NOTE: PURSUANT TO S 437A OF THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE FAMILY COURT
AT MASTERTON (HELD IN WELLINGTON)

FAM-2010-035-000475
[2016] NZFC 2853

IN THE MATTER OF	THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989
	CHILD THE APPLICATION IS ABOUT ZP born [date deleted] 2002
BETWEEN	OPEN HOME FOUNDATION Applicant
AND	DP First Respondent
AND	TD Second Respondent

Hearing:	16/17 March 2016
Appearances:	B Inglis for Open Home Foundation V Pearson for First Respondent S Barnes for Second Respondent J Hunt lawyer for child
Judgment:	13 April 2016

JUDGMENT OF JUDGE A P WALSH
[CONTACT]

Introduction

[1] ZP, born [date deleted] 2002, is presently in the custody of the Director of Open Home Foundation (OHF) pursuant to an order under s 101 of the Children, Young Persons, and their Families Act 1989 (the Act). Additional guardianship orders in respect of Z have been made under s 110 in favour of OHF and his caregivers Mr QW and Mrs MW.

[2] Presently Z is in the care of Mr and Mrs W 5 days per week; each weekend he is in the care of his mother DP. His mother applied for an access order enabling him to stay 4 nights per week – Thursday after school until the start of school on the following Monday. OHF opposes the application and maintains the current care arrangement should continue.

[3] Z's father, TD, applied for an access order enabling him to have unsupervised contact with Z at times to be agreed with OHF. There is an issue whether such access should be supervised.

[4] The determination of these applications requires a careful evaluation of risk factors affecting Z, given the history and nature of care and protection concerns, which lead to him being placed in the custody of OHF on 2 December 2010.

Background

[5] It is necessary to set out in some detail the background to these proceedings in order to understand the context in which the evaluation of risks factors is undertaken. Care and protection proceedings were filed 2 December 2010 in respect of Z and a sibling, X, who is the child of the mother's relationship with another man. Z's parents were not married or living together when he was born. The family had been referred to OHF in 2008 after Z had been diagnosed with Attention Deficit Hyperactive Disorder (ADHD) and Oppositional Defiance Disorder (ODD). The mother struggled to cope with his behaviour. In 1998 she had been diagnosed with depression. At times it was difficult for her to provide routines and boundaries for Z and X.

[6] Concerns arose over Z being late for school, his behaviour and fluctuations of moods. He was aggressive and confrontational to other students and was often excluded from class.

[7] In September 2009 the Police became involved on 2 occasions after concerns arose about Z [details deleted.

[8] OHF provided social work support, respite and holiday care and had coordinated inter-agency involvement to assist the family. Over time there was concern Z's behaviour was posing a risk to himself and others and he was not receiving sufficient supervision.

[9] OHF supported Z attending [name of school and location deleted]. He was accepted into that school in June 2010. His behaviour improved under the routines and controlled environment at the school.

[10] During 2010 the mother's mental health deteriorated; she suffered mood changes and her behaviour became erratic. In November 2010 the mother learnt she was pregnant [details deleted]. Her relationship with her partner at the time ended shortly after.

[11] In November 2010 there were several incidents arising out of the mother's behaviour. Police became involved when the mother was served with a trespass notice by her former partner. Concerns escalated about her behaviour and her ability to care for X who was becoming distressed by her behaviour. The mother did not accept there were any safety issues affecting X. Arrangements were made for the maternal grandmother to look after X. The mother was admitted to hospital from [dates deleted] November 2010. She had stopped taking her medication and had driven a motor vehicle after giving assurances she would take her medication and not drive. In late November 2010 the mother was admitted to hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992 for assessment.

[12] The mother's use of marijuana had become problematic; it was alleged she became angry and aggressive if marijuana was not available. OHF became

concerned the mother's use of drugs impaired her ability to care for X. There was also concern for the mother's unborn [details deleted].

[13] Safety concerns arose for X; there was a risk of him poisoning himself from loose medication left lying around in the house by the mother. OHF considered the mother would not be able to administer Z's medication as she did not monitor or regularly take her own medication. Her lifestyle was described as "*chaotic*"; she neglected the children by not providing regular meals and routines and her parenting was described as "*inconsistent*".

[14] The mother's use of alcohol, while caring for the children, raised further concerns for their welfare. There was particular concern the mother was drinking alcohol and driving with the children in the vehicle.

[15] Ultimately OHF considered it was no longer safe for the children to remain in the mother's care, given concerns about her mental health, alcohol and other drug abuse, her verbal and physical aggression in front of the children and her general neglect of the children. While the mother was undergoing assessment under the Mental Health (Compulsory Assessment and Treatment) Act, OHF obtained a s 78 order placing Z and X in the custody of OHF. At that stage it was anticipated, once the care and protection issues had been addressed by the mother, the children would be returned to her care. Z was due to return from [name of school deleted] on 16 December 2010 and arrangements were made for him to be cared for by the maternal grandmother.

[16] At a family group conference held on 20 December 2010, it was agreed the children were in need of care and protection on the grounds set out in s 14(1)(b) of the Act. It was further agreed an interim custody order would be made under s 102 in favour of OHF. The children were to remain in the care of the maternal grandmother; they would be returned to the care of the mother when it was in their best interest.

[17] On 28 February 2011 a s 67 declaration was made on the grounds of s 14(1)(b) in respect of Z and X. An interim custody order under s 102 was made in favour of OHF.

[18] The mother had begun to address concerns but it would take some time for her to demonstrate she was ready to resume care of the children. She gave birth to [details deleted] in [date deleted] 2011.

[19] On 8 August 2011 the s 102 order was discharged and a custody order in respect of Z and X was made under s 101 in favour of OHF which was also appointed an additional guardian of Z and X.

Review Reports – June 2011 to December 2014

[20] In a review report 8 June 2011 it was noted all parties, including [name of school deleted] agreed it was very important for Z to continue to benefit from what he had learnt at [name of school deleted].

[21] On 29 November 2011 it was agreed Z would be placed in a shared care arrangement between the mother and Mr and Mrs W. Starting 2012 Mr and Mrs W cared for Z from Monday to Thursday and the mother cared for him Friday through to Sunday. Arrangements were made for Z to attend a school in [location deleted].

[22] In a review report 19 September 2012 it was recorded Z appeared happy with this care arrangement and had settled well with Mr and Mrs W. The mother was working hard to parent Z and implement strategies she had learned from Mrs W and a counsellor. She recognised the shared care arrangement was working well for Z and the whole family.

[23] The father contacted OHF in April 2012 seeking contact with Z. Arrangements were made for him to have supervised contact and this had gone well. The father contacted OHF regularly and had sent parcels of clothing and letters for Z.

[24] It was agreed Z would attend [school details deleted] in 2013. Throughout 2012 the mother continued to have personal counselling and was supported by mental health services until her discharge in September 2012. Z was happy in the care of Mr and Mrs W but the mother claimed he wanted to spend more time with her.

[25] On 3 December 2012 Mr and Mrs W were appointed additional guardians of Z. During 2012 and early 2013 the father had 5 supervised visits which Z appeared to enjoy. He had missed one occasion and Z was very disappointed. It was proposed OHF would continue to organise contact. Z had integrated well at college. He continued to enjoy his time with Mr and Mrs W and was showing less challenging behaviours.

[26] At a review meeting 9 September 2013 Z's family sought an additional night each week with the mother. Initially OHF declined this request but after further consideration, agreed to the proposal subject to a condition Z's family addressed all OHF's concerns over a period of 3 months. A safety plan was agreed. OHF worried if Z was in the care of the mother for more than 3 nights per week she would be unable to give him the consistent rules and boundaries he needed, to remain calm and in control of his feelings. There was concern also Z would start misbehaving at the W's home. A review report 31 October 2013 recorded Z had spent longer periods of time with the mother during the holidays. It was noted while Z "*isn't always perfect in care*" the mother believed she was managing his behaviour.

[27] In July 2014 the father advised OHF he had returned to the [location deleted] area. He had supervised contact on about five occasions and that had gone well for Z. Problems arose in October and November 2014 when the father turned up intoxicated; on those occasions contact did not proceed. OHF put the father on notice if there were further incidents of him turning up intoxicated contact would be suspended until OHF was satisfied he would be more reliable. The mother did not support the father having contact.

[28] A review report 4 December 2014 noted the mother and her family had requested an extra night per week for Z. This arrangement had started in February

2014. On 1 June 2014, however, Mrs W advised OHF she had Z in her care following an incident between W and his mother during which she had grabbed him by the face. A s 15 notification under the Act was made. OHF became concerned the mother was not adhering to the agreed safety plan and was unable to manage W's behaviour. Child Young and Family (CYF) investigated the incident but did not take the matter further. During the investigation W remained in the care of Mr and Mrs W.

[29] OHF revised the care arrangement with the mother; it was agreed Z would be returned to her care for Friday and Saturday nights starting 20 August 2014.

[30] On 13 September 2014 Mr and Mrs W notified OHF they had caught two other foster children engaging in sexualised activity. It appeared Z had encouraged this behaviour. A s 15 notification was made to CYF. Z was placed in another foster home for a week while OHF conferred with Mr and Mrs W and the mother. A referral was made to WellStop to assess and address Z's sexualised behaviour. CYF investigated the incident but did not take matters any further.

[31] On 4 October 2014 the mother advised OHF there had been a further incident of sexualised behaviour involving Z and her other children. He was placed in a temporary foster arrangement while OHF reassessed risk issues and revisited the safety plan for Z. Subsequently the shared care arrangement involving Mr and Mrs W and the mother resumed.

[32] Z's College Dean was worried about a deterioration in Z's behaviour since the beginning of term 1 in 2014. It was noted, however, his behaviours improved dramatically when he moved to the W's fulltime care in June 2014. There had been occasions when Z was placed on internal and external stand downs. An enrolment application for Z to attend another school was unsuccessful.

The Mother's Application for Access

[33] On 23 January 2015 the mother applied, pursuant to s 121 of the Act, for access on the following terms:

(a) each week from Friday 3pm until Sunday 10:30am;

(b) contact to progress from Thursday after school until Monday morning each week before the next Court review period.

[34] The mother acknowledged she had not coped with the care of the children in 2010; she had been diagnosed with bipolar disorder and had alcohol and other drug issues which made matters worse. She had struggled to control Z's behaviour. Since then her situation had improved; she had given birth [details deleted] and X had been transitioned back into her care.

[35] The mother wanted her contact with Z formalised by an access order. She alleged OHF had reduced and varied her contact over the past 12 months, without her having much say. She wanted to ensure contact happened consistently. Eventually she wanted Z returned to her fulltime care and the orders, in favour of OHF, discharged. She believed she had done everything required of her to address issues; she drunk alcohol occasionally, no longer used drugs and her mental health was stable. It transpired her mental disorder was initially misdiagnosed and she had been prescribed the wrong medication. Since the diagnosis of the bipolar disorder her new medication had worked well. She now had a good support network.

[36] The current care arrangements troubled the mother; she believed they were not meeting Z's needs. He had consistently told her he wanted to spend more time with her and his siblings. The mother was not criticising the W's care of Z. She accepted any change had to be transitioned gradually, given Z's ADHD and ODD and the fact that he found change difficult.

[37] The mother rejected the suggestion the increase of one extra night in 2013 had resulted in a deterioration of Z's behaviour. She claimed his behaviour had started to deteriorate after he had contact with the father. She felt there were other factors also contributing to his behaviour including difficulties at school and coming into adolescent years. After concerns arose about Z's sexualised behaviour she supported the referral of Z to WellStop but was concerned she had not been consulted by WellStop about the history of Z's life, particularly in his early

childhood years. She disputed observations in a WellStop report Z had been exposed to trauma and violence at a young age but acknowledged he had witnessed arguments between her and X's father and later between her and Z's father.

[38] At times the mother felt excluded by OHF and the Ws from decision making affecting Z and wanted to be more involved in his upbringing and in his education. She felt OHF had an agenda to transition Z into the fulltime care of the Ws. She opposed any such proposal, maintaining Z enjoyed and benefitted from being included in her family on a regular weekly basis.

[39] After considering a psychological report 8 May 2015, completed by Dr R Gammon a registered clinical psychologist, the mother realised Z may be better off if she actively supported his placement and relationship with the W and focused on him having regular contact with her and her siblings. She confirmed, however, she wanted Z in her care 4 nights per week.

[40] While the mother accepted, in the past contact periods had been reduced because of incidents involving Z's unsafe behaviour, she did not agree with OHF that he would behave better if he spent more time in the care of the Ws.

[41] The mother was concerned Z might have a predisposition to mental health issues because she and the father had experienced mental health issues in the past. It appeared Z had difficulties, especially processing auditory information. She believed many of his issues had biological roots. She did not accept the majority of his concerning behaviour arose when he was in her care or at school; concerning behaviours had occurred also while Z was in the care of the Ws and her mother.

[42] The mother did not support the father's contact with Z; she did not consider him to be reliable and responsible. She remained concerned he was unreasonable and unrealistic in his expectations about the amount of contact with Z. In 2001 she had obtained a protection order against the father and his partner. She wanted nothing to do with him. In the past contact between the father and Z had been inconsistent.

[43] The mother felt she had and continued to take responsibility for her life, behaviour and events which may have impacted on Z. She had addressed issues which had lead to the care and protection concerns for X and Z and was committed to improving her parenting skills. She supported counselling and therapy for Z. She did not wish to participate in counselling with the father and believed he needed to address and manage his alcoholism.

[44] In her updating affidavit, sworn 23 February 2016, the mother said she, the Ws and OHF had worked well together to vary contact dates by agreement. The mother had joined a new church and while Z found change difficult, it appeared he had adjusted well and had made new friends. His behaviour could still be up and down at home and sometimes he could be disrespectful. Most disagreements at home related to boundaries and rules. Presently the mother felt unable to trust Z to be reliable and responsible.

[45] When Z was at the mother's home, she found his behaviour was very different when he was on his own with her. On occasions she was able to arrange activities for Z and herself without the other children and this appeared to work well. She suggested Z's behaviour changed when he felt he had to vie for her attention. Although he had a tendency to lie the mother had been able to communicate with Mrs W and this minimised his ability to try and play them off against each other.

[46] Z had a tendency to "*bottle up things*" and this worried his mother. She felt he did not want to have to answer to anyone and wanted to control his own life, but felt powerless and frustrated with the adults in his life making decisions around him. He was not enjoying school and continued to be truant from school. She believed he should undergo an extensive learning disabilities assessment.

[47] The mother had completed 2 parenting programs and had found them very helpful. Z had undergone auditory testing which concluded he did not have an auditory processing disorder, but he did have some problems with his auditory memory.

[48] The mother rejected the father's criticism of her as he had not had anything to do with her since Z was little and had no idea about her parenting or the person she had become. She worried the father was having unsupervised contact with Z by telephone and Facebook and it was difficult to assess whether their discussions were appropriate. She wanted ongoing contact to be supervised.

The Father's Application for Access

[49] The father first met Z when he was about 9 months old. He was not in a relationship with the mother at the time; he explained he was still in a relationship with the mother of his other children. Over the following years he had sporadic contact with Z. He relocated to [location deleted] in 2007, wanting to have a relationship with Z. Subsequently he was charged for breaching the protection order in favour of the mother. He pleaded not guilty to the charge. Proceedings were resolved by him undertaking not to contact the mother and on that basis the charge was withdrawn. Given this event the father decided it would be best if he stayed away from the mother. He had a history with the police and was trying to lead a simple life away from trouble.

[50] In 2011 the father sought to re-establish contact and ascertained then Z had been placed in care. He later returned to the South Island but continued to have contact 2 to 3 times a year. Although he had limited contact with Z, the father believed this had not disrupted his bond with him. He was upset when OHF directed his contact with Z was to be supervised.

[51] The father acknowledged he had an ongoing alcohol addiction issue. He confirmed there had been 2 occasions in 2014 when supervised contact did not proceed because he had been drinking.

[52] Z's placement with the Ws was supported by the father. He remained concerned about the mother and her family, alleging they had consistently tried to undermine his relationship with Z. He wanted to have unsupervised contact with him and get to know Mr and Mrs W.

[53] The father denied there had been an incident when he had turned up drunk to watch Z [activity deleted]. He further denied approaching the mother at the game. He was concerned the mother did not support Z's relationship with the Ws. He opposed the mother having contact with Z every weekend and believed he should remain in the care of the Ws. During contact he tried not to speak negatively about the mother. In July 2015 he started to have unsupervised contact with Z at OHF. He considered the mother should only have contact with Z 2 afternoons each week.

[54] As at 22 February 2016 the father worried that decreasing the time Z spent with the Ws would undermine his relationship with them; he needed the discipline in his life that had come from the W's home. He did not believe the mother was able to provide the same routines and discipline. The father acknowledged his own transience and non-conformist lifestyle choices had made it almost impossible for him to offer long term stability that would enable his contact to be increased. Contact by telephone and Facebook had gone well. Long term he wanted extended periods of contact including overnight contact.

[55] OHF expressed concern about inappropriate discussions between the father and Z when they had been unsupervised contact. The father acknowledged he had spoken to Z about the court proceedings but denied making negative comments about the mother.

[56] In his updating affidavit 2 March 2016 the father advised, after reading affidavits filed recently by the mother and OHF, he did not know who or what to believe about how Z was doing. He wanted to have direct communication with the Ws and be informed as to how Z was doing at home and at school. He saw no need for supervised contact. He was agreeable to a condition that he not to consume alcohol 24 hours prior to contact and during contact.

The Concerns of OHF

[57] Ms S Aspinall, the OHF social worker assigned to Z, advised he had been much more settled over the past 12 months. At the end of 2015 he had received "*a generally positive school report, both academically and behaviourally*". She

believed this marked improvement was due to the positive influence of the Ws and the settled care arrangements over the past year. She noted, however, problems had arisen over Z's behaviour when in the care of the mother and the maternal grandmother. On several occasions the mother had texted Mrs W about concerns over his behaviour, relating to him screaming abusive language, being violent to the other children, pushing his mother, throwing dishes, slamming doors and threatening to run away. In December 2015 there had been 3 occasions when concerns arose over Z's behaviour. On 6 December 2015 he had become so unmanageable the mother asked Mrs W to collect him earlier than the usual time.

[58] Mrs W had advised Ms Aspinall that Z usually returned to their care in a "*flat emotional state*" which lasted for about an hour. On several occasions he had returned, suffering a migraine headache. Ms Aspinall considered the mother and Mrs W were able to communicate well by text; this provided a consistent approach to managing his behaviour and limited the scope for Z to manipulate the rules between the homes. This communication had also provided the mother with a "*safety net*" support in managing his behaviour. She had made a lot of progress in the way she coordinated with the Ws and supported them as caregivers. Ms Aspinall remained concerned the maternal grandmother did not support the placement with the Ws.

[59] In early 2015 Z's medication for ADHD and ODD was stopped. Neither the school nor the Ws noticed any subsequent deterioration in his behaviour; Mrs W reported "*his personality blossomed*". The mother did not support the stopping of the medication.

[60] Z told Ms Aspinall he enjoyed his time with the mother but frequently complained he was treated unfairly compared to his siblings. He often referred to "*arguments and shouting matches*" with the mother and said he found her *"frustrating*". The mother acknowledged Z found her rules hard to follow despite them being similar to the W's rules. Ms Aspinall noted Z expressed different views at times about his relationship with the mother. In February 2016 he advised he wanted more time with the mother which was contrary to his views expressed in November 2015. He also said he did not want to spend less time with the Ws. He

was unable to explain why his behaviour was different when he was with the mother or how he managed his behaviour better at the W's home.

[61] Although the mother indicated she was gaining trust in OHF, Ms Aspinall observed the mother had not initiated contact with OHF. Ms Aspinall worried the mother believed it was Z who had to make the changes, contrary to the views of Dr Gammon, who believed the relationship would only improve when the mother acknowledged Z was not the problem and she was able to manage better her response to him.

[62] Dr Gammon had recommended family therapy for the mother and Z and if possible the father. This referral was delayed to early February 2016 as Z was undergoing counselling with WellStop. This counselling stopped in November 2015. Z had participated well in the counselling.

[63] In February 2016 it was alleged Z had made a video of himself acting inappropriately in a sexualised way. He had sent it to his ex-girlfriend and had shown it to some of his school friends. It transpired Z was not the subject of the video. This incident disrupted care and contact arrangements while it was being investigated.

[64] The current care arrangement had been in place for over 12 months and had worked well. In October 2015 the time was extended to 5:30pm on Sundays. On occasions additional time had been negotiated between the mother and the Ws and this had worked well. Until October 2015 the father had supervised contact at OHF and Z had enjoyed the contact. The father had returned to the South Island in October 2015 but had made contact by phone, text and Facebook. Ms Aspinall considered a stage had been reached where the father could have unsupervised contact with Z. After hearing allegations, however, the father had discussed the court case with Z and had made derogatory remarks about the mother she decided supervised contact should continue. She proposed to monitor contact until it was appropriate for unsupervised contact to occur.

[65] The father did not react well to having his contact supervised. Ms Aspinall advised contact on 2 March 2016 had become problematic because the father had been persistent in discussing inappropriate matters with Z relating to the Ws. As to telephone contact the father advised his conversations would be "*open book*". Ms Aspinall understood from this advice he intended discussing matters with Z relating to the Ws. In those circumstances Ms Aspinall had stopped the telephone contact. OHF was still prepared to work towards unsupervised contact providing communication was "*uncomplicated and positive*".

[66] Ms Aspinall proposed the existing arrangement for Z's contact with the mother should continue. She was concerned if contact time was extended it was likely to lead to more problematic behaviour which would impact negatively on Z's schooling and emotional wellbeing. She considered his progress was due to the W's commitment to him; they had "*a very calm, firm and consistent approach*" to Z and were developing his ability to manage his own behaviour. There was ongoing concern the proceedings had put pressure on him and his relationship with his family.

The Psychological Report 8 May 2015

[67] Dr R Gammon was requested by OHF to undertake a neuropsychological assessment of Z. Comprehensive testing was carried out in respect of Z's behaviour activities and general functioning, neuropsychological development and intelligence.

[68] The Conner's Parent Rating Scale Revised (Short Form) was used to assess Z's behaviours along four scales – oppositional, inattention, hyperactivity and a general ADHD in depth and to provide an overview of Z's difficulties in these areas. He was rated as displaying traits and behaviours for the four scales "*more frequently and severely than most other children of a similar age group".* Results indicated Z more likely displayed many "*inattentive and distracted behaviours"* and might meet the diagnostic criteria for ADHD. Dr Gammon noted, however, The Conner's Rating Scale was simply a screening tool and should not be used as a formal diagnosis of ADHD because many of the behaviour systems on The Conner Rating Scale might be symptoms of other mental health conditions including trauma,

anxiety and depression. Further testing was required to determine a "*differential and accurate diagnosis*".

[69] The Achenback System of Empirically Based Assessment provided information regarding a child's behaviours, activities and general functioning in a variety of situations. The mother, the Ws and Z's teacher participated in this part of the assessment. Overall Z's internalising behaviours fell within the subclinical range while his externalising behaviours fell within the clinical range.

[70] The Development NEuroPsychological Assessment Version II (NEPSY-II) assessed neuropsychological development in children aged 3-16 years; in particular it assessed both basic components of cognitive abilities and complex aspects of cognition allowing for a thorough overview of a child's abilities. Fourteen subtests were conducted. Results indicated Z was "*above average*" in two of the subtests, *"superior*" in one subtest, "*average"* in eight subtests, and *"low average"* in two subtests. There was no valid score for one of the subtests.

[71] The Wechsler Intelligence Scale for Children – IB (WISC-IB) was used. There were ten subtests. Z was assessed as "*average*" on eight subtests, "*low average*" on one subtest and *"high average*" on the remaining subtest. In the WISC-IB indexes relating to verbal comprehension, perceptual reasoning, working memory, processing speed and full scale IQ Z scored in the "*average"* range.

[72] In her conclusion Dr Gammon noted the following factors:

(a) Z had a lot of different influences in his life which might be making it hard for him to be clear about his current needs. He was demonstrably "*torn between alliances which may be complicating his situation*".

(b) Z had a close relationship with the Ws; he had demonstrably bonded with them. The Ws presented as "*proud and loving of Z*".

(c) There was a close relationship between Z and the mother; each had expressed a strong desire for more time together. It was noted, however, there were inconsistencies in the mother's "*reporting when viewed in line with Z's behaviour and presentation"*.

(d) As Z's behaviours had arisen before the age of 5 years and he was seen in a mental health system for these behaviours it could be hypothesised his upbringing had been chaotic. While the mother and maternal grandmother disputed this assessment, it appeared likely Z had been exposed to trauma in his past.

(e) The mother had attended numerous parenting courses and had made positive changes to address her dysfunctional relationship with alcohol and other substances. She had demonstrated a strong desire to change and adapt so she could assist Z with his transition back to her full time care. She had also expressed the need for further support for her and Z.

(f) It was essential for the mother to have a better understanding of why Z might display more disruptive behaviour while in her care and how to deal more effectively with this behaviour.

(g) It did not appear the mother had insight as to how her behaviour may impact on Z's behaviour. The mother tended to find fault with Z and "*pathologise him*" rather than look at systemic issues.

(h) It appeared, from an early age, Z had been identified as the problem, having ADHD and ODD rather than looking to change the home environment.

(i) It appeared clear, from previous placements, Z benefited from "*a highly consistent and structured environment*" and in such an environment his behaviour improved.

[73] Dr Gammon then set out a number of recommendations in the report. In the context of these proceedings the following recommendations are relevant:

1 Given the bonds Z had with his mother and the Ws it was recommended the existing contact arrangement should continue. Z should spend some weekends at the W's to allow him to engage in more associated activities as he struggled to find the time to engage in such activities. This could be balanced with more time spent with the mother in the school holidays.

2 For the time being contact between Z and the father should be supervised. The father's criminal history, alcohol abuse and life stresses did not make this a suitable time to introduce unsupervised contact. Over time contact could be increased to allow Z and the father to have longer visits. Supervision could be reviewed at a later stage once the father was able to manage his alcohol abuse.

3 Family therapy was strongly recommended to enable the mother and Z to repair the damage to their relationship and work through some of the past experiences. Dr Gammon considered the mother needed to accept some responsibility for the events which had occurred in the past and to be open and honest about how they may have impacted on Z. The family therapy needed to focus on their relationship and not on Z's behaviour; if possible this should include the father so he and Z could have a healthy relationship and Z not be torn between alliances. An ideal outcome would be either for the mother to recognise her limitation to parent Z and support his placement with the Ws or to be able to change significantly her parenting style to meet his needs; this was unlikely to occur without significant change.

4 The mother would benefit from further parenting courses and assistance in setting boundaries with both Z and X. It was important X and Z had more clearly defined personal space to enable Z to establish more control in a structured home.

5 Z should be given therapy to assist him cope with attempting activities either through school counselling or a referral through a clinical psychologist.

6 Counselling with WellStop was strongly recommended to continue work on Z's sexualised behaviour. As noted the counselling with WellStop was subsequently completed.

The Law

Statutory Provisions - Objects and Principles

[74] Section 4 sets out the general objects of the Act. The main object is to promote the wellbeing of children, young persons and their families. The means for achieving that object are contained in s 4(a) to (g). The general principles relating to care and protection issues are contained in s 5. These principles emphasise the involvement of families in the decision making process and where possible the goal of unification and strengthening of family groups while focusing on the welfare of the child or children.

[75] Section 13 contains a number of principles set out in paragraphs (a) to (h). The thrust of these principles is that whenever practicable children should live, be supported, cared for and protected within their own family and family group. Where that is not possible steps should be taken to ensure the child or young person is given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed.

[76] Given the comprehensive nature of the principles contained in ss 5 and 13 it is inevitable there will be conflicts of principle and interests depending on the facts of each case. In such event s 6 provides the welfare and interests of the child or

young person are the first and paramount consideration having regard to the principles set out in ss 5 and 13.

Application of Principles

[77] In *The Matter of the S Children* [1994] NZFLR 971 His Honour Judge Inglis QC discussed the application of the principles contained in s 13. At page 980 he stated:

> Because these principles are clearly subsidiary to those stated in ss 5 and 6 it is of obvious importance that no one should fall into the error of treating the principles in s 13 as though they were a self-contained code or as though they provided that family reunification and assistance were paramount objectives. The very fact that the child is found to be in need of care and protection on any grounds stated in s 14(1) is itself an indication of family dysfunction or inadequacy, inimical to a child's welfare and interests and from which the child needs to be protected. While the general theme of s 13, read with s 5, is encouragement of the positive objective of empowering extended family to accept responsibility for considering the situation in which the child has been placed and how the family itself might assist, the emphasis must still remain on the welfare and interests of the child. The emphasis on the child's place within the family, if treated as a matter of doctrine rather than as a factor to be balanced against the child's welfare and interests may achieve little more than locking a child into the inimical family situation from which the proceedings were designed to rescue him.

[78] In *T v The Chief Executive of the Department of Child Youth and Family Service* (High Court Wellington CIV-2006-485-779, 19 October 2006) Gendall J observed at [26]:

> Over the years, Courts have endeavoured to list a number of factors required to be investigated to assist in determining what will best advance the welfare of a child, but those are never exhausted, and may overlap. No one factor is to be regarded as decisive because the Court has to adopt a personalised approach to each child and each family. Some factors include parenting attitudes and abilities; strength of existing and future bonding; availability for and commitment to quality time of the children; security and stability of home environment and the availability of suitable role models; positive or negative attitudes of the wider family; provision of physical care, help and material welfare; the availability of stimulation and new experiences and educational opportunity; the wishes of the children. There will be more, and will include the issue of blood ties.

[79] The provisions of the 1989 United Nations Convention on the rights of the child which was ratified, subject to certain reservations, in New Zealand in 1993 must also be considered. In *S children* (above) Judge Inglis QC noted there are two

clear threads which run through the articles of the Convention. The first is the promotion of the "*best interest*" of the child as a recurring and principal theme – refer Article 3(1), 9(2) and 18(1). Secondly, there is respect for the integrity of the child's natural family unit and in particular, recognition of the nurturing responsibility of the child's parents and the child's rights to be nurtured by his or her parents – Articles 5, 9 and 18.

[80] The expression *"best interests of the child"* was considered by Judge Inglis QC in the *S Children* (above) in the context of the Convention on the Rights of the Child. At page 982 he stated:

> The expression *"best interests of the child"* is itself illuminating. To assess what is in a child's *"best interests"* involves balancing a variety of interests. It is clear from the Convention that an obvious interest of the child will be to maintain personal relations and direct contact with those who are responsible for the child's nurturing, but it is also clear that the child has an interest in being protected from abuse or neglect. A course of action which is dictated by the child's *"best interests"* would therefore be one which treats some interests of the child as dominant and others as of relatively less weight depending on the circumstances. The expression *"best interests"* involves the concept of promoting the child's welfare, so that the course to be chosen is one which enhances, or at least maintains, the child's welfare. Both the Convention and ss 5 and 13 promote the family unit as the ideal structure within which the child should be nurtured. While protection and support of the family and family relationships are seen as an effective way of enhancing the welfare of the child in the generality of cases - a proposition which plainly underpins both the Convention and ss 5 and 13 - nonetheless the question will always be whether the protection of this family and these family relationships will in fact be effective in promoting the best interests of this child.

[81] In *New Zealand Family Law in the 21st Century*, Dr B D Inglis QC discussed the significance of ss 5 and 13 – refer 19.4.2 pp 646 – 643. At page 648 Dr Inglis QC observed there was no basis for approaching ss 5, 6 and 13 from a direction other than what followed in approaching s 4 of the Care of Children Act 2004. He referred to the judgment of Lord MacDermott in *J v C* [1970] AC 668 (HL). In that case Lord MacDermott stated that the statutory words *"shall regard the welfare of the infant as the first and paramount consideration"* connoted a process whereby when all the relevant facts, relationships, claims and wishes of parents and risk choices in other circumstances were taken into account and weighed, the course to be followed was that which was most in the interests of the child's welfare as that term was now to be understood. That was the first consideration because it was of first importance

and the paramount consideration because it ruled upon or determined a course to be followed. Dr Inglis QC then stated:

> Applying that classic definition of *"first and paramount consideration"* to s 6, and the words in that section *"having regard to the principles set out in ss 5 and 13 of this Act"*, the position can be expressed in this way. The Court, having taken into account and having weighed all the circumstances of the case, including such of the matters specified in ss 5 and 13 as are relevant, must treat the child's welfare and best interests as the determining factor.
>
> > *"That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed."*
>
> It follows that the *"principles"* in ss 5 and 13 are (with the possible exception of s 5(c) which is, however, subject to s 6) of potentially relevant, but not of presumptive, force. In other words, ss 5 and 13 provide a number of factors to be considered and weighed along with all other relevant child-centred factors in a care and protection case, the welfare and interests of the child being the dominant and determinative factor.

[82] In *B (CA 204/97) v Department Social Welfare* (1998) 16 FRNZ 522 the Court of Appeal discussed the focus of the Courts regarding the application of principles under the Act and the significance of biological ties between a parent and child. At page 525 the Court stated:

> … the starting point in New Zealand for all cases under the Act is s 6. Parliament through this section is telling the Courts that they must regard the welfare and interest of the child as a first and paramount consideration, having regard to the principles set out in s 5 and 13. These principles cover a number of matters which will have different weight in individual cases. They are all matters which must be considered in each case, but what relevance and importance they will each have in an individual circumstances would be a matter for individual assessment.

Further on the Court stated ….

> We must not be thought to be downplaying the importance which biological ties have in the principles underlying this area of the law. Ordinarily the interests and welfare of the children are best served by their being in the custody of their biological parents or, at least one of them; that is to do no more than to state the obvious and to recognise the fundamental role of the biological family in our society.
>
> If it is suggested the welfare and interests of a particular child would be best served in a different custodian environment the natural enquiry is why should this be so. The alleged deficiencies of the biological environment are then identified and the Court has to decide whether the circumstances are such that the child should live elsewhere. In making that decision the

> welfare and best interests of the children predominate over the interests of the biological parents and, indeed, over the biological ties a factor in itself. That is not to deny the relevance of the tie in making the necessary decision. Indeed, the biological tie between parent and child will often, indeed usually, be the logical starting point in deciding what is best for the child. But there will be cases where the primary focus can legitimately assume that starting point without expressly articulating it and thereby concentrate on the issues which are said to require custody to reside with someone other than a biological parent.

The Hearing

[83] Dr Gammon confirmed the recommendations in her report were still applicable. She considered Z's needs still needed to be met in the W's home which provided a solid structure and consistency for him. The mother was still in denial about significant events in Z's early childhood experiences that contributed to his difficulties. Her perception needed to change and acknowledge it was a systemic issue rather than trying to figure out what was going wrong with Z. Dr Gammon believed early trauma did impact on his current behaviour but this trauma was not acknowledged by the mother.

[84] The trauma assessment was based on interviews with the mother, the father, Z's social worker, Z and a review of previous documentation. In his interview Z had talked about various men involved with the mother early on and how poorly they had treated her. He referred also to violence that occurred during this time affecting him and the mother.

[85] Family therapy for Z and the mother needed to work through past issues which needed to be acknowledged. Dr Gammon believed Z blamed himself for his current behaviour; he did not understand his behaviour might have been caused by earlier experiences. She noted from the last report filed by Ms Hunt Z was unable to resolve issues with his mother.

[86] Dr Gammon had not assessed whether Z should return to the full time care of the mother; she was unable to say whether there was a strong relationship between Z and the mother. His interaction with the mother, the father and the Ws was significantly different. There were indications of a poor relationship between Z and

the mother because of shifts in his moods and interactions; he was not as open with the mother as he was when by himself and with the Ws.

[87] There was a possible range of factors contributing to issues relating to Z smoking, using cannabis, truanting and swearing and they were not isolated to the mother. It was possible he might have a pre-disposition to mental health and addiction issues which had troubled his parents. There were issues relating to Z's self identity and self-esteem; negative factors built on each other. Dr Gammon observed if a person had experienced early negative childhood experiences and a negative sense of self, this lead to more conflict as the person grew older.

[88] Dr Gammon had concerns about the mother's lack of insight; she did not acknowledge early trauma had impacted on Z and minimised the possibility of such trauma occurring. The mother was looking for a diagnosis to explain Z's behaviour rather than focusing on environmental impact and systemic issues affecting Z. It appeared the mother did not have the parenting skills to parent Z effectively.

[89] The mother had acknowledged issues in the past few years but not the entire life span of Z. The "*care issues"* related to the impact on Z's self-image and self-esteem. There was a lot of blaming Z but there was no looking at relationship issues. Z had always been difficult to parent and his exposure to inconsistent parenting may have contributed to his difficulties. He continued to need "*lots of support*" from the mother, the Ws and his school. There was a need for consistency in "*rules*" affecting Z. Dr Gammon did not agree with "*privileges*" being removed for bad behaviour; he needed to earn privileges based on good behaviour. If privileges were removed this would feed into his negative self-esteem.

[90] Dr Gammon acknowledged no assessment of Z had been made in the past 12 months. There was also no assessment of the relationship Z had with his siblings.

[91] Z had scored in the average range in all neuropsychological testing and intelligence testing. Given these results, Dr Gammon concluded his difficulties in learning and behaviour were attributable more towards his mental health issues around self-esteem, anxiety and trauma. She observed if he had learning disabilities

or attention deficit disorder this would have become apparent in the testing carried out and "*he would not have been average across the board*". She thought ADHD had been ruled out; his behaviours were inattentiveness and lack of concentration. The neurological testing did not indicate ADHD.

[92] Dr Gammon described Z as "*a kid that has got some significant mental health issues occurring*". Based on the testing he had the capacity to do well because there was no neurological deficit. He needed extra help relating to emotional issues rather than learning issues.

[93] Despite the father's claim "*he did not see it as a big deal"* Dr Gammon considered the father had poor judgment and lacked insight when he turned up for contact with Z under the influence of alcohol. It was important for a child to know that contact with a parent had to occur in a safe and healthy environment. In this case there was concern about the father's use of alcohol and the need to monitor discussions between him and Z; she stressed the importance of consistency in any contact arrangements. If this did not occur it would impact adversely on the relationship. In determining any contact arrangement Dr Gammon recommended the father undergo a parental capacity assessment to determine what skills he had, what his mental health issues were and what were his substance use issues. His coping skills also needed to be assessed.

[94] Before family therapy took place involving the father, Dr Gammon said there needed to be some resolution between the parents. While the parents might not get along, they should not undermine and blame each other as this caused anxiety for Z and made matters worse for him.

[95] When Dr Gammon raised the issue of *"trauma*" she was referring to adverse childhood experiences and factors such as maternal mental health, parental substance abuse, domestic violence, multiple partners, whether there had been a consistent nurturing environment and the ability to bond with the child. Trauma in this context involved a "*multitude of things*".

[96] The improvement in Z's behaviour resulted from a change of environment and consistency in the new environment as provided by the Ws. Regardless of the outcome of the hearing it was important the parents supported Z; if the conflict between them continued it was probable his behaviour would deteriorate.

[97] Dr Gammon felt Z would benefit from individual counselling. Where a child had been removed from a family there would be issues for that child particularly as a child entered adolescence.

[98] Dr Gammon confirmed Z had ODD; it was a behaviour disorder in the Diagnostic Statistical Manual. It involved arguing with adults and not following directions in multiple environments. ODD was a name for a set of symptoms but did not provide any explanation about treatment. The aetiology of ODD was based on factors such as inconsistent parenting, mixed messages and unstable environment. It was a disorder which evolved from environmental circumstances; a person was not born with the disorder and did not have a predisposition to the disorder. Improvement in Z's behaviour related to his current environment. Dr Gammon explained when a child had anxiety issues from conflict in the home, the child did not have the capability to express themselves in words and this accounted for "*acting out behaviours*", "*agitated behaviours*" or "*inattentive behaviours that looked like attention deficit, but aren't"*.

[99] Dr Gammon advised she had not done a full attachment assessment of the bond between Z and the mother but noted the mother had indicated it was difficult for her to bond with him. Despite Z's age it was still possible to carry out reparative work to improve his relationship with the mother.

[100] There was a major issue for Z as he was demonstrably torn between alliances with the mother and the Ws. He wanted to be part of the mother's family but enjoyed living with the Ws. For this reason it was important the parents and the Ws supported each other to reduce the pressures on Z.

[101] Z's better behaviour with the Ws was attributable to the ability of the Ws to detach emotion and anger when challenged by his behaviour. He did not feel he was

losing the relationship within them. The responses from his mother were more emotionally driven.

[102] In reviewing the history of Z's care arrangements, Dr Gammon stressed the need for permanency noting a child cannot live "*in limbo*". As long as there was uncertainty about his placement it was not possible to develop a stable base.

[103] Dr Gammon indicated an adolescent in care would maintain a strong alliance to a parent. Possible factors relating to Z's desire to spend more time with his mother arose from his loyalty to his family and maybe trying to please the mother and develop a better relationship with her.

[104] When addressing whether the causes of Z's behaviour were organic or environmental, Dr Gammon advised if it was "*organic or neurological*" then the differences in different environments would not be apparent; his behaviour would be consistent across all environments. In that respect she noted the significant improvement in Z's behaviour when attending [name of school deleted]. That had led her to question "*the biological versus the environmental"*. While she believed it was not possible to make a clear split either way she suspected more neurological symptoms would have been apparent if it was biological.

[105] Dr Gammon remained concerned the mother saw the issues relating to Z as "*something being wrong with him*" and if this could be determined then the problem would be resolved. The mother still believed he suffered from ADHD and should continue to have medication for that disorder; she was effectively disregarding the impact of other factors, as discussed, on his early developmental years. The mother needed to reappraise her beliefs otherwise this would undermine family therapy and would probably increase Z's poor sense of self and blaming himself. While the mother loved and cared about Z she did not understand him or his needs and wanted to blame him. She did not agree he had experienced a traumatic upbringing and focused more on a how difficult he was.

[106] The concept of self-esteem was a very significant factor for Z; he responded very positively to positive affirmation. He was particularly vulnerable to any perceived criticism.

[107] In rating priorities for Z, the first and foremost priority was permanency for him; Dr Gammon stressed until there was permanency Z was in "*limbo and cannot move forward*". Presently he felt stuck between the mother and the Ws.

The Mother's Evidence

[108] The mother confirmed she was prepared to participate in family therapy and would support the outcome of the hearing.

[109] After hearing Dr Gammon's evidence the mother was upset to learn her criticism of Z's bad behaviour might have led to self-esteem issues for him. She did not blame him for all of his behavioural problems and accepted responsibility for her parenting and his upbringing during which he had adverse experiences. While acknowledging her issues relating to alcohol and other drugs and the number of relationships she had, she did not agree Z was brought up in ongoing domestic violence and abuse. She was not trying to find a diagnosis as described by Dr Gammon; she had relied on a diagnosis of ADHD and ODD made when Z was 5 years old.

[110] The mother perceived Z had closer relationships with [siblings] NP and RP than with his [sibling] X. At times it appeared he was jealous of their relationship with her.

[111] Alcohol and other drugs were no longer an issue for the mother; she had taken steps to address these issues and claimed she now drank alcohol only on special occasions.

[112] The mother doubted the reliability of Z's memory of historical events. She acknowledged he was present and heard arguments at times between her and his father and when she separated from X's father. She claimed the extent of the conflict was probably several arguments over a short period of time. The majority of her

relationships had been good and positive for Z. She denied swearing at him but acknowledged he had heard swearing when there had been arguments between her and some of her boyfriends.

[113] The mother wanted contact with Z from Thursday after school until Monday morning because she believed his low self-esteem and self-belief related partly to him being separated from her and the other children. She accepted, earlier on, there had been attachment issues between her and Z and they needed time to work on their relationship and develop better communication.

[114] Over the past 18 months the mother believed her relationship with the Ws had become closer; they talked more and kept better contact. She had realised she was not supporting the relationship between Z and the Ws and needed to have more regular contact with them and better communication. In July 2015 she had decided to support Z remaining with the Ws and to have weekly contact with him. She recognised the importance of permanency for Z and the need to have settled care arrangements. She acknowledged the Ws showed Z a lot of love and care; they imposed suitable and consistent boundaries and rules for him. Over time he had developed a good bond with them. The current arrangement of Z spending 2 nights per week with her and the children worked well but Z wanted to spend more time with them. She saw no risk in adding 2 more nights per week and believed this would be good for Z. She accepted if this occurred she would effectively become Z's primary caregiver.

[115] In 2014, when Z was in her care for 4 to 5 months, the mother agreed his behaviour had deteriorated but she did not believe this was the result of him spending 4 nights per week with her. She accepted, however, Z was able to manage his behaviour better when staying with the Ws; he had said he felt more relaxed in their home.

[116] The mother confirmed Z was doing well at school; although he was having some behavioural and learning difficulties he had progressed. The fact he was settled and in a relaxed placement with the Ws contributed to the progress he had made with his learning. She accepted he did not yell and swear at the Ws, as he did

with her, when he expressed anger or frustration. At times he had expressed anger and frustration at her about the Ws. Her response towards Z was more emotional compared to the Ws. At times he had *"meltdowns*" when staying with the mother and was frequently argumentative; he was rude most weekends. Sometimes he had *"huge meltdowns*" and became defiant about every 2 to 3 weeks. Almost every weekend there were arguments over restricting his freedom to socialise with his friends; the mother believed this was a major issue for Z. While he accepted boundaries at the Ws he challenged them when he was with her. She thought family therapy would assist in addressing these issues. She did not think her relationship with him was the cause of his anger and frustration.

[117] The "*safety plan*" had been used on 2 occasions in the last 6 months when Z's behaviour had reached a point where the mother considered he needed to return to the Ws. On occasions she had withheld privileges; she made it clear he knew what the consequences would be for good and bad behaviour. There had been occasions when she did not know how to manage Z into a calm state. She was hopeful this would not occur if he spent longer periods with her. If this proposal did not work out the mother accepted Z could end up blaming himself and this could affect his self-esteem. She no longer thought medication should be used to manage his behaviour. Since the stopping of the medication the mother observed Z had been able to sleep better but she had not seen any change in his thinking being clearer or more focussed as described by the Ws and a school counsellor.

[118] Referring to the early years of Z's life, the mother accepted the adverse factors which had troubled her, including depression and substance abuse, had impacted adversely on his development and her relationship with him. She felt she had met a lot of his needs but was unsure whether she was "*100% emotionally there for him*". Her bond, however, with Z was different to her bonds with the other children. She thought her temperament may have undermined the bonding process. When questioned about historical domestic violence and Z's recollections of such domestic violence, the mother did not accept his account was accurate. She claimed Z told lies at times when he said he had been physically abused by some of her partners. She conceded some of her partners had yelled at him.

[119] Although the mother disputed Z had been exposed to physical violence and disagreed with Dr Gammon's assessment of him being exposed to trauma in his early years she now accepted responsibility for what had happened and how Z had been affected. She did not think how she responded to Z in the future would fix all his problems. She believed individual counselling for Z would be beneficial. She worried about the father's alcohol issues when considering his contact with Z and about discussions which would take place. She was prepared to cooperate with the social worker but said there was no communication between her and the father. From Z's perspective she agreed it was important he saw his parents communicating. Despite the mother's reservations about contact with the father she had not discussed her concerns with Z but acknowledged his relationship with his father was important. She was prepared to leave that issue for the court.

[120] There had been some contact between Z and the father when Z was about 5. The parents subsequently did not maintain that contact. The father had come back into Z's life when he was about 10 after the family had moved to the [location deleted] area.

[121] The mother had obtained a protection order against the father and his partner some years ago. She acknowledged the domestic violence comprised mainly arguments; the only physical violence occurred when the father had pushed her.

[122] Despite the mother's arguments with Z, during the contact visits, the other children were happy to see him and spend time with him. The issues of boundaries and rules for Z continued to be problematic because he resented restraints on his freedom. She did discuss concerns with Ms W and they tried to resolve issues together such as his use of his telephone and the internet. It appeared Z was more willing to breach the rules at her home. The incident in 2015, when she had placed his hand over his face, happened because she was disgusted with his language and did not want the other children to hear what he was saying.

[123] In the future the mother hoped strategies she had learnt from parenting courses would assist and improve her relationship with Z. She was working on keeping her voice down and wanted to have better communication with the Ws and

support his placement with them. After hearing Dr Gammon give evidence she was prepared to accept what had happened in the past to facilitate family therapy. On reflection the mother acknowledged the impact on Z from being exposed to trauma may have been greater than she first realised. She accepted he had been required to make a lot of adjustments over the years resulting from her relationships with five different men. Although the mother accepted the current care arrangement was working reasonably well, she wanted more time with Z and he felt the same way. She was confident, with support in place, the increased contact period would be beneficial for Z.

[124] The mother accepted, from the time Z had gone into the care of the Ws, there had been an improvement in his social skills and at school. When she had more time with Z at the weekends there were less arguments. She confirmed when the other children were away his behaviour improved.

[125] The mother emphasised she wanted more time with Z each week because he felt like an outsider in her family and did not feel close to her and the other children. His self-esteem and self-belief were low and it seemed he blamed himself for not being with her. She reassured him that she loved him but did not know whether this made any difference as to how Z felt. She believed if he had more time then it would not be so much of an issue and it would be good for him to fit into the household routines during the school week.

The Father's Evidence

[126] The father acknowledged his transient lifestyle which suited him. He had no plans to return to the [location deleted] area but did want to be closer to Z. While he wanted to be available for Z it was going to be difficult for the father to stay focused.

[127] The father felt he had been "*kept in the dark*" about issues relating to Z and was now feeling confused about how matters were developing. He had heard about some issues relating to Z for the first time on the first day of the hearing. He believed he and Z could be truthful with each other and Z could rely on him for the truth. He denied saying anything derogatory about the mother.

[128] The father did not think Z would be nurtured properly if he returned to the care of his mother as proposed by her. While he was doing well at the Ws he was concerned Z was being exposed to different types of parenting, was vulnerable and easily manipulated.

[129] The father was not confident he and the mother would be able to communicate. As to frequency of contact he thought twice a year for half a day would be appropriate given his circumstances. He believed Z wanted his father and he would be there for Z "*unconditionally*". If he was unable to restrain himself and was not in a good space he would put something in place to safeguard Z seeing "*the other side of me*".

[130] While the father agreed to the condition he would not drink alcohol during any contact he felt he would be set up to fail if he had to abstain from alcohol for 24 hours before the start of any contact visit. He suggested this restriction should be reduced to 12 hours. He wanted to have unsupervised telephone contact.

[131] The father acknowledged he was addicted to alcohol and had undergone residential treatment. He had been open about his addiction with Z.

[132] When questioned about his convictions the father became defensive. It became evident he was disillusioned with the court process not only in respect of his criminal convictions but also with the current proceedings in the Family Court. He believed Z had been "*ripped*" from him. He alleged the mother had not told the truth. While acknowledging there had been long periods when he had no contact with Z, the father had concerns Z was being "*brainwashed*" on false grounds about historical events concerning him and the mother.

[133] As the father gave his evidence it was apparent he was troubled by traumatic experiences in his own upbringing for which he was having therapeutic treatment. He did not want Z to suffer the same sort of trauma. He did not believe Z was getting a "*fair bite*".

[134] The father was concerned Z was being exposed to character assassination of the father by the mother, but acknowledged at times his attitude towards her had not helped. He had spoken to Z about aspects of the proceedings because he was concerned Z was "*not getting the full picture*". When issues arose over Z's behaviour involving the video of sexualised conduct, the father felt his contact had been unfairly restricted while the matter was investigated but Ms Aspinall indicated in her evidence the restrictions had resulted because of inappropriate discussions between Z and the father.

Ms Aspinall's Evidence

[135] Ms Aspinall advised the safety plan for Z was formulated not as a consequence of his behaviour. The concern was to address situations where the mother had reached the limit of her parenting capacity to control Z and needed support.

[136] Over the past 12 months a more trustful and open relationship had developed between the mother, OHF and the Ws. It was proposed Z would have personal counselling; any alcohol and other drug issues for Z would be included in the counselling. This counselling was to address his self-esteem and self-worth.

[137] When questioned about extending the length of time Z was in his mother's care, Ms Aspinall considered he needed a lot of support when in the care of the mother but not so much support when in the care of the Ws. There was ongoing concern about disruption to Z's routines if he stayed overnight on Sunday with the mother and went to school with anxiety. The Ws had reported Z needed time to adjust and settle after he returned from contact visits with the mother. In assessing these concerns it had to be remembered Z was entering a critical period in his education which should not be disrupted. Ms Aspinall accepted care arrangements for Z from February 2014 onwards had become inconsistent because of reactions to significant events affecting him. Between February 2014 and June 2014 he had stayed 4 nights per week with the mother but by August 2014 this had reduced to 2 nights per week and this last arrangement had continued from that time.

[138] A stage had been reached where there was largely a co-parenting kind of relationship between the mother and the Ws where they communicated and kept each other informed.

[139] The issue of Z's contact with the father was being reviewed; at this stage Ms Aspinall considered the father should have supervised contact. This proposal did not mean "*having to start from the beginning"*. In the past the father had made contact visits a positive experience for Z. Ms Aspinall emphasised the father's convictions were not the main concern; the concerns arose from the fact that after a gap of about 4 years it had been necessary to reintroduce the father to Z. While it was proposed contact would be supervised initially, when the time was right contact would occur on an unsupervised basis. Arrangements could be made for indirect contact by text and phone calls. OHF would also provide updating reports to the father about Z.

[140] Overall OHF considered the more time Z spent with the Ws the greater would be his stability and this arrangement would be more emotionally neutral for him. Consideration also could be given to having some flexibility in the care arrangements relating to "*missed days*" and over holiday periods. Ms Aspinall felt longer stays with the mother should be limited to a week.

Z's Views

[141] Ms Hunt filed a memorandum 11 March 2016 reporting on Z's views which can be summarised as follows:

- Z advised he would like to spend more time with the mother and believed this should happen because she was his mother.

- Z acknowledged at times he and his mother argued but he thought if he was spending more time in her care there would be more time to work out issues between them. It was noted under the current care arrangement if they disagreed on something this normally happened on the Saturday and he went to bed angry and there was not enough time on Sunday to work out the issues properly.

- Z did enjoy living at the Ws. The only issue he had staying with them was that it prevented him from spending more time with his mother.

- Z became annoyed if he got into trouble at school when he had been in his mother's care. He perceived the mother was blamed for this but there were times when he got into trouble at school when in the Ws care and they had never got blamed for this behaviour.

[142] Z advised the mother had not really talked to him about the court proceedings but he believed she wanted some certainty about having 2 nights a week with him without the threat from OHF he might be taken away. He was aware the father wanted to have unsupervised contact with him and he was keen to go out and do things with his father.

[143] Z confirmed he was aware of the conflict about his care arrangements and found that conflict difficult to cope with.

Analysis

[144] It was clear from Dr Gammon's evidence the first priority, in the context of Z's welfare and best interests, was permanency for him. Under the existing care arrangement he was "*stuck"* between the mother and the Ws. I am satisfied when I weigh the evidence relating to this issue Z has been under stress for far too long because of the uncertainties over his long term placement.

[145] Neuropsychological testing indicated Z suffered from ODD. Dr Gammon was satisfied this testing had effectively excluded the possibility of him suffering from ADHD. It was apparent the mother had difficulty initially accepting this assessment. This is understandable, given the fact Z had been diagnosed with ADHD when he was 5. As a result of that diagnosis the mother believed Z's problematic behaviour was attributable to ADHD.

[146] Although Dr Gammon considered the mother was in denial about significant traumatic events in Z's early childhood experiences contributing to his difficulties, I found the mother had changed her views after reflecting on Dr Gammon's evidence

at the hearing. She acknowledged the effect of trauma, as described by Dr Gammon, may have been greater than she first realised. The evidence established there were significant care and protection issues affecting Z and X; they resulted from the combination of adverse factors affecting the mother arising from her mental health issues, alcohol and other drug issues, her relationships with a number of men and generally her chaotic lifestyle.

[147] The evidence also established, in recent years, the mother had made a sustained commitment to addressing these adverse factors. Through no fault of her own her mental health issues had been misdiagnosed for a number of years. When it was finally determined the mother suffered from bi-polar disorder and was given the correct medication her mental health improved considerably. Over time it appears the mother has addressed alcohol and other drug issues. She has completed parenting programs to up-skill her parenting of the children.

[148] As I indicated at the end of the hearing I found the mother had demonstrated a sustained commitment over a number of years to address issues which had troubled her and had impacted adversely on her ability to care for the children. I did not find her to be defensive nor did she attempt to minimise issues.

[149] I accept the mother is genuine in her belief it is in Z's welfare and best interests to spend more time with her and the other children. It is significant that in mid 2015 she had considered Z's placement with the Ws from the perspective of his welfare and best interests and had decided to support him remaining in the care of the Ws.

[150] Initially it appeared the mother felt excluded by the process which had resulted in Z being placed in the care of the Ws. I did not get the impression the mother had attempted to undermine that placement. Undoubtedly she would have experienced considerable anger and grief when Z was removed from her care. Over time, however, she was able to see this placement was beneficial for Z. To her credit she was able to acknowledge the positive features of the care provided by the Ws. Over the past 12 months she has been prepared to work more closely with them. At times she has been able to discuss issues of concern relating to the parenting of Z

with Mrs W. On two occasions she had invoked the safety plan to have Z return to the care of the Ws when his behaviour had become problematic in her home.

[151] In determining care arrangements for Z the challenge has been to devise a care arrangement which promotes his welfare and best interest but does not undermine the placement with the Ws and provides a solid basis enabling the development of the relationships between Z and his parents.

[152] Care must be taken to address risks relevant to Z's welfare and best interest. As noted Dr Gammon considered permanency was the first priority and I agree for the reasons I have set out. She stressed Z had significant mental health issues in the context of ODD. It will take time, with appropriate specialist counselling, for these issues to be addressed. There is concern Z has low-self-esteem and blames himself for the issues which trouble him. There is no doubt at times his behaviour can become problematic and challenging.

[153] I find the current care arrangement with the Ws has enhanced his welfare and best interests. It appears the Ws have the necessary parenting skills to manage his behaviour and nurture him. Z's views indicate he is happy and relaxed in the care of the Ws. This care arrangement has provided him with certainty, despite being disrupted, when CYF carried out investigations after notifications of concern about his behaviour.

[154] Although Z has been having regular weekend contact with the mother and his siblings the evidence indicated the mother found his behaviour challenging. It appears Z does challenge the mother about her boundaries and rules when in her care but does not do so when subject to similar boundaries and rules in the W's home. The mother believed Z was vying for her sole attention and was jealous of his siblings. I consider that view may well have some substance.

[155] When I considered the extension of time, as proposed by the mother, from Z's perspective I well understand his desire to spend more time with her and his siblings. In weighing this issue, however, I consider there are risk factors:

(a) The relationship between the mother and Z needs more time to improve and consolidate. I am satisfied family therapy will assist them in addressing relationship issues. The mother candidly acknowledged her bond with Z was problematic and different from the bonds she had with her other children.

(b) It appears Z is conflicted in seeking more time with the mother when he is in her care. When he is with the mother he resents her imposing boundaries and rules on him. It appears he has "*meltdowns*" and sometimes "*huge meltdowns*" when he becomes angry and frustrated with her.

(c) The mother believed Z's behaviour would improve if he spent more time with him and the other children. I am not convinced on the evidence the extension of time would achieve this result. It seems Z's challenging behaviour results from his anger and frustration over the boundaries and rules the mother imposes. I find this problematic dynamic will still continue irrespective of the length of time he spends in the care of the mother.

(d) If Z did spend more time with the mother and his behaviour did not improve there is the risk his relationship with the mother would be undermined. I consider such a situation would in turn pose a risk to his relationship with the Ws being undermined.

[156] The placement of Z with the Ws has proved to be very positive and beneficial for the reasons given by Dr Gammon and acknowledged by the mother. Given the history and nature of Z's needs, as evaluated by Dr Gammon, I need to be satisfied the risks, as I have assessed them will, not impact adversely on Z if I extend the time he is in the care of the mother for another 2 days each week. When I weigh these risk factors I find there are significant risks if the existing care arrangements are changed. I am concerned an extension of time when Z is in the mother's care is likely to place the relationship between Z and the mother under more pressure. If this relationship broke down I am further concerned such a breakdown is likely to undermine directly the relationship between Z and the Ws.

[157] Z has special needs. He has been in the fulltime care of the Ws since August 2014; the evidence confirms this relationship with the Ws has strengthened and is beneficial. As time goes by there appears to be no reason why that relationship should not grow stronger with the support of Z's parents. I note the mother indicated she would support the court's decision if it determined the existing care arrangement should continue.

[158] It does appear Z will be able to accept the decision not to change the care arrangement with the support of the Ws and his parents. The fact the Court has determined the existing care arrangement should continue is likely to relieve Z of any pressure he feels to make a choice between the mother and the Ws.

[159] It is accepted Z's relationship with his father is important. Care must be taken, however, in setting up contact between Z and the father.

[160] When the father gave his evidence, as I have noted, it was apparent he had become somewhat disillusioned by the court process and the suggestion his contact between him and Z should be supervised.

[161] In considering the father's application for contact with Z I consider these risk factors relevant:

(a) The father has had very little contact overall with Z and still needs time to get to know Z and develop a positive relationship with him.

(b) As noted, at the hearing the father became defensive when questioned about his convictions and the need for supervision. I do not consider the criminal convictions raise any safety concerns for Z but I am concerned to ensure the father does not discuss inappropriate issues with Z which may undermine his relationships with the mother and the Ws.

(c) It is apparent the father has a negative view of the mother as she does of him. I find the potential for the father to be side tracked and focus on contentious issues between him and the mother remains high.

(d) At the hearing the father made it plain he would say whatever he felt was appropriate to Z. I am concerned in this respect the father lacks insight as to how Z may react adversely to inappropriate comments relating to the mother or the Ws.

(e) The father appears to have personal issues relating to traumatic events in his childhood. He cannot allow those issues to impact on his relationship with Z who feels very vulnerable to negative comments relating to his own care arrangements.

(f) In his affidavit evidence the father was supportive of the Ws but at the hearing he appeared to have second thoughts about that support. I accept he found the hearing stressful but I am concerned if he maintains a hostile negative attitude towards the Ws this would impact adversely on that relationship with Z.

(g) The father has significant alcohol and other drug addiction issues. At times such issues become problematic for him. Care must be taken to ensure on any occasion when he does have contact with Z he is not under the influence of alcohol or any other drug. On two occasions in the past he has turned up intoxicated for contact which has been cancelled. This caused considerable disappointment for Z. There can be no further incidents of this nature.

[162] Time is needed for the father to demonstrate he can exercise contact in such a way so as not to undermine Z's relationship with the mother and the Ws. Until that point is reached contact needs to be supervised.

Decision

[163] For the reasons I have set out I am not persuaded it is in Z's welfare and best interest to extend by an additional 2 days each week the period he is in the care of the mother. Pursuant to s 121 I make an order the mother is to have contact with Z from after school on Friday until 5pm on Sunday each week subject to the following conditions:

(a) This period of contact can be varied by agreement between the mother and Mr and Mrs W.

(b) If there is agreement Z will spend a weekend with Mr and Mrs W then arrangements can be made for that time to be made up with the mother as agreed between them and the mother.

(c) During school term holidays Z can stay in the care of the mother for a period of up to 7 days as agreed between the mother and Mr and Mrs W.

[164] The father is to have contact with Z for a half-day on two occasions during the year subject to the following conditions:

(a) Such contact is to be supervised by a social worker from OHF.

(b) For a period of 12 hours before and during any period of contact the father is not to consume alcohol or any illicit drug.

(c) The dates for such contact visits are to be resolved at least one month before the contact visit.

[165] The father can have indirect contact with Z by way of telephone or text subject to arrangements being approved by OHF.

[166] As noted in my findings it is anticipated over time the father's contact with Z will become unsupervised when he is able to demonstrate he will not do or say anything which will undermine Z's placements with the mother and Mr and Mrs W.

[167] It is important the mother and father now support these care arrangements for Z.

A P Walsh
Family Court Judge

Signed at am/pm on 2016.