this primary cohort in a state of stasis since these matters came to light in April 2021. It is acknowledged that their prospects of permanency have been placed at risk as a result. It accepts that this litigation would have been entirely unnecessary if there had been full compliance with the AAR.

H. The appointment of Dr Carol Smith as Agency Medical Adviser

41. Before turning to look at the existing jurisprudence in relation to the effect of these acknowledged breaches, I propose to deal with the separate issue of whether or not Dr Smith was formally appointed as the Agency Medical Adviser in compliance with regulation 8 AAR. In particular, it is important to establish whether that formal appointment was in place and continuing during the period when Claire Winter, as the ADM, made her decisions in respect of each of the primary cohort children that they should be placed for adoption.

42. Regulation 8 AAR deals with the requirement to appoint both an agency adviser and a medical adviser. The agency adviser must be a social worker with at least five years' relevant post-qualification experience and relevant management experience: reg 8(2). In this case we know that Jane Poore was appointed to this role by SCC. Her functions included the giving of advice to adoption panels. She was also responsible for the constitution of those adoption panels and for the training of the individual panel members. Ms Poore acted as a point of liaison between SCC, in its function as an adoption agency, and the various adoption panels.

43. Regulation 8(3) requires an adoption agency to appoint at least one registered medical practitioner as its agency medical adviser. One of the functions of that AMA is to oversee the arrangements for access to, and disclosure of, health information which is required or permitted by virtue of AAR: reg 8(4). There is a statutory duty to consult the AMA in relation to that health information. Part 2 of Schedule 1 to the AAR deals with 'Matters to be included in the child's Health Report'.

44. The 2013 Statutory Guidance issued by the Department of Education provides a list of the various functions of the AMA: paragraphs 1.6 and 1.7. Paragraph 1.7 provides in terms as follows:-

> "Where a case is being presented to the adoption panel, the medical adviser must advise the adoption panel clerk whether to send to the adoption panel the child's health report, other medical and psychiatric reports, and health information about the child's birth parents. Where a child's case is not being referred to the adoption panel but direct to the decision-maker, the medical adviser should be ready to answer any medical question arising from their written summary or other papers asked by the decision-maker."

45. In relation to the formal appointment of the AMA, paragraph 1.8 of the statutory guidance says this:-

> "It is recommended that the agency make arrangements for the appointment of its medical adviser with a local clinical commissioning group's designated doctor for

looked after children. Each group should appoint such a designated doctor to assist it to fulfil its responsibilities as a commissioner of services to improve the health of looked after children. The designated doctor is likely to be a senior paediatrician with substantial clinical experience of the health needs of looked after children. In some circumstances, the designated doctor may also be able to fulfil the role of the medical adviser. Alternatively, the designated doctor should be able to recommend another doctor to become the agency's medical adviser. A VAA [voluntary adoption agency] may seek advice from a group's designated doctor on arrangements for the appointment of a medical adviser. ..…."

46. Here there is no document evidencing the appointment of Dr Smith as the AMA whether by letter or otherwise. She has confirmed in her written statement dated 3 August 2021 that she was appointed to her role as the AMA for SCC on 15 August 2014. She states that she is fully up to date with the required annual appraisal and revalidation procedures, her next revalidation date being 15 December 2023. It is clear from her curriculum vitae (paragraph 2: "Paediatric Experience") that she is well-qualified for the role. Her predecessor in the role of ADM was Dr Sarah Kelly who retired in August 2014. Dr Kelly had worked with Dr Smith at a local hospital in Taunton where Dr Smith continues to be based. As far as the formalities of Dr Smith's appointment to the role of AMA are concerned, it appears that she was one of two candidates identified for the role as part of progression planning for Dr Kelly's retirement. She was formerly interviewed for the role by Dr Louise Newbury who was the consultant paediatrician and clinical service lead for paediatrics in the hospital in August 2014. Dr Smith confirms that she was appointed to the role of ADM at the conclusion of the interview and subsequently underwent a period of induction prior to succeeding Dr Kelly in August 2014 on her retirement from the profession. She has provided a full account of that induction training in her witness statement.

47. In this context, Claire Winter has a dual role. In addition to her role as ADM, she is also the Deputy Director of Children's Services in Somerset. Exhibited to her written statement dated 29 June 2021 is a run of contemporaneous emails about Dr Smith's induction into her adoption role. In one of those emails, written by a senior member of the NHS team to Dr Louise Newbury and dated 4 March 2014, she asks Dr Newbury to arrange a meeting with Dr Smith "to look at her job plan from August [2014] so she can plan to take over Sarah's A&F[3] role". Ms Winter confirms that Dr Smith's new role would be reflected in her annual job plan from that time onwards in accordance with standard NHS practice. It was not usual or necessary for a formal letter of appointment to be issued. The job plan produced in 2014 is not available to the court because of what is referred to as "a change in HR IT systems since the appointment was made". The chronology suggests that Dr Smith's appointment to the role of AMA was confirmed by 4 March 2014 even though she did not take up the post until some five months later. In the run of contemporaneous emails which I have seen, there is specific confirmation that she was to take over from Dr Kelly with effect from August 2014 (*"Yes Carol is taking this part over from Sarah – plan away !"*). Within the material provided to the court is a

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letter dated 30 June 2014 requesting from Dr Smith the information required for completion of the 'Disclosure and Barring Service form'.

48. Following that appointment, Ms Winter organised part of Dr Smith's induction programme, sanctioned her security access to County Hall and approved the provision of official SCC IT equipment in order to enable her to discharge her role as medical adviser. It seems to me that this course of conduct on the part of Ms Winter in the context of her wider role as Director of Children's Services is reliable evidence of a formal appointment of Dr Smith to her new role. One has to ask why any of these steps would have been taken if she had not been appointed to the role?

49. Significantly, the Adoption Agency Adoption Annual Reports for 2014 and 2015 both make specific reference to Dr Smith's appointment as "replacement" for Dr Kelly with "a handover process commenced in June 2014". These are official reports signed off by an independent panel chair.

50. There is nothing in the AAR or the Statutory Guidance which makes provision for any formalities in terms of the manner of appointment of an AMA. I have not heard oral evidence from Dr Smith herself but there is no challenge from any quarter in relation to her evidence or the facts to which she and others have deposed. In the circumstances I have come to a clear view that Dr Smith was indeed formally appointed to the role of the adoption agency's medical adviser and that her appointment took effect from 15 August 2014. I am also satisfied that she has continued in that role to the present time. In these circumstances, I find that SCC as an adoption agency in not in breach of its obligations under regulation 8(3) AAR.

I. Applicable legal principles relating to adoption as established in previous authorities

51. The ethos which permeates the decision-making process in relation to adoption is the need for care when analysing adoption as a permanency option.

52. Welfare is paramount in any decision which concerns the court's assessment of whether a child should be placed for adoption. In the well-known case of *Re B-S (Children) (Adoption: Application of S 47(5))* [2013] EWCA Civ 1146, [2014] 1 FLR 1035, Sir James Munby P set out on behalf of the full Court of Appeal the correct approach to the welfare determination. Relying on the recent guidance given by the Supreme Court in *Re B (A Child)* [2013] UKSC 33, [2013] 2 FLR 1075, the President emphasised the following principles:-

    (i) whilst the child's interests are paramount, a court must never lose sight of the fact that those interests include the right to be brought up by his or her natural birth family. It is only in circumstances where the overriding requirements of the child's welfare make that impossible that the court will consider the route of adoption;

(ii) the court has an obligation to consider *all* available options alongside that of adoption (where that is an appropriate option) before reaching a final decision on what is right for this particular child;

(iii) any assessment of whether or not a natural parent can provide what is often referred to as "good enough care" must take full account of the assistance and support which a local authority can offer to that parent.

53. The decision-making process itself engages the parents' Article 8 rights to respect for a private and family life and thus a 'proportionality evaluation' is required as part of the process. As *Re B-S* tells us in clear terms, the court must be provided by the local authority with solid evidence of all the realistic options and a clear analysis of the arguments for and against each option.

54. In relation to the children in the primary cohort in this case, rehabilitation to the birth parents or a placement within the extended family were not considered to be realistic options in any of the cases. As we shall see, in some of the individual cases, the parents had consented to the making of placement orders knowing that adoption orders would be likely to follow a successful matching process.

55. The obvious advantages for a child of adoption as opposed to long-term fostering have long been recognised by both child care professionals and the courts. It provides a child with the security and permanence of a family of his own with parents who are in parental control. The commitment of an adoptive placement is very different from that of a local authority foster carer (however good his or her proven track record). The 'permanence' of a child who is subject to a local authority care order is at risk in the event of an application by parents for the discharge of that order. In contrast, once an adoption order is made, it is made for all time. Once an adoption has been sanctioned by the court, routine life is fundamentally different for a child. He or she is a child in a new family just like any other child. The rhythm of his or her daily life no longer includes statutory medical and other reviews and social workers are likely to disappear from view. Perhaps of greatest importance is the fact that the child achieves an enduring sense of 'belonging' which is unlikely to be achieved in the context of long term fostering. Thus permanency, predictability and the enduring quality of an adoptive placement are all important features to be weighed in the balance: see *Re H (Adoption: Parental Agreement)* (1982) 3 FLR 386 per Ormrod LJ at 388, *Re V (Children)* [2014] 1 FLR 1009 per Black LJ at para 96, and *Re LRP (Care Proceedings: Placement Order)* [2014] 2 FLR 399 per Pauffley J at para 39.

56. However, because adoption represents such a fundamental step in any child's life, proper scrutiny of the process of decision making is an essential and elementary safeguard not only for the child concerned and his or her birth parents but also for society at large. It is also vitally important that prospective adopters have full confidence in the system and know that they can rely on the information which they are given about a child to be accurate and complete. The decision to adopt and the commitment which adoptive parents make to a child or children whom they propose to make their own is very

significant. Adoption creates a legal and lifelong bond between a child and his adoptive parents: it is a decision which needs to be fully informed for reasons which are too obvious to state. Since the making of a placement order operates as a legal platform for the move to matching and placing a child with an adoptive family, the lens of scrutiny must fall equally on that stage of the process.

57. The appellate courts have not shied away from setting aside placement orders where serious errors have been identified in this field of decision making for children. *Re B (Placement Order)* [2008] EWCA Civ 835, [2008] 2 FLR 1404 (cited above) was one such case. It concerned the failure of the adoption agency to ensure that important information in the form of three expert reports was factored into the decision making process of an adoption panel. In that case decisions were being taken in relation to three children aged 9, 7 and 4 years old. The local authority's final care plan was for adoption or, if this was not possible for the two elder children, care outside the birth family. The three expert reports had been prepared by a consultant paediatrician, a consultant child and adolescent psychiatrist and a clinical psychologist who was responsible for assessing the parents who wished to keep their children. Not only were these reports withheld from the adoption panel but the adoption agency failed to provide even a proper summary of the detailed information contained within them in breach of the requirements of the 2002 Act and the AAR 2005. To make matters worse, a number of views were incorrectly ascribed to the child and adolescent psychiatrist. In particular, the adoption panel had been informed that he explicitly supported the separation of the sibling group in separate placements. As a result, the panel supported the making of a placement order with a view to adoption for the youngest child. That recommendation was accepted by the local authority decision maker in what was described as "a brief unminuted meeting". The application for the placement order was listed before a recorder. He was told about the failure to provide what was obviously crucial information to the panel and the manner in which they were misled in relation to the expert evidence. The recorder heard oral evidence from the three experts and determined that, although there had undoubtedly been procedural irregularities, they had been remedied during the hearing. He made care orders in respect of all three children and a placement order in respect of the youngest. In the context of a subsequent appeal by the parents, the local authority conceded it had made "a serious error" but argued that it was in the children's best interests for the adoption to proceed.

58. Wall LJ delivered the leading judgment. The appeal against the care orders was dismissed but the placement order was set aside notwithstanding that the youngest child whom it affected had by this stage been matched and placed with prospective adopters. During the course of argument, the Court of Appeal had received submissions from both CAFCASS and BAAF[4]. The court accepted that the local authority and its decision maker had not acted in bad faith in recommending adoption but had made a serious error of omission. The absence of the three expert reports was not only a material error: it was crucial in the process of decision making. The reports contained important information which was vital to that process. The recommendation which resulted was fundamentally

[4] British Association for Adoption and Fostering

flawed and could not be rectified retrospectively by that evidence being heard in a different forensic process such as that undertaken by the recorder. At paragraph 10 of his judgment Wall LJ stressed the need for compliance with the statutory process which provided the framework designed by Parliament to ensure that errors were not made. His Lordship said this:

> "…. this appeal has served to highlight, once again, the supreme importance and sensitivity both of adoption itself as a concept, and of placement order proceedings under the 2002 Act. It has also served to highlight the critical importance of good practice in the legal processes leading to the institution and hearing of such proceedings, and the necessity of ensuring that the integrity of the process is respected. To put the matter in a slightly different way: Parliament, in the 2002 Act and the consequential Regulations has laid down a careful process which has to be followed before placement and adoption orders can be made. That process must be respected and scrupulously implemented. In the instant case, it was not."

59. Later, in paragraph 70, his Lordship said this:

> "…. I do not think that the framework laid down by Parliament can be bypassed or short-circuited. … An application for a placement order cannot properly be made by an adoption agency unless the agency decision maker is satisfied that the child in question should be placed for adoption, and Parliament has laid down that the decision maker cannot be so satisfied unless he or she has properly considered the recommendation of the AAP[5]. *It must follow, in my judgment, that if the decision of the AAP is flawed in any material respect then the decision maker cannot properly consider the recommendation, and thus cannot be satisfied – in accordance with the process laid down by Parliament – that the child in question should be placed for adoption*." (my emphasis)

60. *Re B* was decided before the legislative changes were made which 'stream-lined' the process of decision making to which I have referred above. In the cases with which I am dealing, there was no requirement for reference to an adoption panel prior to the ADM's decision. The evidence before the court in *Re B* established that the agency decision maker in that case had reached her final recommendation after giving due consideration to the panel recommendation. Significantly, she had no opportunity to exercise a fully informed independent judgment of her own in *Re B* because she accepted in evidence that she had never seen one of the reports central to that case which had been prepared by a very well known and respected consultant psychiatrist. It follows that neither she nor the recorder at first instance could have known whether or not this important and (as the Court of Appeal accepted) highly material information might have led her (as the agency decision maker) or the adoption panel to reach a different conclusion as to outcome. The purpose of the legislative framework in this respect is to ensure that *all* relevant and material information is placed before the decision maker in order to ensure that proper consideration can be given to each child's particular circumstances and best interests before the draconian step of permanent and legal separation from his or her birth family is reached. That plainly was not what happened in *Re B.*

[5] the Adoption Agency Panel

61. Wall LJ made it clear that, where there was a material omission in the process which led to decision making by a local authority or adoption agency, the route of retrospective decision making was not open to a court. In *Re B*, he held that the recorder could not substitute his own decision as a judge for that of the agency decision maker on the basis that he had heard expert evidence in order to address the significant unfilled space which clearly existed when both the panel and the decision maker recommended placement for adoption.

62. The course which Wall LJ endorsed at the conclusion of the appeal in *Re B* was a referral back to the adoption panel and agency decision maker for reconsideration of their recommendation in the light of all the information, including the "significant" material which was contained in the expert reports. If the decision remained that placement for adoption was in the children's best interests, a fresh application for a placement order could be put before the court.

63. The judgment in *Re B* contains essential guidance as to the fundamental importance of ensuring that the fullest possible information is available during the decision making process in respect of each child who makes the journey through public law proceedings into the permanence which adoption delivers. The regulations underpin the need for accurate reports and information precisely because this is the information which will inform the vital stage of decision making by the ADM. It is also information which will subsequently inform the adopted child who seeks to understand his background and family circumstances in the future. It is information which will inform the matching process and upon which potential adopters will rely both to inform their decision as to whether or not to proceed and in reaching an understanding of the particular needs of their child as he or she develops physically, emotionally and psychologically in their care. In *Re B* Wall LJ concluded that the decision which was taken was no more than a "simple rubber stamp" exercise imposed by the Director of Social Services who had no real knowledge of the case and who made the decision on the basis of inaccurate information which was supplied to the panel. His Lordship made important recommendations which were designed to ensure that material information concerning a child's health for the purposes of compliance with Regulation 17 should be properly disseminated to panel members in advance of a panel meeting. At paragraph 84 he said:

> "The essence of the guidance, in my judgment, must be that panel members should be fully and properly aware of all the available material relevant to their decision. It will plainly be a matter of judgment for the local authority medical adviser to the panel in each case to decide whether or not panel members need to read any expert report, or whether or not a summary of it will suffice. There is, however, a clear duty on the local authority which is conducting the care proceedings to ensure both that all relevant material is available to the Panel, and that the material placed before it is accurate. As important, it seems to me, is the proposition that the decision to proceed to apply for a placement order is properly made, and minuted."

64. The obligation on SCC in this case as an adoption agency to place a case before its adoption panel no longer applied because of changes to the law but in my judgment the

observations made by Wall LJ in relation to the need for accurate and up to date information will continue to apply to any decision taken by its agency decision maker. In this context, sufficiency and materiality are key because without those elements any decision reached is likely to be flawed and unreliable. It is not difficult to see why the Court of Appeal in *Re B* found itself unable to uphold the placement order given that it was made on a fundamentally flawed basis in ignorance of important information which was likely to be highly material to the decision making process.

65. During the course of submissions I was referred to another first instance case where the judge was highly critical of a local authority's failure to comply with the AAR: see *London Borough of Bexley v B* [2020] EWFC B2. In that case the placement order had not been made. The defects in the procedure related principally to the child's permanence report and flagrant breaches of regulation 17 as well as others. In paragraphs 90 to 104 HHJ Lazarus set out a catalogue of deficiencies including a failure properly to set out within the body of the report a sufficient forensic analysis of the options available for the child. Some options were completely ignored and others insufficiently considered. These serious deficiencies had led to questions being raised about the qualifications of the author of the report (paragraph 94). Furthermore the agency decision maker in that case was found to have made her decision from the foot of incomplete information based on "manifest failures". There had been a fundamental lack of analysis in the decision making process itself. As the judgment records in paragraph 107, the ADM had failed to identify any arguments for or against adoption or long-term foster care and gave as the reason for her decision nothing more than the child's age. The sole reason for that decision was said to be based upon "an orthodoxy or set policy based on age alone" and showed the local authority had failed even to consider alternative options. None of the other factors in the welfare check list had been considered, nor the value to the child of any continuing relationship with her siblings or wider family members.

66. The importance of complying with the requirements of the AAR has been stressed in a number of other cases including *Re S (Children) (Adoption proceedings: Guidance on placement order proceedings)* [2014] EWCA 601 and *ZH v HS, MO and others* [2019] EWHC 2190 (Fam) (a decision concerning the revocation of an adoption order). In *Re S,* Ryder LJ stressed the importance of compliance with the AAR. That case did not concern placement orders because, in the context of ongoing care proceedings, the local authority's agency decision maker had not made the decision which would have been necessary to allow such proceedings to be issued. Ryder LJ remarked that there was no reason in that case why the local authority could not have obtained such a decision so as to enable placement proceedings to run concurrently with the care proceedings. At paragraph 28, he said this:-

> "A concurrent hearing of care and placement order applications also helps to prevent the error of linear decision making because the court has all of the evidence about the welfare options before it. Indeed, I would go further: in order for the agency decision maker to make a lawful decision that the children be placed for adoption, the Adoption Agencies Regulations 2005 (as amended) must be complied with. For that purpose, the agency decision maker has a detailed

> "permanence report" which describes the realistic placement options for the child including extended family and friends. The report describes the local authority's assessment of those options. When a decision is then made by the agency decision maker it is based on a holistic non-linear evaluation of those options. That decision leads to evidence being filed in placement order proceedings. It is good practice for that evidence to include the permanence report used by the agency decision maker, the record or minute of the decision made and a report known as an "annex A" report which is a statutory construct which summarises the options and gives information to the court on the suitability of the adoptive Applicants. All of this permits the court to properly evaluate the adoption placement proposal by comparison with the other welfare options."

67. Thus, whilst stressing the mandatory nature of the AAR 2005, Ryder LJ did not say that any and every breach would be fatal to a lawful decision to place a child for adoption. He said nothing which represented a departure from the careful reasoning of Wall LJ in *Re B* which I have set out above. What Ryder LJ did in the second part of the paragraph I have set out above was to explain what information the agency decision maker would have as a result of compliance with the regulations in order to inform his or her decision. That information was necessary and material to a lawful placement decision and that was why compliance was deemed to be mandatory.

68. That position was restated recently in a case connected with this litigation to which I have already referred in paragraphs 11 to 14 of this judgment. In *Re N (Children)*, cited above, Peter Jackson LJ confirmed in paragraph 7 that "[i]t is not every breach of regulations that will justify the upsetting of an otherwise regular order of this kind". In reaching that conclusion his Lordship relied specifically on *Re B* and the conclusions reached by Wall LJ. Most recently, the Court of Appeal has reaffirmed that it is not every breach of a requirement, or procedural irregularity, which will invalidate a decision to make or approve an adoption order: see *HT v A Local Authority and the I-A Children* [2021] EWCA Civ 1222 per Baker LJ[6] at paragraph 26.

J. The scope of this hearing

69. I shall need to return to aspects of the law in the context of the specific submissions made by counsel on behalf of the parties. Before considering those submissions, it is important to set out precisely what the court is being asked to do in the context of this particular hearing. First and foremost, I am being asked to determine the applications for declaratory relief in respect of the ten children who now fall within the primary cohort category. Their cases are all urgent given the stage of the pathway to permanence which they have reached. Decisions for them cannot wait for the time it will inevitably take to consider the significantly greater number of children who fall within the wider cohort of those affected by SCC's admitted failings. A decision in relation to the legality of the primary cohort children's placement orders will involve a determination of the legal approach or route to determining whether the declarations sought can lawfully be made. In the light of the jurisprudence to which I have referred, I shall need to consider whether those breaches were material and impacted upon the decisions reached by the ADM in

[6] This was a case where a natural parent was not given an opportunity to attend an adoption hearing.

each of the ten cases so as to render them, or any of them, materially flawed and unlawful. For these purposes I have been provided with the complete files of material provided to the relevant agency decision maker for each child. Depending on the approach which I determine to be the correct route to lawfulness in this case, it may prove necessary to analyse that material in the context of each decision before I can declare the placement decisions and the orders which flowed from those decisions lawful or unlawful. In the light of the concessions which are now made by SCC, there is no need for an analysis or findings by the court as to whether the local authority has breached regulations 15 and 17 AAR: those breaches are admitted.

70. Because I have not had the time within the context of this hearing to expand the scope of the court's enquiry into oral evidence which would be needed to establish how the breaches occurred, why they occurred, and who was responsible for them, I cannot in the scope of this judgment apportion responsibility for the situation in which we find ourselves. I have already indicated that lessons must be learned from this wholesale systematic failure. In order to put right past wrongs, there has to be a full understanding of why those wrongs arose. There is no overall consensus between the various professionals whose evidence is before the court in relation to that issue. I indicated at the pretrial review in September this year that I would need to provide within my 'primary cohort judgment' a context for the reasons why declaratory relief was being sought for these children. That I have done from the foot of the concessions which SCC properly makes. Put simply, those failings represent a failure on the part of the adoption agency to understand and apply its regulatory obligations. In this context, the failure may well be properly described as institutional failure rather than failure by any one individual within that institution. What all parties are agreed upon is the need for an approach which does not further prejudice these particular children in relation to their path to permanence. As I emphasised during the course of submissions, neither expediency nor welfare-driven determinations can play any part in deciding what are essentially questions of law.

71. It is against that background that I turn now to consider the detailed legal submissions which have occupied the entire hearing this week.

K. The parties' submissions

SCC: the local authority acting as the adoption agency in this case

72. Mr Goodwin QC on behalf of SCC acknowledges that there are no statutory or regulatory criteria to assist the court in determining the correct approach to the Part 18 applications. Relying on the decisions in *Re B* (per Wall LJ), *Re S* (per Ryder LJ) and *Re N* (per Peter Jackson LJ), he starts from a position that not every regulatory breach requires the resulting placement order to be set aside. He submits that the critical consideration in this context is whether there has been a material error in the ADM's decision making. He points to the submission in *Re B* made by BAAF, accepted and adopted by Wall LJ, that the validity of any decision to place a child for adoption could be called into question "depending on the importance of that information in the context of the particular case". Thus, whilst he accepts that the AAR irregularities are established in this case because of

a lack of form, he submits that the lawfulness of the resulting placement orders will depend upon an analysis of substance. In support, he draws upon the distinction in *Halsbury's Laws* between statutory or regulatory schemes which, on the one hand, require strict and total compliance and those, on the other hand, which permit substantial compliance. He invites me to find that, given the pervading ethos of ACA 2002 and the need for robust, early decision-making for permanency, Parliament cannot have intended a breach of the regulations per se to invalidate a placement decision in circumstances where the irregularity had no material impact upon the decision.

73. In support of this approach, Mr Goodwin QC maintains that there are strong public policy reasons for upholding adoption orders once made. Whilst none of the primary cohort children has yet been formally adopted, they are all significantly far advanced along their respective routes to permanence. In the context of procedural irregularity and materiality, he points to the observations of Swinton Thomas LJ in *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 at 245 F to 246A:

> "There are cases where an adoption order has been set aside by reason of what is known as a procedural irregularity: see *In re F. (R.) (An Infant)* [1970] 1 Q.B. 385, *In Re R.A. (Minors)* (1974) 4 Fam Law 182 and *In re F. (Infants) (Adoption Order: Validity)* [1977] Fam 165. Those cases concern a failure to effect proper service of the adoption proceedings on a natural parent or ignorance of the parent of the existence of the adoption proceedings. In each case the application to set aside the order was made reasonably expeditiously. It is fundamental to the making of an adoption order that the natural parent should be informed of the application so that she can give or withhold her consent. If she has no knowledge at all of the application then, obviously, a fundamental injustice is perpetrated. I would prefer myself to regard those cases not as cases where the order has been set aside by a procedural irregularity, although that has certainly occurred, but as cases where natural justice has been denied because the parent who may wish to challenge the adoption has never been told that it is going to happen."

74. Mr Goodwin QC accepts that there have been no breaches of natural justice in these cases because the children (through their Guardians) and the natural parents have been afforded the opportunity to make representations about their futures. However, he points to the fact that the rules of natural justice embrace more widely the presumption that when any administrative decision is taken, it must be taken fairly. He relies on an extract from *Halsbury's Laws of England* (Vol. 61A (2018) Chapter 2(3)(iv)(A)(30)):

> "The duty to act fairly is highly flexible. Although these two rules must normally, though not invariably, be observed, the precise procedure to be followed in a given situation depends on the subject matter of the decision or adjudication and on all the circumstances of the case. In general, when determining what the content of the obligation to act fairly should be in any particular case, the courts have had regard to factors such as the importance of what is at stake for the individual and society, and the effect of the obligation on the decision-making process."

75. Further, Mr Goodwin QC relies on the analogous principles governing judicial review and the two questions: (i) has there been a material error of fact, or (ii) a breach of

procedural requirements? Again, he relies on *Halsbury's Laws of England Volume 61A Judicial Review* and the proposition that:

> "In exercising their functions, public bodies evaluate evidence and reach conclusions of fact. The court will not ordinarily interfere with the evaluation of evidence or conclusions of fact reached by a public body properly directing itself in law. The exercise of statutory powers on the basis of a mistaken view of the relevant facts will, however, be quashed where there was no evidence, or no sufficient evidence, available to the decision-maker on which, properly directing himself as to the law, he could reasonably have formed that view. The court may also intervene where a body has reached a decision which is based on a material mistake as to an established fact. Although the general rule is that a judicial review is determined on the basis of the material that was before the decision-maker where it is alleged that there has been a mistake of fact fresh evidence may be admitted."

76. *Halsbury* goes on to note that:

> "the court adopts a different approach where the existence of a state of affairs is a statutory precondition to the jurisdiction of a public body. Where the existence of such a state of affairs is put in issue, the decision-maker must determine that issue, but his determination is subject to review by the court."

77. As Mr Goodwin QC points out, in relation to each of the primary cohort children, properly formulated medical reports under regulations 15 and 17 are not a jurisdictional precondition to the ADM's exercise of her power to determine that a care plan for adoption ought to be advanced by the adoption agency. Applying this reasoning, he proposes that the test which this court should apply is whether there was *"no evidence, or no sufficient evidence, available to the decision-maker on which, properly directing [herself] as to the law, [she] could reasonably have formed that view"*.

78. The next stage proposed by Mr Goodwin QC is the question as to whether the procedural irregularities under regulations 15 and 17 vitiate the ADM's approval of an adoptive care plan for each of these children and, in turn, the placement orders made by the court. Whilst the Part 18 applications are directed towards the lawfulness of the placement orders approved by the court, and not the ADM's decision, the relationship between the two and the ADM's decision to advance a care plan for adoption is obvious. I have not heard specific submissions from anyone on the point but it appears to be accepted that, in each case, the court proceeded in ignorance of the procedural irregularities. This is not a point which I can determine in respect of each of the ten cases with which I am dealing in this judgment and I have not been asked to do so.

79. In the context of non-compliance with procedural requirements, Mr Goodwin QC submits that *Halsbury's Laws* draws a distinction between situations in which compliance with procedural or formal requirements are 'mandatory' and those where compliance is 'directory'. Since the AAR are silent in terms of the consequences of a breach, he relies

on the following passage[7] to support his submission that the court is entitled to look to policy considerations insofar as they are consistent with Parliament's intention in formulating the AAR:

> "The consequences of a failure to comply with a statutory procedure are now said to depend not on prior classification of the statutory provision as either mandatory or directory, but on an analysis of what Parliament had intended those consequences to be, and in particular whether Parliament can be taken to have intended the outcome of non-compliance to be total invalidity. Courts determine the consequences of non-compliance as an ordinary question of statutory interpretation."

> "In determining the consequences of a breach of a requirement, the court must look to the words and objects of the statute in which the requirement appears, the purpose of the requirement and its relationship with the scheme, the degree and seriousness of the non-compliance, and its actual or possible effect on the parties. The court must attempt to assess the importance attached to the requirement by Parliament. If, in the opinion of the court, a procedural code laid down by a statute is intended to be exhaustive and strictly enforced, its provisions will be regarded as invalidating an action taken in breach, but even a mandatory procedural requirement may be held to be susceptible of waiver by a person having an interest in securing strict compliance. Courts have been asked whether that statutory requirement can be fulfilled by substantial compliance and, if so, whether on the facts there has been substantial compliance even if not strict compliance."

80. Herein lies the essence of Mr Goodwin QC's argument which is supported by Mr Garrido QC on behalf of the CCG. They submit that, as *Halsbury's Laws* confirm, some aspects of procedural rules are always likely to be regarded as mandatory (for example, whether or not a panel is quorate; whether a decision maker is properly qualified; the obligation to give reasons for a decision and to provide a framework for rights of appeal; the unauthorised sub-delegation of power; and breach of rules of natural justice). Whilst this is not an exhaustive list, they submit that it highlights the very different considerations which arise in this case where non-compliance involves a failure to compile and present information in a prescribed form. In this situation they submit that the court's focus needs to be on the *sufficiency* of the information before the decision maker and the extent to which the underlying substance of that information, viewed in the round, met the procedural requirements of the relevant rule or regulation. If that information provided the decision maker with details of all, or a sufficiently substantial part, of the facts and matters which the regulations specify as material to the decision in question (here, whether to recommend that a child should be placed for adoption), the absence of 'form' may be immaterial to the validity of that decision.

81. That submission is buttressed by the passage from *Re B (above)* in which Wall LJ accepted and adopted the CAFCASS/BAAF submission to the following effect:

> "5. It is our view that if the panel made its decision based on incomplete and possibly incorrect information, the validity of their decision could be called into

[7] *Halsbury's Laws of England/Judicial Review (Volume 61A (2018)/2, para 27: 'Mandatory' and 'directory' requirements*

question, depending on the importance of that information in the context of the particular case. If the lack of information was significant then it is our view that the case should have been referred back to the panel for them to reconsider their recommendation in the light of all the information." [emphasis supplied]

82. Reliance in this context is placed upon paragraph 2.54 of the 2013 Statutory Guidance which requires the adoption agency to consult with its medical adviser "to ascertain whether the health information already obtained is sufficient, and sufficiently up to date, to fulfil the requirements of the regulations and the need for full information for the child, the adoption panel/decision maker and the prospective adopter". Thus, Mr Goodwin QC and Mr Garrido QC invite me to consider whether the Initial Health Assessments (IHAs) and the Newborn and Infant Physical Examination reports (NIPEs) for the primary cohort children which *were* in front of the ADM in respect of each of these primary cohort children contained sufficient information for the purposes of substantial compliance with the regulations.

83. In this context, they submit that interests arising under the Human Rights Act 1998 and ECHR are engaged since it is unlawful for a public authority to act in a way which is incompatible with those rights. In terms of the parents' and children's Article 6 rights, they make the point that the admitted breaches of regulations 15 and 17 have not, within an Article 6 framework, affected the essential fairness of the ADM's decision-making. The parents' and children's views (where they were old enough to express them) were made known to the ADM through the volume of social work statements and reports from the experts and the children's Guardians. The Article 8 rights of the parents are clearly engaged in any decision to place a child for adoption. They submit that there will have been no Article 8 breach in any of the ten cases before the court if the court reaches the conclusion that the procedural irregularities would not have affected either the substance of the adoption agency's planning or the court's determination that a placement order was in that child's best interests.

Additional submissions made on behalf of the CCG

84. Mr Garrido QC on behalf of the CCG acknowledges the breaches of regulation 15(2) in that SCC failed to obtain (i) a medical examination of the child and a written report of that examination; and/or (ii) the opinion of the agency's medical adviser that an examination and health report was not necessary. He also accepts a breach of regulation 17(1)(b) in that SCC (through the ADM) failed to obtain the required summary of the child's health which should have been supplied by the medical adviser for inclusion within the child's permanence report. He offers an explanation drawn from the written evidence in relation to the pressures which were placed upon Dr Smith (the agency medical adviser) in the discharge of her responsibilities in the reporting procedure. He submits, with justification in my view, that at the heart of the problem appears to have been ignorance of the precise regulatory requirements on the part of the agency. He points to the evidence which is now available from Sarah Ashe, the designated nurse for looked after children, who has been able to shed considerable light on the nature and

extent of the health information which *was* available to Claire Winter, the ADM, in respect of the primary cohort of children.

85. On behalf of the CCG he accepts the submission made by Mr Goodwin QC that *Re B*, whilst clear in its expression of the need for compliance with the regulations, does not close down the opportunity which this court has to grant declarations of lawfulness in accordance with the Part 18 applications which are before the court. He relies upon the clear distinction which was drawn by Wall LJ between breaches which have a material effect on outcome and those which do not. In relation to similar warnings about the need for compliance articulated by Ryder LJ in *Re S*, Mr Garrido QC invites me to find that nothing in his Lordship's judgment suggests that the principles of *Re B* required revision or amendment in terms of the materiality issue. In a similar way, he adopts the submissions made on behalf of SCC in relation to the support for this approach as they can be drawn from the general principles of judicial review.

86. There is, however, a divergence of approach between Mr Goodwin QC and Mr Garrido QC in relation to the breaches of regulation 15(2) which concern the provision of health information. Whilst open to remedy, Mr Garrido QC identifies these as breaches of substance rather than form because:-

    (i) at the time she made her decisions the ADM did not have independent expert medical advice as to whether all the other health information which was available to her was sufficient for the purposes of making her decision;

    (ii) that breach admits the possibility that Dr Smith, as the agency's medical adviser, may have taken a different view to the adoption agency or Ms Winter in discharge of her function as ADM as to whether the IHAs or NIPEs were sufficient in any particular case;

    (iii) it follows that there is at least the potential that, in any one or more of the particular ten cases with which the court is dealing, Ms Winter was deprived as ADM of the opportunity of reviewing and considering (a) a report flowing from a full medical examination of the child undertaken by a registered medical practitioner pursuant to regulation 15(2)(a); and (b) any further medical or other examinations and reports which might be required pursuant to regulation 15(3).

87. In similar vein Mr Garrido QC submits that a breach in each case of regulation 17(1)(b)[8] amounts to a breach of substance rather than form. He developed his argument in this way. This requirement is designed to provide the ADM with more than a mechanical précis of all the health information available at that point in time in relation to a child. Rather it is intended to ensure that the ADM has an independent medical opinion by a

[88] As previously stated, regulation 17(1)(b) requires the inclusion within the child's permanence report of a summary, written by the agency's medical adviser, of the state of the child's health, his health history and any need for health care which might arise in the future.

doctor who has a greater degree of experience and (if required) professional specialism than the doctor who undertook the initial IHA or NIPE reports. In order to comply with the regulations, the summary in the child's permanence report should include a developmental assessment of the child. That exercise is clearly the subject of an expert opinion, together with a prognosis of what the child's individual health needs are likely to be, not only now but in the future. Mr Garrido QC described this requirement as "an exercise which joins together the dots between all the independent pieces of information in order to draw for the ADM a complete picture of the health needs of that particular child". That is a description which I accept as accurately depicting the nature and purpose of this particular exercise.

88. In considering the effect of these breaches in relation to the provision of health information to the ADM in this case, Mr Garrido QC poses four questions which the court should consider in order to determine the consequences of the breaches and thus the extent to which the ADM's decision can be said to be materially undermined or flawed.

    (1) Is it likely that the agency medical adviser for any particular child would have requested an examination of the child and a medical report pursuant to regulation 15(2) in the light of the health information which was then available ?

    (2) If the answer to that question is yes, is it likely that such an examination and report would have provided additional health information about the child which would have undermined the ADM's decision in relation to placing the child for adoption ?

    (3) Is it likely that the agency medical adviser would have requested further reports under regulation 15(3) ?

    (4) Finally, is it likely that the agency medical adviser would have expressed an opinion in any regulation 17(1)(b) health summary that would have undermined the ADM decision to place for adoption ?

89. He submits that the court can answer each of these questions by reference to the pre-adoption medical reports that were written by the agency medical adviser albeit that those reports were produced after the ADM decision. He submits that this is a permissible course given that these pre-adoption reports were written within a short period of weeks (in some cases months) after the ADM decision. In these circumstances it is highly unlikely that the agency medical adviser would have formed a different view following a regulation 15 request or in a regulation 17(1)(b) summary from that which she expressed in the pre-adoption medical report. In none of the ten cases with which I am dealing is there a contra-indicator to adoption based upon a health reason. Mr Garrido QC invites me to accept the evidence of Dr Smith and the pre-adoption medical reports themselves to reach a conclusion that those pieces of work provide a comprehensive overview of each individual child's health needs. In particular, they included all the relevant information which would have been placed before the ADM had regulations 15 and 17 been complied

with, including the focus on the child's *future* health care needs which are central to the regulation 17 health care summary. There is evidence in the written statement of Sarah Ashe, the designated nurse for looked after children, which confirms the comprehensive list of health information which was available to the ADM together with her own clinical records in respect of each child. She further confirms that the pre-adoption medical review for each child was completed with reference to all the available health information including, specifically, that which is required pursuant to regulations 15 and 17.

90. If the court decides that it can safely reach a conclusion that the breaches of regulations 15 and 17 were immaterial to the ADM's decision, Mr Garrido QC invites me to make the declarations sought by SCC.

91. As to the apportionment of responsibility for the admitted breaches, Mr Garrido QC submits that the *Concessions* document which SCC has produced now adequately reflects where the obligation lay, and lies, for compliance with the AAR for the purposes of the issues which the court has to resolve at this hearing. He agrees that to go beyond that would require the resolution of some obvious and significant factual disputes which the court is not in a position to determine without oral evidence.

Submissions made on behalf of the Guardians for the primary cohort children

92. Ms Cleo Perry QC and Ms Elizabeth Willsteed appear on behalf of each of the Guardians for the primary cohort children. They have only recently been instructed and it is clear that, together, they have undertaken a significant amount of work with their individual clients in order to prepare for this case and to preserve the confidentiality of each individual child involved in this litigation.

93. Their submissions in relation to the primary cohort children can be summarised thus:-

    (i) Compliance with the regulations is mandatory and sanction for breach lies with OFSTED, the court and potentially the Department of Education.

    (ii) The breaches of regulations 15 and 17 amount to a systemic failure within SCC.

    (iii) During the relevant period in which the breaches occurred in relation to all the children affected (from August 2014 until April 2021), none of the professionals involved appears to have been aware that they were in breach of the regulations.

94. The position adopted on behalf of all ten children within the primary cohort is that each child's journey through the system should be the subject of minimal further disruption and, moving forward, every lawful step which can be taken should be taken to ensure that he or she does not lose the opportunity of permanency as a result of these proceedings. To this end Ms Perry QC seeks the following findings:-

(i) The regulations have been breached. The decision making process utilised by SCC was flawed because of the breaches of regulations 15 and 17.

(ii) Those breaches were significant and arose as a result of systemic failure within SCC.

(iii) During the relevant time period, none of the professionals involved was aware that they were in breach of the regulations.

(iv) All of the children within these proceedings have been materially prejudiced by the breaches and failings of SCC because they have been in a state of stasis since April 2021 with their prospects of permanence jeopardised as the weeks pass. Compliance with the regulations would have avoided this prejudice.

95. In terms of the legal test which the court should apply, Ms Perry QC submits that the test should not be the "substantial compliance" and/or "materiality" test proposed by Mr Goodwin QC and Mr Garrido QC. Instead she submits that the court should concentrate upon rectification or correction of the original decisions. Through a process of interpretation of the statutory conditions, undertaken in accordance with the ordinary rules of construction in the context of the evidence in this case, she submits that automatic unlawfulness is not necessarily the outcome for these children. She invites me to rule on the Part 18 applications for declaratory relief since remittance for a further welfare analysis is likely to have a significant and detrimental impact on the progress of the prospective matched adoptive placements which are waiting for these children and thus parentage is at risk.

96. In relation to the evidence which is now before the court, Ms Perry QC makes some important observations in relation to the extent of compliance with AAR. As I have said, within these proceedings SCC has disclosed the children's permanency reports and records of the decisions for each child. Each decision record appears to indicate that the CPR and the medical records have been considered (through the insertion of an 'x' in the designated box). There are no indications on the face of these records which, without disclosure and scrutiny of internal minutes, indicate that SCC as an adoption agency was in breach of the regulations. There was thus nothing which would appear to have alerted the court to the existence of these procedural issues when it approved and sanctioned the placement orders for the primary cohort children.

97. As to the issue of whether the non-compliance in this case goes to the root of the process (which is another way of asking the 'materiality' question, in my view), Ms Perry QC seeks to draw a distinction between the irregularities in this case and the gateway errors in *ZH v HS* (cited above) which persuaded Theis J to set aside an adoption order. In that case the entire process was contaminated by fundamental failures to observe the rules of natural justice (including a failure to give notice of the adoption application to the birth family and seek parental consent). Ms Perry QC also relies on the earlier decision of Bodey J in *Re W* [2013] EWHC 1957 (Fam). That case involved an application to revoke

an adoption order on the basis of the court's inherent jurisdiction. The application was refused on the basis of the potential consequences of reopening a process which could have profound implications in terms of "potential problems at the human level", the court taking the view that opening such a "Pandora's box" should only be contemplated if the process appeared proportionate, necessary and reasonably likely to succeed. None of those pre-requisites was fulfilled in that case. Ms Perry QC submits that these considerations are highly relevant to the question of disposal or outcome in this case. In response to that submission I would merely observe, and I so direct myself, that outcome here is a matter of law in the context of the Part 18 applications which are currently before the court.

98. Ms Perry QC turns next to the question of the means by which the court can remedy the breaches of regulations 15 and 17. In this context, she relies on the decision of Sir James Munby P in *Re A and Others* [2015] EWHC 2602 (Fam), [2016] 1 WLR 1325. That was a case which concerned the legality of parental orders made in pursuance to the Human Fertilisation and Embryology Act 2008. The statutory regulator of clinics offering services under the 2008 Act is the Human Fertilisation and Embryology Authority (HFEA). Two fundamental prerequisites to the acquisition of parenthood by the partner of a woman receiving fertilisation treatment are (i) consents must be given in writing before the treatment, both by the woman and her partner; and (ii) each must have been given adequate information and offered counselling. In relation to (i), the HFEA regulations were prescriptive about the contents of the appropriate form. An earlier judgment delivered by Cobb J in *AB v CD and the Z Fertility Clinic* [2013] EWHC 1418 (Fam), [2013] 2 FLR 1357 had identified what were described by the judge as "lamentable shortcomings" on the failure of a clinic which had failed to comply with the conditions of the licence granted to it by the HFEA.

99. In a similar case, *X v Y (St Bartholomew's Hospital Centre for Reproductive Medicine Intervening)* [2015] EWFC 13, [2016] 1 FLR 544, Theis J dealt with several cases where legal parenthood was in issue as a result of a failure to comply with the regulations. In that case the court had to determine a number of factual questions which drilled down into the issue of whether there had been essential compliance with section 37(1) of the 2008 Act. Theis J was able to reach conclusions on the facts that it was more likely than not that the appropriate forms had been signed but were subsequently mislaid by the clinic thereby avoiding a finding of regulatory breach. Such a finding would have invalidated the clinic's licence and put in jeopardy the parenthood of the child in question.

100. Describing the widespread systematic failures of compliance and regulation in *Re A and Others* as "alarming and shocking" and resulting from "widespread incompetence across the sector on a scale which must raise questions as to the adequacy if not of the HFEA's regulation then the extent of its regulatory powers", Sir James Munby nonetheless trod a path which enabled him to make the declarations sought in respect of several children whose legal parenthood was in issue. Having considered each individual case from the foot of the evidence available to the court, his Lordship was able to make findings that the deficits in the strict procedural requirements could be corrected or

rectified by a finding that those requirements in their various elements were met even if not recorded and maintained as records on the correct forms.

101. In relation to the doctrine of rectification, Sir James Munby P said this:-

> "47. I start with rectification. As a matter of general principle, I can see no reason at all why a Form WP or a Form PP should be said to be, of its nature, a document which cannot be rectified. The fact that it is a document required by statute to be in a particular form (that is, "in writing" and "signed by the person giving it") is, in my judgment, neither here nor there: compare the many cases where rectification has been decreed of conveyancing or trust documents similarly required by various provisions of the Law of Property Act 1925 to be in a particular form. Nor does it matter, in my judgment, that a Form WP or a Form PP is used as part of, and, indeed, in order to comply with the requirements of, a statutory scheme. There is, for example, nothing in the language of any of the relevant provisions of Part 2 of the 2008 Act to suggest that rectification is impermissible. Contrast, for example, the well established rule that the Articles of Association of a company will not be rectified because rectification would be inconsistent with the provisions of the Companies Acts: see *Scott v Frank F Scott (London) Ltd* [1940] Ch 794. So, in my judgment, if the criteria for rectification are otherwise established, a Form WP or a Form PP can be rectified.
>
> 48. Quite apart from the equitable doctrine of rectification, the court can, as a matter of construction, 'correct' a mistake if (I put the matter generally, without any detailed exegesis) the mistake is obvious on the face of the document and it is plain what was meant. The reported examples of this are legion and stretch back over the centuries. They include cases of clear misnomer. Again, there is, in my judgment, no possible objection to the court taking this course in relation to a Form WP or a Form PP."

102. In paragraph 59 of his Lordship's judgment, he said this:

> "What is meant by a direction saying that a clinic "must" use the Form WP and the Form PP? Suppose that what are completed are copies of Form WP and Form PP which, in their operative parts, follow to the last dot and comma the text of the required forms, but which omit all the explanatory text which is included in those required forms. Can Parliament really have intended that to be fatal? Surely not. So, surely, what one is looking for is compliance with the substance not slavish adherence to a form. Is parenthood to be denied by the triumph of form over substance? In my judgment, not."

103. He continued in paragraph 61,

> "In my judgment failure to use Form WP or a Form PP does not invalidate a consent which would otherwise comply with [the relevant sections in the 2008 Act]. I add only that this approach accords with the general thrust, if not with the specific detail, of Theis J's analysis in *X v Y*."

104. In paragraph 63, he set out his conclusions of principle that:

> "i) The court can act on parol evidence to establish that a Form WP or a Form PP which cannot be found was in fact properly completed and signed *before* the treatment began;

ii) The court can 'correct' mistakes in a Form WP or a Form PP either by rectification, where the requirements for that remedy are satisfied, or, where the mistake is obvious on the face of the document, by a process of construction without the need for rectification.

iii) …..

iv) It follows from this that the court has the same powers to 'correct' a Form 1C as it would have to correct a Form WP or a Form PP."

105. In relation to compliance with regulation 15 AAR, Ms Perry QC makes the valid point that, in this case, there were no medical reports before the ADM *from the agency medical adviser as a result of a regulation 15 request or referral* in any of the cases with which this court is dealing[9]. Whilst the box had been 'ticked' to indicate that such a report had been supplied, we know now that it had not. In these circumstances, she makes the telling but obvious point that there is no document per se to rectify or correct.

106. In these circumstances, Ms Perry QC submits that whilst the court cannot find that a decision was correctly taken simply because, as matters have transpired, it was the right one, it is nonetheless possible for the court to make a declaration of lawfulness if statutory requirements were met in a broader sense. In this context, she asserts that whilst a failure to comply is undoubtedly a serious matter, it cannot have been Parliament's intention that a lack of compliance with this aspect of the regulations, in the broader context of the available medical evidence, would render a placement order unlawful. She submits that, by a process of construction, the court can analyse the evidence it has (where there is no factual dispute as to that evidence) and reach a conclusion that the relevant medical evidence was available at the relevant time, if not from the correct source. In other words, provided that the breaches of the regulations are confronted 'head on' and remedied, either by way of evidence or correction on the basis of the evidence, then it is open to the court to make a declaration of lawfulness in respect of each placement order in respect of which declarations are sought in this case. On this basis, she submits that the declaration that the placement order was lawfully made is merely declaratory of an existing legal right or entitlement: see *R (on the application of TT) v Registrar General for England and Wales (AIRE Centre intervening)* [2019] EWHC 2384 (Fam), per Sir Andrew McFarlane P[10]. I pause at this point to reflect that this observation made by the President at paragraph 79 of his judgment reflected part of the submissions made to the court on behalf of the Registrar General and Secretaries of State.

107. In summary, Ms Perry QC submits that, subject to the court's findings, there are various pathways to rectification of the errors in this case. She supports the granting of the declarations sought by SCC in respect of each of the primary cohort children whom

[9] As we shall see, the ADM did have access to medical information in all the primary cohort cases. Ms Perry QC's point is that it was not medical information which came from a regulation 15 referral or request.

[10] That case concerned a declaration as to whether the parent of a child was his mother or his father in circumstances where that parent had undergone gender transition and become legally recognised as a male before going on to conceive, carry and give birth to the child in question. The President was subsequently upheld on appeal.

she represents although she diverges from the path laid out in the road map presented to the court by Mr Goodwin QC and Mr Garrido QC.

Submissions made on behalf of CAFCASS Legal as Advocate to the court

108. Ms Giz and Mr Niven-Phillips who appear on behalf of CAFCASS Legal as advocate to the court have made it clear that they do not seek or support any specific outcome in this case. Their role has been to assist the court to identify the legal, practical and ethical issues which arise in this case and to highlight, where appropriate, the counter argument to the position advanced by SCC and on behalf of the children through the Guardians which potentially might have been pursued by a parent. As I have indicated, none of the primary cohort parents has sought to intervene in these proceedings nor has any sought to make representations as to the way forward. None has sought to take up the offer of funding for legal assistance which accompanied SCC's formal notification of these Part 18 applications to each (bar one) of the parents potentially affected.

109. As to the form which this hearing has taken, Ms Giz accepts that the *Concessions* document produced by Mr Goodwin QC on behalf of SCC now provides a sufficient context for the nature and extent of the breaches to enable this court to proceed without the need for oral evidence in respect of the primary cohort determinations. However, she submits that these concessions or admissions by themselves do not resolve a number of factual issues in relation to systemic or policy failings by SCC in discharging its functions as an adoption agency.

110. By way of general approach, CAFCASS Legal agrees with the framework of the law which is set out in each of counsel's written submissions. In particular, Ms Giz reminds the court that compliance with the AAR is expressed to be mandatory: *Re P-B (Placement Order)* [2006] EWCA Civ 1016 per Thorpe LJ and *Re S* (per Ryder LJ) (above). Ms Giz invites the court to consider the extent to which, as a matter of law, substantial compliance surmounts the high hurdles of "scrupulous implementation" (per Wall LJ in *Re B*). It will be recalled that, in that case, the court held that it was not open to the recorder to rectify the breaches by reconstituting what was essentially an ex post facto welfare investigation in the form of a wide-ranging process of fresh oral evidence.

111. Dealing first with the breach of regulation 15, Ms Giz submits that, whilst the IHAs and NIPE assessments available to the ADM would undoubtedly have provided valuable information about a child's health and needs, they will have been commissioned or received at the time when the child became a looked after child on entering the care system or, where parental responsibility was not shared, as a result of parental agreement. They will not have been commissioned by the local authority in its role as an adoption agency which is what is required by the AAR. In this case, there is significant reliance by SCC on the existence of IHA reports for ten of the original primary cohort of children, a NIPE report for one and a paediatric assessment for another. In due course I shall need to

examine, in each case, precisely what information the ADM had in relation to each child at the time decisions to place for adoption were made. The point, however, is well made by Ms Giz that the provision of this information, however full in its content at the time, does not absolve a local authority of its obligation to consult with the agency medical adviser in order to seek a health assessment and a written report. It is only when an AMA confirms that a regulation 15(2) assessment or examination is not required in respect of a particular child that compliance is achieved. As Ms Giz puts it succinctly, this is an expert medical decision and not a decision for a social worker who prepares the child permanence report or for Ms Winter in her role as ADM on reviewing the documents placed before her. Whilst the opportunity to seek further assessment or tests as provided by regulation 15(2) may have been lost as a result of the admitted breaches in each case, Ms Giz submits that the court can nevertheless go on to consider whether it can legitimately be said that there would not have been any need for further tests or assessment had the agency medical adviser been asked to assess the children and provide a report.

112. Ms Giz highlights the fact that, whatever processes were adopted by the local authority in its capacity as an adoption agency, they were undertaken apparently in ignorance of the requirements of regulations 15 and 17. In this context she invites the court to consider the extent to which the IHA and NIPE reports, together with the other assessments available in each individual case, can be said to amount to "substantial compliance" with the regulations. She highlights the fact that the 2013 Statutory Guidance emphasises the central importance of the *accuracy* of the child's permanence report for the reasons to which I have already alluded in paragraph 63 above. She draws the attention of the court to the document setting out the National Minimum Standards for Adoption published by the Department of Education in July 2014 which stresses the need for compliance with the two regulations (15 and 17) in order to ensure that a number of different factors are taken into account in the context of decision making.

113. In the context of the children's position through their respective Guardians, Ms Giz makes the point that the rectification or correction route involves (potentially) the rectification of a court order. She submits that it is conceptually difficult to rectify a situation or a document such as a court order on the basis of something which did not happen. In terms, she accepts that the "substantial materiality" route to legality of the placement orders may be the more palatable route if it is based upon an overview of the granular detail of the information available to the ADM at the time she made her decisions. That route requires caution in terms of the extent to which that information, whatever it amount to, was properly evaluated and open to the birth parents, the children's Guardians and, ultimately, to the court.

114. Whether the court is looking at the issue of legality through the lens of "substantial compliance" or "materiality to decision making", Ms Giz submits that the failures in relation to regulations 15 and 17 were substantial. In this context she points to the fundamental failure of the ADM to engage in an overview at the time of the decision making; the displacement by the ADM of the onus to seek that expert medical review on the basis that she would exercise that discretion; and the apparent 'policy' or value system

which may have informed the ADM's decision making that the permanence achieved by adoption should be open to all but the most extreme cases where a child's health issues were likely to be life-limiting. In relation to materiality, Ms Giz highlights the significant distance between that approach and the non-linear analytical approach demanded by *Re B-S*.

115. In relation to the approach adopted by Mr Garrido QC on behalf of the CCG, Ms Giz submits that, whilst post-adoption medical reports obtained *after* the making of a placement order cannot rectify failures to comply with the AAR in terms of ADM decision making, information obtained after the order is made *may* provide evidence of the legality of the decision at the time it was made. I regard this as an important distinction. I accept that it is not open to me in the context of this hearing to follow the course which the recorder took in *Re S-F*.

116. In conclusion, Ms Giz submits that, whilst it is open to the court to pursue a route to lawfulness which has not yet been excluded by any of the appellate decisions to which reference has already been made, the court must exercise caution. In this context, she contends that any policy considerations in relation to the wider cohort of children affected by SCC's failures must be ignored. In those cases, or at least a great many of them, adoption orders have been made and different legal and policy considerations arise.

L. Discussion and analysis

117. I approach my task in this case from the foot of clear reassurances from Mr Goodwin QC that the failure to observe the requirements of regulations 15 and 17 were aberrations in terms of SCC's compliance as an adoption agency with the body of the AAR. Whilst it is outside the remit of this first stage judgment in this case to identify exactly what has gone wrong in the wider context of systemic failure, the court has received an assurance that the wider regulatory framework of the AAR informs the adoption process and procedure in Somerset. Mr Goodwin QC told me that what is likely to lie at the heart of these issues is a lack of training and a consequent failure to understand what was required. He reminds me that in relation to *each* of the ten primary cohort children, by the time of the issue of each placement application, the ADM had before her a child permanence report which contained an internal analysis of the realistic placement options for the children which was *B-S* compliant. Furthermore, by the time of each ADM decision to recommend placement for adoption as the appropriate outcome for each child, there was professional unanimity that rehabilitation with the birth family was not a viable option for any of these children.

118. In terms of the wider cohort of children, I am told that at this point in time there are 36 children who have been placed but for whom an adoption application has not yet been made, or is pending. A further seven children await the outcome of various matching panels. Whilst adopters have been identified, matters can go no further until it is known whether their placement orders are legal. A further six children are placed with foster carers who wish to proceed with an adoption application. The balance of the wider cohort (some 200 odd children) are the subject of adoption orders. They stand in a different

legal position. Many have been settled within their adoptive families for a significant period of time, and in some cases for a number of years. Nonetheless, this illustrates the scale of the underlying problem and the potential consequences of this local authority's failures for each of these children and their families. For the purposes of this judgment, I am looking at institutional rather than individual responsibility for the admitted breaches. In order to go further, as all counsel accept, the court would need to hear oral evidence from a number of witnesses.

119. In terms of the approach which the court should adopt in approaching the determination of these Part 18 declarations, the following propositions are not in issue as between all counsel:-

(i) the court is entitled to consider whether it can legitimately be said that there would not have been any need for further tests and/or assessment of the primary cohort children, or any of them, had the agency medical adviser been asked to assess each child and provide a report; and

(ii) a survey of the granular detail of the medical and other information which *was* available to the agency decision maker at the time of her decision to place any one of these children for adoption *may* lead to a conclusion that a failure to comply with regulations 15 and 17 was not material to that decision; and

(iii) information obtained after the order is made *may* provide evidence of the legality of the decision at the time it was made.

120. None of these factors, taken in isolation or together, detracts in any way from established legal principles that compliance with the statutory framework of regulation laid down by Parliament is mandatory. It is there for a clear purpose. It is intended to ensure that decision making in this quintessentially important arena of law is informed by a holistic understanding of all the relevant factors. It is framed to ensure that no child is placed on the route to a permanent separation from his or her birth family without the fullest appreciation of whether that irreversible step accords with that child's best interests, not only now but for the rest of his or her lifetime. It is a decision which is fundamental to that child's future and Parliament has determined that a decision maker should be required to approach his or her task with a full understanding of all the information which shapes and informs that vital decision.

121. That said, it is clear from the consensus which emerges from the appellate authorities to which I have referred that a breach of the regulations *per se* will not automatically invalidate, or render illegal, a placement order which flows from a decision which has been reached in circumstances where there has been a breach of, or non-compliance with, the regulations. The court retains the ability in these circumstances to look at the nature of the breach in order to determine whether the essential quality of the decision-making process has been critically or materially undermined when viewed through the lens of the statutory objective of the regulations. In this context I agree with the submission made by

Ms Perry QC on behalf of the Guardians that it cannot have been the intention of Parliament that a lack of compliance with the regulations in the broader context of the totality of the medical and other information available to the decision maker would *automatically* render any resulting placement order unlawful. Whilst compliance is framed throughout the AAR as mandatory, the sanction for non-compliance is not specified. The underlying policy considerations which informed the formulation of regulations 15 and 17 were clearly designed to ensure, as Parliament provided, that all relevant information was available to the decision maker so as to ensure a solid evidential basis for welfare determinations. As the preface to the 2013 Statutory Guidance makes clear, non-compliance was contemplated as an exception (in terms, *guidance must be complied with "unless there are exceptional reasons which justify a departure"*). That same Statutory Guidance also stresses the importance which was attached by the policy framers of avoiding a situation where compliance led to "unnecessary delay in securing the child's future": see paragraph 2.16.

122. Further, in terms of *form*, the Guidance is clear that *"the compilation of the CPR* [child permanence report] *itself is not a fresh piece of work but for the most part a bringing together of information that has been gathered already over a period of, probably, several months at least"*: see paragraph 2.18.

123. In terms of the difference in approach in relation to the legal test as between counsel, I accept that we are all proceeding from the basis of the same evidential landscape. In distinguishing between the different approaches adopted, on the one hand, by Mr Goodwin QC and Mr Garrido QC and by Ms Perry QC and Ms Willsteed, on the other, I accept that each provides the court with a potential route to legality if the underlying facts support such an outcome. However, in my judgment there is a conceptual difficulty with the route of correction and/or rectification in this case. In *A & Others* (cited above) the former President of the Family Division was able to correct or rectify the mistake of recording consent on the wrong form because it was clear that, in each case which he considered "informed consent", both as a fact and as a legal pre-requirement, existed and had been voluntarily given as required by the HFEA regulatory framework. The errors in that case were fundamentally errors of pure form and it was clear and obvious from the face of the forms which had been signed in each case what was being provided and what was intended. In my judgment this is a materially different situation from a potential failure to provide relevant information which is prescribed as necessary for a fully informed exercise of judgment on the part of a decision maker. There is no 'mistake' here which can be corrected by an approach which was deployed in *A & Others*. This much is clear from what Sir James Munby P said at paragraph 59: "What one is looking for is compliance with the substance not slavish adherence to a form". What we have in this case is a series of admitted breaches which go beyond the simple rectification of a form. The absence of a health report as required by regulation 15(2) over and above the IHAs and initial paediatric reports is an omission which in my judgment is not capable of rectification in the manner proposed by Ms Perry QC. In conceptual terms it is an omission which goes beyond a failure of form and extends potentially into the realms of substance. Whether in all the circumstances such failure is fatal to the legality of the ten

individual placement orders which are the subject of the Part 18 applications which I am considering is something to which I shall turn shortly.

124. I fully appreciate that Ms Perry QC adopts this more nuanced approach because it avoids the need to confront head on what even Mr Goodwin QC accepts is a fundamental and systemic failure on the part of SCC to comply with regulations 15 and 17. In my judgment that exercise cannot be avoided by the adoption of an approach which strains the limits of legal interpretation. What *A & Others* does provide is a clear steer to the court that (i) its focus must be on substance and materiality rather than on form, and (ii) that it is permissible, in appropriate circumstances, for the court to look at the evidence which was available from sources outside the prescribed forms in order to reach a conclusion about the actual prevailing circumstances at the relevant time. To that extent, the decision of the former President is an essential part of the judicial road map in determining the questions which have to be answered in this case. However, as the authorities make clear, it is impermissible for the reviewing court to look to information obtained *subsequent* to the decision under scrutiny (and thus missing at the point of decision-making) to provide retrospective legality for an otherwise unlawful decision. In this context, it is important to focus upon the nature of the declarations which are sought by SCC. The declarations of lawfulness relate to the placement orders which flowed in each case from a judicial decision. Each of those judicial decisions was based upon the evidence which was put before the court which included, importantly, the decision of the ADM as to outcome for each of these children and the evidential basis for that decision. That is why the form of the draft declarations before the court includes a recital to the effect that the court has determined in each case that "the Agency Decision Maker's decision that [the child in question] ought to be placed for adoption was not … vitiated by any material error or misunderstanding". Thus whilst the full pre-adoption medical reports obtained *after* the decision to place for adoption will have provided the court making the placement order in each case with information which the judge needed to exercise an independent judicial function in the context of Ms Winter's/the ADM's original decision, they cannot in my judgment be used retrospectively and without more to justify or, in this context, give legal currency or validity to an otherwise illegal decision. The court must consider whether, and to what extent, information available in the context of those reports was also available to Ms Winter in whatever form at the point when she, or another ADM, decided that adoption was the appropriate outcome for any one of the ten children with whom I am presently dealing. To that extent I depart from this aspect of Mr Garrido QC's submissions. I do not consider that the pre-adoption medical reports and the information contained within them are irrelevant to the court's survey of the evidence. However, I do not think they can be used to cure any substantial or material defects in the ADM's decision making process if indeed there were such errors in any of the cases I am considering. Whilst this course and his proposed solution would have provided the court with a clear route out of the dilemma with which it is confronted, I do not consider it to be a route which I can properly take.

125. I agree with Ms Giz that an evaluation of "substantial compliance" involves an analysis of the decision maker's state of knowledge at the relevant time. I accept without

reservation that there are conceptual difficulties in aspects of adopting that test. For example, in circumstances where the overview of the agency medical adviser was never sought by Ms Winter because she was unaware of that requirement, how can it be said that there was substantial compliance with regulation 15(2) which requires medical input? Notwithstanding those difficulties, I regard it as essential for this court to conduct a factual analysis of the circumstances of each of the ten primary cohort children's cases in order to reach conclusions about the circumstances in which decisions for them were made and thereafter whether each of those decisions was lawfully made on the basis of substantial compliance with the regulations. Put another way in the circumstances of this case, was there sufficient information available to the decision maker at the time of his or her decision to represent material or substantial compliance with the regulations? Did the agency decision maker have available at the relevant time sufficient information, including medical information in relation to each child, so as to enable a fully informed decision to be made ? It is in this context that I accept and adopt the relevance of the questions posed by Mr Garrido QC as set out in paragraph 88 above. It is that evaluation to which I shall shortly turn. Before doing so, I propose to set out aspects of the local authority's evidence (which is not challenged) in order to provide a context for that specific evaluation.

Dr Carol Smith: the agency medical adviser

126. Dr Smith is employed by Somerset NHS Foundation Trust as a specialist community paediatrician. She is the region's designated doctor for looked after children and, as I have found, has been the appointed medical adviser to Somerset in its role as an adoption agency for over seven years. She has almost twenty years' experience as an expert paediatrician. In the context of her community paediatric role she has provided the following description of her duties:

> "… I provide clinical assessment, diagnosis and management of children from birth to 18 years with developmental disorders and disabilities, complex health needs, (including end of life care), and behavioural presentations of neurodevelopmental disorders (e.g. Autistic Spectrum Condition, ADHD). The work includes safeguarding, and specific to my role, the completion of statutory Initial Health Assessments of Children Looked After. Community Paediatric work frequently requires multi-agency working to ensure that the health and wellbeing needs of children are met. I manage a clinical workload independent of oversight by Consultant Colleagues. There is a requirement for audit and quality assurance within the work, alongside the teaching of medical students and paediatric colleagues. Throughout my working time as a Paediatrician, I have worked with Children Looked After and children who are adopted, who are in long-term foster placements, placed in kinship care, placed under special guardianship orders etc. I have an extensive knowledge of the specific needs of these children.

127. As to her role as agency medical adviser to Somerset, she says this:

> "I am responsible for collating and interpreting the health and developmental history of Children Looked After, (CLA), and informing prospective carers and

he Adoption Panel regarding risk factors for the child's future health, including family history, intrauterine stress and substance exposure, specific health and developmental needs of the child, and experiences of abuse and neglect. The report is additionally based on all previous statutory health assessments and incorporates analysis of past medical history including commenting on future implications for the child. This information is provided in a written report, (the Adoption Medical Review Report), and is also discussed in detail with potential adopters and any accompanying social worker at either face to face or virtual meetings, prior to Adoption Matching Panel (I aim to allow a two-week gap between this meeting and the adoption panel to allow the prospective adopter(s) time to carefully consider the information delivered to them. … I am available to the Adoption Panel for discussion and explanation of any queries or points of concern regarding the health of the child or of the potential adopters."

128. Dr Smith's written evidence highlights a number of issues which arose in connection with the performance of her role as agency medical adviser including funding issues and time pressures. This 'primary cohort' judgment is not the appropriate vehicle for a forensic investigation into these acknowledged failings and there is in any event a factual divergence between some of the local authority professional witnesses as to the root cause of these failures. These are issues which I cannot determine as facts because there was agreed to be insufficient time for the court to hear oral evidence on these issues. What is agreed is that, other than requests made to Dr Smith for medical reports channelled through a local authority administrator, Ms Williams, often at short notice, until October 2018 when a new regional adoption agency was launched (Adopt South West), Dr Smith received no requests for ADM medical summaries from Ms Winter. After 2018, greater focus was given by the new agency to the requirement to provide timely adoption medical reviews to prospective adopters. For these purposes a new post was created. In February 2019 Sarah Ashe was appointed as the designated nurse for looked after children.

Sarah Ashe: designated nurse for looked after children

129. Sarah Ashe has provided a written statement in which she confirms that she was unaware that IHAs were regularly being used in lieu of a formal AAR 17 compliant health summary completed by the agency medical adviser. It was only in April 2021 when these issues came to light that she became aware of this state of affairs. Ms Ashe states that she worked closely with Dr Smith in her role as agency medical adviser since her appointment in 2019 to ensure that the requirement to provide an AAR 17 compliant health summary as part of a child's CPR was, and is, included in the job description for the agency medical adviser. She has explained in her statement that the use of NIPE reports in place of the statutory IHAs, specifically for new-born infants who were subject to care orders from birth and moved immediately to foster placements, was commonplace in Somerset until these events came to light in April 2021. In relation to the breaches of regulations 15 and 17 in the ten cases of the primary cohort children, she confirms that, in all but two cases, the initial health assessment was completed by either a paediatric registrar (for seven of the children) or a consultant community paediatrician (in one of the cases). The agency medical adviser provided the initial health assessment in only two of the cases. Several of the primary cohort children were not physically examined as part of

this process because of the restrictions flowing from an acute stage of the Covid-19 crisis although their assessments were delivered virtually using either telephone or video conference facilities. Furthermore, as Ms Ashe confirms, there were some gaps in the initial health assessments which were provided to Ms Winter in terms of those which were prepared before 2019.

130. In respect of the ten primary cohort children with whom the court is concerned, Ms Ashe has conducted a thorough review of all the information which was available to the agency decision maker, Ms Winter. She has confirmed that in respect of each of them, relevant health information was available to Ms Winter including paediatric reports, unscheduled care attendances, health visitor records and therapy assessments which in some cases predate the IHAs. The regulation 17 breach meant that none of this information was reviewed by Dr Smith in her role as the agency medical adviser and thus there was no specific consideration of "any need for health care which may arise in the future". Ms Ashe further confirms that all the information which would have been provided in compliance with regulations 15 and 17 was subsequently included in the pre-adoption medical reports, each of which did include a specific focus on the child's future health care needs. All of that information was available to the judge who made the placement orders for each of these children.

Claire Winter: Deputy Director of Children's Services and adoption agency decision maker for SCC

131. Ms Winter's written evidence confirms that she was appointed to the role of ADM in October 2015 when she became the Deputy Director for Children's Services. As an adjunct to her role, Ms Winter is assisted by an adoption agency adviser, Jane Poore, who quality assures the adoption process in Somerset including the production of the child permanence reports prepared by the relevant child's social worker. Ms Poore is responsible for bringing together and collating all the information which is presented to Ms Winter in her role as the agency decision maker. The documentation which she sees for these purposes should include not only the CPR and all health assessments and relevant reports which have been generated for the purposes of the care proceedings ongoing in the Family Court up to that point in time.

132. In paragraph 16 of her statement, Ms Winter states that:

> "In making the Best Interest Decision, I meet with the Adoption Agency Advisor to review the documentation provided and discuss whether an adoption plan is the correct one for the child. At this point in the process my key focus is to evaluate, from the documents, whether there are any adults within the child's network who are likely to be able to make the changes needed to care for the child, within a timescale that meets the child's need for permanence. This evaluation includes consideration of medical reports from the proceedings and the child's Initial Health Assessment. I have never considered a case without any medical information and the Agency Medical Advisor is available for me to contact should I need clarification on any medical issue."

133. In paragraph 28 she sets out the result of her overall review of the primary cohort cases in the following terms:

> "Having reviewed the cases I am confident that every decision which has been made approving a care plan of Adoption for a child, and then resulting in an application for a Placement Order, has been made in the best interest of the child concerned. I am confident that whilst medical information in front of me at the time may not have been presented in the correct format, any medical issues surrounding a child's health were contained within the paperwork which I considered and had been considered prior to this by the Agency Medical Advisor. These issues would have been taken into consideration when I made my decision to approve a plan of adoption."

Jane Poore: adoption agency adviser

134. Ms Poore is a qualified social worker who was employed by SCC between June 2016 and July 2021. Her role, as she explains in her written evidence, involved acting as a point of reference for all adoption and permanence issues, contact issues, and supporting other specialist child care social workers to prepare child permanence reports. In this context she provided support to the ADM, Ms Winter, for the purposes of the decisions which were made in relation to appropriate outcomes for children who were travelling through the care system.

135. She has described how the process of decision making was operated in Somerset during the relevant period. Dates for specific decisions for individual children were timetabled in parallel with the timetable determined by the Family Court in respect of the filing of evidence and listing of final hearing. It was part of her function to book the case in Ms Winter's diary for decision making. A detailed spreadsheet was maintained listing the name of the child together with the social worker's name, the date when final evidence was due to be filed with the court, dates when various paperwork was due and, finally, the outcome of the decision for that child. It was part of Ms Poore's function to review all the child permanence reports prepared by the relevant social worker. For the purposes of the agency decision maker's review of the case, four packs of papers were prepared, two of which were provided to Dr Smith and Ms Winter (or whichever agency decision maker was tasked with making decisions for any particular child[11]). Ms Poore says this in paragraph 12 of her written statement:

> "The packs contained a front sheet, detailed reports submitted, a copy of the child's permanence report, medical report, any experts reports, (e.g. drug reports, psychological reports obtained within the ongoing court proceedings) any additional medical information on the child such as a Child Protection medical, or health visitors report, parenting assessments, foster carers' report and any viabilities or SG assessments carried out on family or friends."

[11] In nine out the ten cases with which I am concerned, the ADM was Claire Winter. In one of the cases, that of TRFB, Mark Barratt acted as the ADM. He made the decision in October 2017 to recommend her placement for adoption, a decision which was confirmed by the court's order on 13 December 2017.

136. She describes the problems already identified by Ms Winter in relation to the constraints on medical adviser time and thus capacity. She explains that when she was appointed as agency adviser, her ability to list matching panels was being dictated by Dr Smith's capacity as opposed to assessment time scales. She further confirms that, before her appointment in 2016, a policy or practice appeared to have been approved whereby the initial health assessment (IHA) prepared in respect of a looked after child could be used in place of a full medical report for the purposes of the ADM's decision whether to approve a placement for adoption. Ms Poore explains that this policy was informed by the fact that Dr Smith saw all the children in her role as the lead paediatrician at the hospital where she worked and it was she who wrote the majority of the IHAs. She confirms that "we never had a case where there was no medical information submitted".

137. I pause at this juncture to express not only my surprise but my concern when I read this evidence. If there was indeed in place a formal policy to mandate, or authorise, a locally-sanctioned derogation from the statutory requirements of the AAR, it was a policy which should never have been adopted. I propose to say no more at this stage since I have not heard any oral evidence and have only the information given to me by SCC's adoption agency adviser that such a policy or practice was in place, although it appears to be confirmed on the face of one of the child permanence reports to which I shall shortly come. What is not clear to me from the narrative accounts of procedure provided by both Ms Winter and Ms Poore is how that practice was reflected in the chronology of the individual cases which make up the primary cohort of children. I shall need to return to that chronology and the information which was before the ADM when I come to my analysis of those cases.

138. It is against that evidential backdrop that I turn now to my general findings in this case and thereafter my specific findings in each of the primary cohort children's cases.

M. General findings in relation to SCC and the breaches of AAR 15 and 17

139. In the light of the comprehensive analysis of the statutory requirements of the AAR and the concessions of breach set out in the version of Mr Goodwin QC's document which I have approved (and annexed to this judgment), I make the following findings which are supported by my analysis of the written evidence:-

(i) The requirements of regulations 15 and 17 have been breached.

(ii) SCC adopted a flawed decision making process in that the agency decision maker proceeded to make her decision and recommendation to the court in the absence of a report from the agency medical adviser;

(iii) In each case which I am considering in this judgment, the Child Permanence Report was completed without any apparent input from the agency medical adviser.

(iv) Those breaches occurred over a significant period of time and amounted to a systemic failure on the part of SCC.

(v) During the relevant period, none of the professionals responsible, including those within SCC's legal department who had oversight of these matters, appears to have been aware that they were acting, or authorising acts, in breach of regulation 15 and 17.

(vi) Each of the children within the primary cohort has been materially prejudiced by these regulatory breaches and the systemic failings of SCC in that decisions in respect of their future placements and, in some cases, the process of matching the children with prospective adopters, have come to an abrupt halt to await the court's decision in relation the legality of their placement orders. They have thus been in a state of legal limbo since April 2021. Given the ages of these children, that delay over a period of almost six months is likely to have had a potentially detrimental effect on their welfare and their opportunity to achieve early permanence.

(vii) If SCC had complied with its regulatory obligations, as it was required to do, this litigation would have been avoided.

140. Against the background of those general findings, I turn now to my specific findings in each of the ten primary cohort cases.

N. Specific findings in each case: the primary cohort children

(i) Specific findings: SD

141. SD was born in July 2020 and is now 15 months old. Her mother reported that the child had been conceived as a result of rape. She had, and has, no ongoing relationship with the father.

142. SD has been living with foster carers since she was born. Care and placement orders were made by the court on 2 February 2021. Initially SD's mother moved with her child to a parent and child foster placement but she subsequently left that placement in November 2020 when SD was four months old. SD then moved to a foster to adopt placement but that broke down very swiftly. She was then matched with potential adopters. The pre-adoption medical in February 2021 identified a maternal genetic risk of mitochondrial disease which might have a significant impact on her future medical needs and which may be life-limiting. As a result of that report, those potential adopters decided not to proceed. New adopters have now been identified who are keen to proceed notwithstanding SD's health issues, about which they have been fully informed. With the court's permission, she has now moved to live with her prospective adopters in the context of a foster to adopt placement. That move coincided with the need to move this child as a result of her current foster carers' intention to retire at the end of this month and the notice they have given to SCC.

143. SD's mother does not oppose adoption. She has been notified of these Part 18 proceedings and has declined both the offer of legal assistance and the opportunity to

make representations at the hearing. She accepts that SD's future lies in the security of an adoptive placement.

144. The ADM decision in this case to place SD for adoption was taken by Ms Winter on 28 November 2020. When she considered the papers in this case, the ADM had a report dated 18 July 2020 prepared by a paediatrician at the hospital where SD was born. That was a formal NIPE report. It confirmed that no abnormalities were recorded at birth but the report also contained a reference to the fact that SD's mother suffered from epilepsy and associated learning difficulties. In addition, Ms Winter had the following reports and information:-

(a) a clinical psychology report in respect of SD's mother prepared on 4 September 2020;

(b) a PAMS parenting assessment prepared by an independent social worker on 15 September 2020; and

(c) a response from the clinical psychologist on 29 September 2020 to various questions arising from her initial report.

145. Ms Winter also had a detailed Child's Permanence Report prepared by the allocated social worker and dated 5 November 2020. Section 10 of the CPR (*'Summary report from the agency medical adviser'*) was left blank. The section of the CPR which dealt with SD's needs and the implications for her future placement contains the following reference:

> "At this time [SD] is a healthy baby who is meeting all of her developmental milestones. There are no current indications that [she] has any additional needs. ….It is clear that [her mother] has significant learning needs but we do not know about [her] father at this time. It is unclear if [her mother's] needs are environmental or genetic, although it is not thought that her parents have learning needs of their own."

146. In terms of other options, the adoption decision form (Appendix A) completed by Ms Winter on 28 November 2020 recorded the various viability assessments which had been undertaken in respect of SD's mother's current partner, EN, (dated 2 September 2020) and his parents (14 October and 3 November 2020). She recorded in Appendix A the fact that SD's mother was known to have a learning disability and that the clinical psychology assessment undertaken on 4 September 2020 had recorded her vulnerabilities in a number of respects. It highlighted the fact that the mother's health was likely to fluctuate to the point where she may be deemed incapacitous to conduct litigation without assistance from the Official Solicitor as a litigation friend (as was to prove to be the case).

147. The evidential foundation of the concerns in relation to the possibility of some form of inherited genetic risk arising as a result of SD's mother's presentation was a factor which was known to Ms Winter at the time of her decision on 28 November 2020. SD was described at that time in the CPR as "a healthy baby who is meeting all of her developmental milestones".

148. Thus, in respect of SD,

(i) there was a breach of regulation 15 in that there was no child health report from a medical practitioner requested by the adoption agency to examine the child and no advice, in the alternative, that a report was not necessary;

(ii) there was a breach of regulation 17 in that the CPR did not contain a summary from Dr Smith, the agency medical adviser.

149. In this context it is important to factor into the court's analysis the universal acceptance that SD was at the time of the ADM's decision, and remains, a happy healthy child. The identification of the risk of mitochondrial disease arises only as a result of the fact that her mother presents with features which *may* indicate she has, or may develop, the condition. There is no formal maternal diagnosis in this case, far less any evidence which confirms that SD herself has any genetic defect. The ADM was aware of these issues at the time of her decision from the medical and other evidence which was put before her. She concluded that SD's health risk (if indeed it existed) should not deprive her of the opportunity of the security which adoption would bring. She considered that option in the context of a holistic evaluation of all other options available for this child including a placement with the mother's partner/extended family. The viability assessment in respect of those options was negative and SD's own mother accepted that she was not in a position to provide her daughter with the consistent and appropriate care she was entitled to receive throughout the course of her minority. Following her independent evaluation of SD's welfare, her Guardian supported a placement order in accordance with Ms Winter's decision.

150. It is relevant in this context to consider the following extracts from the PAMS assessment of the mother and her (then) partner in relation to their capacity to care for SD:-

> "[ED] is also seen to be vulnerable. He has been exposed to sexual and emotional harm and neglect as a child, and has not yet been able to make sense of these experiences. [He] lacks the capacity to reflect on his own actions, and those of others.
>
> [The mother] very much loves her daughter, and has tried her very best to look after her. Sadly, the combination of her cognitive difficulties and her poor experience of being cared for as a child, prevent her from being able to do so consistently.
>
> This assessment considers that [SD's mother] and [ED], either together or separately, cannot meet the care needs of [SD] in the short, medium or long term. In [their] care, she will be exposed to physical, sexual and emotional harm and neglect. Her needs will be neglected, and not prioritised. [They] are unable to recognise risks, within their own functioning and that of others" (per the ISW report dated 15 September 2020).

151. In relation to the viability assessment of ED's parents, this proved negative as a result of "significant concerns about their parenting of their own children. All 5 spent a

significant amount of their childhood in LA care having experience[d] physical and emotional neglect, sexual abuse and poor home conditions". No other family members or connected friends or third parties were put forward as alternative carers. Thus the options available were long-term foster care or placement for adoption outside the birth family.

152. The birth mother's position in the care and placement proceedings was protected by the Official Solicitor who acted as her litigation friend. In accordance with the mother's known position at the time of the ADM's decision, there was no opposition to the making of the care and placement orders on 2 February 2021. Whilst I do not place any weight or reliance on that fact, it is nonetheless a reaffirmation of the mother's position which was known at the time of the decision at the end of November 2020.

153. From this evidence, available to Ms Winter as the ADM at the time of her decision in November 2020, I have reached the following conclusions:-

(i) It is unlikely on the balance of probabilities that Dr Smith, as the agency medical adviser, would have requested a further examination or report in respect of SD in the light of the health information which was then available. Even had that course been taken, I find that it is unlikely that such an examination or report would have provided additional health information about SD which would have materially undermined the ADM's decision to place the child for adoption.

(ii) In these circumstances, (a) even in the absence of a breach of regulation 15(2), it is unlikely that Ms Winter would have requested further reports pursuant to regulation 15(3); and (b) it is unlikely that the agency medical adviser would have expressed an opinion in any regulation 17(1)(b) health summary which would have undermined the ADM decision to place the child for adoption.

154. In the circumstances, I find that the substance of the decision taken by Ms Winter in respect of SD to place the child for adoption (i) was not vitiated by any material error or misunderstanding, and (ii) was not undermined by the procedural irregularities which the breaches of regulations 15 and 17 AAR represented. The court subsequently made the placement order on 2 February 2021 on the basis of all the information which was available to Ms Winter in November 2020 in addition to the very full pre-adoption medical report. For reasons which I have explained above, I have not set out in this judgment the extensive detail which was contained in that report. I merely observe that, in terms of the ultimate welfare decision for SD which was left in the court's hands, its decision was fully and properly informed.

155. In these circumstances, the placement order made in respect of SD on 2 February 2021 was lawfully made.

(ii) Specific findings: T-R F-B ("R")

156. R was born on 24 May 2017. She is 4 years old. She has been in care throughout her life and has never known the security of a permanent home. Care and placement orders were made on 13 December 2017 when she was almost 7 months old. Neither of her parents opposed the making of those orders. In terms of the significant difficulties facing this small child, I can do no better than to quote from the summary prepared by SCC.

> "She has spina bifida and hydrocephalus. She has no feeling or function from her waist down, is unable to stand or weight bear and uses a powered wheelchair. She is frequently catheterised during the day in order to manage her continence and she also wears nappies. She requires life-long support for her physical needs. There has been extensive family-finding for [R] since she came into care but due to her very high health needs there have been very few people who have even expressed an interest in adopting her. Adopters have now been identified who have the appropriate skills to enable them to meet her needs and they were due to be matched on 18 June 2021. Given [R's] needs, if these adopters are lost due to delay, there is a strong chance that alternative adoptive carers will not be identified, particularly as [R] is now nearly four years old in addition to having significant health needs."

157. The agency decision maker for this child was Mark Barratt. He has provided a written statement for the court in which he confirms that SCC applied for a placement order on 26 October 2017 following his approval as ADM of a care plan for adoption. That decision was taken on 9 October 2017. At that time R was living with foster carers. He confirms that, at the time of making that decision, he had seen information from a paediatrician concerning R's health and the difficulties with which she lived but he did not have a separate health report which was regulation 15 compliant. He also accepts that the detailed child permanence report which he read did not contain a medical summary as required by regulation 17.

158. What Mr Barratt did have to inform his decision-making were the following:-

(i) a report in the form of a letter from the paediatrician at Yeovil District Hospital, Dr E, prepared on 21 July 2017 less than three months before his decision to place for adoption;

(ii) an Initial Health Assessment prepared by Dr M, a paediatrician at the same hospital, dated 6 October 2017, three days before the decision.

159. Mr Barratt confirms that he considered this medical information carefully conscious that, if he had concerns, he was aware he could liaise with Dr Smith, the agency medical adviser in order to clarify issues or queries about that information. As to the other information before Mr Barratt, it included the following:-

(i) a psychological report prepared by Dr P on 7 July 2017 in respect of each of R's parents;

(ii) a parenting assessment of each parent dated 26 July 2017;

(iii) a report from Mr F, a paediatric neurosurgeon, dated 20 June 2017.

160. An earlier report from Dr N, a consultant paediatrician, had identified the likely cause of bruising to R's half-sibling in April 2017 to have been "a kick of considerable force and not likely to be accidental". There were long-standing concerns about poor parenting and the use within the home by the mother of both alcohol and cannabis. R's mother had been diagnosed with emotionally unstable personality disorder and had been supported by the community mental health team since 2015 when she was referred as a result of acute depression. The relationship between R's parents was described as "volatile" and characterised by frequent incidents of domestic violence requiring police intervention. R's two elder half-siblings, who had been the subject of child protection plans since 2016, were taken into local authority care after that incident. R was born very shortly thereafter and was immediately placed with foster carers following her discharge from hospital. The separate psychological and parenting assessments of her parents concluded that "neither … has the capacity to engage in the intensive support necessary in order for the children to return to their care". Neither was able to offer "safe, child focussed, stable and predictable parenting". Viability assessments of the maternal aunt and her partner were negative. A special guardianship assessment of the maternal grandparents prepared by an independent social worker was also negative. An experienced CAFCASS Guardian had prepared a detailed analysis which supported the plan for adoption of R.

161. I have been provided with all the material which was put before Mr Barratt when he made his decision to place R for adoption in October 2017. Included within that material is information about the various health care experts who were then involved in R's care: Mr S (a consultant paediatric urologist); an ophthalmologist at Yeovil District General Hospital; Mr F (the paediatric neurosurgeon) and Dr E (consultant paediatrician) to both of whom I have referred above. There was confirmation that all of R's immunisations were up to date and details of her GP and dentist.

162. The report prepared by Dr E, consultant paediatrician, confirms R's referral to Mr F. He was said to be pleased with her progress and was due to see her again in six months' time. The report goes on to detail R's developmental progress and the various support and intervention strategies which were in place to maintain "a very content baby who is enjoying her feeds … and is growing well along the 50th centile for weight, 75th centile for length". Dr E's report concluded that:

> "All in all, [R] is doing extremely well and making pleasing progress. There have been some concerns about some jittery movements which are not overtly seizures, foster mother is aware that she is at risk of seizures and also aware of the features to look out for shunt blockage, infection and also urine infections."

163. Mr F's report is dated 20 June 2017. His report was prepared at the direction of the court in the context of the ongoing care proceedings concerning R. He is a specialist paediatric neurosurgeon based at the Bristol Royal Hospital for Children. His instruction was to prepare a report "to include details of all medical conditions [R] suffers from, her current health situation, any current and likely future health implications, additional care needs she has, additional health/medical needs/check-ups/treatment she will require, any additional skills or training her carers will require, her current treatment and any

issues/warning signs the carers will need to be aware of when caring for [R]". I am satisfied that the report, which I have read and considered, addresses in specific detail each of these factors. I do not reproduce them here but Mr Barratt has confirmed in his witness statement that he took into account all the information in that report when making his decision for R in 2017.

164. Also available to Mr Barratt at the time of his decision for R was a child permanence report prepared by the allocated social worker, SS, which was completed on 16 August 2017[12]. That report set out the recommendation of R's Guardian extracted from her report dated 8 September 2017 in these terms:-

> "Given that there are no viable alternative carers put forward in respect of [R], in the case of the parents not being considered suitable to meet her needs, I do not believe that there is any of options than adoption in order to address her permanency needs."

165. Aside from the fact that paragraph 10 of the CPR (*'Summary report from the agency medical adviser'*) records "None obtained", the body of the report includes a close and careful analysis of all the medical information and reports from the various consultants which were then available. It sets out in some considerable detail the medical chronology and the various surgical interventions which R had by then undergone. It deals with R's educational progress and her likely needs in the future. The social work analysis at paragraph 13 constitutes an in-depth examination of all this small child's complex medical and other needs including the lifelong care which she will need "through the community, local hospitals and specialist hospitals". It projects those needs into the future in terms of the specialist equipment she will need and her likely trajectory through education. The CPR explores in some detail the history of R's parents' relationship from the age of sixteen when her mother was pregnant with her first child, R's half-sibling. It contains a careful analysis of the options for R and her two half-siblings. In terms of R's very particular needs, it concludes that in circumstances where neither of her parents can provide the consistent care she will need and there are no viable alternatives, adoption is the appropriate route to security and permanence for this child.

166. All these factors are reflected in Mr Barratt's record of his decision to place R for adoption. That document records a "high level of complex health needs and as a result [R] requires a very high level of parenting". He had read and considered all the expert medical reports and the assessments to which I have referred above. I can detect no flaw or error in his reasoning as ADM. He considered, but dismissed, the options of rehabilitation to the birth parents and long-term fostering. R's health needs did not change between the date of the ADM's decision on 9 October 2017 and the placement order which was made by the court on 13 December 2017. Each of R's parents consented to her adoption. Neither has sought to make any representations in the context of these

[12] The CPR was subsequently updated on 25 October 2017, some two weeks after the decision to place for adoption, to include, for example, a photograph of R taken the previous day.

Part 18 proceedings of which they have received notice and the offer of funding in respect of legal representation.

167. In the circumstances, I find that the substance of the decision taken by Mr Barratt in respect of R to place the child for adoption (i) was not vitiated by any material error or misunderstanding, and (ii) was not undermined by the procedural irregularities which the breaches of regulations 15 and 17 AAR represented. The court subsequently made the placement order on 13 December 2017 on the basis of all the information which was available to Mr Barratt in October 2017.

168. In addition, on 8 October 2018 Dr Smith in her capacity as agency medical adviser prepared a full pre-adoption medical report. That report is not directly relevant to my decision in relation to the legality of the decision to place R for adoption or the court's subsequent endorsement of that decision. It does, however, contain all the information which was required in order to inform the matching process which began at that point in time. For reasons which I have explained above, I have not set out in this judgment the extensive detail which was contained in that report.

169. In these circumstances, notwithstanding the breaches of regulations 15 and 17, I am satisfied that the decision which Mr Barratt took on 9 October 2017 and the placement order made in respect of R on 13 December 2017 were lawfully made and SCC is entitled to the declaration sought in respect of this child.

170. Given that potential adopters have now been identified for R, there is now no impediment to achieving a swift and early resolution for this child.

(iii) Specific findings: SH

171. SH was born on 12 April 2019 and is now two and half years old. The decision to place her for adoption was taken by Ms Winter as the agency decision maker on 12 October 2020. A formal application for a placement order was made by SCC on 20 October 2020. She is subject to care and placement orders made by the court on 14 December 2020. Neither of her birth parents opposed her adoption. She was removed from her parents' care in April 2020 when she was one year old. Neither parent could care for her given issues of chronic substance abuse.

172. Happily, there are no health issues as far as SH is concerned.

173. Ms Winter acted as the agency decision maker for SH. She accepts that there were breaches of regulations and 15 and 17 in this case. In her written evidence, she has confirmed that, at the time she made her decision to place SH for adoption, she had an updated Initial Health Assessment prepared by the agency medical adviser, Dr Smith. That report had been prepared some four months earlier on 11 June 2020. In addition, Ms Winter had the following information:-

(i) a psychological assessment of the birth parents prepared by Dr A, a clinical and forensic psychologist, dated 20 June 2019 together with an addendum report dated 30 September 2020;

(ii) a pre-birth parenting assessment prepared by a social worker on 14 February 2020;

(iii) a parenting assessment of both parents prepared on 26 April 2019.

174. SH has a number of half-siblings on both her mother's and father's side of the family. As a result of the removal from the parents' care of two of these children as a result of parental drug use, neglect and domestic abuse, a child protection plan had been put in place before SH was born. Initially SH and her parents were together in a residential placement for the purposes of assessment. After six weeks, the family returned home. Three of the father's children subsequently moved in to live with them. Both parents were found collapsed at the property following a fire and each tested positive for illegal substances. SH was removed from their care to a foster placement. The court made an interim care order in favour of SCC on 30 April 2020.

175. It is clear from the adoption decision form that Ms Winters was aware at the time she made her decision in this case that SH's mother's dependence on drugs was chronic and had existed for over 20 years despite numerous interventions. Despite her engagement from time to time with medical interventions, she continued to use heroin despite being prescribed methadone and buprenorphine. The updated psychological assessment which informed her decision making had concluded that "from the history of these parents, I do not have confidence that they can consistently work openly and honestly with professionals". There were no other family members or friends who came forward to offer SH a permanent home. Ms Winter's assessment concluded in this way:-

> "[SH] was removed from [her parents'] care in April 2020 due to their drug use and associated chaotic lifestyle. It is clear that they both love [SH] dearly and want her returned to their care. However, the psychological opinion is that both parents would need to be able to cease drug use and maintain a period of abstinence for 12 months, in order to evidence their long-term abstinence prognosis. When combined with the concerns about parents' understanding of the significance of their substance misuse in its effect on their parenting ability, the prospect of [SH] returning to their care is untenable. There are no alternative family carers. The best permanence plan for [SH] is therefore adoption."

176. All the experts instructed in the case agreed with that decision. Dr Smith had confirmed in her medical report that there were no specific health concerns for SH although her mother had described her as "a very irritable baby" who was waking regularly through the night. An updated report from Dr Smith on 11 June 2020 confirmed that the child had made very good progress since moving to live with her foster carers. Her development had accelerated and "there is no specific concern with her gross motor skills or fine motor skills". There were still some concerns at that stage that she was catching up with her social and communication skills. Since being in care she had moved from a position of

struggling with food and feeding to being able to eat well and feed herself. All her vision and hearing tests were confirmed to be up to date and there were no issues arising.

177. There was a child permanence report before Ms Winter at the time of her decision. That report had been prepared by the allocated social worker on 1 October 2020. Paragraph 10 of that report (*'Summary report from the agency medical adviser'*) had been completed "to follow". The social work analysis in paragraph 13 is full and contains a detailed exposition of both parents' childhoods and backgrounds and the family circumstances at the time of SH's birth. It tracks the chronology of events thereafter. It records the parents' inability to cope following the removal of two older children and their ongoing use of heroin and other substances even during periods when there was a high level of external support in place to support the family. It addressed the number of parenting assessments which had been conducted since January 2019 including the six week period in a residential assessment specialist unit. It included a careful *Re B-S* compliant analysis of all the available options for SH including rehabilitation to her parents, long-term foster care subject to a care order, and adoption.

178. In this case there was plainly a failure on the part of the adoption agency to make a specific request for a specific medical examination of the child or to seek advice that a medical report was unnecessary (regulation 15). In addition, there was no medical summary from the agency medical adviser within the body of the CPR (regulation 17). However, Ms Winter did have access to the report prepared by the agency medical adviser, Dr Smith, which had been prepared by her in May 2019 and updated the following month in June. SH's health did not change and there were no contraindicators between June and October 2019 when Ms Winter made her decision to place for adoption. Following her independent evaluation of SH's welfare, the Guardian supported that decision. Ms Winter was required to consider whether SH could safely return to her parents' care. On the basis of the evidence before her at the time, she plainly concluded that she could not. Neither parent opposed her placement for adoption and neither has sought to make representations in the context of these Part 18 applications despite being given notice and the opportunity of legal funding.

179. I can see no basis on which to conclude that, in her capacity as agency decision maker, Ms Winter's evaluation was flawed or based upon incorrect or insufficient medical evidence despite the breaches of regulations 15 and 17. In this case it is difficult to see what more compliance would have achieved in terms of the provision of information for the decision maker. That does not mean that compliance was unnecessary: it plainly was and the regulations should have been complied with. However, on the basis of my analysis of the information available to Ms Winter in October 2020 and the circumstances in which she made her decision, I am satisfied that, notwithstanding the breaches of regulations 15 and 17, the decision which Ms Winter took on 12 October 2020 and the placement order made in respect of SH on 14 December 2020 were lawfully made and SCC is entitled to the declaration sought in respect of this child.

180. Adopters have now been identified for SH and her foster carers have already explained to her in age-appropriate terms that she will be moving to her new family. The potential

adopters have a son. He and SH are aware of each other's existence and a transition plan for a move was already in place when these wider issues came to light in April this year. As a result, these plans have been put on hold. The impact on everyone involved is not difficult to imagine and cannot be underestimated. It is no part of my function in the context of this judgment to conduct any form of welfare evaluation now and I do not do so. These are matters for others but SH has been included within this primary cohort of children because her case is both pressing and urgent.

(iv) Specific findings: TM

181. TM was born on 21 August 2015. He is now 6 years old. He was the subject of care proceedings in November 2018 along with his two brothers. The children were removed from their mother's care in October 2017 as a result of a number of concerns about the care she was providing. The agency decision maker in this case was Ms Rebecca Hopkins, a senior manager within SCC's Children's Services. She made her decision to place TM for adoption on 9 August 2018. Care and placement orders were made by the court on 5 November 2018. Those orders were opposed by the birth parents. The hearing was thus contested. A first appeal by the mother failed as did a second appeal determined in February 2019. TM's father has not engaged at all since the care proceedings concluded. Neither parent has sought to make representations for the purposes of these Part 18 proceedings despite having been given notice and offered financial support for legal advice and representation.

182. TM is currently being cared for in a foster placement. His current carers are not in a position to offer him long term foster care. Attempts to identify a placement for the sibling group of three where TM could be placed with his two brothers has been unsuccessful. An assessment conducted in February 2019 concluded that separate placements should be pursued and he is currently the only remaining child in his sibling group who has been left as a result of these proceedings without a permanent family.

183. TM has global developmental delay and sensory processing issues. In addition he has a chromosomal duplication disorder[13]. He has certain food intolerances and is supported by an educational and health care plan to support his personal, social and emotional skills. For the purposes of her decision in August 2018, Ms Hopkins did not have a regulation 15(3) report nor had there been a specific request for a medical examination. Breaches of regulations 15 and 17 are agreed. What she did have to inform her decision making were reports in the form of an Initial Health Assessment prepared by Dr DK, a consultant community paediatrician, on 28 December 2017 and a report prepared by a health visitor, EW, for the purposes of the care proceedings and dated 7 May 2018.

184. Ms Hopkins records on her decision form that TM was removed from his family home when he was 2 years old as a result of chronic neglectful parenting which had given rise to significant concerns about his wellbeing and development. During two separate periods he had been supported by external resources through child protection plans. He

[13] His particular disorder is chromosome 16p 13.11 duplication disorder.

was then placed in a local residential assessment unit with his mother but she left after two weeks at which point he was transferred to a foster placement. The poor quality of the parenting he had received in the early years of his life were found to have had a direct correlation with his global developmental delay. The decision form records Ms Hopkins' conclusion that:

> "[TM's] current needs means he requires care givers who are attuned to his needs, nurturing and can provide him with a high standard of care. [His] carers should be able to manage uncertainty about his future health and development and support his individual needs in this respect."

185. She made a specific recommendation from the foot of existing health and psychological assessments that "a full paediatric and autism assessment is recommended".

186. The child permanence assessment which was available to Ms Hopkins as the agency decision maker is dated 26 March 2018. TM was then subject to an interim care order and living with foster parents. It is clear from the CPR that there had been by that stage a considerable number of reports from different health professionals including a paediatric assessment of TM dated 12 March 2018 prepared by Dr W and a report by a hearing loss advisory teacher prepared on 18 May 2018. There were other psychiatric evaluations and pre-birth assessments of the parents, a PAMS assessment prepared by an independent social worker, a report from the residential assessment unit and health visitor reports.

187. The social worker who prepared the child permanence report has included the following medical information in her summary:-

> "[TH] has had lots of tummy bugs in his life and still often has very loose bowel movements. He is currently having an elimination diet to see if he has a food allergy. This is being organised and assessed by his GP. [He] has recently had grommets fitted to assist with his hearing, whilst this was being done he also had his hearing tested. He has been found to have some hearing los[s] in both ears. He had a full paediatric assessment in March 2018, this identified global developmental delay, he has made some rapid progress since being in care in all areas, it is currently unknown if he will fully catch up with his peers or if he has some level of learning disability, he was tested for this and we are waiting results still. [He] has also had the usual coughs and colds and he had chicken pox earlier this year. [TB] is currently being assessed to see if he is Autistic."

188. At paragraph 33 of the CPR, there is a much more detailed summary of the various reports to which I have referred above. The March 2018 psychological assessment of TM records that:

> "[TH] has global developmental delay, significant communication and social difficulties, possible autism spectrum disorder. His needs are unusual and complex and he will need long-term carers who are experienced and skilled at supporting his additional needs and the challenges as his needs change and develop."

189. The report from his specialist hearing loss teacher concludes that:

> "[TM] will require a much higher level of interaction than other children in order to develop his language skills given the delay in his development so far. He will need lots of opportunities for play/experiencing different places and environments. He will need the adults around him to facilitate his language development and will need an environment where language is both modelled and extended. This will need to be 'over and above' what a child who has age appropriate language would require."

190. As the analysis reflected in the CPR makes clear, the viability assessments of the ability of the parents to care for TM, or his brothers, were entirely negative. No other family members or potential carers known to the family had put their names forward as alternative carers. The only realistic options at the time for TM were therefore long-term foster care or adoption. Ms Hopkins confirms in her written witness statement that her decision to place TM for adoption would not have been different had she had access to a report prepared by the medical adviser. I bear well in mind the submission which Ms Giz has impressed upon the court that this was not her decision, with her social work background, to make. Nevertheless, she was clearly sighted in relation to all TM's medical conditions and the ongoing concerns about his development. That medical information had no doubt informed her recommendation for a full paediatric and autism assessment in due course (see paragraph 185 above). Whilst neither the IHA nor the CPR made specific reference to a chromosome disorder, Ms Hopkins has recorded as part of her written decision to place for adoption that she had reached her decision based upon an awareness of "more potential complex health needs for [TB]" and it was this which had informed her recommendation for a full paediatric assessment in the future.

191. In the light of the availability and cumulative effect of the medical and other information which was available to Ms Hopkins at the time she made her decision, I do not find her welfare evaluation, conducted holistically as it was, to be undermined by the admitted breaches of regulations 15 and 17. I find it unlikely given the evidence which was available at the time that Dr Smith, in her capacity as agency medical adviser, would have requested a further examination and report in relation to this child. I further find that it is unlikely that Dr Smith would have expressed an opinion in any regulation 17(1)(b) health summary that would have undermined the decision to place TM for adoption. I am satisfied that, notwithstanding these admitted breaches, the decision which Ms Hopkins took on 9 August 2018 and the placement order made in respect of TM on 5 November 2018 were lawfully made and SCC is entitled to the declaration sought in respect of this child.

192. TM has been a difficult child to place because of his particular issues. One set of potential adopters withdrew when they realised what would be involved in meeting his particular needs. Notwithstanding the delays which these proceedings have caused in TM's path to permanence, I am told that an alternative adoptive placement has now been identified for him. These potential carers have been provisionally assessed as capable of meeting his needs and it appears that they remain willing to proceed on the basis of all the

information which is now available. The next steps are not a matter for me since I am not determining welfare issues but, in terms of legal hurdles, there is now no reason why those next steps should not proceed swiftly provided that the current welfare analysis continues to support adoption as the best outcome for this child.

(v) and (vi) Specific findings: MM and HM

193. MM and HM are full siblings. HM was born on 14 July 2017 (she is now 4 years old) and her elder sister, MM, was born on 24 July 2016 so she is now 5 years old. They have two sisters who have already been adopted and part of their care plan is ongoing contact with their siblings. Ms Winter was the agency decision maker for both children. Her decision to approve placement for adoption was made in both cases on 20 May 2020 and care and placement orders in respect of both children were approved by the court on 12 October 2020. The children's birth father did not oppose the route of adoption for his daughters; their birth mother gave her active consent having asked for the children to be voluntarily accommodated when the care proceedings began. The children's Guardian supported that outcome and neither of the parents has sought to make any representations in these Part 18 proceedings despite being given formal notice of their existence.

194. Concerns about the children arose in the context of their parents' volatile relationship, their father's misuse of alcohol, domestic abuse and general poor and chaotic parenting skills. Both girls have been living with their foster carer since 19 February 2020. They continue to have direct and indirect contact with their sisters (aged 2 and 3 years old) who have also been placed for adoption.

195. The same irregularities feature in the case of these two children in that there was no specific regulation 15 referral or advice that a further report was not necessary. Neither was there a regulation 17 summary report within the children's permanence reports.

196. Before Ms Winter at the time of her decision to place these children for adoption was a full report from a consultant paediatrician, Dr J. It is dated 12 March 2020 and was compiled some seven weeks before that formal decision. In addition, Ms Winter was provided with a number of other reports including formal parenting and risk assessments, one of which was undertaken by an independent social worker. These reports had been compiled over a three month period between December 2019 and the end of March 2020. They were thus fresh and up to date.

197. By way of background, Ms Winter records the composition and dynamics of the family. The girls have 13 half siblings, none of whom remained in their parents' care at the date of the decision to place HM and MM for adoption[14]. There were repeated breaches of non-molestation injunctions made against the children's father (who struggled with issues of alcohol and amphetamine misuse) and both children were placed in emergency care before being moved to their current placements in February 2020. At that point in time, the children had no sense of night and day or routines having been allowed to get up at

[14] One older half sibling had been placed for a number of years with the maternal grandmother.

1am and 2am through the nights whilst in their mother's care. Their sense of place and routine were reported to have improved significantly after their reception into care.

198. MM was born with bilateral talipes, a condition which required surgery in 2017 when she was one year old. Her parents failed to comply with ongoing medical advice and missed several appointments for follow-up consultations. As a result MM's condition relapsed several times and she requires further correction to her right foot.

199. Ms Winter was provided with an Initial Health Assessment prepared by the agency medical adviser, Dr Smith which is dated 16 April 2020. That report confirms that MM is "very well" and that "there are no concerns with her health and it is reported that this has improved since she has been in care". There were no specific concerns about her hearing or vision although she had been investigated for a possible squint. Dental care and immunisations were all up to date. The report included reference to professional input from the paediatric orthopaedic surgeon and senior physiotherapist who had been involved in MM's care for her bilateral talipes. She was due to undergo further surgery which had necessarily been delayed as a result of the Covid-19 restrictions. The medical assessment in this respect confirms that,

> "It is recognised that in the wait for surgery, [MM's] feet might relapse further but this should not cause any further concerns for [MM] and it is expected that she should be able to have a good outcome despite delaying the treatment. Appointments will be offered when Covid-19 restrictions are lifted."

200. The section of MM's report which deals with her health history contains (at paragraph 3c) a detailed exposition of the results of an earlier referral to an orthopaedic surgeon in August 2016, the treatment which followed and the operation which was undertaken as a result. It also details the staged relapse which followed when her parents failed to take her to follow-up clinics.

201. In addition, Ms Winter had a full child permanence report dated 6 May 2020 which recorded in depth the child's history and the reasons for her journey through the care system.

202. HM is fit and healthy save for a malpositioning of her right kidney. Before Ms Winter for the purposes of her decision was a paediatric report from Dr J dictated on 12 March 2020 following a consultation on that date. That report confirms that HM had undergone scans of her kidneys which revealed good growth and an absence of any concerns. She was subject to a plan for regular scans at five yearly intervals. In all other respects, "… she is clearly thriving … She looks very well and I have no concerns about her clinically". Dr J concluded her report with these observations:-

> "She has a slightly malpositioned kidney which I would like to re-scan when she is around 5 years old but the risk for long term problems is very small. The only time it would be important to be aware of this was if she were to have an accident or surgery and/or keeping a closer eye on her blood pressure, particularly during pregnancy. I would like to re-check her blood pressure in a year's time but otherwise she needs no further medical intervention."

> "I did a full examination today so I do not think that [HH] needs to be brought back for her Looked After Child medical in April, although if there are any further questions that are needed for the paperwork they can be undertaken when her sister comes for that medical."

203. The child permanence report for HM was completed on 6 May 2020, on the same date as her sister's report, some two weeks before the decision to place both children for adoption. In this instance, paragraph 10 of the reports (*'Summary report from the agency medical adviser'*) includes the same following reference:-

> "An Adoption Medical report is not yet available because, in Somerset, once adoptive parents have been identified the Medical Advisor (who is a Paediatric Doctor) will then prepare a detailed report. The report will share health information about pre and post natal experience of the child as well as health factors. This report should also contain health information about [HM's] parents, half siblings and family members, especially if they have any health issues that are genetic and could therefore impact on [HM], either at the time of writing or later in life."

204. I pause there to remark only that the inclusion of this paragraph reinforces the fundamental nature of the misconception under which its author, and indeed the adoption agency, was labouring. It is the clearest evidence that a policy had been adopted by SCC which was knowingly or unknowingly in direct contravention of the AAR. Beyond that, I cannot make further findings given the scope and reach of the evidence in this case. It is nevertheless captured by formal concessions made by SCC that (i) the ADM was unaware of the requirements in regulations 15 and 17, and (ii) the adoption agency's legal department failed to identify those deficiencies in its procedures. Mr Goodwin QC on behalf of the adoption agency has described this as "a serious misunderstanding of what is required by regulation 17 of the AAR".

205. The children's Guardian supported the plan to place both children for adoption. There were no changes in the health of either child between the ADM's decisions for each on 20 May 2020 and the placement orders approved by the court on 12 October later that same year. The placements for adoption were supported by their mother and not opposed by their father.

206. In these circumstances, it is difficult to see how any perceived lack in the medical evidence and/or a failure to ask Dr Smith, in her capacity as agency medical adviser, whether a further report or examination was necessary, would have made a material difference to Ms Winter's decision-making. Having considered the alternatives for each child in this sibling group of two, she concluded that the needs of each were for placement together in an adoptive home.

207. I do not find her welfare evaluation, conducted holistically as it was, to be undermined by the admitted breaches of regulations 15 and 17. I find it unlikely given the evidence which was available at the time that Dr Smith, in her capacity as agency medical adviser, would have requested a further examination and report in relation to either of these children given the information which was then available and the recommendations for

ongoing monitoring and review. I further find that it is unlikely that Dr Smith would have expressed an opinion in any regulation 17(1)(b) health summary that would have undermined the decision to place either of MM or HM for adoption. I am satisfied that, notwithstanding these admitted breaches, the decision which Ms Winter took on 20 May 2020 and the placement orders made in respect of each child on 12 October 2020 were lawfully made and SCC is entitled to the declaration sought in respect of these children.

208. I am told that, following extensive national and regional searches, potential adopters have been identified. They are prepared to offer a permanent home to both children and they have been assessed as able to meet all their needs including the ongoing interventions which will be needed to correct MM's health issues. I do not propose to say anymore about the next steps save that there is no further legal impediment for either child in terms of the next steps towards permanence.

(vii) and (viii) Specific findings: HP and MP

209. HP was born on 9 November 2017. He is now nearly 4 years old. His sister, MP, was born on 25 May 2019 and so she is now not quite 2 years old. They reside together at a foster placement which has been their home since 15 May 2020. Ms Winter was the agency decision maker in this case and she made her formal decision to place these children for adoption on 13 August 2020. The court made care and placement orders on 26 January 2021. Neither parent engaged in the court proceedings or provided any instructions and neither has sought to make any representations in these Part 18 proceedings notwithstanding that they have been given notice of them and of this hearing. They appear to have separated by the time of the final hearing. The mother had a final contact with HP on 6 April 2021. The father was fully aware of these proceedings, although not formally served, and did not respond to the invitation which was extended to him for these purposes. The Guardian in each case gave her full support to the making of those orders as being in the children's best interests.

210. Neither of these children has any health issues.

211. There were significant concerns about the quality of parenting which these children had received from their parents. Before the birth of his sister, HP had already been the subject of an earlier set of care proceedings which resulted in April 2018 in a supervision order. Neither parent was able to continue to care for the children and, in January 2020, they moved to live with their paternal uncle and his partner under the terms of an interim care order. That placement was short-lived and on 15 May 2020 they moved to a foster placement[15].

212. For the purposes of her decision on 13 August last year in relation to HP, Ms Winter, as the agency decision maker, had a medical report in the form of an Initial Health Assessment dated 7 December 2017. That report had been prepared by Dr Smith, the

[15] For completeness I note that the paternal uncle and aunt (whom I assume now to be married) were also given notice of these Part 18 proceedings. On 14 September 2021 a solicitor instructed on their behalf contacted SCC to confirm that they had been notified of the proceedings. No indication was given that they wished to make representations and none has been received from this quarter to date.

agency medical adviser. The report confirmed that he was a physically fit and healthy boy. A further health assessment prepared by Dr M on 18 June 2020 following an examination at Yeovil District Hospital confirmed that there were no health issues arising out of his examination of HP and no significant past medical history. That report was prepared within a matter of weeks of the ADM decision.

213. In relation to HP's sister, MP, Ms Winter has confirmed that she had a report in the form of an Initial Health Assessment prepared by Dr M dated 18 June 2020. That report confirmed that there were no health concerns for the child who was described by her foster carer as "a gorgeous, cute and delightful baby". When MP had come to her, she was behind in more or less every aspect of her development but that presentation had changed dramatically over the course of the first five weeks of the placement. All MP's immunisation and other records were confirmed to be up to date and blood tests taken shortly after her birth had confirmed that there were no concerns in relation to any other conditions.

214. In addition to the medical evidence for each of these siblings, Ms Winter had a full range of expert psychological and other reports and information which had been compiled in relation to the parents. A special guardianship assessment had been prepared in relation to the option of placement with the paternal uncle and his partner. That report was negative and there were no other family members who were able to offer either of these children a home. Ms Winter subsequently reviewed her original decision on 21 December 2020 some four months after her original decision for both children to be placed for adoption and about a month before the final court hearing. There was additional information available to her at that stage in relation to a medical report about what was considered to be a non-accidental injury to HP whilst he was living in the care of his uncle his partner. I place no reliance on that subsequent information for the purposes of determining the legality of the current placement orders nor have I taken any account of the very full pre-adoption medical report prepared by Dr H on 7 April 2021. There is a full child permanence report in respect of each child in the material placed before the court. Whilst the team leader/social worker compiling those reports has signed them, they remain undated and it is therefore not clear to me whether or not they were available to Ms Winter on 13 August 2020 when she made her decision to place for adoption. From the evidence of Ms Poore and what appears to have happened in relation to the other primary cohort children, it seems reasonable to assume that these reports were provided to her before 13 August 2020. Given the options at that time, it appears that these children were either looking at long-term foster care or an adoptive placement. There were no other options given the fact that neither parent had engaged in the proceedings for the purposes of the final hearing and there was no offer of an alternative from members of the extended family.

215. In these circumstances, I do not find Ms Winter's welfare evaluation, conducted holistically as it was, to be undermined by the admitted breaches of regulations 15 and 17 in the case of these two children. I find it unlikely given the evidence which was available at the time that Dr Smith, in her capacity as agency medical adviser, would have requested a further examination and report in relation to either of these children given the

information which was then available to Ms Winter. I further find that it is unlikely that Dr Smith would have expressed an opinion in any regulation 17(1)(b) health summary which would have undermined the decision to place either of HP or MP for adoption. I am satisfied that, notwithstanding these admitted breaches, the decision which Ms Winter took on 13 August 2020 and the placement orders made in respect of each child on 26 January 2021 were lawfully made and SCC is entitled to the declaratory relief which it seeks.

216. I am told that family finding is well advanced in this case. An adoptive match for these two children has been made. They can be placed together and work had been commenced to prepare the children for a move to their new carers when these issues came to light. For reasons I have already expressed, I say no more about the next steps which are outwith the remit of this judgment save that there is no further legal impediment for either child in terms of the next steps towards permanence.

(ix) and (x) Specific findings: SR and ZR

217. This sibling group is the last of the primary cohort children. SR was born on 5 August 2014. He is now 7 years old. His sister, ZR, was born on 17 October 2018. She is now 3 years old. Ms Winter was the agency decision maker in this case. Her decision to place these children for adoption was made on 8 October 2020. Formal applications for placement orders followed on 22 October 2020. Care and placement orders followed on 9 November 2020. Neither of the birth parents engaged in the court proceedings. The mother has been served with notice of these proceedings and has chosen not to respond and/or make any representations. The whereabouts of the children's father are unknown. He disengaged from the care proceedings at a very early stage. I made separate disclosure orders against the Department of Work and Pensions in order to ascertain whether there was any official record of his current address. That has produced a nil return and thus he has not been given notice of these Part 18 proceedings. To the best of my knowledge, the mother has no contact with the father and cannot assist in this respect. Despite the lack of service on this particular father, I have given leave for the Part 18 application in respect of these two children to proceed since their cases as members of the primary cohort require urgent resolution.

218. In March 2020 both children moved to live with their maternal grandmother. She applied within the care proceedings for a special guardianship order but withdrew that application in advance of the final hearing, recognising that it was in the children's best interests to pursue the option of a settled and secure adoptive placement. Her daughter, the children's maternal aunt, had also applied for a special guardianship order but the court rejected that option following a negative assessment of her capacity to care for them. The mother herself disengaged more or less completely once the children were removed from her care and she has not had any contact with either child since February this year.

219. There are no health concerns in relation to either of these children. That much is clear from the reports which were available to Ms Winter on 8 October 2020. Dr M confirmed

that SR was well and thriving in his report dated 13 May 2020. At the time of her decision, and in addition to Dr M's medical report, Ms Winter had a very full panoply of evidence from a number of professionals including parenting assessments, drug reports, viability assessments and a special guardianship assessment of the maternal aunt. The only concerns to emerge from the medical report in relation to SR was a failure by the mother to ensure that he was up to date with his immunisations and a poor dental health record. The CPR which was available to Ms Winter at the time of her decision records this information from the social worker who prepared the report:-

> "[SR] is fit and healthy. He has some tooth decay and has had several baby teeth removed to manage this. He has outstanding childhood immunisations."

220. Dr M prepared a separate report dated 13 May 2021 for ZR. That report confirmed that she had no past or current medical issues and that she was a perfectly healthy child. The child permanence report dated 28 August 2020 (just weeks before the ADM decision) confirmed that she was "in good health and meeting all of her developmental milestones" although she had not yet had any childhood immunisations.

221. The child permanence reports confirmed that neither child had an ongoing relationship with their father and that neither the mother nor the father was in a position to provide for their children going forward. The parenting assessments of both the maternal grandmother and aunt were negative and carried significant risk of breakdown in respect of both potential placements. Thus the options which confronted Ms Winter in this case were either long term foster care or placement for adoption. For reasons which she gave in her written decision, she favoured giving both of these children the opportunity for security and permanence in the context of an adoptive placement as a sibling group.

222. In these circumstances I do not find Ms Winter's welfare evaluation, conducted holistically as it was, to be undermined by the admitted breaches of regulations 15 and 17 in the case of these two children. In the light of the evidence which was available at the time that both children were in good health and thriving in their foster placement, I find it unlikely on the balance of probabilities that Dr Smith, in her capacity as agency medical adviser, would have requested a further examination and report in relation to either of these children given the information which was then available to Ms Winter. I further find that it is unlikely that Dr Smith would have expressed an opinion in any regulation 17(1)(b) health summary which would have undermined the decision to place either of HP or MP for adoption. There was no material error in her decision-making in respect of these two children. I am satisfied that, notwithstanding the admitted breaches of regulations 15 and 17, the decision which Ms Winter took on 8 October 2020 and the placement orders made in respect of each child on 9 November 2020 were lawfully made and SCC is entitled to the declaratory relief which it seeks.

223. One potential adoptive placement for these children has already been lost. I am told that a new set of adopters has been identified. I say no more about these decisions save that there is now no legal impediment in the path of permanence for these two children.

224. That concludes my analysis of the position for each of the primary cohort children.

N. Concluding remarks

225. This is already a lengthy judgment. The circumstances in which these Part 18 applications come before the court required that it be so. Despite the fact that I am only dealing here with ten of the primary cohort children affected by SCC's failures, I realise that there is the wider cohort whose cases will need to be considered in due course. That exercise is likely to be materially different from this in that many of those children have been placed with permanent families on the basis of post-matching adoption orders. The majority are living in happy and settled homes where they have achieved permanence and, I hope, happiness and security after what will have been a very difficult start in their lives.

226. The fundamental message which must flow from this judgment is that nothing which I have said, and nothing which emerges from my findings in relation to the legality of these ten placement orders, absolves SCC from significant censure for its systemic failures. On the final day of this hearing, Mr Goodwin QC produced a lengthy statement from Ms Winter which purports to address some of the steps which have now been put in place to address these failures. Because counsel did not have an opportunity to read this statement, far less address its contents, I do not propose to say any more about it in this judgment. There may well be issues which need to be addressed going forward and, as I have indicated, I intend that there should be an early case management hearing within the next three weeks to consider what happens next.

227. For completeness, from the foot of the analysis of the individual cases which I have set out in paragraphs 141 to 224 above, I do not consider that Ms Winter or either of the two other ADMs who were involved in decisions for the primary cohort children had a specific policy or agenda to avoid their specific statutory responsibilities to consider all options for these children. It is clear to me from the particular factual matrices and the analysis of the options which were potentially available and viable for each of these primary cohort children that the judgments reached by Ms Winter and her fellow ADMs were both considered and based on an evaluation of the totality of the evidence available at the time. To the extent that it is permissible for this court to look backwards with the benefit of hindsight at those decisions from the perspective of the much fuller evidence which was available to the court for the purposes of subsequent judicial decision making, I am satisfied that each of the decisions taken in relation to the primary cohort children was reached from the foot of an evidence base which was sufficient in terms of its material compliance in substance, if not in form, with Parliament's expressed intentions as reflected in the AAR.

228. Nothing of this sort can be allowed to happen again. SCC must conduct a complete and comprehensive overview of its compliance procedures. If this exercise requires the allocation of financial and other resources, then so be it. The next steps will be determined at the forthcoming case management hearing.

Order accordingly