



Neutral Citation Number: [2024] EWFC 97

Case No: [Redacted]

**IN THE FAMILY COURT AT [REDACTED]**

Date: 13 May 2024

**Before:**

**Deputy High Court Judge Paul Bowen KC**

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**Between:**

**A Local Authority**

**Applicant**

**- and -**

**A mother**

**A father**

**XJA (1) YJA (2) (through their Children's Guardian)**

**Respondent**

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**Re. XJA and YJA (Children) (Care Orders: domestic abuse)**  
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Laura Summers, Solicitor (instructed by Local Authority Legal Services) for the Applicant  
Tony Woods, Solicitor (instructed by the Family Law Group) for the Mother  
Alexander Ormiston, Counsel (instructed by BLM Solicitors) for the Father  
Helen Little, Counsel (instructed by Hepburn Delaney) for the children

Hearing dates: 24 – 26 April 2024, 1 May 2024  
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## **APPROVED JUDGMENT**

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

## **Deputy High Court Judge Paul Bowen KC:**

### **Introduction**

1. This is an application for care orders under s 31 Children Act 1989 (**‘the 1989 Act’**) by a local authority (**‘the LA’**), originally in respect of three children, **‘Child 2’** (17 years old), **‘Child 3’** or **XJA** (aged 13) and **‘Child 4’** or **YJA** (aged 6). The application now concerns only the two younger children, Child 3 and Child 4, who are currently living in foster care following an interim care order (**‘ICO’**) made in October 2023 and an order for removal made on 22 December 2023. Child 2 turned 17 in January 2024 and (by virtue of s 31(3) of the 1989 Act) cannot be the subject of a care order and the proceedings have been discontinued in relation to him. Child 2 remains living at home with M. There is one further sibling, Child 1 (aged 20) who is currently at University and lives away from home (**‘Child 1’**). **‘M’** is the mother of all four children. **‘F’** is the father of the two younger children, but has helped M to raise the two oldest children since their marriage in 2009.
2. There was extensive written evidence before me and I heard oral evidence from the allocated social worker, M, F and the Guardian. M and F are not native English speakers and an interpreter was present during the proceedings. This judgment was delivered in private but I give leave for it to be published in this anonymised form save for the confidential annex which contains details of the parties.

### **Parties’ positions**

3. The LA’s position is that final Care Orders should be made authorising the permanent removal of both Child 3 and Child 4. The proposed care plan is for long-term foster care with regular parental contact (once per month with F for a duration of 2 hours and 4 hours per month with M) and rehabilitation to M’s care in 12-18 months. The LA has also filed a Goals and Expectations document which sets out the work that the parents need to complete in order for consideration to be given to the rehabilitation of the children to M’s care.
4. M opposes the LA plan, avers she is no longer in a relationship with F and seeks the return of the children to her sole care.
5. F opposes the LA plan, states that he and M are no longer in a relationship and seeks the return of the children to M’s sole care.
6. The Guardian supports the LA’s application.

### **Background**

#### ***Pre-proceedings chronology***

7. The LA instituted these proceedings in September 2023. The proceedings arise in the context of long-standing concerns about the domestic abuse of M by F and the physical chastisement of all four of the children, primarily by F, going back to 2010, the facts of which are largely admitted by the parents.

8. At the time the proceedings were issued the children were already subject to child protection plans, but the LA considered this process was insufficient to keep the children safe and free from significant harm, not least because of the parents' failure to properly work with that process and make the changes necessary. The family had been open to the public law outline ('PLO') process, which commenced on 22 October 2022. However, in the LA's view the parents continued to lack insight and minimise the impact that domestic abuse and physical chastisement have on the children and seemed to lack the motivation to make changes to their parenting style.
9. Within the PLO process, Ms. R, the allocated social worker, completed a Parenting Assessment of M in April 2023. This details the incidents of concern involving F's behaviour towards M and the children since 2010. I set these out in full as they appear in the assessment (albeit anonymised) as these demonstrate the level of harm to which the children have been exposed.
  - (a) 11.11.2010: Contact from [X] School. The children's sister, Child 1, told a Teaching Assistant, daddy smacks her face if she loses something or is naughty. Parent Support Worker spoke to her mother and Child 1 did not come to school the next day. School phoned and were told she had a fever. The next day, the head teacher asked Child 1 how she was, Child 1 told her she had a fever. She was asked if everything was okay at home and she said daddy got cross. She said he slapped her around the face - she became very anxious when asked if she would like the teacher to speak to daddy and said no, because when we did that the other day he was very cross and hurt her really badly in the bath. Outcome - progressed to referral and initial assessment undertaken - No Further Action was recommended.
  - (b) 12.01.2011: Contact from [X] School Child 1 did not attend school and when school rang home to find out why there was no answer, her mother returned school's missed call later and said Child 1 was not in school because she has a pain on the leg. However, she did not clarify how or why and put Child 1 on the phone to speak to school instead. Child 1 did not say much as was prompted by her mother in the background. Outcome - unannounced visit by school - No Further Action was recommended.
  - (c) 05.01.2012: Contact from [X] School Concerns were raised in relation to the children stating parents hurt them. Child 2 shared he would be hurt because he couldn't find his PE kit and became very frightened and distressed. Outcome - progressed to referral and initial assessment undertaken. [M] and [F] denied physically chastising their children. The children have not reported to the social worker any concerns in this area. The school continued to monitor and report any future concerns - No Further Action was recommended.
  - (d) 04.05.2012: Contact from [X] School Child 2 came to school very distressed and claimed that mummy had hit him. There was a mark on his arm which he pointed to as where it hurt. This could have been a skin blemish but it could have also been a mark from a ring or a bruise. Outcome - progressed to further investigations to be undertaken. An initial

assessment was completed and the case was transferred to the Family Support Team.

- (e) 16.01.2017: Contact from [Y] Hospital [M] presented to [Y] Hospital for the first time on 14.01.2017 with her husband @ 21:15 having had 'a vase fall on her' causing a black eye/bruise to her right eye. Her husband appeared to answer the questions in regard to how the injury occurred which concerned staff. Also parents left their 3 children at home alone to attend hospital. There were concerns as to why parents presented to [Y] Hospital and not [local hospital]. [Y] Hospital had no previous records for [M], she was discharged home @ 22:30. Staff called the family @ 23:00 and they were at home again with the children. Outcome - [F] was spoken to, he appeared to be doing the talking and his story remained consistent. Professionals were unable to speak to [M] alone to fully ascertain how the injury occurred. His and Child 2's account of who they were staying with when parents went to hospital is also consistent. No health or education concerns. No Further Action was recommended.
- (f) 27.09.2020: Contact from police. The family's neighbours reported domestic abuse between parents where [F] was reported to hit [M]. [F] was arrested for Actual Bodily Harm, however, [M] did not complete a statement. Children's Social Care to continue working with and supporting the family.
- (g) 06.10.2020: Contact from the local Hospital [M] attended the local Hospital with pain to her leg and head and both ears which she has described as a result of an assault from her husband 1 week ago. She shared that this had been ongoing.
- (h) 09.02.2021: Contact from police. The family's neighbours reported domestic abuse between parents where [F] was reported to hit [M]. [F] was arrested, however, [M] did not complete a statement. Children's Social Care to continue working with and supporting the family.
- (i) 31.03.2021: Allegation from [M] to Police [M] reported [F] had hit her, she stated he drinks everyday, and they argue about money as she is the only one who works, she said he was asleep and she woke up to ask for support, he woke up picked up a cricket bat and hit her. [F] threatened to kill [M] with a knife, she took the opportunity to get in the car and run away, she drove to the school and called the police.
- (j) 07.09.2021: Allegation from [M] to Police. Caller can hear female screaming from next door and sounds like male is hitting her. [F] slapped [M] on the face after an argument about cooking, [F] was arrested, and she reported he had been drinking and he was not normally that way. [M] stated she would like him to be told his behaviour is not acceptable, it was deemed no further action in custody, there was no concerns around [F] or children at the time, [M] refused to support.

- (k) 05.10.2020 [*I assume this is 2021*] - Assault with injury – No further action [M] alleged to Police that she had been beaten by her husband causing pain in her legs and in her ear.
  - (l) 31.03.2022 - Assault without injury – No further action [M] disclosed to Police that [F] has been hitting her, she fled the address to a local school. [M] alleged to Police two historic assaults whilst taking a statement, these occurred around January 2022 and end of February 2022.
  - (m) 14.04.2022: Neighbours reported Domestic violence to Police. There was an incident at the family home. Child 2 witnessed his stepfather, [F] punch his mother 5 times to the head and threatened to kill her. Child 2 went to the neighbour's address, and they supported him to call the police. [F] became angry following [M] dropping a dustpan and brush. [F] stated if police arrived, he would kill [M], he then fled the scene but was later located and arrested. [M] and Child 2 gave statements. [F] denied everything in the interview, he changed his account, initially he said Child 2 was not present but when challenged he said he was present. He was arrested and kept overnight then released with bail conditions in place. [F] was not to contact [M] or be at the home address until the court hearing on 1 June 2022. [F] was charged with assault with battery, the court case was adjourned until 14 June 2022.
  - (n) [In June 2022, F was convicted and sentenced to an 18 month Community Order for an offence of Assault by Beating in relation to this incident. Upon sentencing a Restraining Order was made to protect M, stating that F was not to go or enter the family home. This Restraining Order terminated on 13 September 2022.]
  - (o) Most recent referrals 22.09.2022: Child 2 attended school with an injury to the left side of his head. He alleged that this was caused by his stepfather assaulting him the previous night. There was a restraining order for his mother against his stepfather that meant he could not come into the home address, for three months which expired on the 13th September 2022. Child 2 reported that his 'dad' had been coming to the home and was sometimes sleeping in the home whilst the restraining order was in place. Child 2's mother denied being present for the assault but Child 2 said his mum tried to stop his stepfather from hitting him. She said she washed his bloody clothes, but later said to police they were in the bin.
10. I note that a record of the incident on 22 September 2022 is also contained within F's OASys assessment in March 2023. This records as follows:

At school on 20/09/22 [Child 2] went to his Head Teacher's office, telling her that he could not go home before bursting into tears. He had an inch long cut to his head which he said he had sustained when [F] pushed him against the corner of a wall. He also alluded to a previous incident where [F] had punched him. The trigger for this behaviour appears to have been that [Child 2] had been testing boundaries in stayed out until 21:00 without asking or telling his parents where he was, as well as their

concerns (unconfirmed) that he has started using illicit drugs. [F] is reported to have been living at the address in breach of the Child Safety Plan expressly prohibiting him from doing so, something which [M] has not disclosed to the Social Worker during the course of their interactions. There had also been a Restraining Order in place until July 2022, which [F] is also reported to have breached. [F] has been bailed to an address in Feltham and is due to answer bail on the 18th December 2022. He has failed to keep in contact with Probation at the date of this assessment and is due in court in relation to the breach on 03/11/22. [M] is the victim of the index offence (see details below). She has struggled to understand why agencies are concerned and appears to genuinely believe that she will not be able to cope without [F], although there is no evidence of this based on what Children's Services know about the family and the support available to them.

11. The incident of 22 September 2022 led to F's arrest for assault and breach of a Restraining Order. I note that in her probation report F's probation officer explained it was her understanding the only reason proceedings for breach of the Restraining Order were not pursued was because '[F] had in fact been living at the address since the [RO] was first made, and that his has been with the agreement of [M]'. She also understood that the assault charge had cleared the evidential threshold but Child 2 had withdrawn his witness statement seven months later because he was 'anxious at the prospect of having to attend court'.
12. Between September 2022 and April 2023 F was subject to bail conditions to remain away from the home. Following the expiry of bail conditions in April 2023 the parents refused to sign a safety plan to keep F away from the home and he moved back in.
13. Between March and April 2023, the social worker conducted eight home visits while carrying out the Parenting Assessment. During the course of this assessment Child 2 described how after the incident in September 2022 he was scared that 'Dad will come back and kill me or do something to mum'. He explained that he would be happy if they could 'move house so dad doesn't find us again'. After F's bail conditions had been cancelled on 30 March 2023, F had asked if he could have contact with all the children, but Child 2 refused to have contact. Child 3 reported that both F and M had used physical chastisement and had thrown objects at the children. He said 'Daddy threw his phone at my face and the phone broke'. Child 4 shared that 'I want my dad to come back and never fight with my mum. For my dad and my mum to not argue'.
14. The parenting assessment concluded:

The parenting capacity is not currently considered to be good enough and there are concerns that if parents do not engage with support to address the volatile nature of their relationship and their ability to parent the children positively without resorting to physical chastisement that the children could be physically hurt, and their emotional wellbeing will be affected negatively. A

detailed plan of recommendations with timescales will be set out for parents to reduce the risk of harm to the children to an acceptable level.

15. Concerns were also raised about M's ability to understand the risks to the children given she wanted F to return to the home against the advice of children's services, following him physically harming Child 2.
16. Following the Parenting Assessment a psychologist conducted a Cognitive Functioning Assessment of M. Her report dated May 2023 concludes:

[M] Full Scale Intelligence Quotient (FSIQ) was assessed to be within the Borderline Range. This means that she does not meet the threshold for having a learning disability. However, her score is at the lowest point of the Borderline range and therefore she is likely to experience some difficulties in understanding and processing standard forms of information. Her verbal comprehension, perceptual reasoning, working memory and processing speed were all assessed to be within the Borderline Range'.

17. The psychologist recommended that communications with M should be made as simple as possible, but she does not require an intermediary.

### ***The care proceedings chronology***

18. The trigger event that led to this application occurred in late August 2023 when the allocated Social Worker attended the family home for a statutory visit. Child 2 alleged that, 4 days prior to the visit, F had hit him on the back of his legs with a piece of wire while he slept to punish him for failing his GCSEs. F had then hit Child 1 in the face, splitting her lip, when she had tried to intervene. Neither parent had reported this to the Police or to children's services.
19. The LA then brought applications for ICOs for Child 2, Child 3 and Child 4 with a plan for placement in foster care. The first hearing took place on 4 October 2023 when the matter was listed for a contested interim care order hearing on 12 and 13 October 2023, when the Court made ICOs for all three children. However, the Court refused the LA's application (which was supported by the Guardian) for the two younger children to be removed to foster care. I have seen an unapproved note of Recorder Patel's judgment and observe the judge's conclusion that the risks to the children emanated from F and that these could be met by an order excluding him from the family home, with a power of arrest in the event of a breach. The Court made an Exclusion Order in relation to F and endorsed a safety plan (signed by both parents on 16 October) preventing F from attending the home and having any unsupervised contact with the children.
20. On 13 December 2023, the LA made an application for an urgent hearing due to the parent's non-compliance with the safety plan as a result of a missed parenting assessment session. M had also disclosed, in a witness statement prepared for these proceedings dated 9 October 2023, that she had allowed F into the home during the PLO process in breach of written agreements.

21. On 15 December 2023, the LA made a Part 25 application for an expert forensic analysis of M's phone due to ongoing concerns the children continued to see their father outside of supervised contact, in breach of the safety plan. That application was granted on the same day together with a direction that the parents file a statement in advance of an expert report about any alleged contact and/or breaches of the safety plan.
22. M filed a statement dated 21 December 2023 in which she acknowledged that she had breached the safety plan and had allowed unsupervised contact between the children and F on two occasions. A family friend had held a birthday party on 30 November 2023 which she attended with the children at which F had 'unexpectedly arrived'. On 2 December 2023 M had taken the children to a party organised by Child 1 for F's birthday. She went on to assert that she and F were no longer in a relationship.
23. The phone analysis report of M's phone from Evidence Matters, dated 21 December 2023, recorded that there were 44 telephone calls, 7 messages and 44 Whatsapp messages between M and F between 28 November 2023 and 15 December 2023. Although this was not itself a breach of the safety plan, the LA maintains that it demonstrates M and F were continuing their relationship after 12 October, contrary to what they say in their witness statements. They point, in particular, to an exchange on 21 November 2023 when M sent F a photograph 'Happy Wedding Anniversary' with a heart emoji to which F replied 'Happy Wedding Anniversary darling. I'm working now call you later'. M accepted in oral evidence that she had sent this message.
24. Reports from both Child 3 and 4 also suggested that – again in breach of the safety plan – there had been regular telephone contact between F and the children and that F had stayed over at the family home, although this evidence is disputed by the parents.
25. The LA then made an urgent application for the removal of Child 3 and 4 from M's care which was heard on 22 December 2023. Recorder Archer granted the application and Child 3 and Child 4 were removed into foster care, although no order was pursued in relation to Child 2 who turned 17 in January 2024. An unapproved minute of Recorder Archer's judgment details that the court could not feel any confidence that the parents would comply with the safety plan and that the children's safety was 'clearly at risk' in the parents' care. The parents had been given 'every opportunity' to work with the LA and 'could not have been under any illusion how they needed to comply and the consequences of a failure to engage'.
26. The two younger children were then removed together to emergency foster care and then to a longer term foster placement. They have since had to be moved to a third foster placement after Child 4 was found to be hurting the family dog.
27. There was another hearing on 2 January 2024. Child 2 was discharged as a party to proceedings given he was about to turn 17. The preamble to the order for that hearing records F's solicitor, upon instructions, stated that F remained in a relationship with M and wished to parent together. In a witness statement filed on



the first day of the hearing F stated that he and M were no longer in a relationship and in oral evidence F disputed the accuracy of the order of 2 January 2024.

***Parenting assessment 15 February 2024***

28. A further parenting assessment of M and F was carried out by Ms A, a Deputy Team Manager, using the Parent Assess Framework, completed on 15 February 2024. The author of this assessment was due to be cross-examined at the final hearing but on the first day of the trial M and F confirmed, through their legal representatives, that they did not wish to cross-examine the witness. Accordingly, the conclusions of this assessment stand unchallenged, save in relation to the ultimate question that I must decide, namely whether the children should return to M's care or remain in foster care.
29. The parenting assessment made a number of relevant findings which I consider particularly concerning, notably that, in addition to witnessing domestic abuse of their mother and suffering physical abuse themselves, the children have all been put under pressure by their parents not to disclose this to relevant professionals and have been chastised when they have done so:

[Child 2, Child 3 and Child 4] have all experienced varying degrees of physical chastisement throughout their lives. They have also witnessed arguments between parents and violence perpetrated by their father against their mother. Parents have asserted that the children have not witnessed any violence, however there has been multiple occasions of neighbours witnessing these arguments and feeling the need to call the police, therefore it is conceivable that this has in some way been witnessed by the children. Child 3 has spoken of being scared to end up involved in the arguments, he spoke of being trapped in them, and unable to leave, giving the impression of being used as ammunition within these arguments. ...

There are instances throughout the case recordings that Child 1 and Child 2 have stated that they have been reprimanded for having told professionals about the physical chastisement they have experienced. During a home visit on 25th August following the incident of Child 2 being assaulted, Child 1 did not wish to show the social worker her split lip for fear of getting in trouble for it. During Direct Work session with Child 4 on 1st December 2023 he told the social worker 'mummy told me if I tell you about Daddy he won't come back forever'. This paints a picture where the children are experiencing abuse in the form of physical chastisement, as well as witnessing aggression and violence towards their mother, but being put in a position where they are not allowed to speak about this. Certainly, for a child as young as Child 4 this is confusing and difficult. Throughout the time that Children's Services have been involved there has been difficulty in gaining information with regards to their lived experience and there has been continued concern that they are being coached in what to say to professionals.

30. The parenting assessment also makes positive findings about the family, but notes that these do not offset the risk of harm to the children arising (in particular) from F's aggressive and violent behaviour:

It is clear from observations of the family that there is love in the family. All of the children report a fondness of mum and that they feel loved, she is kind and caring. There have been similar reports in relation to their father and the observations of greetings and goodbyes during family time are indicative of a bond between children and parents. All of the siblings are equally close, affectionate and desire to support and care for each other. Despite the unpredictability of their father's behaviour, witnessing aggressive and violent behaviour and experiencing physical assault in the manner of chastisement, they all feel loved and have developed a bond as a family. This is important to note but should not be taken as an indication that there has not potentially been damage caused by these experiences.

31. Concern was also expressed that M was unable to protect the children from harm caused by F because of the extent to which she had been manipulated and coerced by him.

The main concern for [M] is whether she is able to prioritise the needs of her children over the needs and desires of her husband. [M] states that she wants to have time without her husband in the family home, so that he can prove to her and the children that he has changed and that he can sustain this change. Whilst this appears to be a genuine response and intention, she has failed to ensure this in the past and there remains concern that she is easily manipulated and coerced by her husband, leaving the question as to whether she will be resilient enough to ensure he remains unable to have free access to the family home, her and the children

32. The recommendation of this assessment was that '*whilst the M is viable to have the children returned to her care, this is not the case for F*'. The return of Child 4 and Child 3 to M's care would '*need to be monitored to ensure that [F] is not supported to have continued access to the family home and to the children. This will need to be given significant consideration given that parents have ignored previous Court Orders preventing [F] from entering the family home or having unsupervised time with the children.*'
33. The recommendation in relation to F was informed, among others, by concern about his alcohol misuse. This concern is reinforced by hair strand test analysis which demonstrates an '*excessive consumption of alcohol*' between 13 January and 9 February 2024.

***The Goals and Expectations document 15 April 2024***

34. The parenting assessment made a number of recommendations for work that both M and F should complete which are reflected in the LA's Goals and Expectations

document dated 15 April 2024, which sets out the work the LA (supported by the Guardian) considers must to be undertaken before consideration can be given to Child 3 and Child 4 being rehabilitated to M's care:

- (a) M to complete the Freedom Program to gain a better understanding of Domestic abuse and how this impacts herself and her children; Talking Therapies to enable her to explore her experiences in a safe environment where she can be open and honest about her feelings and the impact, they have to both her relationship with F and the impact this has for the children; and parenting classes to support her in identifying and understanding methods of managing issues of sibling conflict and to be equipped with the tools to maintain routines and boundaries in addition to enabling her to support Child 4 in regulating his emotions.
- (b) M must not allow F in the family home until a risk assessment is completed by the LA and he has undertaken: (i) either Building Better Relationships with Probation or Fresh Start, ideally this would be in a group setting where F would be exposed to other men who are able to express their feelings and experiences and show their own vulnerability. This may enable F to feel supported in sharing his own feelings and experiences. F must engage in this process in a meaningful way to enable his motivation to change to be observed. (ii) F to be referred for and to engage in talking therapy to encourage him to engage more effectively with his feelings and to be able to recognise and express them in healthy ways. (iii) F to attend parenting classes to support him in identifying alternative behaviour management strategies and to support him in learning to be emotionally available and supportive to his sons and to enable him to develop skills to support Child 4 in regulating his emotions and understanding the need for consistent routine and structure and be equipped with the tools to maintain routines and boundaries. (iv) F to engage with local addiction recovery services to explore his alcohol use and the impact this has to both his self and his family members.

35. Both M and F accepted that they must undertake this work but disagree with the LA and Guardian that the children need to remain in care while they do so.

### **Witness evidence**

#### ***Evidence of the social worker***

36. The social worker confirmed his opinion as set out in the LA's witness statements, and the LA's corporate opinion, that care orders were necessary to authorise the LA to continue to care for Child 3 and Child 4 in foster care. The work identified in the Goals and Expectations document should be completed before consideration can be given to any reunification, a process that would take between at least 12 and 18 months. The LA has agreed to make all of the necessary referrals, if it has not already done so, in respect of the proposed work and there are no cost implications in respect of these courses that would prevent them taking place. He observed that some of the courses do not start until September 2024 but said that if there was any difficulty accessing an in-house course then a reference could be made to the FAST team. The LA also agree with the

Guardian's recommendation that Child 3 and Child 4 should have supervised contact with M twice a month for two hours at a time and once a month for two hours at a time with F. He confirmed the LA's intention was that the children should remain in foster care together. In his view it was not in the children's best interests to discuss the proposed plan for reunification with the children. It should be explained to them that they cannot go home. He agreed that both children clearly love both their parents, but the risks are such that (for example) they would not be able to play cricket with F this summer or play in a community cricket match with him, at least not without a specific risk assessment being carried out.

37. In questions from Counsel for the Guardian the social worker said that the risks from F were such that even with very frequent announced and unannounced visits they could not keep the children safe. F had visited despite the fact he had been subject to bail conditions and a restraining order in the past, and M had taken the children to see F in breach of the safety plan. The children had been put under pressure not to disclose that fact. He agreed with the Guardian that M is warm and loving but has difficulty with more complex aspects of parenting and that reunification should remain the plan *if or when* M is able to evidence sustained and meaningful separation from F, insight into the impact of domestic abuse and physical abuse of the children and development of parenting techniques that move away from the use of physical chastisement. It would not be enough just for M to attend the relevant courses; she would need to demonstrate engagement with the work and a process of assessment would be necessary. The LA would keep an open mind about whether more or different courses are required if the first set of courses do not achieve the necessary breakthrough. The 12-18 month timescale before reunification included the process of assessment, but there could be no certainty about reunification. The plan for reunification should not be explained to the children until it becomes a feasible option. Otherwise there was a risk that their hopes of reunification would be dashed, causing them further harm.
38. In questions from the solicitor for M the social worker confirmed that both boys had made clear that they want to go home. He agreed that there were orders that the court could make that would reduce the risk of F returning home, such as a non-molestation order, but his concern was that F would not comply given his history of non-compliance with similar orders.
39. In questions from the Court the social worker accepted that if it could be guaranteed that F did not return home then the children could safely return to live with M. All of the work identified in the Goals and Expectations document could, in principle at least, be carried out while the children are living at home. He agreed that it will be upsetting for the children and they will be unhappy if an order for their permanent removal is made. However it would be worse if they were returned. If F returned in breach of any order and abused M or the children that would cause further emotional harm. If they then had to be removed a second time that would be devastating for them.

### ***Evidence of mother***

40. In oral evidence M affirmed that she was prepared to engage in the work set out in the Goals and Expectations document. She said she was no longer in a

relationship with F and had promised to keep the children away from him. She accepted that she had breached the safety plan she had signed on 16 October 2023 by taking the children to see F on 2 December 2023, which she regretted. If the Court made an order excluding F from the house and prohibiting him from seeing the children then she would comply with it. If he broke the order she would immediately inform the police and social work team. She had learned her lesson and had been punished for breaching the safety plan and would not allow the same thing to happen again. She denied that F had breached the restraining order imposed in the criminal proceedings by coming home; the order had expired on 13 September 2022 and he had come home after that. She was definitely capable of looking after the children on her own, without F.

41. In cross-examination she accepted that she had failed to protect the children from harm from F in the past. She accepted that F had hit her and the children had seen that, which would have harmed them. Although she had not witnessed F hitting the children she accepted that had happened too. She had been with F since 2009 and prior to that was in another violent relationship with the father of Child 1 and Child 2. She felt able to leave F now; they had separated after the hearing in October 2023. She was asked about the WhatsApp'd photograph of her and F on their wedding day that she had sent to F on 21 November 2023 saying 'happy wedding anniversary' with a heart emoji. She accepted (after first appearing to say that her daughter had sent this) that she had sent this to her husband. The explanation she gave was that it was their wedding anniversary; that even though the relationship was over 'this was my second marriage after my last husband passed away; he gave me a new life. So I just sent him this message'. When asked about F's statement on 2 January 2023 that they remained in a relationship (set out in the preamble to the order, see para 27 above) she said this was not true. M accepted that she had allowed Child 4 to speak to F on the telephone despite that being prohibited by the safety plan. She denied having told Child 4 not to tell the social worker that he had spoken to F and could not explain why Child 4 had told the social worker that. She was also asked about another record in which Child 4 had told the social worker that he had seen F sleeping in M's room at their house in early November 2023, in breach of the safety plan and after she had said the relationship was over. M denied that F had stayed over during this period. She was adamant that the relationship had ended after the hearing on 13 October 2023. The courses she had already attended (the Freedom Programme) had taught her a lot; how to protect herself and the children and how to identify if someone was mistreating her. Asked about Talking Therapies she said she did not think she needed to do this but would do so if advised. It was not necessary for her to do so before her children came home because she could care for her children. She was committing her life to her children.

### *Evidence of the father*

42. F affirmed that if the children were returned to M he would stay away from the family home and agreed to do all the work set out in the Goals and Expectations document. He is currently living in a caravan. In cross-examination he was asked about the statement made, on instructions, on 2 January 2023 that he remained 'in a relationship with M' and wished to 'parent the children together'. He said that he meant that they remain speaking on the phone and had contact with each

other. He said they wished to ‘parent the children together’ because if they did not the children would be upset. His hope is to jointly parent the children in future. He accepted that on two occasions, 30 November and 2 December 2023, he had breached the safety plan. The first had been a family party with family friends and he had not known M and the children were coming. He hadn’t told the family friends that he and M were separated as he was concerned it would affect the children. On 2 December 2023 his daughter had arranged a surprise birthday party and he had not known M and the children were coming. He accepted he should have reported this event to social workers. In future he would be more careful. He denied having slept over at the house, either in 2022 when the restraining order was in force or in November 2023, contrary to what Child 2 and Child 4, respectively, had told social workers. He accepted his behaviour had affected the children mentally and emotionally.

### ***Evidence of the Guardian***

43. The Guardian’s position was, in some respects, firmer than that of the social worker. She did not accept that securing F’s removal from the home would provide adequate protection for the children. That is in part because she does not believe that he can be prevented from returning home; any court orders will be insufficient because they depend upon M to police the orders and to be honest with social workers. The Guardian did not believe M could or would do that. Moreover, the children had been exposed to domestic abuse which is deeply harmful emotionally and psychologically. While they remain in the family home they will feel fundamentally unsafe and will be expecting that abuse to resume, even if F is not present. In any event F could continue to exercise coercive control indirectly. It is essential for the children to be somewhere that they feel safe. That will not happen in their home because that is the environment in which the abuse took place and they will remain in fear of F returning. There is also the wider context of M’s neglect as a result of her inability to understand the impact on the children and to protect them from harm. She hopes that the work identified in the Goals and Expectations document will allow the children to return but at present is not confident it will succeed. There has already been significant LA involvement but this has not been understood and acted upon by the parents and matters had not progressed. There was no evidence of any increased insight or understanding. She agreed with the timescale of 12 months for the delivery of the necessary work and assessment followed by a transition plan with a number of stages. She agreed that the children should not be told of any plan for reunification. If the children were to be permitted to return home then they will learn that they cannot speak to professionals and will not know who to trust when they are worried, so action cannot be taken when required to protect them. There had probably been a much higher incidence of physical assault against both M and the children than social services know about.
44. In questions from the Court the Guardian accepted that she had only spent one hour observing M with the children during the time of her involvement. She did not know why Child 4 had hurt the family dog (which precipitated their move to the third foster carer) but it could have been because he was playing out violence he had witnessed by F or for cultural reasons as a result of not being familiar with pets. She had not seen the children in their new setting or considered whether

their emotional and cultural needs were being met there. She accepted that emotionally and psychologically the children were harmed by separation from their primary caregivers. She accepted that her advice as to reunification was highly contingent and at best a possibility. Accordingly, the question was whether it was in the children's best interests to be removed for the whole of their childhood, to which her answer was 'yes'.

### ***The s 31A care plan***

45. The LA produced final care plans for each of the children dated 29 February 2024. Although not identified as such these are the care plans required by s 31A of the 1989 Act. During the course of the hearing I raised with the LA that these did not provide any detail of the proposed timetable for family reunification or any form of support plan that would be provided in the event the Court decides not to make a final care order. Such detail is required by s 31A and s 31(3B) (see below, para 56). I requested the LA to provide a document setting out such detail. A document provided during the course of the hearing was still deficient in this regard. When the case went part heard I directed the LA to provide a detailed rehabilitation plan with clear timescales in the event a final care order is made and, in the alternative, a supervision order support plan by Monday 29 April 2023. That document was filed in the afternoon of 30 April 2023. I have set out the 'rehabilitation plan' in the event the Court makes a final care order as Annex 1.

### **Threshold**

46. The parties have agreed, and I am satisfied, that the threshold for the purposes of s 31(2)(a) and (b)(i) Children Act 1989 has been met. The document recording their agreement is dated 18 April 2024 and reads as follows (with minor modifications).

### ***Physical Chastisement of children***

47. The children have suffered, and continue to be at risk of suffering, significant physical harm due to F using physical chastisement against the children. Concerns surrounding the parents' use of physical chastisement date back to 2010 and, despite professionals' advice to parents around the use of physical chastisement, the children continue to experience physical harm.
48. On 22nd September 2022, Child 2 attended school with an injury to the side of his head after being assaulted by F. F slapped Child 2 in the face and pushed his head into a wooden door. M was in the house when the incident took place, Child 2 informed her of the incident and M failed to report the incident to the Police. [SWET, p.11; Police Disclosure p.12]

### ***Domestic Abuse***

49. The children have suffered and continue to be at risk of suffering significant emotional harm due to their exposure directly and indirectly to domestic abuse between the parents. The children have either been present in the home and witnessed the incidents of domestic abuse and/or have witnessed the effects of

these incidents on the parents afterwards which will have impacted on their emotional wellbeing. In reverse chronological order:

- (a) On 25 August 2023 at approximately 2.00am, there was a domestic abuse occurrence in the family home. All of the children were in the home at the time and were exposed to the domestic abuse. M was present and failed to report the incident to Police or professionals.
- (b) On 14 April 2022, F assaulted M punching and slapping her to the head 10-15 times. This incident was witnessed by Child 2 who had to ask a neighbour to call the Police. F was charged with battery and pled guilty.
- (c) On 31 March 2022, M was assaulted by F punching and slapping her and making threats to kill her. When giving an account to the Police, M reported being assaulted by F on two further occasions in January and February 2022.
- (d) On 7 September 2020, F assaulted M slapping her to the face during an argument. M refused to support any criminal proceedings against F. The children were in the home at the time of the incident.
- (e) On 5 October 2020, M attended A&E following a fall at work. She was noted to have bruises to her legs and suspected perforated ear drum which she told professionals was as a result of the assault from her husband on 7th September 2020. [SWET, p.9; Police Disclosure, p.36]
- (f) On 27 September 2020, F assaulted M hitting her a number of times to the face and legs. The assault took place in the home and the street outside the home and was reported to Police by a neighbour. M failed to provide a statement to the police. The children were in the home at the time of the incident.
- (g) During direct work with the children, Child 2, Child 4 and Child 3 have all shared worries about arguments between the parents which they have been exposed to and witnessed.

### ***Neglect***

- 50. The children have suffered and continue to be at risk of suffering neglect in the care of their parents due to the parents being unable to prioritise their children's needs above their relationship, being unable to work with professionals and follow advice.
  - (a) M has failed to protect the children and keep them safe from significant harm. She has failed to report incidents of domestic abuse perpetrated, to the Police and refused to support the Police in proceedings against F.
  - (b) M and F have not consistently engaged with professionals, support or followed advice. Parents have refused to follow advice and safety plans designed to keep the children safe. Parents have failed to engage



meaningfully with professionals and support identified to address the risks impacting their children.

- (c) M and F have, on occasions, been unable to implement appropriate guidance and boundaries for the children which has resulted in Child 2 having numerous missing episodes and being at risk of criminal exploitation.
- (d) School report that, on occasion, Child 4 presents as tired and sleepy at school. On some occasions Child 4 has had to stay late at school due to parents' failure to collect him.

### **Legal framework**

- 51. This is an application for a care order under s 31 of the 1989 Act. There is no application for a placement order with a view to adoption under s 21 and 46 of the Adoption and Children Act 2002. There is no dispute between the parties as to the relevant law so I can state this as a series of propositions.

### ***Care Orders and Supervisions Orders***

- 52. The court may, on an application for a care order, make a supervision order and, vice versa: s 31(5) of the 1989 Act.
- 53. The effect of a care order – which lasts until a child turns 18, or until it is discharged - is (a) to confer the powers on a local authority in s 33 of the 1989 Act, primarily the exercise of parental responsibility and to determine the extent to which a parent may exercise their parental responsibility; (b) to impose a number of duties on a local authority including those relating to 'looked after children' in s 22 of the 1989 Act and summarised by Ryder LJ in *W, Re (A Child) (Care Proceedings - Court's Function)* (CA) [2014] 1 W.L.R. 1611, [48]; and (c) to impose a number of important care planning duties on the local authority under the Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) ('the 2010 Regulations') and associated rights to a review of a care plan by an Independent Review Officer ('IRO') under ss 25A and 25B of the 1989 Act and the 2010 Regulations: *Re. W*, *ibid*, [53-59].
- 54. The effect of a supervision order – which ordinarily lasts for up to a year, but may be extended for up to 3 years – is to impose a range of duties on a local authority, primarily 'to advise, assist and befriend the supervised child' and 'to take such steps as are reasonably necessary to give effect to the order': s 35. Schedule 3 gives very limited powers to a court to impose requirements on the person with parental responsibility or with whom the child is living but only if that person consents; and grants powers to supervisors to give directions to the supervised child. By contrast with a care order, a supervision order confers no power in relation to the exercise of parental responsibility or any of the specific duties owed to 'looked after children' under s 22 and there is no equivalent regulatory safety net for the exercise of the local authority functions in relation to them including those exercised by IROs. The general and specific duties which apply to children who are the subject of supervision orders are those which also apply to 'children in need' by reason of the broad definition of the circumstances in

which ‘a child [should] be taken to be in need’ to be found in section 17(10) of the 1989 Act: *Re. W*, *ibid*, [49-52].

55. A supervision order will generally be made if the s 31(2) threshold is met but the child is to remain with their family. A care order must be made if the threshold is met and it is necessary to remove a child from their family. A care order may also be made while a child remains with their family, but only in exceptional circumstances. That is because ‘It should be rare in the extreme that the risks of significant harm to a child are judged to be sufficient to merit the making of a care order but, nevertheless, as risks that can be managed with the child remaining in the care of parents’: *JW (A Child)*, *Re* [2024] Fam. 25, [66(b)], per the President. None of the parties suggested that this was such an exceptional case.
56. Once a full care or supervision order is made the family courts’ functions are at an end unless and until a jurisdiction granted by Parliament or otherwise recognised in law is invoked by an application that is issued: *Re. W*, *ibid*, [71]; *Re S (A Minor) (Care Order - Implementation)* [2002] 2 AC 291, [42]. However, the Court may (for example) be satisfied that a care order should be made but does not approve of the care plan required by s 31A, in which case it may adjourn its final determination of the application or may make a care order and express its observations on the care plan, which the LA should take into account: *Re. S*, [96]. Furthermore, if the Court’s conclusion as to the evaluation of risk or the support that is necessary to meet that risk differs from that of the LA, the LA must accept the Court’s conclusion: *Re. W*, *ibid*, [79-81]. The LA is also obliged to identify in the s 31A care plan ‘the practicable services that it is able to provide to make each of the range of placement options and orders work in order to meet the risk identified by the court’, even if they do not agree with the court’s assessment of risk or the outcome: *ibid*, [82].

### ***The exercise to be conducted by the Court***

57. Before the Court can make a care or supervision order two principal questions must be addressed. Are the threshold criteria for making a care order under section 31(2) of the Children Act 1989 satisfied? If so, what order should the court make?

### ***Threshold***

58. In determining the first question:
- (a) The threshold criteria are set out in s 31(2), namely (a) that the child concerned is suffering, or is likely to suffer, significant harm (the ‘significant harm’ criteria) and (b) that the harm, or likelihood of harm, is attributable to (i) 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; or (ii) the child’s being beyond parental control (the ‘attributable’ criteria).
  - (b) As regards the ‘significant harm’ condition, the general rule is that the burden of proof rests upon the local authority and that the standard of proof of past facts is the balance of probabilities. When considering the

likelihood of future harm, what must be shown is a real possibility of such harm, a possibility that cannot sensibly be ignored, having regard to the nature and gravity of the feared harm in the particular case. Both past and future harm can only be established on the basis of proven facts. Doubts or suspicions are not enough: *B (Children) (Uncertain Perpetrator), Re.* [2019] 1 W.L.R. 4440, [40].

- (c) A child who sees or hears, or experiences the effects of, domestic abuse that is perpetrated by, or which is inflicted on, a person to whom they are related is a ‘victim’ of domestic abuse: Domestic Abuse Act 2021, s 3. Such exposure is capable of amounting to ‘significant harm’. In recent years there has been an increasing awareness that domestic abuse may occur when a person subjects another to a pattern of behaviour amounting to ‘controlling or coercive behaviour’. The definition of such behaviour is to be found in PD 12J, which in turn derives from statutory guidance issued by the Home Office under s 77 of the Serious Crime Act 2015 following the introduction of the new offence of controlling or coercive behaviour under s 76: see *H-N (Allegations of domestic abuse), Re.* (CA) [2022] 1 WLR 2681, [29-32]; *EF (Abduction: Hague Convention (Slovakia), Re.* [2023] EWHC 505 (Fam), [32-36].

### ***What order should be made***

59. As regards the second question, in deciding what order to make:

- (a) The child's welfare (‘best interests’) is the court's ‘paramount consideration’ (s 1(1)).
- (b) Any order made by the court has to be better for the child than no order before it can be made: s 1(5) of the 1989 Act.
- (c) The Court must adopt the ‘least interventionist’ approach: *Re. B-S*, [22], *H-W, Re.* (SC(E)) [2022] 1 W.L.R. 3243 [45]; s 1(5) of the 1989 Act, read in conjunction with section 1(3)(g) and now similarly embodied in section 1(6) of the 2002 Act. A care order removing a child from their natural parents is a measure of ‘last resort’: *B (A Child) (Care Proceedings: Threshold Criteria), Re.* (SC(E)) [2013] 1 WLR 1911, [77]; *Re. W*, [94].
- (d) The Court must have regard to the ‘welfare checklist’ in s 1(3) of the 1989 Act, namely (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); (b) his physical, emotional and educational needs; (c) the likely effect on him of any change in his circumstances; (d) his age, sex, background and any characteristics of his which the court considers relevant; (e) any harm which he has suffered or is at risk of suffering; (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; (g) the range of powers available to the court under this Act in the proceedings in question.
- (e) The Court must have regard to the range of powers available to it: s 1(3)(g). These are, materially: a child arrangements order; a placement with the

parents under a care order or supervision order; a placement with extended family; fostering; adoption (not relevant here); or special guardianship under s 14A of the 1989 Act. These orders allow a local authority to protect the child by a number of means: by supporting parents with resources, by exercising control over the exercise of parental responsibility by the parents over the child and/ or, where necessary, by removing the child to another care setting either temporarily or, in the last resort, permanently.

(f) Where, as here, it is or may be necessary to protect children from one parent the Court must consider what other powers may be available to exclude that parent, not limited to those under the 1989 Act. In the present context these include the powers outlined by the Supreme Court in *H-W, Re*, [35], namely:

(1) An occupation order together with a non-molestation order under the Family Law Act 1996, s 42 ('NMO') with geographical exclusion. A NMO may be made by the court of its own motion in any family proceedings: s 42(2)(b). A power of arrest may be attached to an occupation order: s 47. Breach of a NMO is a criminal offence punishable by up to 5 years' imprisonment: s 42A. There is, however, no power to impose a requirement of electronic monitoring under either order, by contrast with s 35(6) of the Domestic Abuse Act 2021 which permits such a requirement to be imposed when the court makes a Domestic Abuse Protection Order ('DAPO') under s 28 or 31 of the 2021 Act. Those provisions of the 2021 Act are not yet in force, however. Accordingly, the primary means of enforcing a NMO requires the victim to report any breach, which may be of limited value if an abusive relationship is continuing.

(2) A prohibited steps order under section 8 of the 1989 Act or an injunction pursuant to the inherent jurisdiction prohibiting one person from permitting another to enter the house or to contact any of the children.

(g) The Court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. Accordingly, before making a care order the Court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support: *B-S (Children) (Adoption Order: Leave to Oppose)*, *Re*. [2014] 1 WLR 563 (B-S), [28].

(h) The Court must resist the temptation of social engineering and recognise the need to recognise the inevitable diverse and unequal standards of parenting: per Hedley J in *L (Care: Threshold Criteria)*, *Re*. [2007] 1 FLR 2050, [50]:

... society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very

unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.

- (i) The Court's task is likely to be a choice between two or more realistic options. In exercising that choice, the Court must follow the guidance of the current President in *G, Re.* (CA) [2014] 1 FLR 670, recently approved by the Supreme Court in *Re. H-W*:

[49] The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.

[50] The linear approach . . . is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to accord paramount consideration to the child's welfare'.

- (j) The removal of a child from their parents constitutes a significant interference with the Article 8 rights of the child, their parents and wider family members. Accordingly, it will only be lawful if it is a necessary and proportionate means of achieving the legitimate aim of safeguarding the child from harm. As the Supreme Court re-emphasised in *Re. H-W*, the analytical approach identified by the President in *Re. G* in the previous paragraph 'is now rightly the accepted standard for the manner in which a contemplated child protection order must be tested against the requirement that it be necessary and proportionate': [47].
- (k) In determining what is in the best interests of the child, and whether intervention is necessary and proportionate, the primary question will often be (and is in this case) whether the risk of harm to which the child will be exposed if they remain within their family can be adequately managed within the available legal framework and with available authority support. Only if the risk of harm is too great to be adequately managed is it likely to be either proportionate or in the best interests of the child to be removed from their family. That is because removal of a child from their family is not itself risk-free. The most obvious, immediate consequence is that it makes children, and the rest of the family, unhappy and may have significant longer term consequences which I consider further, below. As Sir James Munby asked, rhetorically, in *A LA v MM* [2009] 1 F.L.R. 443, 'What good is it making someone safer if it merely makes them miserable?' While those words were written in a case concerning the best interests of

an incapacitated adult, they are equally applicable to the best interests of children, as the surrounding context of the quote makes clear (emphasis added):

[120] A great judge once said, ‘all life is an experiment,’ adding that ‘every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge’ (see Holmes J in *Abrams v United States* (1919) 250 US 616 at pages 624, 630). The fact is that all life involves risk, and the young, the elderly and the vulnerable, are exposed to additional risks and to risks they are less well equipped than others to cope with. But just as wise parents resist the temptation to keep their children metaphorically wrapped up in cotton wool, so too we must avoid the temptation always to put the physical health and safety of the elderly and the vulnerable before everything else. Often it will be appropriate to do so, but not always. Physical health and safety can sometimes be bought at too high a price in happiness and emotional welfare. *The emphasis must be on sensible risk appraisal, not striving to avoid all risk, whatever the price, but instead seeking a proper balance and being willing to tolerate manageable or acceptable risks as the price appropriately to be paid in order to achieve some other good – in particular to achieve the vital good of the elderly or vulnerable person's happiness. What good is it making someone safer if it merely makes them miserable?*

### ***Decision for the court***

60. The decision as to the child’s welfare is ultimately a matter for the Court, not the local authority, the guardian or the experts. A judge is at liberty to depart from their opinion on that issue, even if unanimous: *Re. W*, *ibid*, [97]. In particular, while careful consideration must be given to the views of the guardian they carry no special weight in the forensic process: *MW v A* [2014] EWCA Civ 405 at [32].

### ***Procedural issues***

61. The following procedural requirements must be borne in mind by the Court:
- (a) The application for a care or supervision order should be determined without delay otherwise the child’s welfare is likely to be prejudiced: s 1(2).
  - (b) The Court should only find such facts as are necessary for it to determine what is in the child’s best interests.
  - (c) The procedure by which the Court makes its order must be fair to all the parties and compliant with the procedural guarantees of Article 8. In particular, the Court must be satisfied it has all the relevant evidence available to enable it to discharge its function, including an appropriately specific care plan: *Re. W*, [64], [93]; *Re. S*, [99].

## **Welfare analysis**

62. I am required to weigh up the advantages and disadvantages of each of the realistic options for the children's care. There are only two realistic options: return to the care of M under a supervision order with a package of suitable support from the LA and appropriate restrictions on F (option 1); or a final care order with a care plan that the children remain in foster care with a view to rehabilitation to M in 12-18 months (option 2). A return to live with F is not a realistic option because of the risks of harm posed by F; M and F are now separated and F is living in a caravan; and F does not propose that the children are returned to him but supports their return to M's sole care. There is no alternative carer that might be considered for a special guardianship order.
63. In choosing between these two options I must undertake 'a global, holistic evaluation of each of the options available for the child's future upbringing' by reference to the welfare checklist in s 1(3) of the 1989 Act before determining which is the most proportionate, namely the least interventionist, means of securing the children's welfare that is also in their best interests.

### ***Option 1: the case for a final supervision order permitting the children to return home***

64. A supervision order is the least interventionist of the two available options. The key question is whether and to what extent a supervision order with other available orders and LA support reduces to an acceptable level the risk that the children will suffer further harm from F.
65. The most serious harm to the children will only eventuate if F returns to live with them or visits the family home and if he then assaults either M or the children. F is not currently living at home and there are a number of measures available that reduce the risk of F returning home (see para 56, above):
- (a) An occupation order and non-molestation order under the FLA 1996 with geographical exclusion, with a power of arrest, restraining F from returning to the family home and from contacting M and the children other than by way of supervised visits.
  - (b) A prohibited steps order and/ or an injunction pursuant to the inherent jurisdiction prohibiting M from allowing F into the house or to have any contact with any of the children.
  - (c) Enhanced monitoring by way of announced and unannounced visits by the LA social work team.
66. I address below under 'Discussion' whether these measures are capable of adequately addressing the risk posed by F.
67. *If* the children can be protected from further harm from F (the key question to which I must return), a return home is likely to meet the children's physical, educational and emotional needs having regard to their age, sex and background.

- (a) Both children have made it clear that they wish to return to live with M. At 13, Child 3 has sufficient age and understanding for considerable weight to be placed on his ascertainable wishes and feelings. Child 4, who has just turned 6, is capable of expressing his wishes and feelings and these carry some weight in the balancing exercise. To make an order that has the effect the children cannot return home, contrary to their expressed wishes, will cause them harm.
  - (b) A return home is a return to their immediate family (albeit without F), their wider family (a maternal uncle and his children), their community and their culture. All witnesses attest to the strong bond of love between M and the children and between the siblings. At home the children will benefit from the presence of their older brother, Child 2, and visits by their older sister, Child 1. I heard little evidence about their wider community and culture but the family regularly attend their local Hindu temple and have a circle of friends who invite them to parties, such as the party on 30 November 2023.
  - (c) Although M accepts that she lacks parenting skills, she is willing to undertake the recommended work and to enable her better to protect the children from abuse as set out in the Goals and Expectations document. That work can take place while the children are in her care.
  - (d) I would add that M has been raising four children, including the two older children, over the course of 20 years. Despite having grown up in a household where domestic abuse occurred, Child 1 has thrived to the extent that she is currently at university. Save for the blind spot she has in relation to her husband's violent behaviour, M's parenting would not justify the removal of the children. I repeat Hedley J's salutary reminder in *Re. L* that 'society must tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent': above, para 59(h).
  - (e) F has also undertaken to complete the work on his abusive behaviour, his parenting skills and his alcohol misuse as recommended in the Goals and Expectations document. There is no need for the children to be removed from M for F to complete this work.
68. By contrast, a permanent removal would mean the loss of home, family, community and cultural ties and is likely to cause the children significant emotional and psychological harm. The harm of separation and long-term foster care can be greater than leaving children in their existing setting and doing nothing: [Shanta Trivedi, \*The Harm of Child Removal\*, 43 New York University Review of Law & Social Change 523 \(2019\)](#). I note the following:
- (a) The children are hoping that they will be returned to their parents' care; the impact on their emotional wellbeing of being told they are to be permanently separated from their parents can be well-imagined. Child 4, in particular, is at an age where he is likely to be particularly affected by the enforced separation from M, his primary caregiver, although I do not underestimate the impact on Child 3.



- (b) The proposed monthly visits with F and twice-monthly visits with M would be essential but will not compensate for this harm. Indeed, the children will experience a repeated sense of loss each time they see, and then must leave, their parents.
- (c) The LA's care plan for long-term fostering may mean the children are safe from harm from F and their immediate physical needs met. But a foster carer – particularly a carer from a different ethnic background - will be unable to provide the sense of belonging and identity that the children will enjoy within their own community, culture and family, even with its acknowledged failings.
- (d) The children's current foster placement is their third since they were removed on 22 December 2023. There was no evidence before me about this new placement, how long it was anticipated it would last or how well (or not) the children were managing. When I asked the Guardian about that placement she told me she had not visited the children and assumed that it was in their best interests to be there because the carers must have been approved by the LA.
- (e) The reason for the children's recent foster care move was because Child 4 had been harming the family dog. It is not clear to me what precipitated this behaviour but it is not too remote a possibility that it is connected to the emotional turmoil of being separated from his family. I accept the Guardian's view that it could also be a consequence of his having witnessed F's aggressive and violent behaviour or a result of cultural difference because he has not been raised around pets.
- (f) Although the LA care plan anticipates a return home within 12-18 months that is currently only a tentative prospect. The Guardian, for her part, expressed considerable scepticism that it would be possible. If the care plan is not actively and conscientiously focussed on rehabilitation there is a significant risk that the children will remain in foster care for the rest of their childhoods - for 5 and 12 years, respectively. According to recent statistics, only 28% of children taken into care in England are returned to their families: [NSPCC Statistics briefing - children in care, January 2024](#), p. 10. It is well-known that this phenomenon, known as foster care drift, may cause significant harm, particularly if there are multiple care placements: '*Multiple care placements have been shown to have a significant impact on looked after children's wellbeing (Hannon et al, 2010) and are associated with poor behavioural outcomes (Rubin et al, 2007)*': *ibid*, p. 12.
- (g) Although the LA's intention is that the two brothers should remain together, the possibility of a separation at some juncture cannot be discounted if further changes of placement are necessary and no foster carer can be identified who is willing and able to take both boys. This risk will increase the longer they are in care.
- (h) There is a significant risk that the children will grow up with a profound sense of injustice that the state removed them from their family, rather than

protected them from F, when it is they and their mother who were the victims of domestic abuse.

69. In summary, a return home should be ordered if it is possible to do so while keeping the children safe.

***Option 2: the case for a final Care Order authorising the children's permanent removal***

70. Foster care is the most restrictive of the children and their parents' Article 8 rights but it is the safest option, at least in the short term. There is a long history of domestic abuse by F against M which the children have witnessed, of physical chastisement of the children by F and of neglect of the children which crosses the s 31(2) threshold, which the parents accept. I find that F continues to pose a high risk of harm to his partner and children within the context of relationships and agree with the conclusion of his probation officer to that effect and 'that until [F] accepts his own mistakes and works with professionals for support, he will simply repeat the same mistakes again and again. [F] needs to reflect on the impact that his avoidant coping strategies have on himself and those he loves.' Of further concern is that the children have been put under pressure by the parents not to make disclosures to the authorities and have been chastised when they have done so. I note, in particular, that following the assault on Child 2 on 22 September 2022, Child 2 initially gave a statement but then retracted it, which meant that the prosecution had to be discontinued. This pressure is harmful on a number of levels: it places the children in a situation where they have conflicting loyalties, which is psychologically harmful; they cannot disclose to those in authority when they or their mother are at risk; and F cannot be held to account and the children protected when they are exposed to his criminal behaviour.
71. The LA and Guardian submit that there is a continuing risk of significant harm in future because there are no measures available that will adequately manage the risk of F returning and resuming his aggressive and violent behaviour. In that event the children will suffer greater harm than if they are removed. Accordingly, if the measures available to the Court cannot reduce the risk of F returning to the family home to a manageable level then a final care order is the only option.
72. Foster care, for the proposed period of 12-18 months, would provide F and M with both the opportunity and the incentive to engage in the work identified by the LA which would reduce the risk of harm to the children by (a) improving M's parenting skills and teaching her how better to protect herself and the children from abusive behaviour; and (b) teaching F about the consequences of his abusive actions and giving him the tools to address those. It therefore offers the prospect that the children could return home, once that work has been done, to live with M and, possibly, F if by then he has sufficiently addressed his previous conduct.
73. Child 3 and Child 4 have already been removed to foster care so the immediate impact of a final care order may be lessened as they have already experienced the immediate pain of separation from their family.
74. Foster care is likely to meet Child 3 and 4's immediate physical and educational needs, at least in the short term, although I heard very little evidence about how

the boys are doing in their current placement save that they are less tired when they come to school than they had been while living at home.

75. In the short term their emotional needs will be better met in foster care than in their own home should it continue to be an abusive one. They will also benefit from the fact they have been, and will remain, removed from the environment in which they have witnessed and suffered domestic abuse. I accept the Guardian's evidence that this will enable them to feel safe, which is crucial to their emotional well-being and development.
76. A return home that is too early, before the risks of further abuse have been adequately addressed, runs the risk of a further removal. I accept the social worker's evidence that this would be devastating for the children.
77. Accordingly, if the only way of keeping the children safe is to remove them from their family then a care order must be made. However, removal will only be a proportionate measure for so long as it is necessary for the purpose of keeping the children safe.

### **Discussion and analysis**

78. In deciding between the two options, the critical question for the Court is whether the range of measures available, if implemented, could prevent F from returning to the family home and thereby reduce the risk of further harm to the children to a manageable level. I have concluded, after much anxious consideration, that the available measures would not keep the children safe, at least in the short to medium term.
79. I have identified at para 59 above the powers available to the court and at para 65 the possible orders that might be made and available measures to manage the risk posed by F, namely: an occupation order and NMO with a geographical exclusion under the FLA 1986, orders prohibiting M from permitting F to return and regular monitoring by the LA, both announced and unannounced. In my judgment, and in agreement with the evidence of the LA and the Guardian, these orders and measures are not sufficient to meet the identified risk. The available court orders are all dependent upon either F, M or the children reporting a breach by F or by the LA detecting a breach during the course of its supervision of the family. None of these provide sufficient assurance given the likelihood that F will breach the orders, the unlikelihood that either F or M will report any breach, the inappropriateness of depending on the children to report any breach, the absence of other protective factors and the unlikelihood that the LA will detect any breach:
  - (a) I am not satisfied that F will comply with the terms of any occupation order or NMO. I find that he has breached previous orders (the restraining order in 2022, the safety plan in November 2023) by returning home in the past: above, paras 11, 42. It is highly unlikely that either Child 2 or Child 4 will have invented their separate accounts that F had returned home in breach of those orders. I reject F and M's denials that he has done so. In any event, it is concerning that neither F nor M immediately reported to the local authority the meetings between F and the children on 30 November and 2 December 2023 and F's telephone conversations with the children, all of

which were a breach of the Court ordered safety plan. These breaches took place while these proceedings were ongoing and the family were under significant scrutiny. It is more likely that F will breach any orders made by the Court once the proceedings are over when that scrutiny will be significantly reduced. In any event, I do not accept F's evidence that he would report any breach to the LA given his record of non-compliance with orders in the past.

(b) I do not accept M's evidence that she would report any breach of the Court order by F, for three reasons.

(1) F and M gave evidence that their relationship has been over since 13 October 2023. I do not accept that evidence. In reaching that conclusion I place weight, in particular, on: the level of contact between F and M revealed by the telephone analysis, including the happy anniversary messages sent by M and F in November 2023; F's instructions to his lawyer at the hearing on 2 January 2024 that he remained in a relationship with M; and the evidence of Child 4 that F had stayed over in M's room in November 2023. I also consider it telling that both M and F have expressed the hope that their relationship could resume, although in M's case I accept that she stated this to be conditional on F changing his behaviour and sustaining that change. In my judgment it would be wrong to return the children to M's care on the premise that the relationship is over. That would be to set them up to fail. Both M and F need to have the time and the opportunity to conduct the necessary work. M, in particular, needs to make a choice whether to prioritise her children over her partner. If she chooses to continue or resume her relationship with F then the LA will need to be satisfied that F has addressed his own behaviour and that the risk of further abuse of M and the children has been reduced to an acceptable level. In the meantime, this factor causes me considerable doubt that M will report any contact between F and the children or any other breach of a NMO.

(2) M has proved unable to protect the children from harm from F in the past, despite significant involvement and input from the LA. M has been in a coercive and controlling relationship with F since 2009 and was in an abusive relationship with her previous partner. As I have had cause to observe elsewhere, the insidious nature of coercive and controlling relationships is such that the victim remains vulnerable to the abuser's influence and will often return to the abusive relationship: *Re. EF (Abduction: Hague Convention (Slovakia))* [2023] EWHC 505 (Fam), [65]. Unless and until M engages meaningfully in the work identified in the Goals and Expectations document she will continue to lack insight into the risk that F poses to her and the children and the harm that a resumption of his behaviour will cause. She will therefore remain unable to protect herself and the children from that harm. While I find she is now highly motivated to prove her willingness to engage in the necessary work in order to secure the return of Child 3 and Child 4, that

willingness is likely to dissipate if the children were to be returned to her now. She needs to demonstrate a consistent engagement and understanding of the risks posed by domestic abuse generally and by F specifically. That is only likely to happen if the children remain in foster care, at least in the short to medium term. Until then, I do not consider M will be able to provide effective protection for the children in the event that F seeks to return home or that she will report any breach by F.

- (3) M has made no application for protective orders against F in the past or in the context of these proceedings.
  - (c) The children might disclose that F has breached Court orders; they have done so in the past. However, they should not be put in a position where their safety depends upon their own reporting. That would subject them to conflicting loyalties. They would also be at risk of further violence from F who has, in the past, chastised the children for making allegations. Their older brother, Child 2, is a potentially protective factor but he has been the subject of serious assaults by F and could be at risk of further assaults if he were to allege that F is in breach.
  - (d) Other protective factors are no longer available. The children's elder sister, Child 1, has now left home and, I understand, a neighbour who had previously reported incidents of domestic abuse has moved away.
  - (e) The LA is unlikely to detect any breaches from the announced or unannounced visits that they are able to make. If the children were returned to live with M under a supervision order the LA are only prepared to provide monthly supervision. Although in her closing submissions Ms. Summers, on instructions, said the LA were prepared to provide weekly supervision, at least for the first 3 months, I am not satisfied that would provide adequate protection if M and F are sufficiently intent on avoiding detection. I note that the LA did not detect the breaches of the safety plan during the course of the proceedings when more intensive scrutiny was in place; these were either disclosed by the parents or by the children.
80. Accordingly, I find that a final care order authorising the children's continuing removal from the parents' care is the only order that will secure the children's safety. Such an order is in their best interests and is a proportionate means of protecting them from harm for the purposes of Article 8.
81. However, in my judgment it is only proportionate and in the children's best interests for them to be removed from M's care for as long as that is necessary to keep them safe. Once they can safely return home then they should be supported to do so. There are two developments that may change the calculus of risk.
- (a) First, the work that the parents have agreed to undertake as set out in the Goals and Expectations document. The purpose of that work in M's case is to enable her to acquire insight into F's previous abusive behaviour so she can recognise it and avoid it in the future, both for her own sake and that of the children. In F's case it is to reduce the risk that he poses to M

and the children from his violent and aggressive behaviour. Once either or both of these goals have been satisfactorily achieved – which will require further assessment by the LA - the children must be returned to live with M. Whether that is also with F will depend upon his completion of the necessary work to reduce his risk to the LA's satisfaction.

- (b) Second, once Part 3 of the Domestic Abuse Act 2021 has come into force it will be possible for either M or the LA to apply for a Domestic Abuse Protection Order ('DAPO') to be imposed on F, to include a condition of electronic monitoring. That will provide additional protection for the children against F seeking to return home as his movements will be independently monitored and enforcement of the order will not rely upon monitoring by M or the children or detection by the LA, as now. I heard no submissions from the parties on this question but, had a DAPO been available in this case, it would have gone a long way to addressing the Court's concerns about the risks posed by F.

82. It is not appropriate to seek to anticipate when either of those events will occur which are dependent on a multiplicity of factors that cannot be predicted; nor to adjourn these proceedings to await their outcome. There is sufficient evidence for me to reach a decision on the basis of the s 31A care plan provided by the LA and any further delay is likely to harm the children: s 1(2) of the 1989 Act. The management of the care plan falls squarely within the LA's functions under the scheme provided for by the 1989 Act. However, given these are matters that go to the proportionality of the interference with the Article 8 rights of the children and their family they must be kept under review by the LA and the IRO. Furthermore, the work identified in the Goals and Expectations document must commence as soon as possible and should not be delayed because of a lack of resources. This case must not be allowed to drift. If a year from now the point has not been reached where the necessary work has been finished and planning for a return home has reached an advanced stage then searching questions will need to be asked. The IRO will then need to give careful thought to whether to refer the case to CAFCASS to consider what steps are necessary to safeguard and promote the children's welfare, for example by instituting proceedings on their behalf under reg. 45 of the 2010 Regulations. I direct that a copy of the amended care plan, together with the rehabilitation plan in Annex 1 and this judgment, should be sent to the head of service and the IRO alongside my comments in this paragraph.

### **Parental contact**

83. As I have observed, the LA agree with the Guardian that the children should have monthly supervised contact with M for 4 hours (whether in a single visit of 4 hours or two visits of 2 hours) and with F for 2 hours. There was no cross-examination on this point by the parents which I take to be not in dispute. I accept the submission made by the Guardian that there should be sufficient parental contact for the relationship to be maintained but not so much that the children never have a chance to think about anything else. Save to endorse the Guardian's recommendation as to the amount of contact in the care plan, I make no findings or observations about the level of contact going forward and whether it should be

supervised or unsupervised. These are matters for the LA under the supervision of the IRO.

**Decision/ outcome**

84. I make a final care order authorising the LA permanently to remove the children to foster care in accordance with the care plan and annexed rehabilitation plan.
85. That is my judgment.

## **Annex 1 - Rehabilitation Plan**

### **Work to be undertaken prior to reunification**

#### **M**

- 1) Freedom programme · 6 – 8 weeks referral time · 10 – 12 weeks of sessions · Key sessions must be completed to enable the course to be considered completed
- 2) Talking therapies · 6 – 8 weeks for initial assessment · Length of involvement dependent on the recommendations from the initial assessment
- 3) Parenting support work · 6 – 8 weeks referral time · 12 – 16 weeks intervention (more to be considered if necessary)

#### **F**

- 1) Fresh Start · 6 – 8 weeks referral time · 26 – 32 weeks of sessions · Those awaiting the outcome of criminal justice process, undertaking work via another DV programme and those attending other counselling or therapy will not be accepted
- 2) Talking therapies · 6 – 8 weeks for initial assessment · Length of involvement dependent on the recommendations from the initial assessment
- 3) Parenting support work · 6 – 8 weeks referral time · 12 – 16 weeks intervention (more to be considered if necessary)
- 4) Assessment of local addiction recovery services · 4 – 6 weeks for initial assessment · addiction recovery services have confirmed via email that they have already made contact with [F] who stated he did not require their services and the referral has been closed as of 29th April 2024 All referrals have been made by the LA. The timescales for the work to be undertaken by parents needs to be considered as a rough guide and will be dependent on the individual services availability and on the engagement of the parents and ability to make themselves available for all sessions.

### **Parenting Assessment**

Once all of the above work has been completed (approx. 12 – 18 months) a Parenting Assessment will be undertaken of [M] solely or jointly with [F]. The approximate timescales for this will be 12 weeks but are dependent on the availability of an assessor to undertake the assessment and parents' engagement. If [F] was being assessed as joint carer, further alcohol testing would be required.



## **Transition**

If the parenting assessment is positive a transition plan would be formulated for the return of the children, depending on the recommendations and analysis therein. The timescales of this would be dependent on the level of contact between the parents and children at the time. If contact was still supervised/supported, then this would need to progress to unsupervised before a transition could be considered. Once parents were having regular unsupervised contact with the children (at least 3 times per week) then a transition plan would be formulated. This would be undertaken over approximately 6 weeks. This would start with unsupervised contact within the family home moving to an overnight contact then weekend contact and then full transition. SW visits would be conducted along with input from school and foster carers.