Neutral Citation Number: [2024] EWCA Civ 498

Case No: CA-2024-000702

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL FAMILY COURT
HHJ JACKLIN KC
ZC23C50416

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2024

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE NEWEY
and
MR JUSTICE COBB

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Re D (Children: Interim Care Order: Hair Strand Testing)

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Chris Barnes (who did not appear in the court below) (instructed by **Miles & Partners**) for the Appellant (mother)
Simon Miller and **Alana Hughes** (who did not appear in the court below) (instructed by **Local Authority solicitor**) for the Respondent (Local Authority)
Max Melsa (instructed by **Campbell Chambers**) for the Respondent (Children's Guardian)
The fathers of the subject children were neither present nor represented.

Hearing dates : **17 April 2024**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Cobb :

Overview

1. This appeal has brought into focus once again the science of hair strand drug testing – its evidential value in context, its inherent reliability, and its limitations. For the purposes of determining the appeal, we have reviewed a number of hair strand testing reports prepared on samples provided by children and adults from a single extended family, prepared by different laboratories. We have considered how this evidence fits into the wider range of evidence filed in these public law proceedings (issued under Part IV of the Children Act 1989 ('CA 1989')). We have examined how the expert 'Summaries' and 'Opinions' expressed within the narrative section of each of the reports compares with the data which are said to support those opinions. Importantly, we have had cause to look at how the hair strand testing reports, and in particular their summaries, were presented to the judge by the advocates at the hearing which led to the order which is now under appeal.

2. This judgment sets out my reasons for granting permission to the Appellant mother ('the mother') to appeal, and allowing an appeal, against a decision of Her Honour Judge Jacklin KC ('the Judge') sitting at the Central Family Court on 26 March 2024. By her decision, the Judge authorised the Local Authority (the First Respondent to this appeal) to remove three children, all of whom are the subjects of interim care orders in its favour, from the care of their maternal grandmother and maternal uncle, with whom they have lived since early-August 2023. That decision was very largely based upon three sets of hair strand testing reports.

3. At the conclusion of the appeal hearing, we announced our decision: we set aside that part of the order which reflected the Judge's authorisation for the removal of the children (see §38 below) and, having been informed that the Local Authority would not, on the current evidence, seek to remove the children from their maternal grandmother's care in light of our decision, we left in place the interim care orders.

4. The case before us concerns altogether four children – three girls, A (aged 13), C (aged 6) and D (aged 4), and a boy, B (aged 10). The order under appeal was reached following an urgent hearing listed at short notice which was conducted on brief submissions. It was not disputed at the hearing before the Judge that B should move to live with his father (who is not the father of the three girls), and he has indeed so moved. The appeal focuses on the Judge's decision in relation to the three girls (A, C and D) only.

5. On 28 March 2024, before the removal of A, C and D from the maternal grandmother's home, the mother applied successfully for a stay of the order. In granting the stay, Peter Jackson LJ also gave directions for the appeal, providing for the filing of any application to adduce additional evidence if so advised. The mother did file and serve such evidence, and we considered this, having looked first at the evidence before the Judge; this fresh evidence took the form of additional hair strand test reports on the children and their extended family carers (see §§39-41 below).

6. We received the written and oral submissions of counsel for the mother, for the Local Authority and the Children's Guardian (the Second Respondent to this appeal). We

have had access to a significant volume of the bundle of evidence, which was before the Judge, together with the fresh evidence.

Background facts

7. The mother of the four children is 36 years old. Each child has a different father, none of whom has played any part in this appeal.

8. On 27 July 2022, C (then aged four years old) was admitted to hospital exhibiting abnormal behaviour. Subsequent blood testing confirmed a likely overdose of topiramate, a medication used to manage and treat epilepsy and migraine which had been prescribed for her older sister, A. Almost exactly one year later, C was once again admitted to hospital, this time suffering auditory hallucinations, tonic seizure activity, and loss of vision. It is said that the mother denied that C could have ingested any substance; a full battery of invasive and other tests was undertaken and the blood tests again confirmed high levels of topiramate. Following the intervention of the Local Authority, on or about 30 July 2023, A, B and D were placed with their maternal grandmother (whose care of the children was and is supported by the children's maternal uncle) under section 20 CA 1989. On 8 August 2023, C was discharged from hospital and joined her siblings.

9. On 20 September 2023, the Local Authority applied under Part IV CA 1989 for care orders and interim care orders in respect of all four children. The section 31 CA 1989 'threshold criteria' document focused principally upon the two hospital admissions referred to in §8 above; while those incidents were said to be serious in themselves, they were aggravated, in the submission of the Local Authority, by an alleged failure on the part of the mother to seek prompt medical attention, and in the second incident by the mother allegedly requiring A to perform cardio-pulmonary resuscitation on her younger sister. The threshold document contains other alleged grounds for intervention, but it is unnecessary to rehearse those here. An interim care order was first granted on 12 October 2023, and this order has been continuously in place since that time.

10. The limited evidence filed by the Local Authority for the first hearing of the application for an interim care order contained a positive review of the maternal grandmother's care of the children. She was observed to have a "close stable and affectionate relationship with her grandchildren and understands their needs". She was said to have engaged well with the Local Authority, under a 'Working Together' agreement; she was proving that she could fit her commitments to the children around her work as a part-time teaching assistant in a primary school.

11. In order to formalise the placement, the maternal grandmother and uncle were promptly assessed as 'connected persons' under Regulations 24 and 25 of the Care Planning, Placement and Case Review (England) Regulations 2010 (i.e., for sixteen week temporary approval). This was a positive assessment, the report reflecting "the strong bond" which the children have with the grandmother and the "stability" which the children had found in her care. This report specifically attested to the:

> "… capability [of the grandmother] to address the physical, emotional, and educational requirements of the children. … The commitment of both grandparents to ensuring the well-

> being of their grandchildren is unwavering, aiming to establish a stable and enduring home for them. This arrangement would maintain all four children under the nurturing umbrella of their family network. The resilience demonstrated by both [grandparents] in the face of challenges, along with their earnest motivation to care for the children within the family, highlights their suitability for this responsibility."

In light of this report, on 5 December 2023 approval was given for this placement under Regulation 24 of the 2010 Regulations.

12. In the meantime, on 26 October 2023, hair samples had been taken from each of the children and submitted for analysis by an independent toxicology laboratory, Forensic Testing Service ('FTS'). On 23 November 2023, FTS provided hair strand test reports on the children ('Reports #1'), which revealed that all of them showed signs of passive exposure to topiramate in the period up to October 2023, with likely ingestion in the case of C. The reports recommended further testing of unknown additional compounds identified in the children's hair samples.

13. On 14 December 2023, the Court gave permission for the Local Authority to instruct FTS to undertake that further testing of the hair samples (and where relevant toenail samples, in respect of B, whose head hair was too short for sampling) already collected from each of the children for further compounds. The addendum reports from FTS were filed on 29 January 2024 ('Reports #2'); these reports indicated that the children had been passively exposed to a range of Class A drugs (including cocaine, ketamine and MDMA) and cannabinoids throughout the testing period (October 2022 to October 2023).

14. On 30 January 2024, the Local Authority applied for orders to facilitate hair strand testing of the maternal grandmother, maternal uncle, and mother (in respect of topiramate and a wide range of proscribed drugs). These applications were granted at a case management hearing on the following day, at which neither the maternal grandmother nor uncle were present. The order was expressed in terms of an 'invitation' to the maternal grandmother and the uncle to co-operate with hair strand testing. Various other case management directions were given, including notably for the instruction of an independent expert toxicologist to report upon the children's hair strand test reports; the chosen expert was Dr John Douse. The Position Statement filed on behalf of the Local Authority for the 31 January 2024 hearing (in accordance with PD27A FPR 2010 para.4.3) made no mention of concerns about the continued placement of the children with their grandmother, nor did it contain any hint that an application to remove them would be issued.

15. The 31 January 2024 order recorded as a recital (from information supplied by the Children's Guardian) that the maternal grandmother was resistant to undertaking the assessment for a Special Guardianship Order (under section 14A CA 1989) as she did not wish to be seen to be "in competition" with her daughter for the care of the four children.

16. On 29 February 2024, the Local Authority issued an application requesting the court to arrange "a case management hearing to deal with the continued placement of the

children with the maternal grandmother in light of the fact that the maternal grandmother and uncle have refused to submit to hair strand testing", and had "thus far refused to commit" to further social work assessment, rendering the current placement "unregulated". There was no indication on the face of the application that it required urgent determination. The court fixed the hearing for 22 March 2024. On the same day, the Local Authority wrote to the maternal grandmother and uncle; the author (from the legal department) drew attention to the upcoming hearing, asserting (it is not clear on what basis) that the maternal grandmother and uncle had been 'directed' to attend, and wrongly threatening them that their failure to do so "is likely to be considered contempt of court" (a threat which was repeated in a subsequent letter on 8 March 2024). The letter goes on:

> "If you decline to be assessed further, then the Local Authority may ask the court to approve the removal of the children from your care" (Emphasis by underlining added).

17. Pursuant to the earlier court direction, on 14 March 2024, the results of hair strand tests on the mother, undertaken by a second laboratory, DNA Legal, were filed and served ('Report #3'); this report revealed no evidence in the samples of any of the wide range of proscribed drugs over the period from the end of February 2023 to the end of February 2024.

18. The case management hearing took place, as scheduled, on 22 March 2024 before DDJ O'Leary. The maternal grandmother and maternal uncle were present. The order generated following this hearing specifically recited that the maternal grandmother was "concerned that the children's positive hair strand tests for illicit drugs are inaccurate and is worried that the same inaccuracies could affect her care of the children and employment." The order records that the uncle agreed to provide hair and nail samples for drug testing. It was further recorded in the order that Dr Douse had requested further testing of the children's hair and nail 'B' samples by a third laboratory, namely Alpha Biolabs. This request coincided with a request by the mother for further independent analysis of the children's samples.

19. DDJ O'Leary gave directions to set up a hearing before HHJ Jacklin KC on 26 March 2024, with a time estimate of one hour; this hearing was to be convened upon:

> "… the [Local Authority] informing the court the placement of the children with [the maternal grandmother] and [maternal uncle] is no longer regulated and will be seeking the permission of the court to remove the children from their care on the basis that (1) both have failed to engage in hair-strand testing; (2) both have recently disengaged from the special guardianship assessment; (3) both have not taken up the offer of legal advice with a solicitor; and (4) refusing to allow on occasions access to the children by a social worker (which they dispute)".

20. On 26 March 2024, shortly before the hearing (and nearly a day later than directed), the Local Authority filed and served an updating witness statement from the allocated social worker. The statement raised concerns about the maternal grandmother's

engagement with the social work Special Guardianship assessment, and her levels of cooperation with her supervising social worker. It was said that:

> "… As [the maternal grandmother and uncle] are not engaging in a Special Guardianship Order (SGO) assessment, the placement is therefore unregulated and cannot been endorsed by the Local Authority or the Children's Guardian. The children will undergo weekly visits by social care staff. The Local Authority is of the view that the children can no longer reside in the placement given that the placement is unregulated, there is poor engagement with the supervising social worker, non engagement with the SGO assessment and [the maternal grandmother and uncle] have not adhered to the court directions (sic.) and participated in a hair strand test …. As [the maternal grandmother and uncle] continue to refuse to participate in hair strand testing the Local Authority draw negative inferences…".

The Local Authority proposed to remove A, C and D to a foster placement which had been found for them in Hillingdon, on the other side of London. Such a move would necessitate a change of school. It was proposed that the children would remain with the maternal grandmother and uncle until the end of the school term (two days' later), with increased announced/unannounced social work visits before removal to foster care. The Children's Guardian supported the removal.

21. Significantly, the social work statement raised no concerns about the care or wellbeing of the children, or their attendance and presentation at school, nor did the social worker raise any concerns about the presentation of the maternal grandmother or maternal uncle, nor any suggestion that they had any association with drug taking.

Hair Strand testing – The evidence available at the hearing on 26 March 2024

22. By the time of the hearing before the Judge, there were three available sets of hair strand test reports (Reports #1, #2, #3). We had the opportunity, at the hearing of this appeal, to review the evidence from these reports. We had more time available to us at the hearing of this appeal than plainly had been available to the Judge at the hearing on 26 March 2024, and we believe that we were afforded a greater degree of care and focus in the analysis of these reports from Mr Barnes (appearing for the mother) than appears to have been offered by the advocates at the hearing at first instance. That review assisted us to understand more fully a picture of this evidence which was not painted or otherwise available to the Judge.

23. It is not necessary for me to rehearse all the points which emerged from our review, but I take the following as examples:

Reports #1 (23 November 2023): Children: Testing for topiramate:

i) The reports showed that all of the children had been exposed to topiramate; that much is uncontroversial;

ii) The general summary section of Report #1 in relation to A, for example, indicated that her passive exposure to topiramate was likely to have been on multiple occasions up "*late October 2023*". On examining the specific data findings in relation to A, the traces of topiramate were diminishing over the period tested, and no traces were in fact detected in the sample from *21 September 2023*;

iii) The general summary section of Report #1 in relation to C indicated 'ingestion' of topiramate "on multiple occasions during each of the months from around July to September 2023". On examining the specific data findings in relation to C, it appears that the traces of topiramate were significantly diminishing over the period tested; after C's removal to her grandmother the quantity of topiramate detected in the samples had reduced dramatically to less than one-third of the reading prior to C's removal from her mother; in the following month (Sept-Oct 2023) the test result shows that the quantity was just a little over 5% of the figure detected in July-August.

Reports #2 (29 January 2024): Children: Testing for other compounds:

iv) All of the children tested positive for exposure to a range of Class A drugs;

v) The general summary section of Report #2 in relation to A, for example, indicated that she had experienced passive exposure to cannabis during the period from around February to late October 2023 and passive exposure to cocaine and MDMA during the period from around October 2022 to October 2023; this was said to be "*regular passive exposure* to cannabis during the period from around February to *late October 2023*" (emphasis added: i.e., three months after placement with the maternal grandmother), and "close contact with cocaine users" or "cocaine residues" and "close contact with MDMA users" in the period up to and including late-October 2023 without any identification of the source. However, on reviewing more carefully the specific data findings in relation to A, it appears that *no* traces of cocaine were found in the hair sample from May 2023, and *no* trace of MDMA in the hair sample from March 2023; *no* traces of cannabis were found in the hair sample at all, and *diminishing* quantities of cannabinoid (compounds found in cannabis) were found in the period up to August 2023, and none thereafter; these specific data were not reflected in the general summary;

vi) The general summary section in Report #2 in relation to C was in largely identical terms to the opinion section in relation to A (see §(v) above), but included "passive exposure to methamphetamine (incl. amphetamine) and ketamine during the period from around October 2022 *to October 2023*" (emphasis added) and "close contact with cocaine and/or MDMA users" or "cocaine residues" and "close contact with methamphetamine and/or ketamine users" in the same period. However, on reviewing the specific data findings in relation to C, it appears that *no* traces of cannabis were found, *no* traces of ketamine were found after February 2023, *diminishing* traces of cocaine and cannabinoids were found up to October 2023, and *no* consistent traces of methamphetamine after July 2023; again, these specific data were not reflected in the general summary;

vii) Furthermore, while a similar general opinion was offered in relation to D, in fact no Class A drugs were detected in the samples taken from D at all after August 2023.

Report #3 (14 March 2024): Mother: testing for proscribed drugs:

viii) As I have mentioned above (§17) a hair sample taken from the mother in February 2024 was tested for amphetamine, cannabinoids, cocaine, ketamine, and methamphetamine in the period end-February 2023 to end-February 2024. None of the tested groups were detected.

24. At the conclusion of our review of Reports #1 - #3, within the limitations of an appellate hearing and without the benefit of expert analysis from Dr John Douse, we could see that:

i) The general summary in Reports #1 did not draw attention to the apparently significantly diminishing traces of topiramate in the children following August 2023;

ii) The general summary in Reports #2 gave a somewhat misleading impression in relation to timeframes, given that the data appeared to show limited evidence that any of the children had tested positive for Class A drugs in the period *after* August 2023 when they moved to live with their grandmother;

iii) If was or is to be the Local Authority's case (by allegation or inference) that the children's positive drug tests during the period up to August 2023 were attributable to exposure to drugs used by their mother, this did not appear to be supported, on the toxicology evidence, by her full set of negative results (Report #3); this of itself might be thought to have given rise to a need for further investigation.

25. Notably, the hair strands of the children from which both of the key reports had been prepared (both Reports #1 and Reports #2) had been collected from the children on 26 October 2023 (some five months before the hearing before the Judge); these were the 'A' samples. On 15 March 2024, Dr Douse had written to the parties, requesting further testing of 'B' samples (i.e., hair taken at the same time, and reserved for independent testing) taken from the children on 26 October 2023 by an independent laboratory, Alpha Biolab. He explained his request as follows:

> "2: The reason for this is because a previous case has shown that the results from various providers can vary and hence duplicate analyses can provide vital additional evidence." (Emphasis by underlining added).

The hearing: Gaps in Evidence: Position Statements

26. At the hearing on the 26 March 2024, the Judge had the social work statement (see §20-21 above) and Reports #1, #2, and #3. She may have had background materials too. There were a number of significant evidential gaps, notably:

i) As mentioned above, there was no *direct* evidence from the maternal grandmother or uncle before the court; they had not been directed or invited to

file witness statements. Their views (informal or formal) on all or any of the crucial issues were largely or entirely unknown, including: their views about how and where the children had apparently been exposed to a range of proscribed drugs; the children's welfare generally; the proposal to remove the children from their care, and to remove them from their schools; their aspirations/intentions for future care of the children; and the request for and/or progress of social work assessment;

ii) There was limited if any *indirect* evidence from the maternal grandmother or uncle before the court on any of the above issues; the significant evidential gap referred to in (i) above had not been filled either by the Local Authority or by the Children's Guardian. There was nothing in the filed social work evidence nor in the position statement of the Children's Guardian which reproduced (even in summary) any meaningful account of any conversation with the maternal grandmother or uncle in relation to the matters referred to in (i) above;

iii) There was no evidence of the children's ascertainable wishes and feelings, either directly, or indirectly (i.e., from the Children's Guardian). It was reasonable to suppose that all of the children would have had something material to say about:

a) Whether they had been exposed to drugs and/or drug taking, so as to lead them to test positive for Class A drugs and cannabis (Reports #2);

b) The plan to remove them summarily from the care of their grandmother and uncle, and/or to change their schools.

It is indeed unimaginable that A (at thirteen years old) would not have had relevant and potentially important views on the issues above. It transpires that at the time of the hearing before the Judge the children were wholly unaware that there was an application to remove them from their maternal grandmothers care, or the reasons why;

iv) The maternal grandmother was neither present nor represented at the hearing on 26 March 2024 given its listing at very short notice; at this crucial point, the Court was denied the opportunity to hear from her directly.

27. Position Statements were prepared by the advocates for the Local Authority, the mother and the Children's Guardian for the short interim hearing. They were read and relied upon by the Judge. It was revealing to us to see what they did and did not say.

28. The Local Authority's Position Statement drew from Reports #1 and Reports #2. However, in summarising the general opinions from these reports, counsel did not reflect the important qualifications offered by the data evidence which was located deeper into the reports (and to which I have referred in §23 above). Thus, for example, counsel referred to C having 'ingested' topiramate on "multiple occasions during each of the months from around July to September 2023" but did not mention that "the low level of topiramate … could predominantly represent carry-over from her previous ingestion", nor that "there is presently insufficient data available to

accurately estimate her likely frequency of ingestion during this period", nor the significantly diminishing quantities identified on testing. Counsel referenced the headline of Reports #2 in stating that all of the children had tested positive for the range of Class A drugs (listed in full), without referencing any of the qualification as to time period or quantity, or pattern (namely, diminishing quantities and no quantities detected later in the testing period). The Position Statement made no reference at all to the negative drug test of the mother, nor to the request by Dr Douse for further testing of the children.

29. The Position Statement prepared on behalf of the mother understandably referenced her own negative drug test (Report #3), but made no reference to the outcome of the hair strand test reports on the children (Reports #1 and #2), other than a passing reference to the failure of FTS to provide second samples of the children's hair to DNA Legal for testing. She proposed further testing of the children. The mother, through counsel, also confirmed that the maternal grandmother wished to take legal advice from an identified solicitor; she proposed that any contested hearing for removal should take place once the further drug tests were available and the grandmother had received legal advice (which was finally in the process of being arranged) and sought an adjournment in that regard.

30. The Position Statement prepared on behalf of the Children's Guardian referred to the children having experienced "passive exposure" to cannabis and to a range of Class A drugs (which are listed in full) in the period up to "late-October 2023". It referred to "the children's *recent* positive drugs test results" (my emphasis), and explicitly asserted that "the timespan" in which positive results for exposure to drugs had been detected "overlaps with the period that the children have been living with the maternal grandmother and the uncle".

The hearing and the judgment

31. At the conclusion of the hearing, the Judge delivered a short *ex tempore* judgment. It opens with an abbreviated history of the proceedings, the Judge describing the key events (described at §8 above) which led to the move of the children to their maternal grandmother and uncle.

32. The Judge referenced the results of the hair strand testing produced on 29 January 2024 (Reports #2) which she described as "alarming"; she described the Local Authority's efforts to obtain hair strand testing from the maternal grandmother and uncle, but commented that "both have steadfastly refused to agree with that until very recently in respect of [the uncle]". The Judge noted that the maternal grandmother and uncle had sought to withdraw from the Special Guardianship Assessment. She recorded the Local Authority's position that the January 2024 hair strand tests (Reports #2) "indicate ongoing exposure of the children to these [Class A] drugs in the home of their maternal grandmother", and that this situation "is not something that can be monitored".

33. That said, the Judge acknowledged that the "general care" which the children were receiving in the hone of their maternal grandmother and uncle was "very good". She also rightly reflected that the children would suffer emotional harm "by a removal from their maternal grandmother, and indeed removal from a situation whereby they can see their mother very regularly".

34. The Judge recorded that, given the listing at short notice, the maternal grandmother had not been present at court at the hearing (she was at work), and that the uncle had agreed to undergo hair strand tests for drugs, and to take up the appointment with a child care lawyer. The Judge referenced the request by Dr Douse for further hair strand testing of the children to check the reliability of the earlier results; the Judge acknowledged that further results and a report could be available "rapidly" (i.e., within one week) from another independent laboratory, Cansford Laboratories, and that a hearing to review the new evidence could therefore take place in the week of 8 April 2024; however, she concluded by expressing her reservations about this:

> "… the timescales for a second report are unknown, and I do not know when it could come back to court, another two plus, maybe three or four weeks would go by".

35. The Judge addressed the care plan for the children which was to place them in a foster home in Hillingdon, which would necessitate a change of school for each of them. She noted that the Children's Guardian, who had been "very much in favour of this placement with the maternal grandmother", was now supporting the removal of them on the basis that the placement with the grandmother was not "safe" for them, in light of the January 2024 drug test results (Reports #2); she expressed her concern that "the children have continued to be exposed to such drugs for what is now getting on for another three months".

36. The Judge referred to the accepted legal test for interim separation of children from their families, laid out by the Court of Appeal in *Re C (A Child) (Interim Separation)* [2019] EWCA Civ 1998 ('*Re C*') (see §51 below) and acknowledged that removal could only be justified where necessary and proportionate and that:

> "…the plan for immediate separation is only to be sanctioned where the child's physical safety, or psychological or emotional welfare demands it, and where the length and likely consequence of the separation are a proportionate response to the risks that would arise if it did not occur."

37. In her conclusion she said this:

> "I am concerned about these children being exposed to these drugs; there are <u>some serious Class A drugs involved in the hair strand testing</u>. I recognise that these children will be caused emotional harm by a removal from their maternal grandmother, and indeed removal from a situation whereby they can see their mother very regularly. I am concerned about the distance that the children will have to move, and the risk that they will have to change school, and I would endorse the Guardian's entreaty of the local authority to do everything possible to avoid changing schools. I have come to the conclusion that, <u>given the seriousness of the findings in that drug test</u>, that the children's safety does require their removal, and it would be a necessary and proportionate response to <u>the risk that has been presented to them for</u>

> some months now, and it has got to stop, so I endorse the local authority plan." (Emphasis by underlining added).

38. The decision is recorded in a recital to the 26 March 2024 order; it reads as follows:

> "AND UPON the court coming to the conclusion that the welfare and safety of the children demands immediate separation and approving the interim care plans for the children to be placed together in foster care".

Hair Strand testing – The evidence available after the hearing on 26 March 2024

39. Following the 26 March 2024 hearing, and in accordance with the Judge's direction issued on that day, further hair strand and nail testing of the children was undertaken by Cansford Laboratories; the analysis reports were filed on 5 April 2024 (Reports #4). Nail testing was undertaken of the maternal grandmother by the same laboratory, and a report prepared and filed on 4 April 2024 (Report #5); hair strand testing of the maternal uncle was undertaken and a report prepared and filed on 4 April 2024 (Report #6). Having first considered the appeal on its merits without regard to the fresh evidence, and in accordance with the principles of *Ladd v Marshall* [1954] 1 WLR 1489 (and with regard also to *Re E (Children)* [2019] EWCA Civ 1447; [2019] 1 WLR 6765 at [25], and CPR r.52.21.(2)(b)) we then admitted this evidence into this appeal; no material opposition was offered to this course by the Respondents.

40. These reports are revealing, and I summarise some of their key contents below.

Reports #4: *(5 April 2024): Further hair strand / nail testing of the children*

i) No evidence of Class A drugs (amphetamine, cocaine group, ketamine, methamphetamine) was detected in any of the samples provided by the children covering the period March 2023 – March 2024;

ii) Two cannabinoid analytes were detected in A with a significantly diminishing incidence over the months for which the samples had been provided, with no evidence detected in the most recent samples. These findings were said to be more likely to be the result of drug exposure than ingestion; the level was in the medium-low range, although the presence of one of the analytes (THC) "is not regarded as an absolute indicator of cannabis use"; the African hair of the children renders the testing process (in terms of accurate range of timing) more imprecise and the information "should be treated with caution"; all time periods "are approximate"; "it is possible that [A] has ingested a quantity of cannabis, likely in the form of second hand smoke from being in the presence of / same location as other people using the drug"; and importantly "it can take several months for all drug residues to be eliminated from the hair once exposure to the drug ceases";

iii) A broadly similar picture to that presented by A was presented in relation to the samples provided by C and D (i.e., no evidence of Class A drugs, but evidence in their samples of *three* cannabinoids); higher results were found in the younger children than in the samples provided by A overall, but similarly

diminishing in the relevant time period and with the same caveats expressed as I have set them out in (ii) above;

iv) No traces of cannabinoids (or other proscribed drugs) were detected in the toenail sample provided by B.

Report #5: *(5 April 2024): Nail test of the maternal grandmother*

v) A sample of toenail from the maternal grandmother was tested (there was insufficient head hair for the sample). The sample was tested for amphetamine, cannabinoids, cocaine group, ketamine, and methamphetamine group in the period of 12 months prior to end-March 2024. No evidence of drugs was detected.

Report #6: *(5 April 2024): Hair strand test of the maternal uncle*

vi) Hair samples from the maternal uncle were tested for amphetamine, cannabinoids, cocaine group, ketamine, and methamphetamine group in the period of 12 months prior to end-March 2024. No evidence of drugs was detected.

41. At the conclusion of our review of Reports #4 - #6, again within the limitations of an appellate hearing and without the benefit of expert analysis from Dr John Douse, we could see that:

i) Contradictory findings about the presence/absence of Class A drugs in the samples provided by the children are revealed by a comparison of Reports #4 and Reports #2; this is a particularly notable discrepancy in respect of the period March 2023 – October 2023, in respect of which period samples had been tested by both laboratories;

ii) If it is to be the Local Authority's case (by allegation or inference) that the children's positive drug tests for cannabinoids in the period from March 2023 – March 2024 was attributable to exposure to drugs used by their mother and/or maternal grandmother and/or uncle, this does not appear, on the basis of the hair strand test results alone, to be supported by the full set of negative results returned in respect of each of the adults who have cared for the children in the relevant period (Reports #3, #5 and #6).

The arguments on appeal

42. The mother raises four principal grounds of appeal:

i) That the Judge was wrong to conclude that the girls would not be safe in the care of the maternal grandmother even for a short period in order to allow for further hair strand or nail testing;

ii) The Judge formed erroneous conclusions about the hair strand testing results; she wrongly treated the general opinion of FTS as to its findings (as she was encouraged and/or believed them to be) as presumptive of the children's exposure to Class A drugs while they have been in the care of the maternal grandmother, and further failed to consider the wider evidence;

iii) The Judge's refusal to adjourn the application for removal to permit further testing in line with Dr Douse's recommendation (which could be considered at a hearing on or around 8th April 2024) was wrong;

iv) The Judge failed to consider adequately or proportionately the emotional impact on A, C and/or D of removal from the care of their grandmother, which would also require for them a temporary change of school.

43. Mr Barnes developed these arguments on behalf of the mother, and took the opportunity (as I have outlined above) to demonstrate that the Judge had probably received a distorted impression of the results of the hair strand testing reports at the hearing on 26 March 2024, and the basis for her decision to remove these children from their family was accordingly fatally undermined.

44. Mr Miller and Ms Hughes invited us to refuse permission to appeal on the basis that the mother's case did not enjoy a "real prospect of success" (CPR rule 52.6(1)(a)). If permission were granted, they accepted that the newly obtained hair strand test reports (Reports #4, #5 and #6) could be admitted before this court. In that regard, they accepted that if the Judge had seen Reports #4 she would not have regarded the drug results as 'alarming'. They however argued that the Judge had taken a holistic view of the evidence then available to her, which had explicitly included her acknowledgement that the children were receiving 'very good' care in the placement with their maternal grandmother (although their skeleton argument suggested that the care was merely 'good enough' which was not in line with the evidence), and that the plan for removal of the children into foster care was both necessary and proportionate.

45. Mr Melsa, for the Children's Guardian, supported the Local Authority in inviting us to refuse permission to appeal, but did not oppose the admission of fresh evidence if the appeal were to proceed. The case for the Children's Guardian rested upon an "escalation of concerns" about the placement of the children with their maternal grandmother during the early months of 2024, given the alleged withdrawal of co-operation by the maternal grandmother and uncle with social workers, and the consequential loss of 'regulated' status, against the backdrop of the drug testing results indicating exposure to Class A drugs set out in the Reports #2.

Hair Strand testing – The court's approach

46. The science of hair-strand and nail testing for prescribed and non-prescribed drugs and alcohol has contributed to family court decision-making for many years. In the Family Drug and Alcohol Courts ('FDAC'), this type of evidence is central to its processes, and its outcomes. It is still an evolving field, and, as previous case law has cautioned, hair strand testing has its limitations. The variability of findings from hair strand testing does not call into question the underlying science but emphasises the need to treat data with proper caution. The science was considered in two High Court decisions (delivered close in time in 2017), namely *London Borough of Islington v M and another* [2017] EWHC 364 (Fam) (Hayden J) ('*Islington v M*'), and *Re H (A Child: Hair Strand Testing)* [2017] EWFC 64, [2018] 1 FLR 762 ('*Re H*') (Peter Jackson J, as he then was). Both judgments contain reviews of earlier caselaw. The judgment of Peter Jackson J is of particular interest in its distillation of the evidence of no fewer than five toxicology experts. It is not necessary for the discussion of the issues arising in this appeal to cite extensively from those judgments; they nonetheless

both repay re-reading in a case involving this type of evidence, particularly paragraph [28] of *Re H* which provides a useful guide to interpretation of hair strand test results. However I propose to highlight three themes from these judgments which have particular resonance to this appeal.

47. First, both judges point out that hair strand test drug results cannot be viewed in isolation, separately from the wider environmental factors. In *Islington v M*, Hayden J observed at [32]:

> "It is particularly important to emphasise that each of the three experts in this case confirmed that hair strand testing should never be regarded as determinative or conclusive. They agree, as do I, that expert evidence must be placed within the context of the broader picture, which includes e.g. social work evidence; medical reports; the evaluation of the donor's reliability in her account etc. These are all ultimately matters for the Judge to evaluate."

At [40] in *Re H*, Peter Jackson J echoed this point: "a test result is only part of the evidence", adding, materially: "[a] very high result may amount to compelling evidence, but in the lower range numerical information must be set alongside evidence of other kinds".

48. Secondly, in *Re H* Peter Jackson J reinforced the need for experts fully and faithfully to explain their findings; at [25], he said:

> "Any assessment of a family situation, whether carried out by the court or by other professionals, involves the gathering and analysis of a range of information. Most of the information is factual, and in some cases it will be interpreted by experts, who will express an opinion. That will be the case when scientific investigations such as hair strand tests are carried out. These tests can provide important information, but in order for that to be of real use, the expert must (a) describe the process, (b) record the results, and (c) explain their possible significance, all in a way that can be clearly understood by those likely to rely on the information. If these important requirements are not met, there is a risk that the results will acquire a pseudo-certainty, particularly because (unlike most other forms of information in this field) they appear as numbers."

49. Thirdly, and developing the point in the second half of paragraph [25] quoted above, Peter Jackson J offered this advice in relation to the preparation and interpretation of hair strand test reports, at [57] that:

> "The writer [of a hair strand test report] must make sure as far as possible that the true significance of the data is explained in a way that reduces the risk of it becoming lost in translation. The reader must take care to understand what is being read, and not jump to a conclusion about drug or

> alcohol use without understanding the significance of the data and its place in the overall evidence."

Discussion

50. The children in this appeal were at the time of the relevant order, and are, the subjects of interim care orders in favour of the Local Authority. By virtue of the interim care orders (section 38(1)(a) CA 1989), the Local Authority has parental responsibility for the children (section 33(1) CA 1989) which it can exercise with precedence over the exercise of parental responsibility by a parent (section 33(3)(b) CA 1989). Prior to 29 February 2024 the Local Authority was exercising its parental responsibility, in fulfilment of an interim care plan, by facilitating the children's placement within their extended family. When the Local Authority's plan changed, it rightly sought to place the issue before the court in line with the guidance set out in the judgment of Baker J (as he then was) in *Re DE* [2014] EWFC 6. In *Re DE*, Baker J proposed that in such circumstances (i.e., when the care plan for placement of a child at home under a care order or interim care order changes) the removal of the child should only be effected on notice to the family; if there is a perceived urgency in the situation, removal could/should be authorised only if the child's "safety and welfare requires that he be removed immediately" (see [35]). Baker J gave guidance as to suggested notice periods (fourteen days notice for a child who is the subject of a final care order except in an emergency: see [49]) which should otherwise be respected prior to any planned removal. In a short passage which resonates on the facts of this case, Baker J cited from McFarlane J (as he then was) in *G v N County Council* 2008 EWHC 975 (Fam); [2019] 1 FLR 774:

> "… once a child has been removed [into foster care] it is harder to mount and succeed in an application for his return, given that the child will have suffered the experience of removal and will have been placed in a neutral setting".

51. We were also rightly referred in this regard, as was the Judge, to the decision of this court in *Re C* (citation above), and specifically to paragraph [2] of that judgment which reads:

> "(1) An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage.
>
> (2) <u>The removal of a child from a parent is an interference with their right to respect for family life under Art. 8. Removal at an interim stage is a particularly sharp interference,</u> which is compounded in the case of a baby when removal will affect the formation and development of the parent-child bond.
>
> (3) Accordingly, in all cases an order for separation under an interim care order <u>will only be justified where it is both necessary and proportionate</u>. The lower ('reasonable

> grounds') threshold for an interim care order is not an invitation to make an order that does not satisfy these exacting criteria.
>
> (4) A plan for immediate separation is therefore only to be sanctioned by the court where the child's physical safety or psychological or emotional welfare demands it and where the length and likely consequences of the separation are a proportionate response to the risks that would arise if it did not occur.
>
> (5) The high standard of justification that must be shown by a local authority seeking an order for separation requires it to inform the court of all available resources that might remove the need for separation." (Emphasis by underlining added).

Although Peter Jackson LJ in that passage refers to removal of a child "from a parent", it has rightly been acknowledged in this appeal that the principles set out above apply with similar effect to a proposed removal from a grandmother or other primary family care-giver.

(1) The hearing on 26 March 2024, and Judgment

52. The evidence laid before the Judge by the Local Authority at the hearing on 26 March 2024 raised obvious concerns; specifically, Reports #1 and #2 strongly suggested exposure of the children to topiramate, cannabis, and Class A drugs over a period of time. Given the alleged withdrawal of co-operation by the maternal grandmother and uncle with the Local Authority's Special Guardianship Order assessment in the early part of 2024, against the backdrop of Reports #2, the wellbeing and indeed the safety of the children appeared to be under threat.

53. However, on closer analysis, the evidence was not in my judgment as stark or as disturbing as it had been presented to the Judge, or as she had understood it.

54. First, it seems likely that the Judge misunderstood the full import of Reports #2; she appears to have understood them to disclose significant exposure of the children to Class A drugs until the end of October 2023. As my short illustrative review of the reports above (§23) reveals, the outline summaries of the toxicologists do not reflect fully or perhaps appropriately the material qualifications provided by the data on which they are based.

55. Aligned with this, I detect that the Judge had failed to appreciate, either fully or possibly at all, that the hair samples on which the Reports #2 test results were based had been taken from the children altogether some five months before the hearing (i.e., on 26 October 2023). I have in mind the following comments from her judgment:

> "…it is of heightened concern that we have *these* drug testing results that go back to January, and [the Children's Guardian] is concerned that the children have continued to

> be exposed to such drugs for what is now getting on for another three months" [i.e. from October – January].

And later (as I earlier referenced at §32 above) she says:

> "… insofar as the hair strand results from January indicate ongoing exposure of the children to these drugs in the home of their maternal grandmother" (Emphasis by italics in the original and by underlining added).

It may be that she was, in part at least, encouraged to this view (albeit inadvertently) by the comment in the Position Statement of the Children's Guardian which referred to "the children's *recent positive drugs test* results" (see §45 above).

56. Secondly, the Judge appears to have treated the evidence from the hair strand test reports as determinative of the issue of exposure of the children to illicit drugs in the period under review. Specifically, in concluding her judgment, she stated that "the seriousness of the findings in that [January 2024] drug test" which led her to the view that "the children's safety does require their removal". She was, in my judgment, wrong to attach such presumptive weight to the test results for at least four reasons:

i) The decisions of *Islington v M* and *Re H* shine a light on the recognised and inherent occasional anomalies in hair strand testing science which should be factored into judicial evaluation of this issue in all cases, especially at an interim stage where the court is working – as here – without the benefit of independent expert review. In this case, Dr Douse had specifically recommended that the children submit samples of hair for a second set of tests by an independent laboratory to verify or otherwise the results from Reports #2 but this had not yet been done; his important professional view that "the results from various providers can vary and hence duplicate analyses can provide vital additional evidence" (see §25 above) was regrettably ignored;

ii) The data contained deeper within each of the reports reviewed by the Judge (Reports #1 and Reports #2) painted in some, and highly material, respects a different (certainly more complex or nuanced) picture than the plain opinions/summaries offered by the experts in the narrative sections of the reports suggested;

iii) The Judge did not consider sufficiently "the context of the broader picture" (*Islington v M*) of evidence, and/or that the "test result is only part of the evidence" (*Re H*). As I have indicated above (see §10 and §11) the maternal grandmother and uncle had attracted glowing reviews from the Local Authority for their care of the children over a period of time. The Judge rightly described the care that they were providing as "very good", and reflected the likelihood of emotional harm to the children by a removal from their family. Thus, one could have expected the Judge to have given this evidence more weight in her overall review. Other than the toxicology results, there were in fact no indicators in the wider evidence before the Judge on 26 March to suggest that the children were exposed to illicit drug taking in the care of the maternal grandmother and uncle. There was no social work or professional suspicion that the maternal grandmother or uncle had ever been

under the influence of illegal drugs; the maternal grandmother continued to work in a primary school; the children were good attenders at school, and presented well there without concerns. The social worker and Children's Guardian raised no negative assessment of the welfare of the children in this placement.

iv) There were yawning gaps in the evidence to which I have referred above at §26 which will inevitably have impaired the Judge in her ability to reach an informed assessment of risk. It is not apparent that she was invited by the advocates to look more widely across the evidential piece; they should have done so. In any event, such was the Judge's focus on the hair strand tests of the children, that she did not herself do so. Had she considered, for instance, the negative test results of the mother (Report #3) she may have queried the positive findings from the samples of the children relating to periods while they were in her care.

57. Thirdly, given the inherent limitations and/or anomalies thrown up by hair strand testing, and in particular in light of the superficially 'alarming' results of Reports #2 the Judge, as the mother argued in Ground 3 of her appeal, should have acceded to the request for fresh testing of hair samples of the children; this was particularly so given that (a) the hair samples under review had been taken five months before the hearing; there was no scientific evidence of exposure to drugs in the intervening period, and (b) this had been specifically recommended by Dr Douse. There was no reason for the Judge to doubt that the results of fresh testing on the children could be achieved in one week (as indeed, as it turned out, it was); indeed it may be thought to show a degree of inconsistency that in the same order in which she authorised removal of A, C and D, the Judge directed the filing and service of hair strand test results on the girls by 5 April 2024. A short adjournment to obtain further results would not have materially impacted these children who had been in placement for more than two months since the delivery of Reports #2.

58. I have sympathy for the Judge who was presented with an unduly bald, and at least partly misleading, representation of the results of the hair strand tests of Report #1 and #2 in the Position Statements filed by the advocates and this, I regret, led her into error. In all cases involving this type of evidence, it is vital that the advocates:

i) Draw the Judge's attention to what the science can and cannot tell you, as explained in *Islington v M* and *Re H*;

ii) Carefully examine the hair strand test reports in full; as far as it is thought helpful or appropriate to do so, they should distil their contents accurately so as to provide with Judge with a reliable summary, not just a rehearsal or précis of the general 'Summary' or 'Opinion' section;

iii) Assist the Judge to consider the hair strand test results in the context of the whole of the evidence, including:

a) The statements of those who are alleged to have exposed the children to the drugs identified;

b) Other evidence (i.e., from observation) which may suggest drug use within the home;

c) Other evidence which may suggest that drugs are not used within the home;

d) The presentation of the children and the adults;

e) The history of the family generally.

This is all the more important, of course, in cases where the test results are in the lower range.

59. It was and is understandably a matter of concern that the maternal grandmother and uncle had sought to withdraw their co-operation from the Special Guardianship assessments, but the grandmother's explanation (she did not wish to be in competition with her daughter for the care of the children) plainly required sensitive investigation. The Judge's description of the grandmother's opposition to hair strand or nail testing bluntly as 'steadfast' may have been a little unforgiving; the grandmother's concerns about the inaccuracy of the hair strand testing reports (Report #2) may at least in part have been potentially vindicated by Reports #4. Moreover, she was entitled to be concerned as to the implications for her as a carer and a teaching assistant if false test results were to be returned in respect of her and the uncle. As it happens, by the end of the day on 26 March 2024, she agreed to be tested.

60. I am acutely conscious that Family Court judges operate under very considerable pressure of time, overwhelmed by the weight of a significant backlog of cases, with congested daily court lists; this imposes real constraints on their ability to give time to deal fully and fairly with urgent applications. In this case, the Judge was required to make a momentous decision for these children, directly impacting their immediate and medium term welfare, under intense pressure of time; the social work professionals and the Children's Guardian were urging that the children were no longer 'safe' in the maternal grandmother's home and urging removal. It is thus all the more regrettable that the application was presented on all sides in a manner which failed in material respects, to explain the evidence fully and fairly. This contributed materially to the Judge's misunderstanding of their content. Even so, I am satisfied that the evidence before the Judge fell short of demonstrating the 'high standard of justification' (see *Re* C at [5]) for the removal of the children from their maternal grandmother and uncle, and/or that the children's physical safety or psychological or emotional welfare demanded that they immediately leave her care (see *Re DE*). Such a step was not, in my judgment either necessary or proportionate.

61. Before leaving this aspect of the appeal, I would like to make an observation about an aspect of the case which did not feature large in the submissions but which concerned me, namely the fairness of the process which led to the decision to remove these children. In particular:

i) The application of the Local Authority seeking 'case management' (29 February 2024) "to deal with continued placement" (see §16 above) did not specifically refer to the prospect of removal of the children, and was not expressed to require urgent determination; the letter issued on the same day

simply said that "the Local Authority *may* ask the court to approve the removal of the children" (§16). The Local Authority's radical change of care plan was only articulated formally and unambiguously for the first time at the hearing on 22 March 2024, one working day before the hearing itself (note that the Judge herself commented that "the local authority applied *last week* at *short notice* for the court to endorse the removal of all four children": my emphasis); the intention of the Local Authority to remove the children should have been made more clear at a much earlier stage;

ii) There was some uncertainty about the extent of disclosure of the written evidence to the maternal grandmother and uncle prior to 26 March 2024 (she was and is not a party to the proceedings and not therefore entitled to the documents); the order made on that date specifically provides for extensive disclosure of documents to her, but only after removal had been ordered;

iii) The maternal grandmother was neither present nor represented at the hearing on 26 March 2024; the hearing had been listed at short notice and, given her work commitments, she was not able to participate effectively or at all; she should have been given the chance to attend, and the process would have been more complete had the Judge known her view;

iv) The children had not had any chance to participate in the process, and/or contribute (through the articulation of their wishes and feelings) to the decisions made about them,

v) It was important that all of the key participants in the process should have access to the relevant evidence. The social work statement had been delivered only on the morning of the hearing (in breach of the direction for it to have been filed and served the day before) denying the grandmother and the uncle any (or any real) chance to consider it.

vi) In a case involving such a drastic change of plan, the Judge might have permitted or possibly encouraged some limited oral evidence to test out the plans.

(2) The evidence obtained post-hearing and Judgment

62. The recently obtained evidence from Cansford Laboratories (Reports #4, #5 and #6) has, as it happens, cast significant doubt over the test results contained in Reports #2 (29 January 2024), ostensibly significantly undermining one of the key findings which had so greatly influenced the Judge's decision to authorise removal of the children, namely that "there are some serious Class A drugs involved in the hair strand testing" (see §37 above). This evidence has served to confirm the conclusion which I reached on the basis of the evidence available to the court below.

Outcome of the appeal

63. As I have already mentioned at §3 above, at the conclusion of the hearing we announced our decision: namely, that permission to appeal was granted, leave was also granted to adduce fresh evidence, and the appeal was allowed. In light of the Local Authority's indication that it would amend its care plan to allow the children to

remain with their maternal grandmother, the interim care order was left in place. I see no reason why the case cannot proceed for further hearing before HHJ Jacklin KC in order to try to achieve a degree of judicial continuity.

64. Finally, I would like to associate myself with the comments of Peter Jackson LJ made at the conclusion of the appeal hearing. It is essential, in the children's interests and despite what has occurred, that the maternal grandmother and uncle now engage fully and co-operatively with the Local Authority in the preparation of its various assessments. When final orders are being considered in several months time, the court will need to know what they can offer these children, and how they can meet their needs, so that truly informed welfare-focused decisions can be made about the children and their futures.

Lord Justice Newey

65. I agree.

Lord Justice Peter Jackson

66. I also agree, and add three observations of my own.

67. I endorse the statement made by Cobb J at paragraph 58 about the obligations on those who seek to rely on scientific tests. He has laid bare the apparent effect of the evidence in this case and shown how it was misdescribed and misunderstood. But even if it was taken at face value, it gave rise to a perplexing state of affairs that cried out for investigation and careful consideration, not for the peremptory removal of the children before any investigation had taken place. The Judge should have adjourned for a short time until the further tests that she was ordering could be considered. That would have given the parties and the court the opportunity to look more closely at the scientific picture. It would also have allowed them to supply the missing evidence about the perspectives of the children and their unrepresented carers, and would have given the carers another chance to receive legal advice, which could only be beneficial in relation to the problems that had arisen with the assessments.

68. Second, it is troubling that the children were unaware of the prospect of their removal until after the order was made, particularly as they might well have something to say about the central issue of exposure to drugs. A was aged 13, yet neither her social worker nor her Children's Guardian spoke to her about the test results or about the changed plan and in consequence the court lacked important information about the drug issue and essential information about the children's wishes and feelings: see paragraph 26 above. This was not a ground of appeal, but it speaks for itself. Under s.41(2) CA 1989, it is the duty of a Guardian to act on behalf of the child upon the hearing of any application with the duty of safeguarding the interests of the child. We were told that the Guardian and the children's solicitor met the children at the end of January to establish their wishes and feelings, which will have been that they were happy with their grandmother. The Guardian saw the children at home again at the end of February and had no concerns about their presentation. Yet three weeks later she supported their removal without speaking about it to them (or at least to A), or to either of their carers. We were told that she thought she could say what was in the children's best interests without doing that. However, PD16A 6.6 states that a Guardian must advise the court about the wishes of the child in respect of any matter

relevant to the proceedings and advise the court about the options available to the court and the suitability of each such option. There will be situations where it is not possible or appropriate for a child's view to be canvassed, but this was clearly not one of them.

69. Finally, there are of course cases where there is no alternative to interim removal. But whenever a child is removed from a family placement on an interim basis, the court must recognise that its short term order may have lasting consequences. A move into the care system can become a watershed that progressively limits the options for family placements as time passes (see *Re DE* and *G v N County Council* at paragraph 50 above). In this case, whatever the ultimate decision about the children's futures, it is fortunate that there was someone (the mother) who was motivated to seek and obtain a stay of the Judge's order on the afternoon that removal was due to occur. Had that not happened, the children would already have been in foster care when the latest test results were received and, once their lives had been so disrupted, it cannot be known what position the local authority and the Guardian would then have adopted, what the reaction of the family would have been, and what course the court would then have taken. These events illustrate why it is so important that orders for interim removal are only made when the exacting legal test is satisfied.