigation had parted company with the boys, appeared without representation. L was represented by Miss Houston and R was represented by Mr Hughes.
5. In short order, the position of the parties was that the Local Authority argued that the position should stay the same as at the moment. The father's position was that contact with the mother should be significantly reduced. The mother argued that contact with her should be increased. The Guardian supported the father. L and R both supported the mother's position, wanted more contact, and both indicated they wanted the care orders to end.

Background

6. This case is described in the Local Authority's position statement as one of severe parental alienation. Keehan J, who undertook the fact-finding hearing, avoided the use of that word, and I am not convinced that labels, particularly the label of parental alienation, is ever very useful, but it is a shorthand to what has happened in this case.
7. There was a fact-finding hearing and a lengthy judgment before Keehan J, the judgment dated 6 December 2019. He was considering allegations by L and R, but also their older brother P, who at that time was part of the proceedings, as to abuse by their father. The three boys made numerous allegations of physical, sexual, emotional abuse against their father and paternal family members.
8. The full facts and background are set out in detail in Keehan J's judgment, and I have no intention of repeating anything other than a short summary of them. He found that:

“(1) The allegations made by the boys against the father and the paternal family were false; see in particular paragraph 288.

(2) That the mother had caused the children significant emotional and psychological harm by her acts of omission because she failed to challenge their allegations or reassure the boys that they were safe and had nothing to fear from the paternal family; see paragraph 301.

(3) That P had accepted during the hearing that he had lied to the Court and the police about some of his allegations; paragraph 147.

(4) That the mother had done nothing to prevent their ability to escalate their allegations either by discussions between themselves or with their counsellors or in the interviews with the police.

(5) That the mother failed to act as a reasonable parent would and caused them emotional and psychological harm”.

9. The judgment was extremely critical, to put it mildly, of the mother’s conduct throughout the proceedings and emphasised the amount of harm that she had caused not just to the children but also to the father and the paternal family.
10. After the fact-finding judgment was received, expert evidence was ordered from a psychiatrist, Dr Butler, and a psychologist, Dr Gregory. Dr Butler produced a report dated 23 June 2020. She also produced a number of supplemental reports.
11. Her conclusions were that:

“(a) P is vulnerable but also risky as he potentially poses a risk to himself and others and his presentation impacts upon his brothers’ wellbeing.

(b) That there has been severe emotional abuse and the mother has been a perpetrator of that abuse.

(c) That she is focused on her own needs rather than the children’s needs.

(d) That the mother displayed alienating behavior in respect of the father and paternal family.

(e) That there was evidence she sought to sabotage the relationship between the boys and their father.

(f) That Dr Butler agreed that the social worker’s concerns about a victim narrative around the mother and the boys and the system of professionals and the friends around them which locked them into a cycle of abuse [sic].

(g) Dr Butler was concerned that P had been bullying L and she says that the notes show that P is sometimes a frightening and potentially violent person, and there is a risk he would use aggression as a means of problem-solving as this is how he has in the past dealt with matters in the family home.

(h) Dr Butler recommended a psychological assessment of the mother if she was putting herself forward as a carer for the children to assess her psychological functioning and ability to develop a safer relationship with the children.

(i) That work was required for the mother to identify how her underlying belief systems were activated and maintained and for her to explore how this has

impacted on her children before she could effectively parent.

(j) That P told her he thought the judgment was wrong.

(k) That the mother cause sexual harm to the boys, allowing them to watch pornography and speak about sex in such an explicit manner.

(l) That this was one of the most extreme cases of parental alienation she had encountered.

(m) That L had been subject to manipulation and coercion within the maternal family by P and the mother. That L is vulnerable as a result of his mental health and that false memories have been created which he believes are real, and he has been left with the belief that he is the perpetrator of abuse, and that L presents with paranoia.

(n) That R had increased risk of mental health problems.

(o) That they should be removed from the mother's care as they are at risk of emotional abuse and neglect in her care and are potentially at risk of physical and emotional abuse from their brother.

(p) That the children will need therapeutic input, which will be a long process".

12. There was subsequently a psychological assessment of the mother and P carried out by Dr Gregory.
13. To a large part in consequence of Dr Butler's report, the children were removed into Local Authority care in, I believe, August 2020. Because P was just short of his 18th birthday by that stage, he stayed with the mother and did not go into care.
14. I was told during the hearing that L initially went to a residential unit where he was extremely unhappy and plainly his mental health was poor. He was described in one of the documents as having shut down, not eating or sleeping, and he would not leave his room.
15. R went into foster care and, happily, his foster carers, when approached by the Local Authority, agreed for L to live with them. Therefore, L moved to the same foster care as R after two or three months and has remained there.
16. In November 2020, Keehan J approved final care plans for the children, there having been an IRH before that at which it was agreed that the final care plans would be for them to remain in foster care. Under the care plans there was direct contact with the mother and P once a week, which was to be supervised, and indirect contact with them separately each once a week by phone or video.
17. There was also the option in the final order for the children to partake in written contact with their father on a weekly basis and that they would receive and respond to texts with their maternal grandparents twice a week. The plan at that stage was for the children to engage in therapy with Dr Gregory commencing in January 2021 as had been recommended. The intention was that this therapy would allow them to move past the false narrative which had led to the allegations of the abuse and to lead to a re-establishment of a relationship with the father and the paternal family.
18. Therefore, in my words rather than that of the care order, the key purpose of removal was to allow the boys space away from their mother and P so that they could engage in therapy and that would address the false history which they had adopted. Unfortunately, since that final

order was made, matters have not gone according to plan. The boys have refused to engage in therapy either with Dr Gregory or with any other therapist or indeed therapeutic social worker.

19. There is evidence that, certainly in R's case, he was initially prepared to undertake therapy, although I have to say, having read the notes, it looks to me as if that was just a way to get back to his mother. There is evidence that P played a role in dissuading him from going into therapy. It is not possible for me to know the degree to which what P has influenced R. but the fact that P made derogatory comments about going into therapy is in the evidence. Further, the boys have refused to have any contact with the father, including refusing to read the weekly letters or emails he sent at the beginning. The mother has engaged in cognitive behavioural therapy. I understand she has had 10 sessions and she says that that has been extremely helpful to her.
20. The contact that was ordered in the final care order was, it is clear from the order, always intended to be supervised. However, a significant problem arose because the supervision until October 2021 was by one social worker. There are frequent references in the papers to P having walked aside with one of the two boys and talked to him, whichever one it was at the time, out of earshot. This seems to have happened on a regular basis. There is no criticism of the individual supervisor because of course they could not supervise both groups at the same time.
21. The supervisor and the foster carers raised concerns within the Local Authority that P and possibly the mother were undermining any hope of the boys accepting therapy. However, unfortunately, the previous social worker does not seem to have acted on those concerns. The father, when he became aware of these problems with the supervision of the mother's contact, on 3 August 2021 made an application to the Court to vary the terms of contact.
22. The current social worker, Miss Bako, who has been the social worker since about August, has put in place a written agreement, although this was only finally finished and signed on 2 November 2021. The position now is that since November that there are two supervisors at each weekly face-to-face contact, and it is ensured that neither the mother nor P can speak to one of the boys outside the hearing of supervisor.
23. It is also the case that, when the boys speak to the mother or P in the indirect contact, they are supposed to keep the door open so that the foster carers can hear what they are saying. In the terminology of this case, that written agreement has worked well in the sense that P is no longer able to speak alone to the boys.
24. The evidence is clear and not contested that the contact with the mother and P is extremely positive in the sense that the boys very much enjoy it. Both of them say in their statements that they very much look forward to it and, indeed, it is the high point of their week. I note to this point, and I will come back to this, that the father says that that is largely irrelevant because it is on the basis of the false narrative that the boys have adopted.

Evidence and the position of the parties

25. The father gave oral evidence and was cross-examined and has also made statements in this case. He said that he very much loved the children and he only wanted their best interests.

He accepted that they appeared to be distressed and unhappy in foster care. Of course, I note at this point that he has not seen them, so that is on the basis of reports, but he did not contest the reports.

26. He also accepted that it was their wishes and feelings that they wished to go home. However, he said sometimes parents have to go against the wishes and feelings of their children, and what he wanted was to secure their best interests in the long term. He said that contact with the mother and P should be reduced to an absolute minimum. He was very keen that the contact be strictly supervised so that there was no possibility of P speaking alone to the boys. Everything should be done to persuade the boys into therapy. He emphasised that, in his view, there was a very short space of time to achieve therapy. He said on a number of occasions through his evidence that “time was running out”.
27. My understanding, and I asked him about those phrases, is that he felt that the opportunity to persuade the boys to go into therapy was an opportunity that ended when the Court supervision ended, effectively, at their 18th birthday. It was his view that decreasing contact with the mother and P would increase the likelihood of therapy.
28. When asked whether he accepted that the boys enjoyed the contact with the mother and P, he said that that was not the right question. In his view, they only enjoy the time because they had bought into the false narrative.
29. When it was put to him that, if contact with the mother was decreased, that the boys would see that as the father punishing them, he disagreed and said no, he was putting the children first. He accepted that L would be emotionally harmed if contact with the mother reduced but he said that he wanted L to have a chance to get better. When I suggested to him that there might be a benefit in him, as I put it, backing off and not pressurising the boys into therapy, he said that he felt he had backed off for 18 months and he had not put pressure on the boys.
30. Miss Clifford, on behalf of the father in her closing submissions, emphasised how tragic this case is, particularly for the father and the father’s family, and for the children because they have no relationship with their father, and that is nothing short of devastating to him. He hopes that at some point the children will realise that it is also devastating for him.
31. Miss Clifford emphasised to me that the father’s application was a genuine one made with the best of intentions and that all he wanted was for the children to have happy and healthy lives. She said he only brought the application as a last resort when the plan for therapy had plainly stalled. The father, and Miss Clifford on his behalf, were highly critical of the Local Authority in the degree to which they did not progress therapy and they allowed the mother and P to undermine contact.
32. When he made the application on 3 August, Miss Clifford said he had done it because he found that the Local Authority were not correctly supervising the children. The foster carers had also raised concerns about P and the mother having contact or communicating with the children outside the terms of the care plan.
33. The concerns that had been raised by the supervisors to the Local Authority were not addressed. This included that the X family, who feature strongly in the fact-finding and are

friends of the mother, had become involved in contact in various ways, which was not in accordance with the contact order. It was those factors, Miss Clifford said, that led the father to make the application.

34. I do not doubt that the father loves the children very much and desperately wants a relationship with them. However, I have to say I thought he had very little insight into the children's emotional wellbeing and in particular how they were likely to react if I acceded to his application. Perhaps that lack of insight is inevitable given the harm that has been done to the father and his family in the past, in large part as found by Keehan J, by the mother. However, he did strike me as a man who was convinced of the righteousness of his own cause and had, in reality, lost sight of what was in the best interests of his children.
35. The mother appeared as a litigant in person. She said in the witness box, and this is supported by the papers, that the time she spent with the boys at contact was very positive and that they did their best to have fun at contact and enjoy themselves together.
36. She said she did not discuss the father at contact or the false narrative because she believed she was not allowed to do that. However, she had tried to persuade L to have therapy, and that she did so try, at least superficially, is referred to in the documentation.
37. She gave evidence about having undergone the 10 sessions of therapy herself, which she said she had found extremely useful, and she felt she had a much better understanding of her past behaviour. She said that P had also benefited from therapy and had moved on to the stage where he was now prepared to call his father "Dad", which in the context of this case may be a significant move, or may not.
38. Again, with the mother, she did strike me as genuinely loving the children. I have to say I am very uncertain as to the degree to which she has fully absorbed the harm she has done, particularly to the children. I will come back to that in my conclusions.
39. L was represented before me by Miss Houston. L is a 16-year-old boy, currently in the first year at sixth form. It is clear from the papers that he is an intelligent young man, who is well able to instruct his own lawyer and make his views clear.
40. I positively offered to both children for them to speak to me before the hearing. L declined, although it was clear that he wanted me not to take offence at his declining.
41. He is described in some of the papers as having autistic spectrum disorder tendencies. There is quite a lot of evidence about him being very rule-based and not as socially confident perhaps as R. He was described by the mother as being more of a homebody than R. The litigation process, not to speak of the original false allegations, has been incredibly damaging to L, and that there have been moments of real concern about his mental health.
42. It is absolutely clear from the documentation and repeated on many occasions that L does not want therapy. He wants to go home and he wants more contact with his mother and P. He does not want any contact with his father.
43. L has said that he does not want to engage in therapy because he is not in the right place at the moment. It is clear from documents relating to him and R that, perhaps unsurprisingly,

they are by now deeply untrusting of any professionals, probably including judges, and feel unwilling to expose themselves to any process which might bring their wishes and feelings more into the public domain.

44. At a statutory visit on 29 September 2021, L said to the social worker:

“If contact was to be reduced, he would not have anything left to live for because seeing and speaking to his mum and brother is the only thing that keeps him going. He said that having contact is the only sense of normality he has left, and he feels that it is the time he can open up about how his week has been”.

45. L, like R, is doing fine at school but it is certainly the mother’s view that neither boy is coming close to reaching their potential, in part because of the upset of the proceedings and being in foster care.

46. R is 14 years old. I did speak to R before the hearing, and he also wrote me a letter. He has written a number of letters to judges over the last year, and I will simply quote from part of the one he wrote to me:

“Dear Judge,

I’ve been in care for 529 days and I’ve been sad for each one of those days. I hate it. It is so damaging to me. I just want to go home where I belong with my mum and brothers. I am never going to see ME” [the father] “or his family ever again. I’m never going to have therapy. I have never changed my mind. I decided this last November that I wasn’t having it because of the social workers and the carers and the conditions”.

The letter goes on for a number of pages but that extract probably fairly encapsulates his feelings. It is clear from the entirety of the letter that he is very articulate.

47. When I spoke to R, the conversation remained quite superficial and I could see that he was cautious about engaging. We did talk about cricket, and his mother told me later, but I picked up from the papers, he is very good at cricket. One of the many unfortunate side effects of the order has been that he is not allowed to play in the senior team for the cricket club because one of the X family have an association with that team and he might come into contact with him. This is merely one example of the way that this order interferes in R’s life. Although it may seem to an outsider a relatively slight interference, I suspect to R it is a very serious one.

48. The other thing that R told me, which is also reflected in the papers but which I found deeply troubling, was that none of his friends know he is in care, and he goes to considerable lengths to make sure that that is the case. R is leading, and presumably has led for the last 18 months, effectively a double life, going home to foster carers but pretending to his friends he is going home to his mother.

49. Miss Bako, the social worker, has been the social worker since August 2021. I have to say she has come into a desperately difficult case and seems to me to have done her absolute best for the boys. She is the one who put in place the solid written agreement and she has organised proper supervision of the contacts. She has done her best to work with both boys to seek to engage with them in motivational work to work towards them agreeing to go to have therapy.

50. However, I am sure through no fault of hers, her efforts have not been successful. It appears that her relationship with R is poor. He does not trust her and will not speak to her but I note here I do not think that is in any sense Miss Bako's fault. I suspect it is much more a product of the history.
51. Her evidence was that, if contact with the mother and P was reduced, the boys would view that very negatively and it would lead them to be less likely to work with professionals and less likely to engage in therapy. Further, it would exacerbate their negative feelings in respect of the father. She said that L had told her he did not want to do therapy because he felt his wishes and feelings would be shared with all involved.
52. Miss Bako accepted that, historically, the supervision of the contact had been inadequate but that had now been addressed. Her view was, and this was repeated by Mr Ruston on the Local Authority's behalf, that the risks of contact had been dealt with by putting in place adequate supervision.
53. It was Miss Bako's evidence, when I asked her, that if the position remained as it was at the moment, the children having declined to engage in therapy over the previous 18 months, although I focus on the last 12 months because that is the time since the final care order, that there was little reason to believe that they would start engaging in therapy going forward. I put to her, and she agreed, that L was unlikely to engage in therapy.
54. Therefore, what we were really looking at was him staying in care for the next 18 months and then leaving care and returning to live with his mother, and that R similarly was unlikely to engage in therapy. In addition, once L had gone back to the mother, R would be left on his own and would be even more unhappy. She had not herself done work with them about their false narrative because she felt it was best to try to build a relationship with them and leave such therapeutic interventions for a therapist.
55. By the end of the case the position had somewhat changed on behalf of the Local Authority. What they were proposing was to introduce every fortnight what was described as a therapeutic contact, where the children and the mother, and possibly at a later stage P would meet with – I am going to use the word “therapist” – not necessarily in a professional sense but with somebody who would do therapeutic work.
56. In the first instance the intention was to approach Dr Gregory and try to set this up with somebody from her unit or office. The use of somebody from Dr Gregory's office has been considered in the past but that is what the children have not engaged with. Therefore, the change was the idea originally raised, I have to say, by the mother during the hearing, that the children and her meet together with this therapist. There is slightly more chance that the children would engage with that because their mother would be encouraging them, but there is of course no guarantee.
57. Finally, I heard from Miss Lock, the Children's Guardian. Miss Lock has been involved in this case since the start of the proceedings back in probably early 2019. Therefore, she has had very considerable involvement in the case and has a very good sense of its history. However, her relationship with L and R is by no means straightforward.

58. The children have been separately represented almost throughout these proceedings, including during the fact-finding before Keehan J. It follows from that that they were considered to be competent to give legal instructions even from the point where R was only 12.
59. The Guardian last saw the children in August at a visit and she has spoken to L twice since. She has only spoken to R once very briefly about a separate issue at the foster carers, because R has declined to speak to her. Her very clear view in evidence before me was that the children needed a reduction in contact with the mother and P in order to give them space to consider what had been going on, and what I am describing in shorthand as the false narrative.
60. In her report to the Court dated 9 December 2021, she said it was her recommendation that L and R spend supervised time with their mother and P once a month for two hours with one video call in between. She said:
- “I would hope that this would not be needed for the remainder of the care order, but that before any increase occurs a full social work assessment is completed, which considers [the Mother’s] and P’s ability to understand the concerns, their insight, and the impacts their actions have had upon L and R and [the Mother’s] ability to work openly and honestly with the Local Authority”.
61. By the time she gave oral evidence, she had slightly changed her position for that to include a joint session with the mother, P, and somebody from the Local Authority or some therapeutic input as well. She accepted that if her proposal was advanced and contact with the mother and P was cut, she did not know if the boys would engage in therapy, but she thought the chance was improved.
62. She joined with the father in criticising the Local Authority’s failure to properly supervise contact after the final order in November 2020. She criticised the Local Authority social workers for not having been more proactive and for lacking what she described as “professional curiosity”. She was very critical of them allowing P in particular to talk to the boys alone, and she was very concerned about the role of the mother and P in undermining efforts to get the boys into therapy.
63. It was Miss Lock’s view that the current level of contact by which the boys see or speak to either the mother or P approximately every three days is too much and places too much pressure on them. It was her view that it prevents them from having the space to think about the false narrative and their relationship with the father.
64. She consistently emphasised that her concern was with the children’s best interests and that she had fully taken into account their wishes and feelings. However, she said that it was in their best interests to have very limited contact with the mother and P. She said that she could not rely and that I should not rely on or trust the children’s wishes and feelings because they are coming from a backdrop that the father has abused them, and that is why she cannot support their wishes and feelings.

The law

65. Happily, the law in this case is neither central nor complicated. The application to vary

contact by the father, which is what brings the matter before the Court, is made under section 34(3) of the Children Act. On an application made by any person mentioned above, which includes the parents, “the Court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person”.

66. Mr Ruston refers me to the judgment of Peter Jackson LJ in *Re D-S (Contact with Children in Care: Covid-19)* [2020] EWCA Civ 1031 at paragraphs 11 to 13:

“11. The statutory framework surrounding parental contact with a child in care is straightforward:

- (1) The local authority is under a duty to allow the child reasonable contact with his parents. It must also endeavour to promote contact between the child and his parents unless it is not reasonably practicable or consistent with his welfare.
- (2) Where an application is made to the court, it may make such an order for contact as it considers appropriate. When doing so, the child’s welfare is its paramount consideration. It must have regard to the welfare checklist and it must not make any order unless it would be better for the child than making no order at all.

12. In the first case, the decision about contact is one for the local authority. In the second case, it is one for the court. The fact that there will be mutual respect between the authority and the court cannot mask this distinction. A parent applying for contact is entitled to expect that the court will form its own view of what contact is appropriate in all the circumstances, however influential the professional view of the local authority may turn out to be.

13. Once the court has formed its own view, it has a broad discretion as to whether or not to make a contact order. It may well decide, applying the ‘no order’ principle, not to make an order because its conclusion about what contact is appropriate is broadly equivalent to be contact that is being offered, or, for example, because the making of an order may lead to a loss of flexibility, or because practical considerations make an ideal level of contact unachievable. But the essential point is that the court must reach its own conclusion and ensure that it has the information it needs to do that. It does not defer to the local authority, and the local authority is no more entitled than any other party to the benefit of any doubt”.

Conclusions

67. The only application before me today is to decrease the contact of the children with the mother and P. The father no longer pursues an order of contact with him. However, the evidence in this case that I have heard over the last two days raises enormous concerns in my mind about how this case is being handled.
68. The first and overwhelming point to make is that this is a case about two boys. It is not about the adults. My concern under the statute is the boys’ welfare interests.
69. The boys in this case are aged 16 and 14. They are intelligent and well able to articulate their views. They have been separately represented throughout, but it is important to note the rather

obvious point that it is now two years from the fact-finding, and they are two years older. Therefore, their wishes and feelings, as well as their Article 8 rights to autonomy, must be given greater weight.

70. The Local Authority describes this as a case of severe parental alienation and like Keehan J, I am not convinced that labels are useful. However, I fully accept the findings of fact in that judgment. I could do no other, but I have no reason to even have any doubt about them.
71. I therefore have no doubt that the mother has caused the boys great emotional and psychological harm. Although the mother may have made considerable progress in therapy, I am not confident that she truly acknowledges her role in the harm that she has carried out. I am also not confident, although I try to be optimistic, that the mother will actively support the boys in re-establishing a relationship with the father.
72. In relation to P's role, I have relatively little insight into that, having quite limited evidence and P not having spoken either to the social worker or the Guardian. However, I fully acknowledge that there is a real risk that P will not support or encourage his brothers to address the false narrative in respect of the father.
73. In those circumstances, I accept that unsupervised contact, or indeed living with the mother and P, may cause the children psychological harm. It is, however, important to note that this is a case where very great harm has already happened, as found by Keehan J, and nothing can be done to undo the past. Therefore, what I have to look at is the welfare interests going forward.
74. I accept that the harm from the false narrative to the psychological wellbeing of the boys, and the unreasonable antagonism to their father and his family, and the psychological manipulation that has happened in the past by the mother and perhaps P, may all be compounded if there is more contact or they go home. Therefore, on that side of the balance I accept harm, and indeed I accept material harm.
75. However, we have to look at the situation as it is today. The boys have now been in foster care for 18 months but they are still refusing to engage in any therapy. Importantly, as Miss Clifford pointed out, the key period is the 12 months since the final order where they have been given the time to engage in therapy and they have absolutely refused to do so.
76. The evidence is overwhelming that the boys are extremely unhappy in foster care. Interestingly, the most positive thing that Miss Lock could say was that they may not be unhappy for every moment they are in foster care. The evidence seems to be that they have very good foster carers and there are things that they enjoy in foster care, but that they are unhappy, indeed very unhappy, in foster care is clear from their letters.
77. Further, they still strongly want to go home to their mother. Their position in those three regards, refusing therapy, being unhappy in care, and wanting to go home, have not moved an iota since June 2020.
78. The father and the Guardian say the solution to that impasse is to reduce contact to a minimum and thereby to remove the mother and P's influence. What that comes down to, in clear words, is to try to force the boys into therapy by removing the thing that both of them say is

the best thing in their week. Everybody accepts, including the father and Miss Lock, that to do that will make them even more distressed and unhappy.

79. Miss Lock says that will give them the space to think about the situation they are in. I have to say I think Miss Lock's approach of, "Well, it will give them more than three days between contact" rather ignores the vast amount of time that these boys have spent in foster care on their own, being able to think about the situation they find themselves in.
80. I entirely agree with Miss Bako that if we reduce contact with the mother and P, it will make the boys very distressed, and there is a very real risk that it will cause L in particular real psychological harm. I already have a significant concern about L's psychological state as it stands.
81. R is more at least superficially robust but reducing contact will further upset him. In my view, and I think I share this with Miss Bako, the most likely consequence of reducing contact is that it will further alienate the boys from their father and make it even more difficult to restore trust. This is an aspect of the case that the father seems unable to have any insight into.
82. Further, I think reducing contact with the mother is unlikely to persuade them into therapy and at the very best might coerce them into therapy. However, I fail to see how that can have any benefit because therapy entered into only because you are being coerced into it is no therapy at all and is highly unlikely to have any positive benefits.
83. I do accept that the father believes he is acting in the children's best interests but, in my view, it is impossible to see it in that way. The only result of his application will be to make his children even more antagonistic to him. The father has lost the ability to separate his own wishes and his desire for vindication of his viewpoint from the interests of his children.
84. For all those reasons, as I indicated earlier, I have no intention of reducing contact with the mother and P because I consider it would not be in their best interests. However, my view on this case goes further than that. There is an urgent need for professionals to step back and consider the impact of what they are doing on L and R and to listen to the children's voices, as we are so often urged to do in the family justice system.
85. Miss Bako accepted that if we continue in the current situation the boys are very unhappy and they are unlikely to engage in therapy. Therefore, effectively we have a position where we have stasis for 18 months until L can go home, which would then leave R isolated and even worse off.
86. The current situation is deeply harmful to both children. I test that by looking at section 1 of the Children Act and the Welfare Checklist.

Section 1(3)(a), the ascertainable wishes and feelings of the children concerned

87. The children in this case could not have made their wishes and feelings more clear. Further, by reason of their age, those wishes and feelings carry a great deal of weight in this case. Those wishes and feelings may be based on a false narrative, but the strength of their desire to go home is undoubted.

(b) Their physical, emotional, and educational needs

88. L's physical needs appear to have suffered in care. He may have had problems before but he has plainly had eating problems in care. Their emotional needs are not being met in foster care, they are both palpably unhappy and distressed. I accept that they may be likely to suffer psychological harm if they go home because there is a real risk that the false narrative will be reinforced by P, and perhaps the Mother.
89. If there was a realistic prospect of them engaging in meaningful therapy whilst in foster care, then there might be some psychological benefit for them. However, as I have explained above, there is in my view no realistic prospect.
90. I am extremely concerned about the impact on their education, of keeping them in foster care against their wishes. They are doing, as Miss Lock described it, fine at school, but these are very intelligent children who should be doing a lot better than fine. One of the things that troubles me in this case is that, by continuing this unhappy stasis, we may create life-long impacts on these children's potential because of the educational damage that is caused.
91. Miss Clifford points me to the fact that, back in 2017, the mother took the children out of the school they were in and doing well in and they suffered real educational harm then. That may well be correct. That the mother has harmed these children is not the issue. The issue is whether the court harms them further by keeping them in foster care.

(c) The likely effect on the child of any change in circumstances

92. I have largely dealt with this above. It will certainly make them happier to go home to their mother and P. In my view at this stage that is at least a tangible benefit that we can see. The danger, as explained above, is that the false narrative is reinforced, but in my view that harm or "effect" has already happened and keeping them in foster care is now serving no useful purpose, and is causing positive harm.
93. I do not think their age, sex, background, and any other characteristics get the Court much farther.

(e) Any harm which he suffered or is at risk of suffering

94. I have already covered that. There is harm either way in this case but at least I can see a benefit for the children, in letting them go home.

(f) How capable either of their parents is of meeting his needs

95. Again, I think I have covered that. I remain very doubtful about whether the mother can meet the children's psychological needs but the question is whether their psychological needs are being met at the moment, and they plainly are not.
96. Therefore, taking all that into consideration, in my view the Welfare Checklist points strongly towards bringing their time in care to an end as expeditiously as we can, and the care order needs to be urgently reviewed.

97. This is a case where we have got to a point where I have to balance harm. Neither outcome for these children would remove harm. However, the question I ask myself is what are we achieving for these children if we keep them in foster care? In my view, we are achieving nothing, and we are inflicting yet further harm upon them.
98. I accept that placing the children in care for a bridging period to allow them space to think and to engage in therapy is fine and appropriate. However, we are by now 12 months beyond that point and if the only way forward is to decrease contact and coerce them into therapy, that is, in my view, plainly inappropriate.
99. Mr Ruston, in his closing submissions, put forward an alternative solution by which Dr Gregory is engaged to do a report, I think by the beginning of March, and then there is a period of nine weeks for a parenting assessment, which gets us to the beginning of May, and then I suppose we might creep towards another hearing in June. That is six months from now, six months more in these children's ever-short remaining childhood, and six months more of them being placed in a situation which is doing them no good and making them unhappy.
100. Therefore, I am not prepared to allow a six-month adjournment. I will put this case back in my list in mid- to late January. It will give the parties time to discuss ways forward, hopefully with some proposals for the children to engage in therapy, but with a very clear and expeditious plan to bring this care order to an end.

End of Judgment

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This transcript has been approved by the judge.