IMPORTANT NOTICE
This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

IN THE FAMILY COURT SITTING AT LEICESTER **LE23C50189**
IN THE MATTER OF THE CHILDREN ACT 1989 **LE24C50111**

Date: 11 October 2024

Before:

HIS HONOUR JUDGE REDMOND

- -

Re: A and Others (Proportionality) [2024] EWFC 410 (B)

- -

LEICESTERSHIRE COUNTY COUNCIL

-AND-

THE MOTHER

THE FATHER

-AND-

THE CHILDREN

- -

Counsel for the Local Authority: James Cleary
Counsel for the Mother: Siân Waldron
Counsel for the Father: Samantha Dunn
Counsel for the Children: Laura Vickers

- -

JUDGMENT

- -

1. This published version of the judgment has been altered from its original form to protect the identity of the family.

2. In these proceedings I am dealing with two applications which are not consolidated but are fundamentally linked:
   a) The first is an application for care orders in respect of several children of varying ages under 10 years old. This application was issued on 22 November 2023 and proceedings are already in their 46th week. I note the statutory maximum of 26 weeks.
   b) The other is a more recent application for a care order following the birth of the couple's youngest child, who was born during ongoing proceedings. At birth, following a pre-birth assessment of the local authority and with the agreement of all parties, they were placed into a residential assessment unit with their parents at the beginning of the summer. Due to changing judicial roles, the exit strategy for such has been dealt with more recently by the Designed Family Judge who will be taking over the proceedings.

3. In relation to the older children, I am charged with determining how this application should proceed or resolve at this, the third issues resolution hearing. By liaison between judges, it has been agreed that I should also have before me the youngest child's proceedings in order to deal with all matters today to make decisions proportionate to both with the necessary oversight and interlinked relationships of both.

4. These proceedings have suffered from too much paperwork and repeated reviews of positions which I understand have been difficult for the parents with their cognitive limitations and even for experienced practitioners and judges. I hope that the parties will forgive me for attempting to deal with matters in a focused and succinct way within this judgment, but noting that I have taken account of all of the history, procedural background, allegations made, admissions made and positions advanced by all. I am grateful to the parties' respective counsel for continuity and assistance.

5. This judgment records my reasons for coming to the following determinations:
   a) That threshold is crossed for the older children and in what terms.
   b) That final care orders shall be made for the older children and their proceedings conclude.
   c) That two outstanding disputed matters of fact shall be determined within the youngest child's proceedings which will inform risk assessment and care planning.

d) That those two outstanding disputed matters of fact shall not be the subject of a separate finding of fact hearing, but rather determined at a composite final hearing in those proceedings.
e) That the proceedings for the older children shall therefore conclude today and that the youngest child's proceedings shall continue to be listed on 30 October 2024 for the anticipated review of the section 38(6) direction by the designated family judge.

Parties' Positions

6. The mother and father have come to terms with final care orders being made for the older children and for them to reside out of their care, in long term foster care, and to be subject to the parental responsibility of the local authority. They concede that threshold is crossed. They have made significant advancements in relation to that more recently following their review of the CPOMS records. They invite me to conclude the proceedings for the older children on their admissions and to make final care orders not opposing the care planning of the local authority. They do not agree that it is proportionate to determine any further matters of fact and resist a separate finding of fact hearing in either set of proceedings.

7. The local authority and the guardian have reviewed the outstanding items in the local authority's now 'fourth' threshold document. They take the view that the parents' own admissions are capable of satisfying threshold in the form they have provided but that, over and above this, only two specific factual matters require determination by the court. Those two matters are the local authority's allegations that:

a) on or around 24 April 2023, father deliberately injured one of the older children's right hand causing a fracture to their 5th metacarpal; and,
b) on or around 3 March 2023, another one of the older children sustained bruising to both cheeks as a result of injuries inflicted by either mother or father.

8. Neither professional party presses the many other items originally contained in threshold for a variety of reasons that I need not relate here concerning proportionality and the court welcomes their reflection and analysis on those issues.

9. However, both wish for the court to determine those two matters in the youngest child's proceedings and agree that matters can be finalised today for the older children. However, they both seek for them to be determined at a separately listed finding of fact hearing to inform any interim risk assessment and interim planning.

10. To determine these matters, I have a wealth of written documentation including submissions by the advocates and their oral submissions to me today which run to several hundred pages. That is in addition to the two bundles of approximately 1200 and 830 pages respectively. I shall not outline each and every submission made: I have taken account of them all.

Law

11. In order to make any public law order, the court must first be satisfied that a subject child is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to him, or likely to be given to him if the order is not made, not being what it would be reasonable to expect a parent to give or that the child is beyond parental control. This is the 'threshold criteria' at s.31(2) Children Act 1989 and the gateway to proceedings.

12. In going on to determine the appropriate order, I must consider all the circumstances and, in particular, the welfare checklist in section 1(3) of the Children Act 1989, reminding myself that the children's welfare is my paramount consideration. In considering that analysis, I also bear in mind the following principles:
    a) That I must only make an order where doing so is better for the child than making no order.
    b) I must take the least interventionist approach that I consider is commensurate with the best interests of the child.
    c) The general principle that any delay in determining the question is likely to prejudice the welfare of the child.
    d) I must consider and carefully balance the child's and each party's article 8 rights to private and family life, interfering with those rights only where it is necessary and proportionate to do so. Where there is tension between the parents and child's article 8 rights, it is the child's that ought to prevail.

13. The local authority and the guardian seek determination of the findings above, which is resisted on a proportionality basis by the parents. The court is therefore engaged in the exercise laid out by the President, as he then was, in **Oxfordshire County Council v DP, RS and BS [2005] EWHC 1593 (Fam)**. Such has been regularly considered and approved by the senior courts, notably and most recently by the Court of Appeal in **Re P & E (Care Proceedings: Whether to Hold a Fact-Finding Hearing) [2024] EWCA Civ 403** where Baker LJ noted that its principles were "considered, approved and amplified" by the Court of Appeal in **Re H-D-H [2021] EWCA Civ 1192**.

14. The authorities make it plain that, amongst other factors and with flexibility, the following factors identified within **Oxfordshire** are likely to be relevant when considering whether to conduct a particular fact-finding exercise:
    a) The interests of the child (which are relevant but not paramount);
    b) The time that the investigation will take
    c) The likely cost to public funds;
    d) The evidential result;
    e) The necessity or otherwise of the investigation;
    f) The relevance of the potential result of the investigation to the future care plans for the child;
    g) The impact of any fact finding process upon the other parties;
    h) The prospects of a fair trial on the issue;
    i) The justice of the case."

15. In **Re H-D-H** those factors were approved and amplified as follows:

> "21. Many of the factors identified in *Oxfordshire* overlap with each other and the weight to be given to them will vary from case to case. Clearly, *the necessity or otherwise of the investigation* will always be a key issue, particularly in current circumstances. Every fact-finding hearing must produce something of importance for the welfare decision. But the shorthand of necessity does not translate into an obligation to conclude every case as quickly as possible, regardless of other factors, and that is clearly not the intention of the administrative guidance. There will be cases in which the welfare outcome for the child is not confined to the resulting order. Not infrequently, a finding in relation to one child will have implications for the welfare of other children. Sometimes, findings that cross the threshold at a minimum level will not reflect the reality. The court's broad obligation is to deal with the case justly, having regard to the welfare issues involved. McFarlane J put it

well in paragraph 21 of *Oxfordshire* when he identified the question as being whether, on the individual facts of each case, it is "right and necessary" to conduct a fact-finding exercise.

22. The factors identified in *Oxfordshire* should therefore be approached flexibly in the light of the overriding objective in order to do justice efficiently in the individual case….For example:
(i) When considering *the welfare of the child*, the significance to the individual child of knowing the truth can be considered, as can the effect on the child's welfare of an allegation being investigated or not.
(ii) *The likely cost to public funds* can extend to the expenditure of court resources and their diversion from other cases.
(iii) *The time that the investigation will take* allows the court to take account of the nature of the evidence. For example, an incident that has been recorded electronically may be swifter to prove than one that relies on contested witness evidence or circumstantial argument.
(iv) *The evidential result* may relate not only to the case before the court but also to other existing or likely future cases in which a finding one way or the other is likely to be of importance. The public interest in the identification of perpetrators of child abuse can also be considered.
(v) *The relevance of the potential result of the investigation to the future care plans for the child* should be seen in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met.
(vi) *The impact of any fact finding process upon the other parties* can also take account of the opportunity costs for the local authority, even if it is the party seeking the investigation, in terms of resources and professional time that might be devoted to other children.
(vii) *The prospects of a fair trial* may also encompass the advantages of a trial now over a trial at a possibly distant and unpredictable future date.
(viii) *The justice of the case* gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been taken into account. One such matter is whether the contested allegation may be investigated within criminal proceedings. Another is the extent of any gulf between the factual basis for the court's decision with or without a fact-finding hearing. The level of seriousness of the disputed allegation may inform this assessment. As I have said, the court must ask itself whether its process will do justice to the reality of the case.

23. These are not always easy decisions and the factors typically do not all point the same way: most decisions will have their downsides. However, the court should be able to make its ruling quite concisely by referring to the main factors that bear on the individual case, and identifying where the balance falls and why. The reasoned case management choice of a judge who approaches the law correctly and takes all relevant factors into account will be upheld on appeal unless it has been shown that something has gone badly wrong with the balancing exercise."

16. In Re H-W [2023] EWCA Civ 149, Baker LJ added that:

"no additional guidance is required beyond what is set out in the ***Oxfordshire*** case and ***Re H-D-H***, save in one respect. When considering the potential evidential result of a fact-finding hearing it may sometimes be appropriate for the judge to have regard to the apparent quality of the evidence. It will never be appropriate, however, to carry out a detailed evaluation, not least because the court can only make findings on the totality of the evidence and at the case management stage not all of the evidence will have been filed. Anything akin to a mini-trial of the allegations would therefore be wrong in principle and wasteful of time and resources. Although each decision will depend upon the circumstances of the case, the apparent quality of the evidence is accordingly unlikely to be a powerful factor in the overall decision unless it is clear without the need for detailed assessment that the evidence appears to be particularly strong or particularly weak."

17. I bear in mind all of those authorities when balancing the decision I must make in this case. Factors above are to be taken among all other information; they are not a checklist where equal weight is applied and may indeed overlap or some become more relevant than others. In such balancing exercise I note that the interests of the child, as clarified in Oxfordshire, are a relevant but not paramount consideration and that ultimately I am making a decision in the interests of justice taking all relevant information on board.

18. I am clear, noting the more recent case of **P & E**, that other cases at first instance do not assist me as they are confined to their own specifics. I have approached this exercise on the basis of the guidance I have identified above taking account what I consider is right for these children.

19. Within that balancing exercise the question also rises as to whether such investigation, if permitted, should be undertaken as a discrete finding of fact exercise or within a composite 'rolled-up' final hearing: an issue as to whether to order a 'split hearing'. Such was the subject of the practice direction by the President in May 2010 noting that such should only be ordered if the court takes the view that the case cannot properly be decided without one. Further, the court directs itself to **Re S [2014] EWCA Civ 25** and the judgment given by Ryder LJ weighing those considerations.

20. I should note that the court has presented its reasons in this judgment in the manner easiest to follow, but has not considered each in a vacuum. The court, at all times, has been considering the whole nature of the two proceedings before it and how each decision impacts on each other to balance them.

Proportionality on Disputed Facts

21. I have read the local authority and guardian's respective analyses as to why they do not consider it proportionate to pursue within the legal arena some disputed matters of fact. The court does not press the point further on these aspects. It does, however, note that there has been a wholly significant movement on behalf of the parents in relation to those matters which they have accepted. Those items are presented as appendices to the orders made when I come to establish the matters on which threshold has been crossed. However, I should note that while on the one hand that is to be commended, it has taken many months and many reams of evidence presented to bring them to those acceptances in relation to their parenting of their children. Such has been a slow process and was not readily acknowledged from the outset.

22. Among the whole tapestry of the case, I specifically look to each of the Oxfordshire principles noting that many overlap and I may have recorded information relevant to one within the heading of another:

23. **The interests of the child (which are relevant but not paramount)**. It is acknowledged by the local authority and the guardian that significant concessions have been made by the parents in threshold which have led to them not pursuing the other allegations. That has included accepting significant harm by both physical and emotional means towards the children. However, the disputed issues centre around the difference between accepting that they may become frustrated and accept extensive physical chastisement in a reckless manner, which they do, and the differences affecting the risk in them either inflicting deliberate physical injury or that it was caused through some form of lack of supervision or unknown cause, which is what the parents' alternative threshold pleads it as. When I look at those explanations, I also remind myself of the specific injuries cited above. It furthermore involves an issue about dishonesty on the part of the parents (or not) which is also fundamental to an effective risk assessment. Those two assertions made by the authority are in my judgment different for assessing risk moving forward to each of the children were the parents to be caring for any. While that does not arise at this point for the older children given their acceptances, it does for the youngest child. However, it may arise in the future on any application for a discharge of the care order. While I accept that in the future the children will be of more advanced age, I cannot accept the submission of

the parents that it would be 'irrelevant' to any risk assessment at that future, unknown stage. Further under this heading, while I accept that it cannot be the sole reason for ordering a fact find that the children know the 'truth' of the allegations and that the senior courts have remarked upon this, it is specifically cited in **Re H-D-H** that it may be of relevance to the welfare of a particular child to know such. I have regard to the evidence in this case of what the children have said and how distressed they have been. While it may be that they are obviously torn in loyalty, in my judgment it cannot be said in absolute terms as advanced by counsel that the allegations have not been repeated nor would become irrelevant to the child in the future. There have been repetitions at times; the consistency or otherwise of such is a matter for the court's wholistic analysis at the point it determines them. Two such distinct matters and whether their parents have deliberately harmed them (or indeed not) are important matters for a child. I am clear that these are not determinative matters, but are weighed within the overall balance.

24. **The time that the investigation will take and the likely cost to public funds**. The cost to the public funds of determining the two specific disputes is that the final hearing (were there not to be a separate fact find) would increase by some questions to each of the parents and potentially the attendance of the expert and the grandmother. I am not persuaded by submissions that each maker of a CPOMS record would need to be called and considered the submissions in this area were lacking in terms of specificity as to what any reasonable challenge would be on direct cross-examination. It is unfortunate that 46 weeks into the process, the question about what other evidence there may be has not been asked. The senior courts have made it clear that a 'no stone unturned' approach has never been the position of the family court and instead there must be proportionate case management responding to particular issues. I made clear throughout the hearing that any challenge reasonably made by the parents will be heard by the court, but thought would need to be given to how it can be achieved proportionately, including whether it is in submissions or indeed if there is a specific and considered factual dispute then heard in cross-examination. However, I am not presented today with concrete submissions in concrete terms despite the length of time the matter has been in issue. While, if there did develop a specific issue that arises then it can be dealt with at an IRH and a proportionate decision made, I am not told today of an issue of such specificity that would add to the witness list. In all aspects, this may require a further day of evidence to be heard if that matter was resolved at a composite final hearing as opposed to a separate finding of fact,

which would then take more time to consider and deliver judgment, for statements to be taken on reflection and new welfare evidence ordered. It would be anticipated at this stage that regardless of that position, the parents would contest the matter on welfare at a final hearing. I am not persuaded that it would be significantly onerous with robust and carefully considered case management while similarly preserving the parents' rights to a fair trial.

25. **The evidential result**. In relation to the older children's planning, the disputed issues do not change the more immediate welfare outcome, as to which there is no dispute, would be a final care order. They are, however, relevant to risk assessment moving forward and the parents are entirely clear that they wish the authority to keep the matter of return under active review. They also seek for the younger child to live with them. They may, therefore, be entirely relevant both to any application to discharge which would lie in the future after the determination of the youngest child's proceedings and their care planning directly. I have already recorded the effect they may have on the individual children making the allegations, although I have not taken that to be determinative. This is a situation in which multiple children have made multiple allegations against their parents. Some of those have been accepted; some have not. Throughout this exercise I have been taking account of the inconsistencies in account and the parents' assertions as to the failure of process in terms of the children's allegations, but that is a point to be advanced in a proper trial of the issue rather than me falling into error by conducting a detailed evaluation at this stage which I am specifically warned against for good reason. I have noted that there is evidence that may point away from a finding, but I do not accept the parents' assertion that there is "no evidence" of deliberate infliction as to the two matters cited. That would be to mischaracterise the evidence before the court. The arguments themselves demonstrate that a proper and thorough evaluation of the competing evidence would be required to come to a reasoned and safe conclusion and be properly heard prior to determination.

26. **The necessity or otherwise of the investigation**. The evidence upon which the facts would be found or not found has mostly already been gathered. The exercise would be to determine what is outstanding, make decisions on how it should be heard taking account of welfare matters and then to hear those matters in evidence before the court and for a judge to determine them. They are based on an evaluation of evidence provided within

the proceedings thus far when weighing that which the court attaches to the expert, parent and other wider canvas evidence, evaluating each piece of evidence in the totality of the whole picture.

27. Although argued by the parents that it is effectively more of what the parents have already accepted, in my judgment the types of harm encapsulated by the two potential findings are different to that which have now been conceded. The parents have accepted either lack of supervision or deliberate harm when undertaken as excessive chastisement, for example smacking a child because they were naughty. However, it appears that these two items fall into different categories, for example a significant fracture to a finger which is unexplained by both parents or indeed a facial bruising which is opined to have been caused by the forceful grabbing of the face are to my mind fundamentally distinct to smacking a child too hard to have them behave. It shows, if proven, frustration to such a level that would be pertinent to risk assess, but also the truthfulness or otherwise that would need to be factored into that risk assessment. They are in my judgment sufficiently distinct from that already accepted to produce a change in the totality of the picture that would need proper evaluation. Again, it may be that they are not proven, in which case the parents can have confidence they will be excluded from consideration.

28. **The relevance of the potential result of the investigation to the future care plans for the child**. I have taken a wide view of the future plans of each of the children in the shorter and longer term. The relevance of the particular facts is unlikely to influence the care planning of the older children in the shorter term since it is conceded by all (with the parents not opposing the orders sought) that they will be subject to long term foster care in the form of final care orders. It would be relevant to the youngest child's care planning as to whether those acts of deliberate infliction of harm upon a child (if the court finds that is what they are) would need to be weighed in any risk assessment as to whether they could return home. Specifically, such actions if proven would weigh to a greater and more significant extent in any risk assessment if deliberately inflicted than if through lack of supervision or recklessly. Such would also have to consider the honesty with which parents (separately or together) made such assertions and that too factored into the risk assessment and therefore reflect on the care planning in the welfare decision that the court must ultimately make. The two pleadings are in relation to a fractured finger and facial bruising which are both significant but also distinct in their separate applications of force.

They were also to two different children of different ages, meaning that they fold into the risk assessment differently. The parents dispute entirely deliberate infliction in the way pleaded and consequently the alternative of them not being proven would clarify the risk assessment and care planning in favour of the parents, but without such determination they would stand nebulously unknown either way.

29. **The impact of any fact-finding process upon the other parties**. Whether a finding ought to be made or not has long been a question within these proceedings and the parties have been preparing themselves for this possibility, foreseen since the items were pleaded and expert evidence sought upon them despite the initial stance of the local authority. Any hearing has an impact upon a party, and in cases of deliberate infliction of injury to a child they understandably have an impact upon the parents facing those allegations, particularly those with cognitive impairments as here. However, the court also has to assess whether that impact is a necessity when determining facts upon which it can properly risk assess for those children remaining in a parents' care. Given their concessions in other areas, the parents would not need to have a wholesale or separate fact-finding process encompass those myriad of pleadings. Any finding could be limited to two discrete areas if ordered, and may be ordered as part of a final hearing meaning there were not a separate hearing to consider it. On any view, however, there is very likely to be a final hearing in the younger child's case given the difference in the parents approach and among professionals.

30. **The prospects of a fair trial on the issue**. Those other matters that were in dispute to which there were evidential difficulties now fall away and I concentrate on the two disputed matters only. The mother and father are able to give evidence on those matters even on aspects that were some time ago because the issue is stark: either there was deliberate infliction or there was not. Any change or difficulty in memory can be properly weighed in the balance by a judge after hearing clear submissions on their behalf concerning it. The parents are represented by experienced legal teams and any difficulties they have can be subject of exploration through participation directions and ground rules. I am far from persuaded that there cannot be a fair trial within the near future on the two disputed facts taking account of the article 6 rights of all parties. On the contrary, it is the fairest time to have a trial, if there is to be one. A delay in determining the issues in a period of years were there to be any further application and if their determination were to

arise in the future may cause those rights to be less secure at that stage than they are now. The criminal investigation remains ongoing, but will not conclude prior to the conclusion of either set of care proceedings.

31. **The justice of the case**. I have been considering this factor in totality, not just in relation to the older children but also to the youngest child. The proceedings are linked but not consolidated for reasons that they follow different pathways. It may be taking a global view that it does not much effect the children as to which proceedings the determination takes place within if the court came to the view that it was proportionate for there to be such determination. Overall, such determination of two simple factual disputes would put the matter to bed for the children and the parents as to their lived experience, resting one of the issues that lies at the heart of the professional dispute in this matter.

32. My conclusion on the disputed facts is that it is proportionate to determine whether the father (in one case) or whether the father and the mother (in another) acted deliberately to inflict physical harm to the children on two occasions and in what circumstances. In a situation where they are seeking return of the youngest child, those determinations are necessary to inform risk assessment and care planning in relation to the youngest child and can be determined in her proceedings. A consequence of that is that the older children will know what the court has found and may be able to adjust to that within their own life story. Although their determination may become relevant to the older children in the future, their determination is not required prior to finalising their proceedings and giving them the certainty they so desperately need as to where they will be living and in whose care.

33. I note the following (in no particular order or hierarchy):

    a) Each of the children need certainty as soon as possible commensurate with dealing justly with the case.
    b) No one argues with the welfare outcome for the older children: that there should be final care orders with a care plan of long-term foster care. That threshold is crossed in relation to them owing to significant harm both physical and emotional attributable to the parents is also not in dispute.

c) The youngest child will be subject, as ordered by the Designated Family Judge, to a further assessment closely monitored by the court and that their proceedings are not in a position to be finalised.

34. The court has also been carefully considering when the matters ought to be looked at within the youngest child's proceedings. It is argued that they should be the subject of a separately, soon to be held, finding of fact hearing by the guardian and the local authority. I have taken their submissions into account and any overlap of the factors I have outlined above. I also apply the President's guidance and the caselaw in **Re S**. In submissions on behalf of the authority it was rightly conceded that such did not readily fit into such guidance. Submissions were given as to the need to determine them before turning to the interim position on community based assessment.

35. Weighing those arguments, I come to the following conclusions:

a) The determination is not necessary to inform the interim risk assessment or care planning as such can be done on the highest basis of risk, that being that it was caused deliberately in those specific situations. Indeed, despite any disagreement that may exist between the professional parties and the independent social worker, the independent social worker comments expressly in her assessment that she has been taking that into account. Whether it ought to proceed in the way envisaged is a matter for the court on 30 October 2024 which is carefully administering its responsibilities under section 38(6). As I understand that is being carefully monitored. That will be with information from both the local authority and the guardian as to the appropriate progression. I remain unpersuaded that it is necessary to have that determination before any progress can be made or that it significantly resolves the issues as envisaged in **Re S**: this is not a single issue case.

b) There is no real reason advanced to me that I can accept as to why professionals cannot consider the two discrete factual findings at a composite final hearing on an either/or basis as envisaged and approved in **Re S** and particularly in light of a case where significant concessions have already been made as to significant physical and emotional harm to the children. That would be what is done in the majority of care cases.

c) The matters as to which professional is correct in care planning ought really to be determined by the court hearing from each witness and preferring the evidence that it does; those factual matters can then be properly linked with the welfare arguments advanced and the court has the whole picture. There are many cases when professionals disagree and the court must resolve that dispute by listening to the challenge to each and making a determination. In line with case law, such is most appropriately done at a final hearing.

36. For all of those reasons, the balance falls away from ordering a split hearing and therefore I determine as a case management decision that those two disputed matters of fact shall be determined at a final hearing in the youngest child's proceedings.

Older Children: Threshold

37. Having determined that it is not proportionate to look at the further allegations within the older children's application, as such does not affect the welfare decision, I have been looking at the opposing ways in which the parties put to me that threshold could be drafted. When considering each, I have taken account of the other and ultimately that threshold findings are factual findings made on the balance of probabilities according to the evidence presented to the court taking a proportionate view of the proceedings. I note that two specific factual findings will be determined in the youngest child's proceedings. Having weighed the various aspects, I find that the facts are found as in the schedule appended to this judgment (in redacted form) and my order which itself is based on the parents' concessions having removed the two items of contention which shall be considered by the court in the other proceedings.

38. Accordingly, I find that the threshold for making public law orders is crossed. It involves significant harm caused both physically and emotionally by both parents and is of the utmost seriousness in relation to their parenting at the point of intervention by the court proceedings.

Welfare

39. It is noted that all parties concede that the welfare outcome for the children should be for them to live in long-term foster care under care orders where the local authority will be in a position to exercise parental responsibility. Their welfare is my paramount consideration and I have in mind the welfare checklist when conducting my separate analysis.

40. I acknowledge first and foremost that both parents love each of their children; that has never been in question for me. It is abundantly clear to me that they want what is best for them and that is why they have made what, on any view, is a difficult decision for them and one in which they are putting their children first. The problem has been their parenting of them and, as a result, the lived experience of the children. There is also the concern about when within the process the issues have been recognised at their full extent. One of those matters remains in contention as described above, but I allow that to be determined in other proceedings. I do fully accept that the parents have engaged with each assessment offered to them and that is to their credit. That has involved a very intense assessment, including going into a residential unit. That is in addition to their own cognitive issues, which I have also been taking into account. I acknowledge that the parents say they are trying really hard to make changes. Whether they can for the youngest child remains to be seen.

41. The threshold findings, made at the point of intervention, established that the parents' care of their children fell well below an acceptable standard and that those failings reached into multiple domains. It is to the parents' credit that they have, albeit belatedly, been able to accept those failings. They comprise a number of reports by the children of their lived experience. I do acknowledge at times there were different things said by the children, but the parents have accepted their own failings in that regard which translates into a very difficult and chaotic lived experience for the children where they suffered both physical and emotional harm from their parents. The parents have attempted to work on those. However, taking just that first assessment, given that they struggled to fully acknowledge the level of concern at that point in time, the usefulness of it has limitations. Although everyone was on track for a plan of rehabilitation in the early part of this year, that itself fell apart due to heightened concerns when considering putting the older children back into their care and ultimately could not be followed through. That was after direct observations by the local authority and the guardian.

42. I am told that there may have been admissions made as to alcohol use by father when in court before the Designated Family Judge and he has been directed to file a statement in that regards. I was not present at that hearing and therefore do not wade into any dispute as to when abstinence was said to be achieved nor make any findings; such can be properly argued and determined in the younger child's proceedings if there remains any dispute. I do, however, acknowledge that more recent testing may start to improve that situation which has been long-standing; the matter remains to be seen in the younger child's proceedings. It is only very early days for any of that; a matter of only a week with a SCRAM bracelet. Putting that in context, I would note that alcohol use for father was still continuing even over 6 months into these proceedings in any event despite the previous parenting assessment and the discussions and reflections that took place within it. That is not counting the time prior to proceedings where it was long-standing for father.

43. Both parents prior to proceedings were given various offers of support including early help, child in need and child protection processes, but unfortunately they alone or in combination did not prevent the issue of proceedings and the matters deteriorating to the point now acknowledged in threshold.

44. Ultimately, the parents' journey to improvement has not been a smooth road and it has yet to be fully evaluated in respect of the youngest child so I cannot say that there have been sufficient improvements. I can say that the parents have always intended for there to be improvements. Their intention will be weighed when considering whether it has actually come to pass. It is for them now to take stock, to be honest, to reflect properly and to fully acknowledge the concerns that surround them. It is still a lengthy road ahead to satisfy fully the professionals and the court. There are positives to draw upon and I note those reflected within the guardian's report about the work done with support networks and also the individual work with each child. The mother has always presented to the guardian as eager to please, easy to get on with and calm and friendly. The father has also shown an excellent commitment to doing what is asked of him and is in the view of the guardian nothing but polite and pleasant. All of that is to the parents' individual credit.

45. However, I accept the professional evidence of the local authority and the guardian that the older children's welfare needs can only be met by a plan of long-term foster care under a care order on the current evidence. That is not challenged by the parents and indeed I acknowledge that they have made a brave and child-focused decision not to challenge that evidence and to concentrate their efforts on the youngest child. That is because it is the right decision at this moment in time for the older children. I have looked at each of them, what is written about them by the local authority, the guardian and indeed both of their parents. Each is special and requires security. I have considered what each has said, in relation to their own care and the care of their siblings, and reflected upon the CPOMS recordings. I acknowledge there are inconsistencies but have also reflected upon the parents' concessions. There are evaluations that remain to be looked at in the other set of proceedings, including honesty on which I make no pronouncements, but these children ought not to await and need not await those determinations in settling their position and final orders.

46. I consider that meeting each of the children's needs can only occur in long-term foster care on the evidence I have. I very much hope that in making final orders to that effect each of the children can find peace and settle in their placement knowing it to be permanent. That may in itself settle some of the disruption they have felt in their own placements with a lack of certainty. There is always the review process and that will regularly take place, but these orders are intended to stretch into the future for the children's minority subject to any further application.

47. I would like to be really clear to the local authority that I am making these orders on the understanding that they will do everything they can to facilitate the correct contact between the siblings according to their placements and needs. The guardian has made her recommendations and I concur with them; I know that any such contact will also be kept under an active review as will that between the children and their parents.

48. Taking all of that into account, I come to the same conclusion as do each of the parties about the welfare outcome: each child should be subject to a final care order.

49. Therefore, and in light of the parties' positions and my own welfare evaluation I make care orders for each of the older children and their proceedings will conclude.

HIS HONOUR JUDGE REDMOND

SCHEDULE TO JUDGMENT

AGREED THRESHOLD FINDINGS

(redacted from their original form for publication)

Domestic Abuse & Parents Relationship

1. The older children have been caused emotional harm by exposure to the domestic abuse perpetrated by father on mother, in particular:

   a) [On an occasion] father was verbally aggressive towards mother and pushed her. During the same incident father broke [one of the children's] bedroom window to gain access to the house.

   b) [On an occasion] father punched mother in the face, causing a black eye.

2. The parents have prioritised their relationship over the needs and safety of the children putting the children at risk of further significant physical and emotional harm:

   a) In contravention of his bail conditions and an agreed safety plan [in the early morning], father was located by the back door of the home address having a drink, together with mother and the children. Upon seeing professionals, father ran into the house and jumped through a window. Mother informed the team manager that father had been staying at the address because she could not see him with nowhere to stay.

   b) Father had been staying at the family home at times since [a date], including over [a particular weekend].

   c) Father by attending the family home and spending time with the children disregarded his bail conditions and the agreed safety plan;

   d) Despite knowing the risks that father posed to the children, mother allowed father to spend time with the children at family home – albeit supervised - knowing that bail conditions were in place prohibiting this, and that it was in breach of the agreed safety plan.

Injuries to the Children

3. Mother accepts that she has used physical punishment as a form of discipline with the children. She has deliberately smacked them to punish them for bad behaviour. This would be a slap or smack on the bottom, leg, hand or wrist. This was inappropriate and wrong and caused physical and emotional harm. Mother deeply regrets this and has learnt new strategies to deal with the children's behaviour:

a) [On an occasion] Mother hit [one of the children] on the leg, and then punched their hand.

b) [On an occasion] Mother smacked [one of the children] on the bottom.

4. Father accepts that he has used physical punishment as a form of discipline with the children. He has used smacking with an open palm to either the upper thigh, bottom or hands. The family home was chaotic, and it was difficult to meet all of the children's competing needs. There were times when father would lose his temper with the children and when this happened, the physical chastisement was excessive and harmful. Father regrets acting in this manner and has reflected and learnt on how to deal with these situations differently in the future:

   (a) Father accepts that he smacked [one of the children] to is upper thigh/bottom twice, to discipline them.

5. The children have suffered significant emotional harm as follows:

   a) [More than one child] as a result of being harmed by one or other of their parents;

   b) All of the children by exposure to their siblings being harmed by one or other of their parents.

6. [On an occasion] Mother said that she thought [a child] had broken [another child's] nose, though did not seek medical treatment for this.

7. [On an occasion] Mother accepts that [a child] fell out of his highchair and that this should not have happened.

8. Father accepts that he was rough with the children through both play and handling when trying to discipline the children so he was reckless in his parenting which is likely to have caused distress or physical harm to the children – i.e. tickling the kids on the stairs so [a child] fell down and got a carpet burn, Father says was an accident which occurred during play, but accepts with hindsight it was dangerous to do this and [the child] was injured as a result.

9. Father also accepts the physical act of pushing [a child] to stop him running in the road when the dog escaped was excessive and reckless, again there was no direct intention of causing physical harm, but the father accepts reckless parenting in the heat of the moment which certainly caused [the child] emotional harm.

10. Father accepts that he used inappropriate strategies to discipline the children and manage their behaviour which were counterproductive, were copied by the children and caused them emotional harm.

Lack of Supervision

11. The injuries which were not deliberately caused by the parents, were caused from a

lack of appropriate supervision acknowledging this was a large sibling group who would frequently squabble and physically fight either in play or in temper. An example of the children sustaining physical injuries due to a lack of appropriate supervision includes [a child] sustaining a bruise to his left ear [on an occasion].

12. Mother has left the children in the care of inappropriate adults, including a person known to use/supply drugs and a [person of 16].

Emotional Harm

13. [On an occasion] mother was emotionally abusive to [a child] by calling them – in [the child's] presence - 'a little [expletive]' and saying to a teacher that 'I've had enough you can take all of the children'.

14. The children have also been caused emotional harm by:

    (a) Allowing them to play [an eighteen rated video game] involving robbery, violence, drug dealing and sexual intercourse;
    (b) Failing to properly supervise the children in their use of media devices, so allowing them to watch inappropriate, violent and adult themed film

15. Father accepts that he struggled with alcohol misuse and previously struggled with cannabis misuse which impacted on his ability to regulate his emotions which with hindsight would have been emotionally and psychologically harmful for the children to witness. Father also accepts that he has not always been honest with professionals about the extent of his alcohol use.