



Neutral Citation Number: [2024] EWFC 365

Case No: [XX]24C00011

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 December 2024

Before:

MRS JUSTICE THEIS DBE

Between:

A Local Authority
-and-

Applicant

(1) X

(2) Y

Respondents

**(3) B (4) C (5) A (by their Children's Guardian,
Faye Roberston)**

Mark Twomey KC and William Dean (instructed by **Hugh James**) for the **Applicant**
Tim Parker KC and Oliver Millington (instructed by **Goodman Ray**) for the **First Respondent**
John Tughan KC and Rebecca Foulkes (instructed by **Dawson Cornwell**) for the **Second Respondent**
Jo Delahunty KC and Fiona Holloran (instructed by **Pluck Andrew Solicitors**) for the **Third and Fourth Respondents**
Sam King KC and Callum Brook (instructed by **Hogans Solicitors**) for the **Fifth Respondent**

Hearing dates: 9th December 2024
Judgment date: 16th December 2024

Approved Judgment

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. Nobody may be identified by name or location. The anonymity of everyone other than the legal representatives 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.

These proceedings are subject to a Transparency Order dated 20 May 2025.

Mrs Justice Theis DBE:

Introduction

1. These ongoing care proceedings relating to two children, B, 15 years and C, 10 years, were issued by the local authority early in 2024. Prior to these proceedings they were in the full time care of their parents. In July 2024 I made a care order in relation to their older brother, A 17 years, and he remains living with G his long term foster carer who he has been placed with since May 2023. Their parents, X and Y, are respondents, as are the children through their Children's Guardian ('Guardian') and A is separately represented in these proceedings. All three children are the biological children of X's sister and were adopted by X and Y at a young age, B and C were placed at (or just after) birth. None of the children have any ongoing contact with their biological parents.
2. B and C have been placed together with foster carers since January 2024. Regrettably, there have been three changes in foster carer although they have been with their current foster carers since July 2024 and the care plan is for them to remain living there long term. A is living with G following a positive connected carers assessment. A, B and C have not had any contact with X and Y since January 2024. Since June 2024 the children have had weekly supervised contact between themselves.
3. The local authority seek final care orders in relation to B and C, with the children remaining in their long term foster placement relying on evidence to establish the threshold criteria that the children were subject to physical and emotional abuse by X, and a failure to protect by Y.
4. X and Y do not dispute the making of a care order or the care plan. They having made it clear in documents filed on their behalf in July 2024 that they did not seek the return of the children to their care or any continuing contact with them, although Y's position has been more equivocal in relation to contact. X and Y contended in July 2024 that in the light of their position regarding the proceedings and the concessions they had made regarding the threshold criteria (that due to the difficulties they had in relation to A they were emotionally unavailable for B and C), it was not necessary or proportionate to have a fact finding hearing. That position was opposed by the local authority and the children's guardian. In an earlier judgment (reported [2024] EWFC 445) I concluded

that a fact finding hearing was necessary. Y sought permission to appeal that decision, which was refused by Peter Jackson LJ on 18 July 2024.

5. These proceedings had been case managed to a three week fact finding hearing listed to commence on 2 December 2024, when a number of witnesses were going to be called by the local authority to be cross examined, including A and B, who had each given detailed police ABE interviews. On the eve of the pre-trial review on 6 November 2024 a joint position statement was filed on behalf of the parents immediately before the advocates' meeting on 4 November 2024, which stated that X and Y cannot give oral evidence, none of the children should be cross examined and none of the other family and friends witnesses relied upon by X and Y should be put through a trial. The joint position statement continued *'In those circumstances the forensic reality is that the findings sought by the local authority are no longer opposed. No admissions are made on the findings sought but neither [X and Y] seeks to oppose the findings sought by the local authority. It is understood that the impact of this position will be that the findings are found to be established'*. The court was pressed by leading counsel for the parents to conclude the proceedings at the pre-trial review. That course was opposed by the other parties. Directions were made for X and Y to file signed statements, the fact finding hearing time estimate was reduced and the matter listed again for further consideration on 2 December 2024. The subsequent statements filed by X and Y raised issues about the extent to which they challenged the evidence relied upon by the local authority, even though they did not seek to cross-examine the witnesses. In their position statements filed for the 2 December 2024 hearing the local authority listed the witnesses they wished to call and on behalf of the Guardian the position was left open that she may seek for the parents to give oral evidence.
6. At the 2 December 2024 hearing Mr Parker KC and Mr Tughan KC on behalf of X and Y re-iterated their position that X and Y stood by their joint position statement dated 4 November 2024. Further directions were made including a direction for X and Y to sign their 4 November 2024 position statement with a statement of truth. That was done on 3 December 2024. The matter was listed for submissions on 9 and 10 December 2024, with judgment on 16 December 2024.
7. On the eve of the hearing on 2 December 2024, on 30 November 2024 the parties were notified by the police that D, X and Y's older child aged 20 years, had contacted them

to inform them that a previous account he had given to them, that he had not been the subject of physical abuse by X or witnessed X being abusive to his younger siblings, had not been correct. The police information also included text messages he had had sent to X and Y informing them that he was going to contact the police. The directions made on 2 December 2024 included a direction for the local authority to include this information in an updating statement from the social worker. This was filed on 2 December 2024.

8. In addition to the extensive court bundles (in excess of 24,000 pages, including the police disclosure), the court has viewed the police video interviews with the children and X and Y, the family videos submitted by X and Y and the court has had the benefit of a detailed written opening note filed on behalf of the local authority. X and Y filed short position statements on the morning of 9 December 2024. The court is grateful to all the advocates for their careful and focussed written and oral submissions on 9 December 2024.

Relevant background

9. As in the previous judgment, it is only necessary to provide an outline of the background.
10. The parents have been together for over 30 years. They have both worked in professions for many years that involve them having frequent and regular direct and indirect contact with children. They have five children, E 22 years, D 20 years, A 17 years, B 15 years and C 10 years. All the children are adopted and have no contact with their birth parents.
11. In recent times the parents have experienced difficulties with A, with the result that A left the family home in February 2022 following allegations by the parents that A had assaulted Y. The police were called, A was arrested and taken to the police station, and placed in custody. A was subsequently placed with foster carers pursuant to a voluntary care arrangement agreed with the local authority. A was not charged and steps were taken to try and rehabilitate A, which were not successful and he went to different foster carers, including G, in May 2023 following him being made homeless. Following a period when there was no contact, from December 2023 until January 2024 there was a steady increase in contact by agreement so that by January 2024 A was visiting the family three times a week.

12. In late January 2024 there is evidence that B expressed reservations to a member of staff at school about returning home due to X's behaviour towards him. Following phone calls by the school with X he did return home. X didn't speak to B as C had a friend visiting. A was there when he got home, as was X. It is reported by A that B was in tears and spoke to A. A left the home and returned to his foster carers. B and C made allegations to A later about X's behaviour, including alleging that X had attempted to strangle B and threatened to kill him. A's foster carer reported the matter to the police and A made arrangements with B and C to collect them from their home.
13. After the police arrived at the parents' home and asked to see B and C, it was discovered they had left home. They were found by the police at A's foster carers and placed in a separate foster placement.
14. B and C made allegations of physical and verbal abuse against the parents, detailing a harsh and punitive regime in the home. Over time their allegations have been made to the police, social workers and the Guardian. The police investigation has involved each of A and B being ABE interviewed three times and C ABE interviewed twice. The parents have each been interviewed twice and were on police bail, having been arrested for assault. The police informed the parents in about July 2024 their investigation had closed and there would be no charges.
15. The local authority issued care proceedings in relation to B and C in January 2024 and A in February 2024. A was later joined as an intervenor in the ongoing proceedings relating to B and C.
16. Directions were initially given for a final welfare hearing at the end of July. There were delays in the police disclosure which meant the local authority threshold was delayed. It was finalised on 4 September 2024.
17. Due to A's age, separate directions were made leading to a final hearing in July 2024, as he was 17 years shortly after that. Even though details in the threshold findings related to A, a pragmatic agreement was reached that the threshold was met regarding A that he was beyond parental control enabling the court to make a care order in relation to A, endorsing a care plan that included A remaining with his current foster carer. X and Y did not seek A's return to their care or to have any contact with A.

18. In the relation to B and C the threshold document in May 2024 set out over six paragraphs the particulars of the way the local authority contended the threshold criteria were met against X, including detailing allegations made by the children of a punitive regime at home including punishments designed to humiliate the children, details of physical, verbal and threatening abuse that caused them emotional and physical harm and resulted in B and C leaving the family home in January 2024.
19. In relation to Y the local authority allege a failure to protect in that Y was aware of X's behaviour but failed to intervene or take any other action to protect the children from harm.
20. As the local authority set out in their skeleton argument for an earlier hearing that the particulars against X *'identify, inter alia, refusing food to the children, leaving the children at home overnight, controlling behaviour, abusive (including racist) language, shouting and swearing, throwing objects, inappropriate punishment (such as standing against a wall, being isolated in bedrooms or outside for long periods, confiscation of spectacles, pushing soap into a child's mouth, throwing a child into a water trough), physical assaults (including hitting with objects, smacking, restriction of the neck, dragging and hitting heads together).'*
21. In their responses to the threshold findings sought X and Y state as follows.
22. X denies all the serious allegations and states the threshold is crossed as follows *'[X] accepts that threshold is met in respect of [B] and [C]. [X] experienced considerable difficulty, along with [Y], in parenting [A] until he became beyond their control. [X] accepts that that in attempting to manage [A's] behaviour, [X's] emotional availability to [B] and [C] was curtailed. As a result [X] was not aware of their unhappiness at home and [B] and [C] were unable to express their feelings to either [X] or [Y]. Ultimately this unhappiness crystallised into a wish to leave home and their subsequent departure. These events taken as a whole will have caused significant emotional harm to [B] and [C].'*
23. The relevant parts of Y's response states as follows, although not in response to any particularised allegation: *"It is accepted that the children suffered significant emotional harm and that harm was attributable to the care they were receiving and were likely to receive. That acceptance is based on the fact that the children have chosen to leave the*

care of [X and Y], that they do not wish to return and that it is accepted that they should not return. It is accepted that [Y] did not know that the children were unhappy or the reasons for any unhappiness. The family relationships have irretrievably broken down.”

24. The local authority filed their final evidence and care plan in relation to B and C in July 2024. The local authority plan was for B and C to remain in long term foster care.
25. In their evidence filed before the hearing in July 2024 the parents set out their position. They agree the care plan. X’s statement repeats the response to the threshold, stating that if there is to be a fact finding X will provide a detailed narrative statement and will seek to file and serve witness evidence from family and friends. In relation to the care plan X does not seek to care for B and C and *‘cannot envisage ever being able to’*. X is aware C had recently said he wanted to come home, but that has not changed X’s position as X *‘would be constantly on edge and in absolute fear of further false allegations being made’*. X describes what the impact of the allegations made has been on the family, the fact that X can’t work and the ramifications for X’s mental health where X is being supported by the local mental health team. They are having to sell the family home and plan to move out of the area. X accepts B’s wishes in not wanting contact with X. C’s wishes regarding contact vary, X expresses a willingness to discuss this with the professionals but is clear all future contact will have to be supervised.
26. Y’s statement confirms the same position as X. Y does not feel able to parent the children again, describes the difficulties in reaching that decision, the impact on Y’s mental health and the fear Y feels in taking on any parenting role again due to the *‘worry all the time that something could go wrong’*. Y is aware of C’s changing views but Y does not consider C coming home is a realistic option *‘either now or in the future’*. Y would like to work towards contact with C as *‘this will be in [C’s] best interests’* but Y states it would need to be professionally supervised and Y would need to be *‘emotionally well enough to take part’*.
27. A, B and C have been the subject of detailed ABE interviews in March and April 2024, X and Y were interviewed by the police in January and April 2024. The police disclosure detailed the other statements taken by the police from the wider family.

28. Following the decision of the need for a fact finding hearing in the judgment dated 11 July 2024 directions were made on 23 and 24 July 2024 leading to the fact finding hearing to commence on 2 December 2024. The directions included a *Re W* assessment as to whether A should give evidence, the parties accepting the *Re W* assessment undertaken by the Guardian who concluded that B could give oral evidence, but not C. The local authority were directed to file their final threshold, evidence and care plan with X and Y to file evidence in response and their threshold response. Directions were also made to manage the evidence if any findings were sought by X and Y against A, any participation directions sought and the pre-trial review fixed for 6 November 2024. At that hearing the matters the court was going to consider included participation directions for A and B, any arguments about the scope of the findings and any other directions.
29. The local authority filed their final evidence and care plan in relation to B and C in September 2024. The police disclosure was complete. The local authority plan was for B and C to remain in long term foster care. In the local authority final threshold document dated 4 September 2024 they provided more detailed findings, cross referenced to the evidence, in particular the transcripts of the police interviews.
30. Due to delays in documents being filed and X and Y submitting GP letters on 30 September 2024 a directions hearing was listed by the court on 10 October 2024 when the timetable for evidence was revised to ensure the 6 November 2024 hearing remained effective. The GP letters recorded the impact the proceedings were having on the mental health of X and Y.
31. X and Y filed their response to the threshold findings, which repeated the substance of their earlier response, and their evidence on 21 October 2024, after a further extension was granted on the papers by order dated 18 October 2024.
32. Just prior to the advocates' meeting on 4 November 2024 X and Y served the joint position statement which stated that X and Y cannot give oral evidence, none of the children should be cross examined and none of the other family and friends witnesses relied upon by X and Y should be put through a trial. The joint position statement continued *'In those circumstances the forensic reality is that the findings sought by the local authority are no longer opposed. No admissions are made on the findings sought*

but neither [X and Y] seeks to oppose the findings sought by the local authority. It is understood that the impact of this position will be that the findings are found to be established’.

33. In the statements filed by X and Y after the hearing on 6 November 2024 they, effectively, made submissions on the veracity of the evidence relied upon by the local authority. Attached to Y’s statement was a two page schedule of matters the court was asked to consider when assessing the evidence relied upon by the local authority.
34. At the final directions hearing on 2 December 2024 the other parties sought clarification of X and Y’s position, in particular whether they were advancing a positive case and required witnesses relied upon to attend for cross examination. The local authority had served a witness template listing the witnesses they relied upon in accordance with directions from the court to have a completed hearing template. In the position statement filed on behalf of the Guardian Ms Delahunty KC made clear that the Guardian reserved her position about the need for oral evidence, including of the parents, subject to clarification of the parents’ position at the hearing. At the hearing Mr Parker and Mr Tughan confirmed their position remained as set out in the position statement dated 4 November 2024 that they sought to advance no positive case and to make no submissions at the final hearing listed to commence on 9 December 2024. Directions were made for that position statement to be signed by X and Y with a declaration of truth and the order made that day records that both parents confirmed to the court and the other parties that they deny the proposed threshold allegations but they do not oppose them. They did not seek the attendance of any witnesses relied upon by the local authority for cross examination.
35. On 5 December 2024 the local authority filed a detailed opening note. The previous order made provision for any party to file a document in response to that by 2pm on 6 December 2024. No documents in response were filed in accordance with that direction, although at just after 9am on 9 December 2024 two position statements were filed on behalf of the parents, mainly addressing the issue of disclosure of any judgment to any regulatory bodies.

The evidence

36. The social worker who was allocated to A between February 2022 and May 2023 details her involvement with A and X and Y in her statement. In her discussions with X and Y they remained fixed on A being the cause of the difficulties with no acknowledgment of responsibility by the parents. Her general experience with A was that he recognised when he had behaviour difficulties at school and engaged in work to try and address that. She found it difficult to get the parents to engage with any work. They acknowledged they had previously smacked the children.
37. The therapeutic support worker who was also involved at that time describes in her statement the work she undertook with the family over two 12 week periods between February 2022 and December 2022. During the first twelve weeks she describes the parents engaging but they remained quite rigid, often focussing on the negative aspects of A's behaviour. During the second 12 week period in the early stages she noticed some positive changes in X and Y and A spent increased periods at home. When A raised issues about his concerns that the younger children were being hit the parents effectively shut down on engaging meaningfully with the work being undertaken and said they did not want A to return home, re-focussing on the lack of any change by A in his behaviour.
38. The statement from A's current carer, G, states she first met him in May 2023 when her daughter asked if A could be taken some water as A said he had been kicked out of home. Following G contacting the local authority A has lived with her since. Prior to January 2024 she reports that she had had no communication or direct contact from the parents and they had dropped off A's clothes and belongings nearby soon after A had started staying with them. Prior to the events in January 2024 she had not met any of A's siblings.
39. The social worker for B and C has been allocated since January 2024, when the local authority received a referral following the allegations made by them and undertook a s47 investigation.
40. The evidence from B's school and the police who initially attended at A's foster carers address detail the initial accounts from B and C.
41. The deputy head at B's school confirmed B had started there in July 2023 and prior to Tuesday 23 January 2024 they had no safeguarding concerns regarding B. In his

statement he sets out that a member of his staff reported to him that another pupil was concerned about what B had reported to him. She had spoken to B who gave an account of an argument with X the previous evening where X had shoved B into his room pushing him against his neck, B was worried about what would happen when he went home, he had told his taxi not to come and wanted to go and see an aunt. The support worker has also filed a statement outlining what B said to her and confirmed she saw some red marks on B's neck. The deputy head said he left a message on Y's phone. X had called back and referred to B's behaviour being challenging and they had had no concerns of this kind with the other children. X suggested B's behaviour had deteriorated since he moved schools and when asked directly X denied having pushed B by the neck. The deputy head saw B and details his discussion with him in his statement and did not consider B expressed any feelings about his safety and did not refer to any physical assault or restraints and did not see any red marks on B's neck. Arrangements were made for the taxi to come and take B home. In her statement the support worker said she considered B looked upset and quite frightened.

42. On the following day, Wednesday, B was spoken to by the support worker and reported X had been fuming, did not say anything as friends of B's younger brother had been round and later did not mention anything to B. On the Thursday an entry in the school logs records that B had told the teacher X had hit C on the leg on the Wednesday evening. B stated C had come to B's room crying to tell him that X had hit him. B said he had asked X why X hit C and X denied this. The deputy head was planning to submit a safeguarding referral the next morning. The deputy head was informed the next day, Friday, that B and C had been removed pursuant to police protection powers the previous evening.
43. When the police attended A's foster carers home on the Thursday evening, after B and C had left home, B gave an account to the police officer of X pushing him against a wall and putting X's hand on B's throat. Both B and C told the police officer that X would call B a 'black bastard', 'black cunt' and would also call him the 'n word'. C stated that the previous day X pulled C's trousers down and smacked his bottom once, saying X was angry because there was a bit of cat food on the floor. X thought C had done that when he fed the cat and X called him a 'fucking bastard'. B told the police officer X hits him, recounted an occasion when X put him on the bottom bunk bed and

banged him up and down so his head banged on the top bunk. B reported he had to shower with the door open and both B and C said X wanted to see B had ‘soaped up’ sufficiently as they reported X said that because B is black he has body odour. B also described an incident when X had taken B’s glasses and made him put on shoes that were too small and also being threatened with punishments by X because of the way B had said goodnight. B and C referred to phoning A earlier and that A had come with his foster carer to pick them up.

44. Following being taken to the police station B stated both he and C began being hit by X when they were about 6 years old and B said they were once spoken to by a social worker but X had told them not to say that X hit them. B also reported that every other Friday X and Y would leave the home and not return until the following day, and that B and C were left alone. B reported the incidents where X gets angry happen weekly and X is always calling B racist names. B said Y does not intervene as Y is scared of X. The police officer who spoke to B and C had body worn video.
45. The therapeutic worker who had worked previously with the family in 2022 supported B and C from February 2024. She detailed in her statement what B had told her, describing X’s harsh and punitive behaviour towards him, the physical assaults by X, having to shower with the door open and how X’s behaviour made him feel. When she saw C he described how X treated him, how X hit A more than them, how X called them all ‘diseases’ and how X took his pants down and smacked his bottom and that ‘it hurt’.
46. The ABE interviews of A, B and C took place in March and April 2024. In their detailed interviews they each had the support of an intermediary and had regular breaks taken during the interviews.
47. In his interviews A was able to detail many of the incidents relied upon by the local authority. His account in his interview was balanced by making clear on occasions when incidents only happened once, providing congruent contextual detail when he could, remaining consistent about the allegations against X and Y’s role. He was candid about his own behaviour. For example, when describing an occasion when X was pulling his hair A said he was having a meltdown as he wasn’t getting his way or when describing the difficulties in his relationship with B when they lived together.

48. In his interviews B also gave details of X and Y's behaviour. He was able to describe the change in relationships in the home, of A's behaviour becoming more defiant, X grabbing both A and B by the hair and banging their heads together as they were both arguing. He was able to give detail about the context, location and distinguish between the hair being pulled hurting him more than the heads banging together. In other incidents he describes B seeks to excuse or explain X's behaviour by saying X is tired. He gives clear and consistent details of X's loss of control and anger and contextual detail about incidents, such as hiding under the table after an alleged assault by X, the repeated instruction from X to go to his room and not to tell any third party, such as the school. In his description of the last thing that happened to him before he left home he was able to provide details of the build-up relating to a task in the home (putting things in the linen cupboard) that X did not consider he had done correctly and how X pushed and threatened to punch B, talking to someone at school about it, being sent to his room when he got home then a further incident when he was assaulted by X (utility room incident), informing the school about not wanting to go home, going home, describing events there including X's behaviour when he got home and being sent to his room by X, seeing A, crying and A giving him his phone number. He recounted his phone call to A and the events that resulted in him leaving the home with C, including retrieving a pair of glasses, as they were normally removed from him by X when he was sent to his room so he could not read. Many of the allegations he makes against X are in the context of household chores not being completed properly and being punished for that by X in a variety of ways, including physical assault and being sent to his room, sometimes with no food. In his descriptions he recognises when he has been shouting, such as the incident he describes taking place in the utility room when X pushed B towards the cupboards and 'chucks' B to the floor. When asked about times when X and Y were away B gave a detailed account of the routine he and C had when they were left alone two weeks prior to him leaving home, including the food that would be cooked, when C would go to bed and how he would ring X to say when he was going to bed. He said that had happened quite often, since the previous year, and referred to a time before that when E looked after them.
49. In his interviews in early March 2024 C describes being sent to his room as a punishment and if he didn't do a job properly X would '*smack me on the bare bum, and like [X] has whacked me – [X] whacked me on the back lots of time as well, if [X]*

doesn't feel like smacking me on the bare bum. And that's when I like don't do the jobs properly or don't do them'. He described being grabbed by the neck by X, being pushed up or down the stairs, having food withheld, his hair pulled and being made to stand next to the wall for ages all as punishments, including for saying 'yes' instead of addressing X more formally. He was able to provide contextual details for the incidents involving X such as being 'whacked on the back of the head' when he was throwing the logs into the basket or when he climbed too high up a tree; being 'whacked on the back' when he was too slow taking X's iPad to X's office and connecting to the charger as C said it was his first time putting this new iPad on charge and X saying that this should have 'knocked some sense' into him; when X thought C was responsible for some cat food that was on the floor; being 'whacked on the back' so hard by X he fell over because C didn't put his bike away; having no food or only a small snack if he had done something wrong or didn't do a job properly such as dropping X's iPad on the floor or making a mess if there is a hole in the log bag; being left outside for up to 7 minutes with no shoes on to teach him a lesson if C had done something in the car, such as argue or take seatbelts off and the door to the house being locked. C describes not giving a truthful account to his friends at school when asked about a lump on the back of his head which he told them was caused when he fell over and knocked his head on a tree as he was concerned if he told them X 'would tell him off badly'. C described the incident that happened on the night they left their home. He was laying the table and dropped a knife on the floor in the dining room and when he walked out to the hall X 'whacked me on the back and said "get on with your job and stop dropping things"'. When asked about standing next to the wall C said 'Er, that would usually be in the morning or at midday when [X]'s like...doesn't want to punish me but [X] just doesn't want me to be in the room with [X]. [X] like puts me in the hall and then, well, tells me to go to the hall and then says to stand by, facing the wall for, erm, as long as [X] says...sometimes it's about half an hour'. C described this as starting when he was 6 years as 'that was like the first punishment [X] would give me'. C was able to say he had fun with X sometimes doing activities with X. C was asked what he thought of X before all this started he said 'Er, I thought that, well, I thought it might happen to me, all this, because [B] was getting it...And, [A] as well'. C was able to describe similar incidents that happened to him happening to B including being pulled by the hair, grabbed by the neck, being called racist names and being smacked on the bum (but probably not as much as C). C was also able to describe some incidents happening to

A and D and E being whacked on the back of the head but not as much as A and B. Finally, he was able to describe being left alone overnight with B since C was 9 years when their parents went out.

50. Both parents were interviewed by the police. First on the day they were arrested in January 2024.
51. In Y's interview Y denied any problems with C and described Y's relationship with B to be good although there had been recent problems and referred to the phone call from the school when B didn't want to come home. Y said when Y spoke to B that evening B said he didn't want to live with them anymore but didn't get to why B had said he was scared. Y referred to the history with A and why he left their home previously when Y said A assaulted Y and X and what had taken place since. In dealing with the routines in the home Y observed that sometimes *'it gets a bit too punitive,'* referring to the length of time there would be no television or phone but said Y and X agreed on the level of discipline in the home. Y agreed they had used physical punishments in the past, Y had smacked them on the legs but *'our parenting style changed'* although Y accepted that they had not done that since A came back full time about a year previous, *'Christmas time last year'* and referred to a time when C was smacked on his calf. Y denied there were any issues between C and X and said that X's relationship with B can be confrontational *'just trying to get him to do his jobs'*. Y said there was no cause for concern. Y said Y had only seen X being physical with the boys *'a long time ago'* in the context Y had talked about before. Y denied any physical abuse towards Y from X. In response to C's allegations of being dragged to his room by X, Y said *'I don't remember a specific but he could have been, you know, taken to his room...moved along physically...can't remember when. It's not...it's not frequent'*. When asked how, Y said *'either having hold of his arm or his shoulder and, and walking him along with you, not letting him walk independently, sort of moving him along'*. Y denied seeing X grab C by his collar or removed B's phone for a week, more like two to three days recently. Y agreed it has not been great and *'it needs to improve'*. Y agreed the pantry had a padlock, to prevent the children taking food without asking.
52. X stated X had no problems with C, had a very good relationship with B up until his teenage years and describes him more recently being lazy and taking things out of the house. X detailed issues B had at school and the *'normal chastisements...20 minutes in*

his room, he gets his phone taken away, no television, those sorts of things...Most of the time he'll [B] abide by, but then, you know, sometimes flatly refuses'. X described being contacted by the school earlier that week when B said he didn't want to return home. When asked how X disciplined B and C, X said 'Well, basically by, you know, telling them to do something and, if they don't do it, then there's chastisement, as in 20 minutes in the bedroom, or no television...take away [phone/MP3 player]'. When asked how often the children are disciplined X said C hardly at all, B more often recently. X denied any physical punishments and the allegations made by B and C. In describing the history of A's relationships in the family X considered there may be a premeditated part to A recently seeking to re-establish his relationship with the family. X thought the change in B's behaviour was due to school influences and possibly spending more time with A, X said 'this is why I'm thinking this is [A's] thoughts, or what he has been telling them...I think he [A] said it ages ago about – before he was leaving, about chastisements and things like that, which didn't happen' at the end of the interview X thought they were under the influence of A and that A has told them to say these things. X acknowledged that about two years previously they did smack the children but not for a 'very long time' and 'not really on their bare bottoms'. X denied B and C were left alone when the parents went out overnight.

53. In X's second interview, after the ABE interviews with A, B and C, when asked about each of the allegations X denied assaulting any of the children or withholding food, and said any time X sent B to his room it would be for about 20 minutes. In relation to the allegations made by A, X said that A had hated X since A was arrested and been in custody and that A wanted X 'in the same situation' and X felt A was to blame for their current situation although then relented as X had seen such a recent change in A then said 'I can't explain it. I don't know why this has happened'. X did not consider themselves as an angry person and when asked about all three children saying that X is often angry said 'I have no idea, except their...the influence of, of [A]. I have no idea.'. X said all they have shown them is love and denied X had a temper. X missed the children and felt C was being led by A and B, that C may have been told what to say by A and the enormous impact on the family caused by these events.
54. In Y's second police interview Y also denied witnessing or knowing about any of the assaults alleged by A, B and C against X and detailed the disruptive behaviour from A

when he was living in the home. When asked whether X gets angry Y said X *'will shout or will raise [X's] voice, and can get angry, but I wouldn't say [X] is always angry. And anybody can get angry. I get angry, There's not a problem with it'*. X will *'shout, that's all....[X]'s got a loud voice'*. Y said the boys would stop if X shouted if they were doing something they weren't meant to be doing but Y had not seen the children scared of X, did not think X has a temper and described X's behaviour towards the children as *'Loving, caring'*. Y described their parenting as *'strong parenting. You have boundaries and routines and structures.'* Y described Y's relationship with X as strong and supportive. When asked why the allegations have been made against X, Y thought A be driven by wanting X to experience what A did by being arrested, that A was exploiting B's *'disgruntledness and teenage unhappiness....And...dragging [C] along with it'* and that A was leading C in the recording of the phone call on the night B and C left the home. Y felt A was driven by revenge. Y set out the impact of these events on both Y and X.

55. In their statements filed in these proceedings X and Y deny the allegations that have been made, set out the history of the children being placed with them and their family life and the impact the allegations and these proceedings have had on them. X and Y confirm they do not seek the children to be returned to their care, they support the care plans sought by local authority and their position in relation to continuing contact with the children. The parents have also filed photos and videos setting out many aspects of their family life which they say demonstrate the many things they did as a family and how those pictures and videos contrast with the allegations being made against them in this case.
56. In addition, the parents have filed statements from third parties including from their parents, the children's grandparents, friends who have known the family for many years and from D and E, their two eldest children. Each of these statements set out their knowledge and involvement with the family and how they have not seen any behaviour that would support the allegations made by A, B and C. The statements from the family placed emphasis on the difficulties with A's behaviour and the impact A may have had on the allegations being made.
57. In his statement A set out the history of his time in X and Y's care, he acknowledges the difficulties his behaviour has caused at home and at school and the periods he spent

out of their care. He does not accept any suggestion made by X and Y that the allegations he made in his police interview have been made up through revenge. He admits that he and B have seen each other a few times out of school but denies they were in communication when they had their ABE interviews. A is now having weekly supervised contact with B and C. He acknowledges there were happy times as shown in the photographs and videos but states that *'they were increasingly tinged with fear and sadness and isolation'* for him.

58. Following the hearing on 2 December 2024 the social worker manager filed a statement exhibiting the information received from the police following D contacting them on 12 November 2024 to say he can't live with X and Y anymore as although he had said previously that they didn't assault the three younger children he said they had. The police record they spoke to him properly on 14 November 2024 when he said he had lied in his original statement to the police and that what had happened to his youngest three siblings had happened to him but it was a long time ago. D said he was worried about getting into trouble for giving untruthful statements to the police and the court. When asked what he had told the police that was not true the record states *'he was hit as a child, a lot, where he was hit across his head and on his back. This happened between the ages of 9/10 to 15/16 and only happened when he had done something wrong. [D] confirmed he never had any injuries.... He said he had seen [B] and [C] being hit on the back, slapped across the face sometimes, and on the head...this would only happen when they had done something wrong. He never saw any injuries on [B] and [C]. He said [B] and [C] would cry afterwards and that this would make him feel scared.'* When asked why he had decided to report this he said he knew from the start his statement was not correct, he had told his girlfriend everything on 12 November 2024, she was upset and angry and they both decided he should report this to the police. As well as the police record there is a copy of a text message from D to X informing X he had spoken to the police and what he had told them.
59. The Guardian has prepared five reports. In her report regarding A she set out that he was always likely to be a more challenging child to manage and it *'may be that he required a high level of tolerant, attuned and sensitive parenting so these behaviours could have been managed in a manner which did not fundamentally threaten his position within the family. What appears to have happened however is that the parents*

regarded [A's] behaviour as a direct challenge to them and their parenting style, something which was deliberate rather than an expression of trauma or testing out'. The Guardian refers to separate meetings with B and C where C said X called A 'the disease of the family' and B said that X said A 'caught the disease from [his birth mother] and then he passed it to me [B], and they were worried [C] would catch it from me'. The Guardian reported she had received a letter from E who referred to A being 'dangerous', 'huge danger' and 'manipulative'. The parents, in an email to the social worker, referred to A as 'dangerous'. The Guardian considered that it would have been deeply upsetting for A if this is what he experienced being characterised in this way. In the Guardian's view 'In reality much of [A's] behaviour seems to have been largely within normal realms of teenage behaviour but parenting which could not tolerate or manage this or the trauma that he may have displayed, will have likely led to an escalation, further exacerbating the tensions in the family home'. From his experiences in the two placements he has been in the Guardian agrees with the local authority that it is a 'clear protective factor that [A] is a young man who is able to follow reasonable expectations for a child of his age and engage in a family living arrangement when given a level of autonomy proportionate to his age.' In her report in relation to A the Guardian acknowledges the difficulties and tensions within the family A is placed with but recognises his strong wish to remain living there.

60. In the *Re W* reports dealing with whether B or C could give oral evidence in the fact finding hearing the Guardian details her meeting with B and how she explained to B about the fact finding hearing and how B focussed on making his parents listen and that other people would hear to '*make them realise*'. The Guardian reported that B has expressed that he has not wanted to see his parents or have any contact with them, he has '*never expressed hatred or dislike for them, in fact he has never expressed anything about them, other than a resigned sadness and a sense of relief*'. In her opinion B's desire to give evidence is '*not vitriolic or to seek retribution; he wishes for simple resolution*'. Her report recommended that B was called as a witness. In her report dealing with whether C should give evidence C told her that his birthday had been the previous day and he had not received any presents. Although the Guardian did inform C about the family home being sold she did not refer to the parents' position of not seeking to resume the care of the children or have contact with them. When she talked to C about giving evidence he said '*I have said what happened, and they know and so*

do [X and Y], so why do they want to ask questions?’ The Guardian explained about the process of giving evidence and answering questions and reached the conclusion that she would not recommend C giving evidence as she considered he had ‘*a very innocent view about giving evidence which is that you tell the truth and people listen*’ and would find it very difficult to be questioned and feel as though he was not being believed.

61. In the Guardian’s final analysis she sets out that she has met B and C on eight occasions and the parents on nine occasions, five of which were just with the Guardian as well three phone calls. She has spoken with the older children and offered to speak with the grandparents but that was declined. As the Guardian notes she knows B and C well and has a good understanding of the context of the family. B does not wish to see his parents. C has talked about wanting to see his parents, then just wanting to see Y, and then wanting to go home and again not. C knows his parents are not seeking his return, and this has significantly impacted on him. The Guardian considers that ‘*the parents set up a regime in their household which very much reflected their own unshakeable belief that their way of parenting was the right way, the better way, entrenched as it was in their privilege and sense of virtue.*’, as the social worker who was involved to support A’s return to the family stated, X and Y did not believe they needed to change. During her meetings with the parents to try and work through the allegations and ascertain whether there was acceptance on any level that there were issues with their parenting or the manner in which they treated the children she noted it was impossible to get them to move past their fixation on what they believed A had done to them and how the local authority was persecuting them. In her view they considered they should be treated differently because of who they were, they were more focussed on their own well being than how the children were. They sought to retain control over their parental responsibility for the children (such as preventing B seeing friends in a local town, having a job or mobile phone and both B and C going on a sporting activity with other looked after children), even though they did not seek any future contact with the children. As the Guardian observed X and Y were ‘*resolute that these were the right decisions and have not been able to consider the impact they have on the children*’.
62. From her discussions with the parents and the children the Guardian reports that ‘*The parents were very focussed on good manners and spoke with me about this. What they did not see perhaps is that good manners essentially come from respect and responses*

learned through fear come from a very different place’. All three children have told the Guardian about X’s temper and she experienced that at a video meeting in September 2024 which she said was ended by the team manager, but had it been in person the professionals present would *‘have felt intimidated and unsafe such that either they or the parent would have had to leave. [X] was completely dysregulated, red in the face and shouting’*. In the Guardian’s view she assesses the parents being *‘fixed on pre-contemplation and have remained static during social work intervention and throughout these proceedings. These proceedings have been a process of self preservation and never about what is best for the children’*. In her opinion the parents are *‘blinkered and frightened’* and they have never been able to consider doing things in a different way. As she notes the parents have never moved away from the narrative that A caused this situation and that in a limited time in A’s foster carers’ home changed the whole perspective of B and C’s experience in their childhoods. They remain of the view that A gave B and C the words they use in their allegations to the police repeated to many others including the social workers, support workers and the Guardian. In the Guardian’s opinion C has continually referred to the same narrative and *‘layered it with further references and feelings. He has never strayed from his original report’*. In relation to B the Guardian does not consider through her experience of him that he could uphold a false narrative.

Legal framework

63. Before the court has jurisdiction to make any public law orders the threshold criteria in section 31 Children Act 1989 (‘CA 1989’) must be established. Section 31(2), so far as material, provides that for the threshold to be crossed it must be proved that: “the child concerned is suffering, or is likely to suffer, significant harm; and ... that the harm, or likelihood of harm, is attributable to ... the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him” (emphasis added).
64. The question of whether the threshold criteria are met is a matter for the court which includes consideration as to whether the justice of the case is met.
65. The legal framework is not in dispute and can be summarised as follows:

- (a) The burden of proving the findings that the court is invited to make lies with the party which seeks the findings.
- (b) The court must guard against the danger of reversing the burden of proof which remains with the party seeking the finding to the requisite standard.
- (c) The standard of proof is the balance of probabilities (*Re B [2008] UKHL 35* paras 70 and 72), namely more likely than not. The law operates a binary system: a fact is either proven or it is not.
- (d) Findings of fact must be based on evidence, not speculation (*Re A (A Child)* (Fact-Finding hearing: Speculation) [2011] EWCA Civ 12, per Munby LJ as he then was: “It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation.”).
- (e) The court must take into account all of the evidence and furthermore consider each piece of evidence in the context of all the other evidence (*Re Z [2004] 2 FLR 838* at [33], Dame Butler-Sloss P: “Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.”)
- (f) It is common for witnesses to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas [1982] QB 720*).

Submissions

- 66. The local authority seek findings in accordance with their threshold document dated 4 September 2024. They rely on the accounts given by the children in their police interviews, and the consistency of the accounts of the children since then even in circumstances where C, in particular, has expressed a wish to return to the parents’ care.

67. The local authority categorise the allegations under eight headings as follows:

- (1) The children were sometimes chastised by way of being refused a proper meal and left hungry.
- (2) The children were routinely neglected by way of being left unsupervised or inadequately supervised in evenings and over weekends, when the parents stayed in one of two major cities which they frequently visited.
- (3) X exhibited significant control over the children, for example by insisting they address X formally and placing a padlock on the pantry door, with X's expectations enforced by punishment.
- (4) X employed inappropriate punishments which amounted to bullying and humiliating behaviour, for example making the children stand against walls, leaving them alone in their bedrooms, locking them outside the home in the garden, confiscating B's glasses; and physical punishment such as being thrown into a water trough, pushing a head into a toilet and forcing soap into the mouth.
- (5) X exhibited emotionally abusive behaviour towards the children by, for example, initiating arguments, swearing, using threatening language, using racist language towards B, behaving aggressively and throwing items and shouting.
- (6) X exhibited violent behaviour and perpetrated assaults on the children, including pushing, smacking, dragging, hair-pulling, hitting C's bare bottom and dragging him by the neck, hitting the back, grabbing by the neck, raising a fist in a threatening manner, 'smashing' A and B's heads together, lifting by the neck or strangling.
- (7) Y was aware of these various actions, behaviours and assaults, but did not intervene or otherwise take protective or preventative action; and
- (8) By reason of the matters above, the children chose to leave the home; and soon after the commencement of these proceedings the parents determined that the parent-child relationships were at an end and do not wish to have any contact with the children.

68. The local authority invite the court to accept the children's evidence which is now unchallenged. They have been consistent in the substance of the allegations which they made to the police and to others including their teachers, the social worker and the children's guardian.
69. They submit the children's evidence is supported in a number of ways:
- (1) The admissions and inconsistent accounts given by the parents. For example, initially when they have admitted to using previous physical chastisement, although stating it was not a method currently used by them. When first informed of B's allegations by the school X stated that they had had no trouble of this kind with the other children and it had only arisen when B had been exposed to bad influences at secondary school. The local authority submit this first response was false as it did not reflect the difficulties the parents had had with A, it was a lie used to discredit B and is inconsistent with their current case that B's allegations are an invention created and driven by A.
 - (2) The inferences which may be properly drawn from the actions of the parents in response to the allegations. When A first made allegations in 2022 the parents identified him as the difficult child and his behaviour became worse when he was exposed to malign influences at school. With A, as with B, the court can infer the parents did not tell the truth to cover the true position and discredit the children. X has admitted that X can sometimes say things in anger, be overwhelmed by A getting the upper hand and the second 12 week programme of intervention only failed when A raised his concerns about X shouting at him and hitting his brothers. This reason is more likely to be correct rather than A seeking to derail the process of rehabilitation which appeared to be going well. The loss of temper by X is supported in some of the messages between the parents and the Guardian's experience at the meeting in September 2024.
 - (3) The parents' response to the allegations made by A, in that they withdrew from any attempts to secure A's return home when faced with child protection allegations which was an extreme position to adopt, was mirrored by their response to the later allegations made by B and C and such an approach was motivated by desire to avoid the truth being established. This is supported by their approach to the proceedings

by seeking to close down the fact finding element of the care proceedings. The local authority submit there is no other credible explanation for the parents taking the position they have in giving up any hope for a loving relationship with the children they have adopted and on their case whom they deeply love and care about. The local authority submit the court can place some reliance on what A has said when he stated in October 2022 X regularly smacked the younger children and they were scared of X as A is someone who admitted when he had misbehaved at school, engaged fully with the social work interventions and has been happily cared for in his foster placements. This rounded approach contrasts with the parents who accepted no fault, did not see they had to make any changes, said they wanted help but did not take it up, declined a parenting assessment and such actions are inconsistent with their account of home life with the children. A's account are supported by messages sent from A to Y in September 2023 highlighting X's behaviour towards A with responses from Y placing all the blame and responsibility on A.

- (4) The recent information provided by D supports the accounts given by B and C. It is detailed and reasoned and is supported by the text sent by D to X. D's admission of lying in both his police statement and his statement in these proceedings is contrary to D's interests and his willingness to open himself to the consequences of that is, the local authority submit, a compelling indicator of the truth of his most recent account. When the parents filed their most recent statement on 3 December 2024 they were aware of D's change of account, yet did not seek to cross examine D or otherwise challenge his most recent account.

70. As regards the consistency of the accounts given by B and C the local authority rely on the following:

- (1) To the therapeutic support worker they both allege

- (a) the smacking began from about the age of 6 years which is consistent with the parents' admissions.
- (b) B alleges the physical abuse and harsh parenting led to his decision to leave when he did.

- (c) B alleges having to leave the bathroom door open when showering, suffering kicks, banging of heads together, being grabbed by the collar and being pulled and harsh parenting by way of excessive punishment for small misdemeanours.
- (d) C alleged Y is scared of X, alleges A was hit the most and all the children were called 'diseases', X called B the 'N' word and having to take his pants down and being smacked hard.

(2) To the police and the school:

- (e) B's initial complaint was that he had been pushed against the wall by X with X's hand on his throat and was told he couldn't have any dinner. This is consistent with his account to a teacher in February 2024 and the teacher felt B was scared of X.
- (f) Both B and C allege X used racist insults.
- (g) B alleged that X kicks him and three months earlier had bounced his head off the upper bunk and needs to be checked for showering properly as he has body odour due to being black.
- (h) B alleged X threatened to abandon him to walk a long distance in ill fitting shoes and he was threatened with punishments for not saying goodnight properly.
- (i) B alleged to the school that he was held and pushed by the neck and the teacher noticed red marks on his neck.
- (j) B alleged he was told not to admit to X hitting A as he too would be taken away and separated from C.

(k) B alleged to the school that X had hit C the previous evening.

71. The local authority also rely on events that have taken place since C left the family home. Despite his young age and feeling upset by the loss of his family unit he did not wish to return home and would only do so 'if life there was to change significantly'. They submit this loss of his home is profound for C yet his parents changing the way they behave remains key to any thought by him of returning. The evidence about how both B and C are affected by raised voices is significant.
72. The local authority rely on the picture painted by the detailed phone messages to support the finding they seek regarding lack of supervision. They were at a time when the family were encountering difficulties as A had left home. In their interviews with the police B alleges he and C were left alone on alternate Fridays for 7pm until 2pm the following day, which as a fact are largely supported by the content and frequency of the messages. In the messages relied upon by the local authority some show that A was left as a supervisor, despite the many problems the parents state they were encountering with him and generally paint a picture that supports the finding sought.
73. Finally, the local authority invite the court to take into account the parents' litigation conduct during the proceedings. The local authority suggest the parents have sought to delay the progress of the proceedings and when they provided their initial response X sought to blame A for the allegations made by B and C and Y's admissions were little more than an *'invitation to conclude from the fact that the children had left home that the family relationships must be at an end. There was no reason provided; and, importantly, none attributable to the care of the parents as required by section 31(2)'*. By the time of the two day case management hearing in July consistent with the position of denying the accounts given by A, B and C *Re W* assessments were undertaken and plans put in place for A and B to give evidence. The parents delayed in complying with the court's directions to file evidence, sent to the court GP letters and it was the court that initiated the hearing on 10 October 2024 to keep the case on track. The parents then filed detailed statements, with evidence from nine other witnesses which the local authority submits is inconsistent with their earlier and later claims of an inability to engage meaningfully with the proceedings. Whilst the local authority recognise the stresses that can be caused to parties in care proceedings they submit there has been a

pattern in this case of *'deliberate (or, at times, passive) frustration of the good management of this case, designed to give the greatest chance that any final determination would be delayed or even avoided.'*

74. In their oral submissions Mr Twomey KC laid emphasis on the content and detail provided by A, B and C in their police interviews. There was he submitted compelling and significant granular detail in each of the interviews regarding the incidents described which gave a very clear picture of any abusive home. He invited the court to consider and apply the principles set out in *Griffiths v TUI (UK) Ltd [2023] 1204 at [70]* where the Supreme Court confirmed the general rule in civil cases is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule applies to both witnesses as to fact and expert witnesses. This is to make sure the trial is fair, which includes fairness to all parties including to the witness whose evidence is being impugned. Mr Twomey relies on the fact that the local authority made it clear what witnesses they relied upon and wished to call and the parents did not seek the attendance for cross examination of any of the witnesses. He submits there are no circumstances, as set out in *TUI* at [61]-[68] that apply in this case with the result that the parents are not able to rely on anything that undermines the local authority evidence but the court can take into account in its overall assessment of the evidence anything that is favourable to X and Y.
75. In accordance with their instructions neither Mr Parker or Mr Tughan made any written or oral submissions following the filing of the local authority opening note save on the limited issue of any disclosure of the judgment to any professional bodies. The parties were able, with the assistance of the court, to agree a framework to notify the relevant bodies. My attention was drawn to the list of matters attached to the penultimate statement from Y which the court was invited to consider when reviewing the evidence. Mr Parker invited the court to read a broader list of documents so that the court would have the broad canvas of evidence but made it clear whilst X denies the allegations made X was not seeking to challenge the findings sought by the local authority and the parents' reasons for not seeking the future care of the children is set out in their letter to the children in July 2024. Mr Tughan agreed with the submissions made by Mr

Parker and did not accept the litigation conduct submission relied upon by the local authority.

76. Ms King KC, on behalf of A, made limited submissions. She supported the local authority submissions. She reminded the court that A is a young person who has been described by his parents as a ‘disease in the family’ and being ‘dangerous’ which is emotionally damaging to A.
77. Ms Delahunty, on behalf of the Guardian, supported the local authority’s submissions although emphasised that the quality and consistency of the accounts given by A, B and C to the police and other professionals is sufficient for the court to make the findings sought. She drew attention to the balance in the children’s accounts recognising positive aspects of family life, referring to Y as a loving parent and that some days were good some were not good. The realism of B when he stated to the Guardian that if he was making it up he would make it far worse, he just wanted it to stop. C said if it was so good, if it was okay ‘*why did we leave?*’ and C stating he would go back home if they stopped smacking him. She submits the section of the Guardian’s report that deals with the impact of past harm is powerful reading, in particular what C says about his realisation of how long he will be in care.

Discussion and decision

78. B and C are now in their fourth foster placement. They have been there since July 2024, are settled and the care plan intends that to be their long term placement. Since June 2024 they have been having weekly supervised contact with A which is reported to be going well. They have had one visit with D and E and the care plan provides for that to be kept under review. They have had no contact with X and Y since they left home in January 2024.
79. That summary alone sets out the enormous changes B and C have had to manage since January 2024, in addition to understanding what has taken place in the course of these proceedings. In their letter to the parents in the Guardian’s final report they make it clear they want to the parents to listen to them and then say they are sorry about what they did.

80. Both parents have found these proceedings very difficult to manage, their distress has been obvious to see when they have been present in court, they have sought medical advice as outlined in the GP letters produced by them both and they have described in some detail the impact on them in their statements. Their position is clear; whilst they continue to deny the findings sought they do not challenge them. They have been given every opportunity by the local authority to require the witnesses they rely upon to attend court to be cross examined. They have, with the benefit of expert legal advice, not required the witnesses to attend and have confirmed in their latest statement that the *'forensic reality is that the finding sought by the local authority are no longer opposed'*. In taking that position they confirmed that the impact of that position *'will be the findings are found to be established'*.
81. The allegations made by B and C in the police interviews and then consistently repeated to professionals paint a picture of an extremely controlled environment in the family home with X mainly using fear to regulate and parent the children, with Y being described as a bystander being simply unable to protect them. The evidence from the social worker involved in 2022 – 2023 when A was living away from home paint a picture of the parenting of all the children that was controlling and rigid, with the parents giving a veneer of agreeing to professional involvement yet ultimately being resistant to any change. This accorded with the experience of the Guardian, whose evidence I accept, that whilst it was clear the parents were struggling emotionally she sent details of services to seek support, but from what she understood they had not contacted them but continued to demand that it should be the local authority who support them although in unspecified ways.
82. The local authority have made it abundantly clear what findings they seek, focused on the threshold findings dated 4 September 2024, the evidence they rely upon in the court bundle and the witnesses they proposed to call listed in the hearing template sent to the parties and attached to their position statement for the hearing on 2 December 2024. No party sought for any of those witnesses to be called and in the light of that position no party sought to call the parents to give oral evidence. The parents have not taken issue with the legal analysis put forward by the local authority, in particular the reliance on the principles in *TUI (ibid)*, namely the general rule in civil cases that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on

a material point which he or she wishes to submit to the court should not be accepted. That rule applies to both witnesses as to fact and expert witnesses. This is to make sure the trial is fair, which includes fairness to all parties including to the witness whose evidence is being impugned. Mr Twomey had made it very clear which witnesses they relied upon and knowing that the parents did not seek the attendance for cross examination of any of the witnesses. There are no circumstances, as set out in *TUI* at [61]-[68] that apply in this case, with the result that the parents are not able to rely on anything that undermines the local authority evidence but the court can take into account in its overall assessment of the evidence anything that is favourable to X and Y.

83. The local authority invited the court to draw an adverse inference as a result of the parents' failure to give oral evidence. They rely on what Johnson J stated in *Re O (care proceedings: evidence)* [2003] EWHC 2011 (Fam) at [13] when he stated '*As a general rule, and clearly every case will depend on its own particular facts, where a parent declines to answer questions or, as here, give evidence, the court ought usually to draw the inference that the allegations are true*'. Williams J in *Re K (cocaine ingestion: failure to give evidence)* [2020] EWHC 2502 (Fam) at [39]-[43] considered the position is more '*nuanced*'. In this case the parents have not sought to cross examine any of the witnesses relied upon by the local authority with the consequences set out in *Tui*, which they have not challenged. In those circumstances I do not consider it necessary to consider whether any inferences need to be drawn by their failure to give evidence.
84. The way the parents managed the position with A between 2022-2023 provides, in my judgment, a valuable window into the way X and Y parent with rigidity and control. When A was made homeless by the parents in May 2023, age 15 years, he was taken in by his current carers. As his current carer reports they had no contact from the parents, no offer of support even though A was sitting his GCSE's at the time and his belongings were dropped off nearby. According to B and C, A was regarded as the disease in the family and it was made clear that A could not see his siblings unless he saw X and Y as well. The inflexibility shown by the parents was not child focussed for any of the children.
85. I have carefully considered whether the accounts given by B and C of the care they received from X and Y are credible and have reached the conclusion that, on the balance

of probabilities, they are. B and C were able to describe to the Guardian about the increasing number of household chores that had to be undertaken by them as the older children left home and that they were '*scared as they always seemed to get them wrong, and [X] would shout at them*'. No party has suggested the police interviews have not complied with the ABE guidelines. Even though the initial police accounts were given late at night, in the careful and detailed ABE interviews each of the children had an intermediary and regular breaks.

86. In B and C's initial account to the police and in the subsequent ABE interviews they paint a picture of a household that is run by an undercurrent of fear, mainly orchestrated by X. I agree with the Guardian's analysis that C has remained consistent in what he has said and B would be unable to uphold a false narrative. The compelling and powerful accounts of the way they were parented with rigid and inflexible rules that would be enforced by punishments that included the assaults described have contextual detail that have the hallmarks of having been experienced by the person giving that account. By way of example, B's account of not having his glasses when he is sent to his bedroom, his description of how he came to hate his bedroom as it was, as he reported to the Guardian '*a blurred fog, unable to even read*', his account of getting the emergency glasses before he left home in January and X being seen with B's glasses when the police were at the home all support B's account of this cruel aspect of his parenting as being entirely credible. In relation to the allegations of physical abuse made by C against X, C is frequently able to give detailed context such as when he rode X's bike and got a puncture, he climbed too high up the tree, he was too slow putting X's iPad on charge, the way he was stacking the logs, the hole in the log bag, dropping a knife whilst laying the table and the cat food being on the floor which supports the credibility of the accounts he gave of the events he was describing, including X's behaviour towards him. Both B and C have been consistent about Y's role in failing to protect, and I accept their evidence that Y was fully aware through being present on occasions when they have been subjected to the punishments being implemented by X, including physical assaults.
87. B and C refer to X's anger, which the parents deny. I reject that denial in favour of the consistent accounts given by the children of X's anger and the Guardian's compelling account of her own direct experience of X's anger at the meeting in September 2024,

even taking into account and allowing for the strain of being involved in these proceedings. In my judgment, it provided a valuable insight into the way X behaves and a valuable window into the dynamics in the relationship between X and Y, their very different personalities and Y's willingness to cover for X's behaviour.

88. B and C's allegations are supported by the accounts given by A and now D. In his police interviews A describes a similar regime of parenting to B and C with the features of rigid rules largely enforced by X through the punishments described, with Y standing by and X's explosive anger. I reflected carefully on the suggestion by X and Y, supported by members of the wider family, that the allegations made by B and C have been orchestrated by A. In my judgment that is highly unlikely as the depth of detail given by B and C would not be possible if they had not experienced the events themselves. At the relevant time there was only limited contact between B, C and A. A was visiting the home at the end of 2023/early 2024 but B and C were at school, there were other family members around, they had limited time together on the night B and C left and after B and C were placed in care there was no contact around the time of B and C's ABE interviews, and only limited contact before the weekly supervised contact was set up in June 2024. I accept the Guardian's evidence regarding C's consistency and her assessment of B being unable to maintain a false narrative. In addition to what B and C set out in the police interviews they have remained largely consistent with what they said in those interviews in what they have subsequently reported to the social workers and Guardian.
89. The credibility of the accounts given by B and C is also supported by the balance each of them give in recognising the good times they had in the care of X and Y. They acknowledge their privilege and the opportunities they had. They have tried to understand their experiences by talking about Y loving X and loving Y's job, and not wanting to give them up and refer to X witnessing parental domestic abuse in X's own childhood and the impact that had on X's family. As the Guardian states they '*place their allegations within the family system, not outside of it, and all their allegations are anchored in their experiences*'. In relation to C he has expressed the wish to return to the care of X and Y and/or have contact with them but he has been consistent in the need for them to stop smacking him.

90. Whilst the court only has relatively limited information about what D is reported to have said the credibility of what D has stated, which I accept, is supported by the fact that he has made this report to his own detriment, laying himself open to the risks of any action that may be taken in relation to his previous untruthful statements. He too has given a context of when they have done something wrong, consistent with the punishment regime described by A, B and C.
91. In relation to the evidence about B and C being left alone whilst X and Y went away overnight, I accept the account given by B in his ABE interview of the routine that he describes and he made a clear distinction of when the older children were present and, more recently, when it has just been him and C.
92. Having considered the wide canvas of evidence, including that given and filed by and on behalf of X and Y, I therefore make the findings sought by the local authority in their threshold document dated 4 September 2024, set out at the end of this judgment.
93. What the evidence demonstrates is the disconnect between the professional backgrounds of both X and Y and the lived reality in the family home. There appears to be no understanding by either parent that the regime they operated in the family home of rigid behavioural standards and strict parenting underpinned by exacting punishments and assaults has had a significant detrimental impact on the children's welfare. The parents have remained of the view and maintained the narrative throughout these proceedings that the position they find themselves in and the allegations made by B and C was orchestrated by A, rather than face the reality of what the evidence has demonstrated. I hope, for theirs and the children's sake, they will acquire an understanding of what has taken place. It will require skilled help and support over an extended period of time. It will be only with that perspective will they begin to understand the position from the viewpoint of the children.
94. Having made those findings it is now necessary to consider B and C's welfare, which is the paramount consideration of the court under s1 Children Act 1989, having regard to the checklist set out in s 1(3). Although no party takes issue with the care orders sought and the care plans dated 25 November 2024, it is important to set out the welfare considerations.

95. Both B and C's wishes are to remain in their current placement. C has been more equivocal about his wishes as to whether he would like to return to the care of X and Y and/or have contact with them but he remained consistent this would only be if they agree to stop smacking him. By not moving from their current placement it will mean their educational needs will be met and they will benefit from the stability of care. The local authority have made clear they will keep the issue of contact under active review. They are committed to maintaining sibling contact, which is clearly important as regards A and will need to be carefully considered in relation to D and E, as well as their parents.
96. As regards the range of orders the court can make I am satisfied the local authority need to share parental responsibility as the children's welfare needs require it to be exercised in a way that meets their welfare needs, including their wishes and feelings, rather than as it is at the moment at arms-length by the parents with the focus on the parents' views.
97. Both the local authority evidence and the Guardian's report have carried out a careful analysis of the various options and I am satisfied that B and C's welfare needs are likely to be met by a care order being made for each of the children. The local authority should consider the matters set out in paragraph 71 of the Guardian's report and ensure those matters are covered in the existing care plans and, if required, file amended care plans to include them.
98. This matter was listed for hand down of the judgment on 16 December 2024, the draft judgment having been circulated on 13 December 2024.
99. On 15 December 2024 the parents sent an email to the court stating that they would not be attending the hearing the following day and they no longer wished to be legally represented. In that email they detailed a number of matters including suggesting they had been '*so restricted and silenced throughout this whole traumatic and destructive process*'. They allege that the local authority and the Guardian have '*been intent on destroying what could have been rebuilt to prove and bolster their own poor case*' and continue '*The family court has nothing to do with the welfare of the children and this outcome goes against much of what it is supposed to stand for*'. They continue '*As soon as we are well enough we will become strong advocates of change in relation to this process. We have been very adept individuals in our fields of work with no blemish on*

our careers to date and will one day want to fight for justice in relation to what has been done to us. Continued engagement in this process gives it the approval and authority which it doesn't deserve'. In that email they agreed to the judgment being disclosed to the relevant regulatory bodies.

100. The parents were sent a link by the court to join the 16 December 2024 hearing prior to it commencing. They did not join. I granted the application made by their counsel and solicitors to come off the record. I adjourned the hearing until the afternoon and made an order requiring the parents to attend the adjourned hearing, setting out in that order the matters that were going to be considered. The order was sent to the parents by email and the hearing link sent again. Neither of the parents attended the adjourned hearing and did not communicate with the court.
101. As a result of the parents' email, which may have welfare implications for the children, and the need for an amended care plan to include the matters raised by the Guardian in her report I reached the conclusion that final welfare orders could not be made on 16 December 2024 and the interim care orders would continue. I made directions for a further hearing when the matters I will consider will include any amended care plan, any further evidence regarding welfare, publication of this judgment and the judgment dated 11 July 2024, any disclosure of this judgment and any documents from the proceedings to the regulatory bodies and any directions regarding disclosure of the judgment to A. This will enable the parents to have notice of the issues the court is going to consider at the next hearing.

THRESHOLD FINDINGS

1. The subject children in these care proceedings issued by the local authority are B and C.
2. The children's older brother, A, is placed in the care of the local authority, pursuant to the order of this court made in July 2024.

3. The parents are X and Y, each of whom hold parental responsibility for each child.
4. The relevant date for the purpose of establishing whether the s. 31(2) Children Act 1989 threshold criteria have been met is 25 January 2024, the date when the police first used their powers of protection and a continuous regime of proactive measures was put in place.
5. The court has jurisdiction to make care and/or supervision orders, pursuant to s.31 Children Act 1989 on the basis that, at the relevant date, the subject children had suffered significant harm and were likely to suffer significant harm, attributable to the care that was being provided to them and/or likely to be provided to them by their parents not being what it would be reasonable to expect parents to give to them.
6. The subject children have suffered and are at risk of suffering physical harm, emotional harm and neglect as a consequence of the particulars set out below.
7. Except where specified otherwise, the Local Authority relies upon the accounts given by the subject children and A in Achieving Best Evidence [‘ABE’] interviews conducted by the police. References to ‘the children’ herein are references to the subject children and A.

Particulars

8. As a means of punishment, the children were on occasions refused a proper meal, being provided with only a snack, such as bread and water or biscuits and milk. This left them hungry. This was an inappropriate form of chastisement which caused the children emotional harm.
9. The children were routinely neglected by reason of being left unsupervised in the evenings and/or overnight, alternatively as a consequence of inadequate supervision on such occasions:
 - (a) Recently the subject children were routinely left alone in the family home overnight. No adult was present, and no adult visited to ensure their safety and well-being.

- (b) Recently the subject children were routinely left alone in the family home overnight with A required to supervise his younger brothers when he was only about 16 years of age.
10. Each child required adult supervision at night and overnight. By reason of their respective ages and individual needs, including their particular need for consistent emotional care, each child required adult supervision at night and overnight by an experienced adult.
11. Each of the children was, accordingly, routinely neglected and thereby caused significant emotional harm and was likely to subject significant physical harm.
12. X has exercised a level of control over the children which goes beyond that of a reasonable parent. This included insisting on the use of [a formal phrase to address X] and placing a padlock on the pantry door to prevent the children having unsupervised access to food. The requirements which [X] placed on the children were enforced by means of punishment in the event of the children's non-compliance. This created a punitive environment beyond the parameters of reasonable parenting and caused emotional harm to the children.
13. X subjected the children to emotional abuse by:
- a. regularly initiating arguments with them;
 - b. swearing at them,
 - c. using threatening language,
 - d. making racist remarks to B such as '*stupid black bastard*' and making other inappropriate references to his heritage,
 - e. behaving in an angry and aggressive manner, including by throwing books from a bookshelf when not tidied to [X's] likeness.
 - f. on one occasion, becoming angry with A throwing a clothes airer across the kitchen whilst shouting "*I am going to fucking kill this kid*".

14. As a direct consequence of the aforementioned conduct, the home environment was intolerable and, on 25 January 2024, B and C chose to leave the family home.
15. Despite intervention by the Local Authority when A entered into foster care, the parents failed to:
 - a. take on board advice,
 - b. acknowledge any problem with their approach to parenting,
 - c. make the changes necessary to meet the emotional needs of the children.
16. X subjected the children to inappropriate punishments which amounted to bullying behaviour and which were designed to humiliate them. The following list of examples is non-exhaustive:
 - a. The children were made to stand against the wall for periods of time considerably in excess of that which might be compatible with a reasonable exercise of parental discipline.
 - b. The children were made to spend extended periods alone in their bedrooms, isolating them from their family. On occasions tape was placed across C's bedroom door.
 - c. The children were made to remain in the garden while locked out of the family home for extended periods of time. Sometimes they were made to stand outside without shoes.
 - d. B had his corrective glasses removed from his possession.
 - e. on one occasion, X threw food made by B on the floor in anger because it did not meet the standard that X felt appropriate.
 - f. during a holiday to Country W, X carried A to a water trough and threw him in as a punishment for continuing to talk to his siblings after bedtime.
 - g. following a disagreement, X pushed A's head into a toilet and flushed the toilet.

- h. as a punishment for using inappropriate language, X forced green Palmolive soap and water into A's mouth and forced him to bite the soap and swallow it.
17. The children have been subjected to physical assaults, causing each of them significant physical and emotional harm, including being pushed, smacked, 'whacked', dragged and having their hair pulled. The children allege that this conduct took place on numerous occasions. The examples which they related to the police include the following:
- a. in January 2024, in response to cat food being tipped on the floor, X pulled down C's trousers and pants and smacked him across the bottom. X then grabbed C by the neck and dragged him up the stairs to his room.
 - b. on an occasion on which X perceived C to have been too slow to collect an iPad for X, X hit C on the back while stating '*...might knock some sense into you*'.
 - c. in response to C saying, what C describes as, the "*wrong words*", X grabbed C by the neck causing him to experience difficulty breathing and pushed him up the stairs.
 - d. while in A's bedroom following an argument between them, X grabbed A and B's hair and '*smashed*' their heads together.
 - e. during the course of an argument with B, X grabbed B by his shoulders whilst he lay on the floor and moved him up and down such that his head hit the bed more than once. This occurred sometime in 2023 in B's bedroom.
 - f. in January 2024, whilst in the linen room, X pushed B against the cupboard and raised [X's] fist to B.
 - g. in January 2024, whilst in the utility room, X lifted B by the neck and strangled him causing him to experience difficulty breathing, before dropping him to the floor.
 - h. when A was around 9 or 10 years of age, following an argument, X grabbed A by the hair. X continued to pull A's hair while X and A were on the floor.
 - i. while A was cooking food, X grabbed A by the collar of his school uniform and dragged him out the door into the garden. This placed pressure on A's neck such

that he could not breathe. X threw A to the floor outside causing A to briefly pass out.

18. Y knew or ought to have known of X's conduct but failed to intervene or take any other action to protect the children from harm.
19. The parents' conduct has led to their children choosing to leave their parents' care. This has caused the children emotional harm.
20. But for the children departure from their parents' care, each of them was likely to continue to suffer significant physical and emotional harm in a similar manner to that described above.

16 December 2024