

IN THE FAMILY COURT SITTING AT OXFORD

Case no.: OX18C00137

Date: 15th February 2019

Before: HHJ Vincent

Between:

OCC

Applicant

-and-

M

F

MGM

MGF

C

(Acting through his Children's Guardian)

Respondents

Hearing dates: 13th, 14th and 15th February 2019

Martin Blount instructed by solicitors for the local authority
Maria Savvides instructed by Wilsons solicitors for the mother
Jennifer Kotilaine instructed by Reeds solicitors for the father
Anne Donelon instructed by Bastian Lloyd Morris solicitors for the maternal grandmother
Kate Yeomans instructed by Johnson & Gaunt solicitors for the maternal grandfather
Roma Whelan instructed by Oxford Law Group for the child

JUDGMENT

1. I am concerned with C who is six and a half.
2. His mother is M, his father is F.
3. Until November 2018 C had lived for all his life (save a four-month period in 2014) with his maternal grandparents, MGM and MGF. They hold parental responsibility for him pursuant to a child arrangements order.

4. The precipitating event for these proceedings was that C's cousin, D was admitted to hospital on 8th October 2018 with very serious injuries; double fractures to both legs. No satisfactory explanation for the cause of the injuries has been provided to clinicians, she is a baby, and the obvious concern is that these very significant injuries were inflicted upon her by an adult.
5. In those proceedings it is alleged that the maternal grandmother is a person who should be placed in the pool of perpetrators of those injuries, together with D's mother, P (who is the maternal grandparents' youngest daughter), and her partner, Q. I have no idea of the facts which are relied upon by the local authority in those proceedings, which allegedly place the grandmother as a person who is regarded as a potential perpetrator of the injuries to D.
6. On 8th October 2018, [the] police apparently advised the local authority that C should be removed from the care of his maternal grandmother and placed with his aunt R, while further and urgent investigations were undertaken. The grandparents reluctantly gave their section 20 consent to this, feeling they had no option. The local authority applied for emergency protection orders for D and her brother E on 11th October, and subsequently care proceedings were issued. Those two children are subject to interim care orders and are currently in foster care. HHJ Owens has listed a fact-find hearing to determine the cause of D's injuries, due to take place in the week before and after Easter, in April 2019.
7. Proceedings in respect of C were issued on 2nd November 2018. On 8th November at a hearing before me, the grandparents confirmed their agreement for C to continue to be accommodated under section 20 with his maternal aunt R and her partner T.
8. At paragraph 6 of the Application notice the grounds for the application rehearse a narrative of events leading up to the issue of proceedings. In no way could this section be regarded as a document which sets out the threshold criteria relied upon by the local authority. I directed that the local authority file and serve by 9th November 2018 an interim threshold document together with a risk assessment as to the possibility of C returning to his grandparents' care. A viability assessment of them as carers was filed on 13th November 2018. It was not recommended that C returned to his grandparents' care.
9. C remains in his placement with R, but in January the local authority's fostering panel did not authorise its continuance and it is now an unregulated placement. Some issues had arisen as between the local authority and R, but it is not suggested that C was not safe or well cared for by his aunt. It is accepted by the local authority that if the fostering panel had continued to authorise the placement, that is where they would have preferred C to remain. C continues to attend the school close to his grandparents' house with R's children, and to see his grandparents every day after

school, supervised by R. He has continued to spend time with his grandfather at the weekends, following their shared hobby of motocross.

10. The local authority now brings the matter to Court to seek an interim care order in respect of C with a plan that he is placed with his father. F has been having regular contact with C during these proceedings and they have a lovely time together.
11. The application was listed for hearing on 8th February 2019. The paternal grandparents put forward a proposal they hoped would meet the local authority's concerns, that in the interim C could be placed in the sole care of his maternal grandfather and that the maternal grandmother could move out of the home. HHJ Owens adjourned the local authority's application and directed that evidence of the two competing interim proposals should be provided before the application for an interim care order could be decided. She directed that all parties file statements, the social worker to file a detailed analysis of the interim placement options and the guardian to file a detailed position statement setting out her analysis in respect of the ICO application and interim placement. The matter was listed for a two-day hearing before me the following week.

Parties' positions

12. Relying on the initial viability assessment, the local authority represented by Mr Blount says that the risks of C returning to his grandparents are too high and it is therefore better for C to be with his father, positively assessed by them.
13. Miss Savvides on behalf of the mother, questions whether the threshold for making interim orders is crossed at all, but if so, says it is not in C's welfare to be separated from his grandparents, or at the least his grandfather, who has not been identified as potentially in the pool of perpetrators for causing injuries to D. This position is adopted by the maternal grandmother and grandfather, represented by Miss Donelon and Miss Yeomans respectively. While she does not accept that she presents as any risk to C, the maternal grandmother remains prepared to move out of the home in order to secure C's return home to the care of his grandfather.
14. C's father, represented by Miss Kotilaine, alleges that the maternal family has an agenda against him. He supports the local authority in its application and is ready and willing to provide a home for C.
15. The guardian was represented by Miss Whelan. In the position statement prepared on her behalf by her solicitor, the Guardian balanced the pros and cons of the maternal family's proposal with the pros and cons of placement with the father, and concluded that placement with father is a better option for C at this time.

The law

16. I do not accept that the test I have to apply is which of these two potential carers would offer the best care to C in all the circumstances.
17. The placement which was secured by the section 20 consent is no longer an option. The grandparents have a child arrangements order, and remain entitled to withdraw their consent to C's placement at any time and to seek for him to be returned to their care.
18. This is not a foster placement which has broken down, the local authority is not currently sharing parental responsibility with the grandparents, nor is there a supervision order in place. In order to secure C's placement with his father, the local authority has to persuade the Court that an interim care order should be made and that the local authority's interim care plan should be approved.
19. It is therefore incumbent upon the local authority to establish that (i) the threshold for making an interim care order is crossed, and (ii) that in all the circumstances, C's welfare can only be met by his continued separation from his primary care givers.
20. Section 38 of the Children Act 1989 provides that the Court may only consider whether to make an interim care order where it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2) i.e. that on the date protective measures were taken, the child had suffered or was at risk of suffering significant harm as a consequence of the care given by his grandparents, which is not the level of care one would reasonably expect a parent to give.
21. If that threshold is passed, the Court then has to consider what order to make, having regard to the matters set out in the welfare checklist at section 1(3) of the Children Act 1989 with C's welfare the Court's paramount consideration.
22. Miss Savvides reminds the Court of Re A (a child) [2015] EWFC 11 (also known as the Darlington case), which the President of the Family Division described as a textbook example of how not to embark upon and pursue a care case. He made some general remarks about the obligation upon a local authority to prove the facts upon which they seek to rely. At paragraph 9, he said:

'It is a common feature of care cases that a local authority asserts that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority's concern about something. If the 'thing' is put in issue, the local authority must both prove the 'thing' and establish that it has the significance attributed to it by the local authority.'
23. At paragraph 12, he said,

'The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts.

24. At paragraphs 13 to 17, he continues as follows:

13. In the light of the local authority's presentation of this case, it is important always to bear in mind, and again, I fear, it is too often misunderstood or overlooked, the point made by Macur LJ in *Re Y (A Child)* [2013] EWCA Civ 1337, para 7, in a judgment agreed by both Arden and Ryder LJJ:

"(3) In upholding the criticism made of the judgment as to inadequate identification of risk and consequent evaluation of likelihood of that risk in subsequent analysis of measures which mitigate that risk, that is articulation of the proportionality of the order sought and subsequently made, the judge was not assisted by the dearth of relevant evidence which should have supplied, in particular by the local authority. Relevant evidence in this respect is not and should not be restricted to that supportive of the local authority's preferred outcome.

(4) I regret that quite apart from a lamentable lack of evidence which would have enabled the judge to conduct a rigorous analysis of options objectively compliant with the twins' Convention rights, whether favoured by the local authority and/or Children's Guardian or not, I consider the case appears to have been hijacked by the issue of the mother's dishonesty. Much of the local authority's evidence is devoted to it. The Children's Guardian adopts much the same perspective. It cannot be the sole issue in a case devoid of context. There was very little attention given to context in this case. No analysis appears to have been made by any of the professionals as to why the mother's particular lies created the likelihood of significant harm to these children and what weight should reasonably be afforded to the fact of her deceit in the overall balance (emphasis added)"

14. The third fundamentally important point is even more crucial. It is vital always to bear in mind in these cases, and too often they are overlooked, the wise and powerful words of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

"society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."

15. That approach was endorsed by the Supreme Court in *In re B*. There are two passages in the judgments of the Justices which develop the point and to which I need to draw particular attention. The first is in the judgment of Lord Wilson of Culworth JSC where he said (para 28):

"[Counsel] seeks to develop Hedley J's point. He submits that:

'many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or "model" them in their own lives but those children could not be removed for those reasons.'

I agree with [counsel]'s submission".

The other is the observation of Baroness Hale of Richmond JSC (para 143):

"We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs."

16. I respectfully agree with all of that. It follows that I also agree with what His Honour Judge Jack said in *North East Lincolnshire Council v G & L* [2014] EWCC B77 (Fam), a judgment that attracted some attention even whilst I was hearing this case:

"I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink. But so far as Mr and Mrs C are concerned there is no evidence that I am aware of that any domestic violence between them or any drinking has had an adverse effect on any children who were in their care at the time when it took place. The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence (now very widely defined) and where parents on occasion drink more than they should, I am not condoning that for a moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not

be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts."

17. There is a powerful message in these judgments which needs always to be borne in mind by local authorities, by social workers, by children's guardians and by family judges.'

25. Mr Blount has referred me to the case of K A B [2010] EWCA Civ 871, which rehearses the leading authorities on making interim care orders including Re L-A (care: chronic neglect) [2009] EWCA Civ 822, in which Thorpe LJ said '*at an interim stage the removal of children from their parents is not to be sanctioned unless the child's safety requires interim protection.*' Safety can mean psychological and physical safety.

26. Articles 6 and 8 of the ECHR require that the Court refrain from premature determination of the case; matters at an interim hearing should be limited to issues which cannot await the final fixture (*Re H (A Child) (Interim Care Order)* [2002] EWCA Civ 1932). The Court must further be satisfied that removal is proportionate to the risk of harm that the child would be exposed to if not removed (*Re B (Care Proceedings : Interim Care Order)* [2009] EWCA Civ 1254).

27. I have these authorities firmly in mind as I consider the application before me.

28. Only if I reach the conclusion that threshold crossed, and that in all the circumstances C's safety required his continued separation from his grandparents, should I then look to the possibility of alternative placements.

Evidence

29. I heard from the social worker and guardian. It was agreed by all parties that there was a danger of unnecessarily raising the temperature and pitting family members against one another should I hear evidence from them, and that in all the circumstances it was not necessary nor proportionate. I have however, carefully considered the statements each family member has filed.

Analysis

30. I have found this application difficult to determine because it was initially presented to me as a simple exercise of my discretion in respect of weighing up the pros and cons of two competing placement options, but, for the reasons I have given, I do not regard that as the correct approach as a matter of law. I am grateful to all counsel who have shown flexibility in dealing with the issues that were troubling me, but I have received no written submissions about the question of interim threshold, and no

evidence or submissions in respect of the application of the welfare checklist. Because there has in my judgment been inadequate formulation of the nature of the risk that each of the grandparents is said to present to C, there has been inadequate consideration as to how those risks might be contained so as to enable C to continue to be cared for by his grandparents. The case law is clear that the key to any application for an interim care order in which it is proposed that a child is separated from his primary care givers is proportionality. I have had no evidence or submissions to enable me to consider whether the course of action proposed by the local authority is necessary or proportionate in safeguarding C's welfare.

Threshold

31. The threshold document is very short on factual detail and does not explain why it is said that C, who it is accepted has never suffered any harm in his grandparents' care, is at risk of significant harm from either of them.
32. Paragraphs one to nine set out the history of D's admission to hospital and the local authority's concerns about the care she and her brother E received in their mother's care.
33. Paragraphs 10 to 16 concern the grandparents, although there is not a single specific allegation against the paternal grandfather.
34. At paragraph 10 it is said that E has spent a considerable amount of time in the care of his maternal grandparents. It is then pleaded:

The maternal grandparents have, therefore, had, at the very least, very regular contact and extensive contact with their grandchildren and have failed to protect them from suffering significant harm.

35. There can be no doubt that D has suffered significant harm. However, this paragraph does not plead when either of the grandparents had regular or extensive contact with D, or in what way they should have acted in order to prevent her serious and significant injuries. The threshold document does not identify which, if any, of the injuries allegedly sustained by E amount to significant harm. It is not pleaded in what respect either of the grandparents should have prevented his injuries being sustained.
36. At paragraph 11(a) the local authority pleads that it considers that C would be at immediate risk of significant harm if he returned to the care of his grandparents at this time, because:
 - (i) *D's treating clinicians consider that her injuries were inflicted non-accidentally;*
 - (ii) *None of the adults who had care of her or were in contact with her at the time have been able to provide any explanation for the injuries;*

(iii) *The paternal grandparents and extended family, are reluctant to acknowledge the possibility of the injuries being inflicted non-accidentally ... and show a lack of acceptance around the severity of D's injuries and the need for local authority involvement with the children.*

37. In my judgment, this paragraph fails the President's test in Re A. It does not set out why the A + B + C of D's injuries and the grandparents' reluctance to contemplate their being inflicted non-accidentally amounts to the X + Y + Z of an immediate risk of significant harm to C if he was in their care. Within the evidence, I have not seen a specific reference to either of the grandparents suggesting that there should not have been local authority involvement with D. There is a reference in the first social work statement to the maternal grandmother expressing her reluctance for C to be living with his aunt stating that '*she had done nothing wrong*', but if this is what is relied upon, it is not explained why this would mean that C is at risk of significant harm.
38. It is not specifically pleaded whether either of the grandparents was caring for D or in contact with her at the time her injuries were sustained, or whether they were specifically asked to give an explanation or not. If they were not there when the injuries were sustained I am not sure why they should be criticised for not having an explanation for their cause.
39. If proved, showing a lack of acceptance around the severity of D's injuries and the need for local authority involvement, is of course a valid concern in general, but in my judgment not on its own sufficient to stand as an explanation that C is at '*immediate risk of significant harm*' from his grandparents.
40. Paragraph 11(b) includes the statement that '*one of the adults within the potential pool of perpetrators is the maternal grandmother*'.
41. It was repeated to me a number of times in submissions that the grandmother is '*in the pool of perpetrators*'. She is not. A person is 'in the pool' only after a finding of fact has been made to that effect. I understand that an allegation has been made against her within D and E's proceedings, but findings have not yet been made. The threshold is for the local authority to prove. If the grandmother is alleged to be in the pool of perpetrators as part of these proceedings, it is not because she accidentally found herself there, or someone else put her there, it must be because the local authority positively asserts that she had the opportunity and the motive to cause these very serious injuries, and that she was there at the time the injuries thought to have been sustained. In support of its assertion, and in order for the Court to come to the conclusion that there are reasonable grounds to believe that C is at risk of suffering significant harm from his grandmother, the local authority must spell this out in its threshold document and provide evidence in support.

42. In the first social work statement from [name redacted], it is alleged that D's mother P told Dr [name redacted] that her mother had had care of D, but it is also noted that D's mother told the police that *'nobody has unsupervised contact with D.'* It is alleged that the maternal grandmother visited P on 5th October 2018 to collect E for the weekend, and saw D sitting happily in her high chair. Later in the statement she records that MGM confirmed to her that the only time she had D in her sole care was during the summer holidays, when P was at a meeting with social services. The evidence as to whether the grandmother did have care of D is therefore at best equivocal, however it is continually asserted within this statement that the maternal grandmother is *'in the pool of perpetrators'*.
43. In the viability assessment of the maternal grandparents dated 13th November 2018 it is again asserted that MGM was *'identified as a potential perpetrator of the injuries'*, and *'the possible role that MGM may have played in relation to D's injuries is unclear at this time'*. It is noted that the maternal grandmother reports *'she was interviewed by police on 12th November 2018 and is no longer a suspect in relation to D's injuries'*. However, it is noted that there remain concerns, because MGM saw D on several occasions prior to her admission to hospital on 8th October, including the day before, but she failed to raise concerns. The source for this is not disclosed and this information conflicts with that within [name redacted]'s statement; she records that the maternal grandmother did not see D on 7th October when she returned E, because D was asleep. No other dates of visits in the weeks up to D's admission are noted. None are alluded to in the threshold document.
44. In her first statement, in support of the application for an interim care order, C's social worker [SW] says that there is *'contrasting information about how much time MGM has spent at home with E and D, and how involved or aware she was in relation to D's injuries prior to 8 October, information about this is still emerging.'* She does not give her source for this statement, nor does she identify what the contrasting information is, nor what information is still emerging.
45. I have not found any other evidence within these proceedings to suggest that the maternal grandmother had care of D in the week or so before her admission to hospital.
46. Nonetheless, SW still asserts in her conclusion that *'MGM is currently in the pool of perpetrators for causing injuries to D and/or failing to protect her'*.
47. A perpetrator does not fail to protect, they perpetrate. The pleaded allegation is that MGM is in the pool of perpetrators.
48. I am unaware of what is pleaded against MGM in the proceedings concerning D and E, and I accept there may be specific allegations and evidence that puts her in the frame more clearly. However, I am concerned with C, and the pleaded threshold

document in respect of him. The threshold document does not explain upon what facts it relies to suggest that the grandmother could reasonably be believed to be in the pool of perpetrators, and scrutiny of the local authority evidence in this case does not assist.

49. At paragraph 12 it is pleaded that D's injuries are so severe, '*with no explanation as to causation and no clarity, at present, around the possible perpetrator, that the local authority does not consider that it can be safe for C to return to his grandmother's care*'. Again, this allegation does not explain why it is that the severity of D's injuries and the fact of the perpetrator remaining unidentified pose an immediate risk of harm to C from his grandmother.
50. At paragraph 13 it is alleged that the presentation of the maternal grandmother and mother's presentation at the hearing of the EPO were 'extremely alarming'. They were seen to physically and verbally restrain Q by sitting on him and putting their hands over his mouth, while he clenched his fist. This allegation may well need to be explored further, but whether true or not and whatever the reasons for and the significance of this behaviour is, again, the threshold document does not explain why this means that C is at immediate risk of significant harm from his grandparents.
51. At paragraph 15 it is said that the grandparents have been unable to work openly and honestly with professionals. No examples are given. This makes it impossible for the parents to answer the local authority case. If proved to be true, this could in theory be a risk factor for C because the grandparents might be reluctant to seek out assistance and support from the local authority. However, it is accepted that C has never suffered any physical or emotional harm in his grandparents' care. There is no evidence that they have ever misled any professional about matters to do with C. If the allegation is that they have not worked openly and honestly with professionals with regard to any other children, then it is incumbent upon the local authority to spell out in what circumstances they did not work openly and honestly, and why as a consequence of those circumstances, C is at immediate risk of significant harm. The local authority has not done so in its threshold document or the evidence in support.
52. Finally, at paragraph 16 it is pleaded that on 17th October 2018 the local authority received an anonymous referral with concerns about C's safety in his grandmother's care. It is reported that the caller said he had been in the house when she smacked C around the head although he did not say when, and that she smacked all her grandchildren and he has been told this by R and P [*maternal aunts*].
53. Plainly this is not an allegation but simply a note of a reported conversation, itself reporting conversations with others. It is not evidence of the truth of the reported conversations. The social worker giving evidence to the Court and the guardian were clear that as far as they are concerned there is no evidence at all that C has ever suffered any physical or emotional harm in his grandparents' care.

54. I have no doubt that SW wants the best for C and above all, for him to be safe. She explained clearly in her oral evidence the nature of her concerns and worries about the maternal grandparents, and she sets out these concerns in her witness statement. They echo those set out in [name redacted]'s first statement and the initial viability assessment. In summary it is said that there is an extensive pattern of high risk domestically abusive relationships within the maternal family that have impacted each of the maternal grandmothers' three daughters and several of their grandchildren (apart from D and E, I am not sure which other grandchildren). SW is concerned that this pattern is not acknowledged as significant by the grandparents and they appear not to feel that they have a role in protecting their grandchildren when their daughters have been in dangerous relationships. It is suggested therefore that they would be unable to protect C from unsuitable adults coming to the house.
55. A concern is raised that the culture within the family is to exclude social care at times when they should be involved and it is said that the maternal grandmother has not always worked openly and honestly with the local authority. It is suggested that the grandmother colluded with the mother to conceal the fact of her latest pregnancy.
56. SW says that *'there are a lot of uncertainties and unknowns at the current time regarding various events where Mr and MGM could have intervened to protect the children, and in relation to the injuries sustained by D. There has not been time at this stage in proceedings to fully explore these.'* This statement is dated 31st January 2019, proceedings were issued on 2nd November 2018, so we are three months' in, and it is four months since care proceedings were issued in respect of D and E. The local authority has to prove that interim threshold is crossed as at the day protective measures were taken, the Court cannot find interim threshold crossed on the basis of information which may come to light in due course.
57. I accept that SW has concerns about the relationship between the maternal grandparents and the local authority, and I am not for a moment dismissing worries about their level of understanding and insight about how to identify domestic abuse in relationships and how to take steps to prevent it, or else to assist those who are victims of domestic abuse, in particular young children. However, I am concerned with C. C is not in a situation where he is now or has ever been exposed to domestic abuse. There is no evidence that he has ever been caught in the cross-fire of adult domestic abuse, or that he has been at risk from being exposed to violent or risky individuals. There is no evidence that C was left in the care of his mother, or P or any of their partners. In any event, none of these worries is pleaded as an allegation in the threshold document.
58. There is evidence that the grandfather discovered a bitemark on E's shoulder when he was looking after him and immediately called P (*D and E's mother*) to ask what had happened. She is said to have reported that it was her partner at the time who did it.

The grandfather took protective steps by keeping E with him that night, but the local authority criticises him for not calling the police or social services and for subsequently returning E to his mother's care. The grandfather has not had the opportunity to give his version of events to the Court about this and in any event it is not an allegation pleaded against him on the threshold document. If proved I understand the reason for the local authority's general concern in respect of this incident, and the grandfather's ability to act protectively and co-operatively with safeguarding agencies. However, I am not satisfied that it should give rise to a specific concern that C is at risk of significant harm from his grandfather's care. He was in his grandparents' care and not put at risk from violent individuals.

59. C's guardian gave oral evidence. She has not yet been asked to file an initial analysis in these proceedings. The document she was directed to file was a position statement from her solicitor setting out her views on the application and interim placement. The document is mainly concerned with a comparative analysis of the benefits and disadvantages of a placement with maternal grandfather and father. She was directed to do this on Friday 8th February, and to file the position statement the following Tuesday, she had to wait for further statements to be filed, so she has had very little time. The position statement deals only very briefly with interim threshold and her understanding before the hearing was that it was not in issue. The position statement does not refer to the welfare checklist when considering the options for C's placement in the event of a finding that interim threshold was crossed.
60. She was asked a number of times why she considered there needed to be an interim care order. Her first answer, to her own counsel, was that the local authority needed to share parental responsibility in order to manage difficulties anticipated to arise from the relationship between the maternal family and the father once C was placed with him, and that given decisions needed to be made further down the line, the local authority needed to share decision making with everyone. She was asked more specifically about the risk of harm to C and said that there were no clear answers about how D was hurt, the maternal grandmother was a possible perpetrator and there was a risk of emotional abuse to C as well as there being potential for physical abuse.
61. She was asked again in cross-examination what was the risk to C and she said, *'I don't know – I can't tell you what's going to happen in that home, I don't have the confidence to say it's risk free or it's a manageable risk.'* She was pressed to say, what is the risk to C? She answered, *'I don't know.'* I understood her to be saying in effect that because she felt she did not have sufficient information about the circumstances of D's injuries, the risk to C had to be regarded as unmanageable at this stage.

Is interim threshold crossed?

62. I have looked at the threshold allegations carefully.

63. I have considered all the evidence in the bundle and I have listened carefully to the oral evidence of Y and of the guardian.
64. I am not satisfied that threshold is pleaded with sufficient clarity to set out why it is said that either the maternal grandmother or the maternal grandfather present an immediate risk of significant harm to C. I have reviewed all the evidence and I am not satisfied that there are reasonable grounds for believing that on the date protective measures were taken, C had suffered or was at risk of suffering significant harm as a consequence of the care given by his grandparents, which or that the care given by them was not the level of care one would reasonably expect a parent to give.
65. I do not accept that asserting repeatedly that the grandmother is in the pool of perpetrators with respect to D's injuries, and being concerned that there is insufficient information and clarity around the circumstances of D's injuries is sufficient to form the basis of a threshold allegation against the maternal grandmother. so far as C is concerned. If the local authority wishes to put forward a positive case in respect of the maternal grandmother then it is required to set out in the threshold document what facts are relied upon and then to provide the evidence in support of its contention. They have not done so. The evidence is at best equivocal. While at an interim stage there is of course no requirement to prove the section 31 final threshold is crossed, there must be evidence to satisfy the Court that there are reasonable grounds to believe the section 31 circumstances exist.
66. There is no single specific allegation against the maternal grandfather in the threshold document.
67. All the remaining allegations are generalised and none of them provides an explanation as to why it is said that the care that has been given to C or is likely to be given to him by his grandparents should he return to their care, is below what one would reasonably expect from a parent, and why it would put him at risk of suffering significant harm.
68. Because I do not find interim threshold to have been crossed, I have no jurisdiction to make an interim care order in respect of C and he should in my judgment be returned to his grandparents' care.
69. In reaching this conclusion I am not suggesting that the local authority's concerns about the grandparents are baseless, and I accept that SW and the guardian have genuine concerns about the grandparents' ability to work co-operatively with them, their insight and acknowledgment of the severity of D's injuries and the existence and impact of domestic abuse upon their grandchildren. However, the case law is clear, the local authority must meet a high standard when seeking to justify the continuing separation of C from his grandparents. I must only consider making an order which

interferes with their right to a family life where the strict statutory grounds are made out.

Welfare

70. If I am wrong and the interim threshold were crossed, I would not have been persuaded that C's welfare would have been met by being separated from either of his grandparents pending resolution of these proceedings.
71. I would have had regard to all the factors on the welfare checklist, in particular his consistently expressed wish to return to their care. I note that no criticism of the grandparents has been made in respect of their care of C in the past, of their abilities to support him in his education and to meet all his needs. It is clear that they have a strong and loving bond.
72. It is accepted that C has not suffered any harm in his grandparents' care, either when they were sole carers or since proceedings were issued. For reasons given above I am not satisfied that there are reasonable grounds to believe that either of C's grandparents present as a risk of harm to him. Any risk of harm from their perceived unwillingness to recognise the local authority's concerns would in my judgment be outweighed by the harm in his being separated from his grandparents in a way that is a much more significant separation than the current arrangement with R where he still sees them every day of the week. The evidence from the local authority is that C's grandparents were able to meet all his needs every day to a good standard, had a good relationship with his teacher and that he was happy, settled and thriving in their care. If a direct risk to C had been identified, I would have wished to explore the possibility that C's grandparents could have continued to care for him but under supervision. from family members, or I would have looked at grandfather as sole carer.
73. I do not doubt that the father has very many positive qualities, and that he and his partner are absolutely committed to C and have a genuine wish to give him a home if possible, or at the least be much more involved in his life. It is on any view positive that he and C have during these proceedings consolidated their relationship and that C has now been introduced to his siblings and his father's partner. I hope that regular and positive contact between them will continue.
74. I do not necessarily disagree with the guardian's and social worker's analysis of the positives and disadvantages of placement of C with his father, although in my judgment some of the negatives in respect of father carry much more weight than the negatives identified in respect of the maternal grandfather. For example, there is very little information around the father and his partner's cannabis use; initially he said he was an occasional user, he then admitted to smoking two joints a day. There is no information about how longstanding this habit is; if he has been smoking two joints a day for a number of years then it may be difficult or stressful to stop. He has only

engaged with Turning Point in the last week. He has three children under five who C has only met for the first time this week, and one of whom has a higher level of need.

75. On any view it would be very difficult for C to make the transition to this new household. The commute to school from his father's house while probably similar in travelling time to that from his aunt R's, is a tougher challenge for him because it would involve travelling on his own in a taxi, whereas R drives him to school with his cousins. In my judgment the local authority underestimates the harm that would be caused to C to be separated from his aunt and grandparents. Even though he loves his aunt R and his cousins and was happy in their care, and was still seeing his grandparents every day, he was still very distressed by the move to his aunt, his teacher said he was 'all over the place'. He consistently said he wanted to go back to live with his grandparents. The local authority's proposal was to reduce contact with them to 90 minutes a week. In my judgment he is likely to have found this very difficult to cope with.
76. It is unfortunate that the local authority and the guardian approached this application on the basis that the Court had only to look at the two options of grandfather or father as potential carers and to see what was best. Within her statement SW refers to the local authority's '*change of interim care plan*', but that is not the position we are starting from. There is no interim care order at the moment; C's placement with his aunt is subject to his grandparents' consent. This approach has meant that the father and grandfather have been pitted against one another in a way that is unhelpful and could have contributed to unnecessary tension between the two sides of the family.
77. Due to the existence of these proceedings and those involving D and E, the local authority may wish to maintain previous agreements entered into with the grandparents in order to reassure themselves that C remains safe in his grandparents' care, for example in respect of ensuring that individuals whom they have identified as risky are not left alone with C (although there is no evidence at all that this has ever been a difficulty in the past), or in respect of ensuring C's positive contact with his father continues. However, as I have found interim threshold is not crossed, I am not seeking to impose any conditions upon the grandparents at this stage, nor proposing at this stage of proceedings to make a child arrangements order in respect of the time the father spends with C.
78. For all these reasons, I dismiss the local authority's application for an interim care order in respect of C.
79. I have departed from the views of the experienced guardian who is well known to me as a conscientious, thoughtful and insightful professional and to whose views I always pay close attention. I have not departed from her recommendation lightly, but in the particular circumstances of this case, I have been led to a different conclusion because I have carried out a different exercise. She said in her evidence, and it was clear from

the position statement filed on her behalf, that she understood she had been asked to compare two options for C and see which one was best. When it was put to her that she should be approaching the application in terms of whether C's separation from his grandparents was justified, she said that she did not regard the application as one that was ripping C away from his grandparents because he had already left them and was living with his aunty.

80. However, as a matter of law, for the reasons I have explained, C's grandparents still have parental responsibility for him, the test to apply, had threshold been crossed, was whether his safety demanded his continued separation from them. That had to be decided before any comparative assessment of his father as a carer with his paternal grandfather as a carer could take place. The guardian's assessment of the comparative benefits for C of the two options may well be sound, or I may have found reason to disagree, but that is irrelevant, as it is not the exercise upon which the Court could embark in circumstances where the local authority first had to establish that the Court had jurisdiction to make an interim care order.

81. I appreciate that some frustration has arisen because at the hearing before HHJ Owens on 8th February 2019 she is reported to have said that she considered threshold had been crossed and the order made directed that the hearing before me should be limited to be a consideration of proposals for C's interim placement. However, as discussed with all parties at the outset of the hearing, it has not been recorded on any order that interim threshold had been found or was accepted to have been crossed, and there is no note of any judgment that HHJ Owens gave to that effect. HHJ Owens adjourned the whole application for an interim care order to me. I could not consider that application without applying all elements of the statutory test.

Joanna Vincent

15th February 2019

HHJ Vincent
Family Court, Oxford