



Neutral Citation Number: [2025] EWCA Civ 1342

Case No: CA-2025-001731

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT CHELMSFORD
HHJ SHANKS
CM23C95001

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2025

Before :

LORD JUSTICE GREEN
LORD JUSTICE PHILLIPS
and
LORD JUSTICE COBB

Re H (Final Care Orders at IRH)

Liam Sullivan (instructed by **Jefferies Law**) for the Appellant/Father
Jonathan Hasson (instructed by **Legal Services**) for the Local Authority
Jessica Hunter (instructed by **White & Co**) for the Mother
Daniel Proctor (instructed by **Brights Law**) for the Children's Guardian

Hearing date : 14 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Cobb:

Introduction

1. Care proceedings under Part IV of the Children Act 1989 ('CA 1989') were issued by the Family Court in Chelmsford in early 2023 in relation to three boys: L (now aged 9), Y (now aged 5) and N (now aged 3).
2. These proceedings were in their 128th week when they were listed for an Issues Resolution Hearing ('IRH') before Her Honour Judge Shanks ('the judge') in June 2025. We were told that this was the twelfth hearing within the proceedings; by the time of this hearing, the filed documents exceeded 1700 pages. The applicant for care orders (the 'local authority'), supported by the Children's Guardian, encouraged the judge to make final care orders at the IRH. The parents opposed the making of final orders at that stage, and invited the judge to list the applications for a final hearing. The judge heard brief oral submissions, and made final care orders.
3. It is against the final orders made in relation to Y and N that the Appellant, who is the father of N, and was for a period of time the main carer for Y (and hereafter is referred to as 'the father'), appeals to this court. Permission to appeal was granted on 2 October 2025 and the appeal was listed as a matter of expedition. The father is supported in the appeal by the children's mother. The appeal is opposed by the local authority and Children's Guardian.
4. At the conclusion of the appeal hearing, we announced that the appeal would be allowed, and that the care orders in respect of Y and N would be set aside. We substituted interim care orders and remitted the care applications for case management by the Family Court at Chelmsford on 24 October 2025.

The facts

5. Given the circumstances in which the proceedings concluded, there has been no judicial determination of the facts in this case. The following basic outline history is taken from the documents filed with the court.
6. The appeal concerns Y and N. They have a number of older half-siblings, including their half-brother, L. Neither the mother nor the father contested the making of a care order in respect of L at the IRH, and that order remains undisturbed by this appeal. L is currently in residential care, and the local authority's plan is that he should, at the right time, transition to a specialist foster placement.
7. The mother and father separated in June 2022 when N was only two months old. N was their only child together. N remained living with his father; L and Y continued living with their mother. During 2022, safeguarding concerns were raised about the welfare of L and Y, principally focused on the mother's poor home conditions, her lack of funds for heating and adequate food, alleged domestic abuse by the mother towards the father, the mother's mental ill-health and her misuse of cannabis, and her lack of cooperation with professionals over a period of months. Police Protection Orders were made in respect of L and Y on 1 January 2023 and they were removed from their mother's care; the local authority swiftly thereafter issued care proceedings, and interim care orders were made. Against the backdrop of safeguarding concerns about the

father's misuse of drugs, and his chronic excessive use of alcohol, the local authority issued care proceedings in respect of N in February 2023. In doing so, it did not seek the removal of N from the father's care; instead, it sought and obtained an interim supervision order, on the basis that it would offer practical support to the father in his care of N. The two sets of proceedings were consolidated.

8. In September 2024, following a positive assessment conducted by the local authority, and with the approval of the Family Court, Y was moved from foster care to join N in the care of the father. By that time, the father had, with the local authority's support, moved into a 2-bedroom property specifically so as to accommodate Y. We were told without contradiction that throughout the period in which the father was caring for N, and indeed prior to Y's move into his home, the father had been regularly subject to hair strand testing for drugs and alcohol. This testing had showed, as the local authority well knew, varying levels of drug use (including cocaine, though possibly not active use) and chronic excessive alcohol use.
9. On 20 December 2024, the father attended the boys' school to collect them at the end of the school day; he was observed to be drunk. The local authority was notified, and obtained the father's agreement to the accommodation of the children over the Christmas period under section 20 CA 1989. In January 2025, the local authority sought and obtained an interim care order in relation to N. N was placed with his paternal grandmother, while Y was placed back with his foster carers.
10. During the spring of 2025, the father underwent community-based treatment for alcohol misuse; it is the father's case that from early-March 2025 he has maintained total sobriety. Subsequent hair strand testing appears to offer some support for this claim.
11. During early 2025, special guardianship assessments were undertaken of the paternal grandmother and her partner as potential long-term carers for N. In that process, concerns were raised about the paternal grandmother's partner's responses to issues of historical sexual abuse within his own family, albeit he was not identified as the perpetrator of that abuse. Further focussed work on sexual risk was commissioned, and this was ongoing at the time of the IRH (see further at §13 below). Assessment was also undertaken of the paternal grandmother's partner's daughter (and her partner) as special guardians for Y. Subject to the outcome of DBS (Disclosure and Barring Service) checks, this assessment was positive.

The IRH

12. The IRH was listed for 24 June 2025. One week earlier, an advocates meeting had been held in purported compliance with Stage 3 of the Public Law Outline ('PLO'). It is unlikely that this meeting was productive; the mother's advocate was without instructions, the father's advocate was not present (a scheduling mishap), and the final analysis of the Children's Guardian was not available. Following the advocates meeting, the local authority filed its position statement with the court in readiness for the IRH; in that document, counsel indicated that the local authority "would have liked" the court to conclude the proceedings at the IRH in respect of the boys, but accepted that "a final hearing is required". The draft case management order, filed with the court and circulated to all parties in compliance with PLO, supported by a draft witness template, contemplated a listed contested final hearing in relation to Y and N on a date to be fixed.

13. The trial bundle was lodged prior to the IRH; among the recently filed documents were the final care plans. The care plan for N provided for him to be placed with his paternal grandmother and her partner for his long term future, however (as I have indicated above) this was expressed to be:

“... subject to satisfactory work being undertaken by the couple around sexual risk by the Edge of Care (EOC) team following the Lucy Faithful programme. It is proposed that the EOC team complete this work by 8 July 2025 with an addendum Special guardianship assessment being completed on the 29 July 2025 in order to evaluate the effectiveness of the work completed and make final recommendations”.

Notably, the care plan further provided that:

“In the event that [the paternal grandmother] and [her partner] are not deemed suitable to care for [N], the Local Authority are parallel planning including a plan of adoption which will be considered as an alternative final care plan for [N], subject to [Agency Decision Maker’s] approval”.

14. The care plan for Y was that he should be placed in the long term with paternal grandmother’s partner’s daughter, and her partner. In the event that this placement were to break down, the care plan for Y also provided for a parallel plan of adoption. The Children’s Guardian did not feel able to lend her full support to this long-term family placement under the aegis of special guardianship orders in the absence of the DBS check.
15. The IRH was listed for one hour. It lasted 45 minutes. The judge heard argument from counsel. No party suggested that the judge should hear any evidence, and none was called. The position of the parties at that hearing was as follows:
- i) The local authority had changed its stance since filing its position statement; at the hearing it argued that the proceedings in relation to all three boys should conclude at the IRH with the making of final care orders. In respect of Y and N, it was proposed that their placements with family members (as outlined above), should be confirmed, initially under Regulation 24 of the Care Planning, Placement and Case Review Regulations 2010 (temporary approval of connected persons), as a prelude to the family carers becoming special guardians under section 14A CA 1989; the local authority proposed a significant reduction of contact between the children, and between the parents and all of the children;
 - ii) The father opposed the making of care orders in respect of Y and N; he disagreed with the plans to place them with extended family; he sought to resume care for them himself. He also sought to challenge the proposed contact arrangements. He asked the court to list a final hearing so that these matters could be determined after a contested hearing on oral evidence;
 - iii) The mother did not seek to care for any of the children but opposed the local authority’s care plans in respect of them; she supported placement of Y and N with the father. The judge later recorded in her judgment that the mother “...

contests the plan in respect of contact. In essence her position is that that contact is not sufficient to preserve a meaningful relationship between herself and her three children”. She too sought an opportunity to test the local authority’s plans.

- iv) The Children’s Guardian supported the Local Authority’s care plans and invited the court to make final orders there and then.

- 16. Following submissions, the judge gave a short *ex tempore* judgment, of which we have the transcript. The judge opened with a brief summary of the position of the parties. Of the father’s aspiration to care for Y and N, she said:

“... he very much wishes to care for [N] and [Y] himself and indeed there was a time when they transitioned into his care” (emphasis by underlining added).

In the same vein, she later said:

“The children, [N] and [Y], moved to his care on 21st September 2024. That placement ended in December 2024; it was short-lived” (emphasis by underlining added).

Later she referred to the “short-lived reunification” of the boys with their father. I shall return to this later, but (as will be apparent from §7 above) these remarks represented a material misunderstanding of the history of N’s care.

- 17. The judge alluded to the father’s history of alcohol misuse, and his assertion that by the time of the IRH “he has started on a road to recovery”. She added that:

“... he says he is engaging with services (although there is no evidence of that by way of exhibits to his statement) and he says he is on a positive trajectory.”

The words in brackets suggest that the judge was sceptical about the father’s assertions. She went on to describe the father’s use of alcohol over a prolonged period of time as “the central feature” in the case; this issue, she said, went to the issue of future risk. Later in the judgment she returned to this issue:

“He tells me with some pride in his statement that he has been free of any drink, of alcohol, since March of this year, the longest time in the period of two years, relapses in February 2025. He says he is engaging with services and he says he is on a positive trajectory and will be able at a future point in time to care for his children. What the professional evidence highlights is the significant feature of alcohol in his life and the impact of risk of relapse and consequently the impact on a child in his care. These children deserve a decision to be made now”.

- 18. The judge referenced the fact that a previous case management order had made clear that unless the parents filed a response to the statement of proposed ‘threshold criteria’ (under section 31(2) CA 1989) the formulation of threshold facts prepared by the local authority would be approved by the court (on the written evidence) as drafted. She

said, “this is not a threshold case”, by which I understand her to mean that there could be no real issue that the test under section 31(2) CA 1989 was satisfied.

19. In the course of her judgment, she made two passing references to the “welfare checklist”, but did not identify or address any of its constituent elements with regard to either Y or N.
20. The essence of the judge’s decisions is contained in the three concluding paragraphs of the judgment:

“[15] Of course I understand that [the father] and [the mother] love these children very much indeed but these are children who cannot simply be left waiting to see if [the father] can do it. When I say “do it” I mean can he sustain change which the papers show is change only recent and I refer again to relapses admitted by [the father], February 2025, a short time ago and him saying no drink since March 2025 and that is against a significant background of alcohol misuse.

[16] It seems to me that these children deserve a final decision now and that there is sufficient evidence to make that final decision now. I make final care orders in respect of both [N] and [Y]. I endorse the care plan in respect of contact. The Local Authority have a duty to keep those arrangements under review. The order is both necessary and proportionate to secure the welfare of each of these children who deserve to have a settled life; to know where they are. Even at their respective ages they will know that they have had moves around during their lifetime and they have an overwhelming need for permanency. That is what this order is intended to achieve. More likely than not applications for special guardianship will follow.

[17] In making my decision I have considered the Article 8 rights of those concerned. The orders are necessary and proportionate to secure the welfare of these children. I have considered whether to list the matter for a final hearing. In my judgment there is more than sufficient evidence to enable me to make a final decision now, having listened to each of the advocates in turn and having read the court bundle which now extends to 1784 pages” (emphasis by underlining added).

21. Following the judgment, Mr Sullivan, counsel for the father, sought permission to appeal, referencing in particular (a) the judge’s lack of consideration of the elements of the welfare checklist, and (b) a failure to address the Article 6 ECHR issues given the judge’s rejection of the parent’s wish to test aspects of the evidence. The judge ruled on that application as follows:

“I refuse permission to appeal. I specifically referenced in my judgment the welfare checklist. I have mentioned more

than once the dynamic feature which is alcohol misuse on the part of the father, an extensive history around that, the short-lived reunification, the admitted relapses in February. So far as Article 6 is concerned I have mentioned Article 8 [sic] more than once and I have mentioned welfare was my paramount consideration. I have also referred specifically to the wealth of the expert evidence. I have read, as I hope I have illustrated, the father's statement and I have given what I think is a holistic approach to these proceedings, in train in excess of 100 weeks. These three children who have been in them, their reunification has been tested; it has failed. Permission refused".

Grounds of Appeal, and the arguments on appeal

22. There are three Grounds of Appeal:

- i) That it was wrong for the judge to make final care orders at the IRH;
- ii) That it was wrong to make 'short term care orders' as a prelude to the court making Special Guardianship Orders;
- iii) The judge's reasoning was inadequate in declining to list the matter for a full final hearing. In bringing matters to an end at the IRH, she failed to consider the wider welfare issues, did not address the welfare checklist in section 1(3) CA 1989, the merits of the father's case to resume the care of the boys, and/or Article 6 of the ECHR. She placed inordinate weight on the issue of delay. The judge did not consider the question of contact.

23. In relation to Ground 1, Mr Sullivan does not suggest that the court does not have the power to make a final order at IRH, but argues that on these facts, it was wrong for the judge to do so. He argued that the father had a legitimate case to be tried, namely that he was now abstinent from alcohol and posed no future risk to the boys; Mr Sullivan had pressed upon the judge that the father could now once again resume their care. The father indicated at the IRH, through Mr Sullivan, that he wished to challenge the contrary views of the local authority and the Children's Guardian. He and the mother contend on this appeal that the proceedings should not have been abruptly ended at the IRH, and that their Article 6 rights were infringed in an attempt to moderate the impact of what was an already long-since passed 26-week target for the completion of the case. While acknowledging the length of the proceedings already, Mr Sullivan argued that justice and fairness to the parents was in this particular hearing and at this stage of the case regrettably "sacrificed upon the altar of speed". (*Re NL (A child)* [2014] EWHC 270 (Fam) at [40]: Pauffley J).

24. The local authority and Children's Guardian rely on the guidance issued by Sir Andrew McFarlane P (see §§33-35 below) in arguing that the court was right to act robustly in bringing the proceedings to an end at the IRH; it was right for the judge to make this hearing truly "effective". Mr Hasson argues that it was not necessary for the court to hear any further evidence about the father's relationship with alcohol and that, given the chronic history, any period of proven abstinence would not in fact make the difference.

25. On Ground 2, Mr Sullivan has argued before us that the court should have adjourned the proceedings further until it was in a position to consider whether to make Special Guardianship Orders under section 14A CA 1989, and that it was wrong in principle for the court to make ‘short term’ care orders. Mr Sullivan relies on *Re P-S (Children)(Care Proceedings: Special Guardianship Orders)* [2018] EWCA Civ 1407 at [33] (*Re P-S*):

“The concept of a short term care order within which the placements could be tested was raised by the judge as a justification for making full care orders. Aside from the welfare merits of the orders, which were not adequately reasoned, the concept of a short term order is flawed. There is no mechanism for a care order to be discharged on the happening of a fixed event or otherwise to be limited in time. The exercise of parental responsibility by a local authority cannot be constrained once a full care order is made other than on public law principles of unlawfulness, unreasonableness and irrationality. The judge should have reflected on the fact that if the local authority did not in due course apply to discharge the care orders themselves it would have been incumbent on the proposed special guardians to do so and to satisfy the test for leave to make that application without the benefit of legal aid, given that in the circumstance of a disagreement with the local authority it would be highly unlikely that the special guardians would be in receipt of funding from them”.

The parents argue that the placement with the special guardians ought to have been tested within the timeframe of the proceedings. The local authority and Children’s Guardian reject the suggestion that the orders made were ‘short term’ and/or that the court was wrong in its approach.

26. All parties to this appeal realistically accept (Ground 3) the paucity of judicial reasoning in what was acknowledged by all counsel to be a ‘short’ judgment. While Mr Hasson accepted that “the judgment may well have benefited from a greater level of explicit detail”, he and Mr Proctor nonetheless argue that all of the relevant and necessary components of a public law judgment were referenced and by implication included. Mr Sullivan, supported by Ms Hunter, point to several material omissions which expose flaws in the judge’s approach to the decision to conclude the proceedings, and make final orders. They further argue that the judge over-emphasised the impact of delay, given that the plans for the children were not yet ready to be finalised by means of a special guardianship order in any event.

Developments post-IRH

27. Following the filing of the Appellant’s Notice, there was a material development in the case. The paternal grandmother unexpectedly died. At the time, she was caring, with her partner, for N for whom, as I have said, she was the prospective special guardian. We considered it appropriate to consider this latest information under the provisions of CPR 52.21(2)(b) for two reasons:

- i) Its significance to the care plan for N, which had been approved by the judge at the hearing under review; potentially it brings into play the contingency arrangements (i.e., adoption) within that care plan (see §13 above);
- ii) The father relies on this significant development as a material change of circumstances underpinning a recently issued application to the Family Court under section 39 CA 1989 to discharge the care order in respect of N. In that application, the father claims that the paternal grandmother's partner has informed him that he has no wish to care for N alone. This application is listed for case management directions on 24 October 2025.

Discussion and conclusion

28. Public law (care and supervision) applications are case managed in the Family Court in accordance with the PLO; this case management template is currently located in PD12A FPR 2010. The IRH is a key step ('Stage 3') in the PLO. Preparatory to the IRH, an advocates meeting should be held, at which it is expected that discussions will focus on how best to use the IRH to narrow and/or resolve the issues. In this case, the advocates meeting was largely unproductive for the reasons set out above (§12).
29. The PLO contemplates that at the IRH the court will:
 - i) identify the key issue(s) (if any) to be determined, and the extent to which those issues can be resolved or narrowed;
 - ii) consider whether the IRH can be used as a final hearing;
 - iii) resolve or narrow the issues by hearing evidence;
 - iv) identify the evidence to be heard on the issues which remain to be resolved at the final hearing;
 - v) if necessary, give case management directions.
30. PD12A FPR 2010, para.2.3 makes clear that:

“... if the issue on which the case turns can with reasonable practicability be crystallised and resolved by taking evidence at an IRH then such a flexible approach must be taken in accordance with the overriding objective and to secure compliance with section 1(2) of the 1989 Act and resolving the proceedings within 26 weeks or the period for the time being specified by the court”.
31. The role of the IRH in the public law process was considered by this court in *Re J (Care Proceedings: Issues Resolution Hearing) (ALC Intervening)* [2017] EWCA Civ 398; [2017] 4 WLR 109 (*Re J*). Paragraphs [17] to [23] of Macur LJ's judgment (with which the other members of the court, including Sir James Munby P, agreed) repay re-reading in full. Macur LJ highlighted the importance of “robust case management” at the IRH, particularly given the pressures then (as indeed now) on the Family Court. She continued:

“[17] ... There can be *no* doubt that the Public Law Outline (‘PLO’) contemplates the resolution and final determination of applications under s 31 Children Act 1989 at the IRH in appropriate cases, subject implicitly to the necessary evidence being before the court.” (emphasis by italics in the original).

“[18] The determination of what procedure to adopt calls for the exercise of judicial discretion dependent on the circumstances of the case before the judge. It is impossible to formulate a 'one size fits all' policy. This court will be slow to interfere in that exercise of judgment carefully articulated and soundly based. However, the principles of procedural fairness formulated in several recent cases decided by this Court provide clear guidance to the first instance judge in his/her decision of the appropriate and fair procedure to be adopted at various stages in family proceedings”.

....

“[22] It is obvious that Art 6 and 8 ECHR convention rights necessarily will be engaged at every stage of the process. As Pauffley J so aptly characterised in *Re NL (Appeal: Interim Care Order: Facts and Reasons)* [2014] EWHC 270 (Fam), 'Justice must never be sacrificed upon the altar of speed'.”

32. Macur LJ went on to quote the following passages from the judgment of Sir James Munby P in *Re S-W (Care Proceedings: Case Management Hearing)* [2015] 2 FLR 136 (*Re S-W*):

“[57] ... there is the right to confront one's accusers. So, a parent who wishes to cross examine an important witness whose evidence is being relied upon by the local authority must surely be permitted to do so.

[58] I stress the word important. I am not suggesting that a parent has an absolute right to cross-examine every witness or to ask unlimited questions of a witness merely with a view to 'testing the evidence' or in the hope, Micawber-like, that something may turn up. Case management judges have to strike the balance, ensuring that there is a fair trial, recognising that a fair trial does not entitle a parent, even in a care case, to explore every by-way, but also being alert to ensure that no parent is denied the right to put the essence of their case to witnesses on those parts of their evidence that may have a significant impact on the outcome.

[60].... there can, in principle, be care cases where the final order is made at the case management hearing. But, unless the decision goes by concession or consent, it will only be

exceptionally, in unusual circumstances and on rare occasions, that this can ever be appropriate.”

33. Further ‘Case Management Guidance’ was issued by Sir Andrew McFarlane P in 2022, aimed at tightening up good practice in public law process, returning to the principles of the PLO; it contains this important paragraph:

“IRHs need to be more effective. At an IRH, it is the judge’s role to encourage all parties to take a realistic approach. Any suggestion of adjournment or the filing of further evidence at that stage will only be justified if it is ‘necessary’ to determine the remaining relevant issues”.

34. This guidance draws from earlier published guidance (the ‘Road Ahead’) published during the Covid-19 pandemic in 2020:

“Parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear.”

35. In July 2024, Sir Andrew McFarlane P added to this guidance with further remarks in his ‘View from the President’s Chambers’:

“To undertake an IRH, a judge must be given sufficient time to prepare the case as if preparing for the final hearing and the listing should be sufficient to accommodate the hearing of short evidence if required. Not to allocate sufficient preparation and hearing time to the IRH robs the court and the parties of any real opportunity to resolve issues and effectively accepts that the IRH will be no more than a pre-trial review hearing.

36. No-one who practises or sits in the field of family justice doubts the importance of the points made in §§29-35 above, and of ensuring that every hearing counts in public law litigation; the objective is efficient, informed and timely decision-making in the interests of the subject children. Equally, there is no doubt that in family proceedings the judge is vested with considerable discretion to manage any particular application or hearing within a wide spectrum of procedure. This includes the IRH. Where on that spectrum a particular application should be placed is a matter for the judge’s discretion (see *Re B (Minors)(Contact)* [1994] 2 FLR 1 per Butler Sloss LJ and *Re N (A Child)* [2012] EWCA Civ 1563 at [10] and [11]). One of the key considerations as to whether a case is resolved summarily or adjourned for further and/or more detailed enquiry will be “the relevance of the potential result of the investigation to the future care plans for the child” (*A County Council v DP, RS, BS (By their Children’s Guardian)* [2005] EWHC 1593 (Fam) 2005 2 FLR 1031: [24(f)]).
37. The dreadful history of delay in this case, already more than four times longer than the statutory 26 week “imperative” (per section 32(1)(a)(i)/(ii) CA 1989, and Sir James Munby P in *Re P-S* at [60]), demonstrates how significantly the proceedings had

spiralled out of control by the time of the IRH. The number of hearings and the voluminous documentary evidence, particularly when taken together with the delay, point to persistently ineffective and unfocused case management; it is not clear to us whether there had been any judicial continuity in the case management, but any lack of continuity may go some way to explain the problems. The case had its share of complexity, but not unusually so. The unpalatable truth is that the delay will have prejudiced the wellbeing of these subject children (see section 1(2) CA 1989).

38. The judge was plainly concerned at the IRH about the undue delay, and she was right to be so. In her judgment she makes several references to this. It is easy to understand her eagerness to resolve the case at that hearing, and I accept that this was well-intentioned. However, the benefits of robust resolution of public law proceedings at any stage prior to the final hearing (where evidence is tested) must never be at the expense of procedural fairness and justice (rule 1 of the FPR 2010, Article 6 ECHR and *Re J* at [18], above). In this case, the solution to the procedural disarray of this protracted litigation did not lie, in my judgment, in the summary termination of the proceedings at the IRH in a manner which was procedurally unfair to the respondent parents.
39. There was a material issue of fact to be tried. The judge had rightly identified that the central issue in the case was future risk (see §17 above). The local authority's final care plans for the children, filed shortly before the IRH, had been predicated on the factual premise that the parents had not "been able to achieve any positive change to their lifestyles that would support the children returning to either of their care". However, the father had filed evidence maintaining that he could demonstrate a contrary position, with evidence (including from professionals working with him, and hair strand testing), that he had made significant strides successfully to rehabilitate from his alcohol misuse. The social worker did not, it appears, believe the father, or credit him with any or any claimed progress in his recovery; therein lay a material factual issue which justified determination, the more so since history reveals that the local authority had (a) allowed N and Y to live with the father for a period of time, and had (b) actually supported the father in that regard, when the authority knew of the father's troubled relationship with drugs and alcohol. It seems to me that the father had a right to challenge the social worker's view that he had not reformed (he had "the right to confront [his] accusers", per Sir James Munby P in *Re S-W* see §32 above), given that if the father was vindicated in his assertion of sobriety this "may have a significant impact on the outcome" (*Re S-W* *ibid*);
40. Secondly, it appears that the local authority had not signalled any prior intention to seek final orders at the IRH; it had, in fact, indicated a contrary position in its position statement (see §12 above). This offers a troubling context for the hearing itself; the parents and their lawyers were entitled to complain that they were taken by surprise by the applicant's change of stated position. Moreover, in despatching these long-running proceedings at the IRH in no more than 45 minutes, including judgment (which itself gives every indication of being rushed and improvised) there is a real question whether the listing of the hearing had complied with the letter or the spirit of the President's 2024 guidance (see §35 above). There should always be "sufficient preparation and hearing time" at an IRH, so that the parties are treated justly and fairly, and no-one is denied the opportunity to attempt properly to resolve the issues.

41. Thirdly, the evidence was incomplete at the IRH; the time for filing the final assessment report on the prospective long-term carers for N had not yet passed (it was not due for filing for one more month). While all other indications were positive, it was not clear what the further court-ordered assessment may show in relation to sexual risk of the grandmother's partner, and how it may affect the shape of the plans going forward. Moreover, the DBS checks on Y's prospective carers had not been returned, and this had caused the Children's Guardian to pause in supporting them as special guardians. The parents were surely entitled to have this information before final orders could be made. Moreover, in view of this lack of certainty in the plans for the boys, the judge needed to address the contingency of adoption for the boys, and explain why it would not be unfair to the parents to proceed to finality notwithstanding the spectre of this radically different long-term outcome.
42. Fourthly, before making a care order, it was the judge's duty to "consider the permanence provisions of the section 31A plan for the child concerned" and specifically the issue of contact. Section 31(3A) / (3B) CA 1989 specifically engages section 34(11); this subsection provides that:
- "Before making, varying or discharging an order under this section or making a care order with respect to any child the court shall— (a) consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and (b) invite the parties to the proceedings to comment on those arrangements".
43. The judgment offers no more than a perfunctory endorsement (para. [16]: see §20 above) of the care plan for contact. The judge did not acknowledge the social work evidence that contact had been "positive family time" for all, nor that the plan provided for significant changes to both the inter-sibling and parental relationships; for example, the father's contact with Y would reduce from once per week to four times per year and the inter-sibling contact would reduce from three times per week also to four times per year. The judge did not address at all the pros and cons of the plan, and the inevitable impact of the proposed diminution of contact on family relationships, particularly as she was aware (and had recorded) the parents' opposition to this course.
44. For these reasons, I am satisfied that the judge was wrong to terminate the proceedings at the IRH. Instead, she could and in my judgment should, within the discretion available to her (see §36 above, the 'spectrum of procedure'), have used this IRH to give case management directions to progress the application towards a short and focused final hearing at which the issues (and oral evidence) could be limited to:
- i) Future risk, and specifically whether the father had demonstrated sufficient change to care for N with or without Y;
 - ii) If not, whether the completed special guardianship assessments could enable the court to make orders under section 14A of the CA 1989;
- And/or

- iii) The appropriate level of inter-sibling and parent-child contact going forward in light of the children's placements.
45. It makes sense to turn next to consider the points raised on Ground 3.
46. Where proceedings conclude at an IRH, particularly where the outcome of the proceedings are contested, as here, there is an obligation on the judge to give clear reasons which explain:
- i) Why the IRH has been used as a final hearing, and / or why the proceedings are not being case managed to a further / final hearing, particularly if (as here) there is a dispute as to whether the proceedings should be concluded at the IRH;
- and
- ii) The substantive final orders which are to be made at the IRH. In this regard, I suggest that the judgment should include specific reference to the threshold criteria (section 31(2) CA 1989) and a review (however short) of the evidence which supports the same, a discussion of the balancing exercise in which each future option for the child is evaluated "to the degree of detail necessary" (*Re B-S (Children)* [2013] EWCA Civ 1146 at [44]), the permanence arrangements in the care plan (section 31A CA 1989), the constituent elements of the welfare checklist (section 1(3) CA 1989), and the contact provisions (section 34(11) CA 1989).
47. It is reasonable that a judgment delivered at the conclusion of an IRH bringing proceedings to an end, even if matters have been contested, is more concise and focused than a judgment delivered at the conclusion of a contested final hearing. After all, there will have been limited, if any, oral evidence to review, and/or any detailed assessment of credibility. However, that does not of itself relieve the judge of the obligation to give proper and clear reasons for the decision in a structured and logical way so that the parties know how the decisions have been reached, even if given *ex tempore*: "a reasonable structure is essential for disciplined and transparent decision-making ... The need for structure is perhaps particularly true of oral (*ex tempore*) judgments": *Re B (Child: Adequacy of Reasons)* [2022] EWCA Civ 407 at [57] and [58].
48. The judge's rationale for concluding these proceedings at this contested IRH (see §46(i) above) is contained in two short sections in paragraph [16] and [17] of the judgment, see §20 above (I have underlined the relevant phrases/sentences for identification and emphasis). In short, the judge felt that she had "more than sufficient evidence" on which to make a final decision. However, this did not begin to explain:
- i) Why she had taken the view that it was not necessary or proportionate for the court to determine whether the father had (as he said he had, on ostensibly credible albeit hearsay evidence) achieved sobriety and maintained it for a period of time; if he was indeed sober, it was surely incumbent on the judge to address why this did not constitute "positive change to [his] lifestyle[s] that would support the children returning to [his] care" (reference the social work statement summarised at §39 above);

- ii) Why it was possible to conclude the case before all of the evidence had been filed (namely the sexual risk assessment in relation to the future carers of N and the DBS checks in relation to the future carers of Y); this court in *Re J* contemplated that final orders would be made at IRH only if the “necessary evidence” was before the court; the judge did not address these gaps in the evidence;
 - iii) How adoption (which may arise under the contingency care plan) could in the circumstances be the proportionate outcome for either or both of the children;
 - iv) How this summary outcome met the parents’ rights to a ‘fair’ (Article 6 ECHR) and ‘just’ (rule 1 FPR 2010) determination, given their opposition to summary disposal, in light of the issues which I have discussed at §38 to 42 above. Even when it was brought to the judge’s attention that she had failed to consider the parents’ Article 6 rights in concluding the proceedings at the IRH (on the application for permission to appeal), she failed to address the issue (see §21 above).
49. In dealing with the substantive orders, the judge specifically referenced the ‘threshold criteria’ (section 31(2) CA 1989) and concluded that they were established in this case in the form presented by the local authority; she reached this outcome by two routes: first, reliant on the evidence pertaining to the risk of past and future harm at the time when the protective measures were taken, and secondly, because the parents had failed to comply with an earlier case management direction (5 March 2025) requiring them to file a document setting out their response to threshold, with a deemed acceptance of the same if they failed to do so. This summary treatment of the threshold criteria was barely adequate (if it was indeed adequate at all: see *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ 407; [2022] 4 WLR 42), and I have misgivings about the parents having been ‘deemed’ to accept the evidence on account their non-compliance with a procedural step. This was not, however, the focus of this appeal.
50. I accept Mr Sullivan’s argument that the judgment suffers from a number of incurable flaws in its review of the wider welfare aspects which informed the final orders made. I address these at §§51-52 below.
51. First, the judge appears materially to have misunderstood the history of the case, and specifically the length of time in which N had been in the care of his father prior to 20 December 2024. Three references in the judgment (see §16 above) suggest that the judge believed that N had lived with his father for only three months in the autumn of 2024. In fact (see §7 above) N had been cared for by his father (as a sole parent) for more than 2½ years (June 2022 – December 2024). This mistake of fact, a material underestimate of N’s experience being cared for by his father, is sufficiently serious on its own as to undermine the judge’s ultimate conclusion, at least insofar as it related to N.
52. Secondly, while the judge was plainly exercised, and justifiably so, by the appalling delay in resolving this litigation and the likely “prejudice” (section 1(2) CA 1989) to the children as a result, she allowed this issue so to dominate her thinking that all other considerations relevant to welfare were largely, if not completely, ignored. In particular:

- i) She gave no indication that she had considered any of the constituent elements of the welfare checklist in section 1(3) CA 1989 in respect of Y and/or N; most notably, there was no mention of the children's "ascertainable wishes and feelings" (section 1(3)(a) CA 1989) or of the "likely effect ... of any change in [their] circumstances" (section 1(3)(c) CA 1989); she did not make any mention of the capability or otherwise of the paternal grandmother and her partner (i.e. "any other person in relation to whom the court considers the question to be relevant") to care in the long-term for N (section 1(3)(f) CA 1989), omitting any reference in the judgment to the ongoing assessment of sexual risk;
 - ii) In view of the father's asserted sobriety, it was incumbent on the judge (as part of the welfare review) to evaluate the "risk of harm" posed to the children by the father (section 1(3)(e) CA 1989) and, following the approach in *Re T (Children: Risk Assessment)* [2025] EWCA Civ 93 at [33] to consider at least (a) how likely the risk was to arise, (b) what would be the consequences for the child if it did, and (c) how the risks may be managed or mitigated;
 - iii) She failed to mention, let alone discuss, the impact of separation of Y and N, who, under the care plan, would be living permanently apart and seeing each other only four times per year, notwithstanding that: (a) they are half-siblings; (b) they had lived together as recently as the autumn 2024, and (c) the local authority had commissioned a "Together and Apart Sibling Assessment" which had shown their compatibility to live together;
 - iv) She gave no reasons for supporting or endorsing the significant reduction in contact between the children, and between the children and their parents; this would inevitably have implications for the children. This oversight was all the more striking given her earlier identification of the parents' unhappiness with the sufficiency of contact in the long term (i.e., the "mother says the contact is not sufficient to preserve the relations").
53. My views on Grounds 1 and 3 of the Notice of Appeal are sufficient to dispose of the appeal. I express no concluded view on whether, had all other matters been appropriately addressed, the judge was right to make care orders which were likely, on the local authority plan, only to be short term, though note the similarity between the situation which obtained in this case, and that in *Re P-S* (see §25 above).

Outcome of the appeal

54. It is for the reasons discussed above that I indicated my support for this appeal to be allowed at the conclusion of the hearing. We have already indicated that the care orders in relation to N and Y will be discharged, and substituted for the time being by interim care orders pending further hearing at the Family Court. The application for care orders will be remitted forthwith to Family Court in Chelmsford, for urgent case management, on 24 October 2025. It is, of course, highly regrettable that the appeal process has added yet further to the delays.
55. One final word. Although the father has succeeded in persuading this court to set aside the care orders concerning N and Y at this stage, I would not wish him to take any specific encouragement from this outcome in his ambition to care in the long-term for

either or both of the boys. His case at the final hearing will require careful examination on up-to-date evidence.

Lord Justice Phillips

56. I joined in the decision described in paragraph 4 of the judgment of Cobb LJ for the reasons set out in his judgment

Lord Justice Green

57. I agree.