



Neutral Citation Number: [2024] EWFC 445

Case No: [XX]24C00011

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 July 2024

Before:

MRS JUSTICE THEIS DBE

Between:

A Local Authority
- and -

Applicant

(1) X

(2) Y

Respondents

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

William Dean (instructed by **Hugh James**) for the **Applicant**
Tim Parker KC, Lucy Lodewyke and Oliver Millington (instructed by **Goodman Ray**
Solicitors) for the **First Respondent**
John Tughan KC and Rebecca Foulkes (instructed by **Dawson Cornwell**) for the **Second**
Respondent
Fiona Holloran (instructed by **Pluck Andrew Solicitors**) for the **Third and Fourth Respondents**
Deirdre Fottrell KC and Callum Brook (instructed by **Hogans Solicitors**) for the **Fifth**
Respondent

Hearing date: 4th July 2024

Judgment: 11th July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 11th July 2024 by circulation to the parties or their representatives.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

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

Mrs Justice Theis DBE:

Introduction

1. These ongoing care proceedings that relate to three children, A 16 years, B 14 years and C 9 years were issued by the local authority early in 2024. Their parents, X and Y, are parties, as are the children through their Children's Guardian and A is separately represented. All three children are the biological children of X's sister and were adopted by X and Y at a young age. They have no ongoing contact with their biological parents.
2. The case management issue I am dealing with is whether there should be a fact finding hearing in relation to B and C. The court determined earlier in this hearing that a care order should be made in relation to A, driven in part by the fact that he will be 17 years very shortly.
3. In summary, the parents submit it is not necessary or proportionate to have a fact finding hearing as the parents have made concessions in relation to threshold and do not take issue with the care plans for B and C. That is opposed by the local authority, A and the Children's Guardian. I heard submissions on this issue on 4 July 2024 and reserved judgment until today.

Relevant background

4. It is only necessary to provide an outline of the background.
5. The parents have been together for over 30 years. They have five children, the eldest two are over 18 years.
6. In recent times there have been difficulties with A, with the result that A left the family home in 2022, and was placed with foster carers pursuant to a voluntary care arrangement agreed with the local authority. Steps were taken to try and rehabilitate A, which were not successful and he went to different foster carers in May 2023. Between then and January 2024 there was a steady increase in contact by agreement so that by January 2024 he was visiting the family three times a week.
7. In late January 2024 there is evidence that B expressed reservations to a member of staff at school to returning home due to X's behaviour. Following phone calls he did return home. A was there when he got home, as was X. It is reported B was in tears and spoke to A. A left the home and returned to his foster carers. B and C made allegations to A later that day about X's behaviour, including alleging that X had attempted to strangle B and threatened to kill him. A's foster carer reported the matter to the police.
8. The police arrived at the parents' home and asked to see B and C when it was discovered they had left home. They were found by the police at A's foster carers and placed in a separate foster placement.
9. B and C made allegations of physical and verbal abuse against the parents, detailing a harsh and punitive regime in the home. Over time their allegations have been made to the police, social worker and Children's Guardian. The police investigation has involved A and B being ABE interviewed three times and C ABE interviewed twice.

The parents have each been interviewed twice and are on police bail, having been arrested for assault.

10. The local authority issued care proceedings in relation to B and C in January 2024 and A in February 2024. The proceedings were consolidated and recently A was joined as a separate party.
11. Directions were given for a final welfare hearing at the end of July. There were delays in the police disclosure which meant the local authority threshold was delayed. It was finalised on 17 May 2024. Due to A's age separate directions were made leading to a final hearing on 4 July 2024, as he was 17 years shortly after that. Even though details in the threshold findings related to A, agreement was reached that the threshold was met regarding A that he was beyond parental control enabling the court to make a care order in relation to A on 4 July 2024, endorsing a care plan that included A remaining with his current foster carer. X and Y did not seek A's return to their care or to have any contact with A.
12. In the relation to B and C the threshold document set out over six paragraphs the particulars of the way the local authority contended the threshold criteria were met against X, including detailing allegations made by the children of a punitive regime at home including punishments designed to humiliate the children, details of physical, verbal and threatening abuse that caused them emotional and physical harm and resulted in B and C leaving the family home in January 2024.
13. In relation to Y the local authority allege a failure to protect in that Y was aware of X's behaviour but failed to intervene or take any other action to protect the children from harm.
14. As the local authority set out in their skeleton argument for this hearing the particulars against X *'identify, inter alia, refusing food to the children, leaving the children at home overnight, controlling behaviour, abusive (including racist) language, shouting and swearing, throwing objects, inappropriate punishment (such as standing against a wall, being isolated in bedrooms or outside for long periods, confiscation of spectacles, pushing soap into a child's mouth, throwing a child into a water trough), physical assaults (including hitting with objects, smacking, restriction of the neck, dragging and hitting heads together).'*
15. In their responses to the threshold findings X and Y state as follows.
16. X denies all the serious allegations and states the threshold is crossed as follows *'[X] accepts that threshold is met in respect of [B] and [C]. [X] experienced considerable difficulty, along with [Y], in parenting [A] until he became beyond their control. [X] accepts that that in attempting to manage [A's] behaviour, [X's] emotional availability to [B] and [C] was curtailed. As a result [X] was not aware of their unhappiness at home and [B] and [C] were unable to express their feelings to either [X] or [Y]. Ultimately this unhappiness crystallised into a wish to leave home and their subsequent departure. These events taken as a whole will have caused significant emotional harm to [B] and [C].'*
17. The relevant parts of Y's response states as follows, although not in response to any particularised allegation: *"It is accepted that the children suffered significant emotional*

harm and that harm was attributable to the care they were receiving and were likely to receive. That acceptance is based on the fact that the children have chosen to leave the care of [X and Y], that they do not wish to return and that it is accepted that they should not return. It is accepted that [Y] did not know that the children were unhappy or the reasons for any unhappiness. The family relationships have irretrievably broken down.”

18. The local authority have filed their final evidence and care plan in relation to B and C. The police disclosure is complete. The local authority plan is for B and C to remain in long term foster care.
19. In their final evidence the parents set out their position. They agree the care plan. X’s statement repeats X’s response to the threshold, stating that if there is to be a fact finding X will provide a detailed narrative statement and will seek to file and serve witness evidence from family and friends. In relation to the care plan X does not seek to care for B and C and ‘*cannot envisage ever being able to*’. X is aware C had recently said he wanted to come home, but that has not changed X’s position as X ‘*would be constantly on edge and in absolute fear of further false allegations being made*’. X describes what the impact of the allegations made has been on the family, the fact that X can’t work and the ramifications for X’s mental health where X is being supported by the local mental health team. They are having to sell the family home and plan to move out of the area. X accepts B’s wishes in not wanting contact with X. C’s wishes regarding contact vary, X expresses a willingness to discuss this with the professionals but is clear all future contact will have to be supervised. As regards a fact finding hearing X considers that would be very divisive and would destroy already fractured relations with the children.
20. Y’s statement confirms the same position as X. Y does not feel able to parent the children again, describes the difficulties in reaching that decision, the impact on Y’s mental health and the fear Y feels in taking on any parenting role again due to the ‘*worry all the time that something could go wrong*’. Y is aware of C’s changing views but Y does not consider C coming home is a realistic option ‘*either now or in the future*’. Y would like to work towards contact with C as ‘*this will be in [C’s] best interests*’ but Y states it would need to be professionally supervised and Y would need to be ‘*emotionally well enough to take part*’.
21. A, B and C have been the subject of detailed ABE interviews, X and Y have been interviewed by the police and the police disclosure details the other statements taken by the police from the wider family. The police have recently received the telephone download. The local authority understand that the police investigation is complete. Although this has not been confirmed by the police, the parties expect the next stage will be for the material to be considered by the CPS regarding any charging decision. X and Y are on police bail. Their next bail date is in two weeks time.
22. If the matter is to proceed to a fact finding hearing the time estimate is likely to be up to 10 days.

Legal framework

23. Before the court has jurisdiction to make any public law orders the threshold criteria in section 31 Children Act 1989 (‘CA 1989’) must be established. Section 31(2), so far as

material, provides that for the threshold to be crossed it must be proved that: “the child concerned is suffering, or is likely to suffer, significant harm; and ... that the harm, or likelihood of harm, is attributable to ... the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him” (emphasis added).

24. The question of whether the threshold criteria are met is a matter for the court which includes consideration as to whether the justice of the case is met.
25. The question as to when and in what circumstances there is a need for a fact finding hearing has been the subject of a number of recent decisions in the Court of Appeal. Those decisions (*Re H-D-H* [2021] EWCA Civ 1192, *Re H-W* [2023] EWCA Civ 149 and *P and E (Care Proceedings: Whether to hold a fact finding hearing)* [2024] EWCA Civ 403) approved the principles set out by McFarlane J (as he then was) in *Oxfordshire County Council v DP, RS and BS* [2015] EWHC 1593 (Fam).
26. In *Oxfordshire* McFarlane J stated at [19(ii)] ‘*it does not... follow as night follows day that the court’s jurisdiction to continue with the proceedings would end simply because the parties all agree the proceedings should be withdrawn*’. At [21] he continued once is established that ‘*it is lawful for the court to conduct a fact finding exercise despite the fact that at this stage no party is seeking a public law order...the court has a discretion whether on the individual facts of [a] case, it is right and necessary to do so*’. At [24] he set out that “*the following are likely to be relevant and need to be borne in mind before deciding whether or not to conduct a particular fact finding exercise*”:
 - a) *The interests of the child (which are relevant but not paramount)*
 - b) *The time that the investigation will take;*
 - c) *The likely cost to public funds;*
 - d) *The evidential result;*
 - e) *The necessity or otherwise of the investigation;*
 - f) *The relevance of the potential result of the investigation to the future care plans for the child;*
 - g) *The impact of any fact finding process upon the other parties;*
 - h) *The prospects of a fair trial on the issue;*
 - i) *The justice of the case.*
27. The *Oxfordshire* case was approved in *Re H-D-H* where Jackson LJ stated at [22] “*The factors identified in Oxfordshire should therefore be approached flexibly in the light of the overriding objective in order to do justice efficiently in the individual case. For example:*
 - (i) *When considering the welfare of the child, the significance to the individual child of knowing the truth can be considered, as can the effect on the child's welfare of an allegation being investigated or not.*

(ii) The likely cost to public funds can extend to the expenditure of court resources and their diversion from other cases.

(iii) The time that the investigation will take allows the court to take account

of the nature of the evidence. For example, an incident that has been recorded electronically may be swifter to prove than one that relies on contested witness evidence or circumstantial argument.

(iv) The evidential result may relate not only to the case before the court but also to other existing or likely future cases in which a finding one way or the other is likely to be of importance. The public interest in the identification of perpetrators of child abuse can also be considered.

(v) The relevance of the potential result of the investigation to the future care plans for the child should be seen in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met.

(vi) The impact of any fact finding process upon the other parties can also take account of the opportunity costs for the local authority, even if it is the party seeking the investigation, in terms of resources and professional time that might be devoted to other children.

(vii) The prospects of a fair trial may also encompass the advantages of a trial now over a trial at a possibly distant and unpredictable future date.

(viii) The justice of the case gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been taken into account. One such matter is whether the contested allegation may be investigated within criminal proceedings. Another is the extent of any gulf between the factual basis for the court's decision with or without a fact-finding hearing. The level of seriousness of the disputed allegation may inform this assessment. As I have said, the court must ask itself whether its process will do justice to the reality of the case."

28. In *Re H-W* [2023] EWCA Civ 149 Baker LJ stated at [28] "*No additional guidance is required beyond what is set out in the Oxfordshire case and Re H-D-H, save in one respect. When considering the potential evidential result of a fact-finding hearing it may sometimes be appropriate for the judge to have regard to the apparent quality of the evidence. It will never be appropriate, however, to carry out a detailed evaluation, not least because the court can only make findings on the totality of the evidence and at the case management stage not all of the evidence will have been filed. Anything akin to a mini-trial of the allegations would therefore be wrong in principle and wasteful of time and resources. Although each decision will depend upon the circumstances of the case, the apparent quality of the evidence is accordingly unlikely to be a powerful factor in the overall decision unless it is clear without the need for detailed assessment that the evidence appears to be particularly strong or particularly weak.*"
29. In *P and E* Baker LJ at [5 – 6] and [53] emphasised the need to focus on the relevant principles and that '*Comparison with decisions of other judges at first instance are unlikely to be helpful because inevitably each case turns on its own facts...*' [53]

30. At the risk of list overload Mr Dean helpfully drew the threads together from the various cases as follows:
- a) the *Oxfordshire* principles remain good law and the correct starting point;
 - b) those principles (or factors) may overlap and they are non-exhaustive;
 - c) the factors should be applied flexibly in light of the overriding objective;
 - d) the factors will not always have equal weight in every case;
 - e) when considering the potential evidential result, there should not be a detailed examination or ‘mini-trial’, and the apparent quality of the evidence is unlikely to be a powerful factor in the overall decision unless it is obviously particularly strong or weak; and
 - f) decisions should not be made on the basis of comparing facts between cases, but rather by applying the *Oxfordshire* principles.
31. Following hearing oral submissions the parties submitted an agreed note referring to the relevant cases setting out the considerations the court should take into account if it is going to make findings outside the known parameters of the case. They are usefully summarised in in *Re L* [2022] EWCA Civ 169 at [62], in which the principles in the case law including *Re G and B*, *Re W* and *Re A (No. 2)* were described as “straightforward and uncontroversial”. In dismissing the appeal in *Re L* (and upholding the Recorder’s findings), Baker LJ said at [70]: “*we start by considering the disparity between the case advanced by the local authority and the recorder’s findings. ... the greater the extent of the disparity, the greater the need for procedural safeguards. There is undeniably a disparity between the local authority’s final schedule and the findings ultimately made by the recorder. We are uncertain whether, to adopt Wall LJ’s colourful phrase in Re G and B, the recorder could be described as having gone ‘off piste’. But for the reasons that follow, we accept [counsel]’s submission that the recorder’s findings were not, to use McFarlane LJ’s phrase in Re W, outside the ‘known parameters’ of the case.*”

Submissions

32. Mr Parker KC and Mr Tughan KC submit, in the light of X and Y’s concessions, it is not necessary for the court to hold a fact finding hearing. They recognise that the concessions are different than the local authority pleaded case.
33. Mr Parker submits X’s response is a ‘*proper response to the child protection concerns and meets the statutory test*’ in four respects. First, it sets the scene, that A is beyond the control of his parents, that doesn’t apportion blame to A. Second, X acknowledges X’s struggle in managing A’s behaviour. Third, as a result of that struggle X was not emotionally available to B and C, which meets the second limb of s31(2) regarding causation. Fourthly, X accepts that failure to be emotionally available has led to B and C suffering significant emotional harm. X’s concessions are not characterised to blame one of the children and what the children say is that X was emotionally unavailable. X relies on what X describes is the ample evidence from their older children and wider support network that X is able to offer loving, attuned parenting.

34. Mr Parker submits the court when considering *Oxfordshire* arguments it is often faced with parents who respond to the local authority case with limited concessions out of expediency and for tactical purposes. He submits X's response is not tactical, describing it as '*a frank recognition that his parenting of [B and C] fell below the expected standard which caused them significant emotional harm*'.
35. Turning to the *Oxfordshire* criteria Mr Parker submits the striking and magnetic factor in this case is the local authority has completed its care planning process and there is no suggestion the plans for B and C are dependent upon the outcome of the fact finding process. He submits a fact finding hearing will have no material impact on the care plans for the children and the remaining *Oxfordshire* criteria should be evaluated in that light, such a hearing in this case, put simply, is not necessary.
36. The children's welfare would not, he submits, be served by what he termed a '*sterile*' factual enquiry which will not have any impact on the future arrangements for the children. This is particularly when a fact finding hearing may involve some or all of the children giving evidence.
37. If there was a fact finding hearing there would inevitably be delay as the hearing would take longer than the current listing of five days and in any event further case management decisions will need to be made. A fact finding hearing will have an impact on resources and even though it is supported by the local authority and the Children's Guardian account should still be taken of their resources. Mr Parker submits that in the context of an established care plan the cost to public funds would be unnecessary and therefore wasted. The court also needs to consider the impact on the parties, including the children who may be required to give evidence. For X and Y their written evidence details the emotional and psychological impact on them of these proceedings. They are unable to work, they are going to have to sell their home and they are both being supported by the mental health team. The police disclosure describes the impact on the wider family and the circumstances of the recent Family Group Conference illustrates the enormous difficulties within the family.
38. Mr Parker submits the evidential result would not affect the care plan for these children or have a bearing on other cases. It is not necessary in the context of the case or any wider basis. X and Y do not seek to parent the children. The allegations continue to be the subject of a police investigation which meets the wider public interest in the identification of perpetrators of child abuse.
39. Mr Parker raises the issue of a fair trial in the event that X is not able to cross examine the children although he recognises that will need to be the subject of a *Re W* application. Whilst he accepts this process does not render any trial unfair it is a factor for the court to bear in mind.
40. The wider justice of this case does not require a fact finding hearing. Mr Parker submits there is a need to stand back to survey the case. The purpose of these proceedings was to enable the local authority to implement a plan to protect the children from future harm. Mr Parker submits '*That has been done; justice will have been served*'.
41. Mr Tughan submits in the circumstances of this case a fact finding hearing is not necessary and would be disproportionate, referring the court to not only the principles in the relevant cases but also the overriding objectives to deal with cases justly, having

regard to the welfare issues involved (Family Procedure Rules 2010 rule 1.2 ('FPR')) and the recommendation from the Public Law Working Group emphasising the need to focus on *'Only those issues which inform the ultimate welfare outcome for the child need to be and should be the subject of a fact-finding hearing by the court...'* [26]. Sir Andrew McFarlane P referred to these matters in *'the Road Ahead'* as providing signposts not directions.

42. Mr Tughan submits the case against Y is one of passivity rather than positive activity. Mr Tughan emphasises that due to the concessions made and that Y does not seek the return of the children it is not necessary to determine the outstanding factual issues. If there is to be any future contact Y agrees it should be supervised. If there is a fact finding hearing the children are likely to give evidence (subject to the outcome of a *Re W* application), the emotional impact on all the parties is obvious as is the impact of the inevitable delay in such a hearing. He relies on Y's most recent statement that outlines the serious concerns for Y's mental health. On the facts of this case Mr Tughan submits there is no prospect of further children being cared for by X and Y, in those circumstances the safeguarding of future children does not arise. Any wider implications for X and Y related to their work is a matter for the relevant regulatory bodies. The focus must remain on whether it is necessary for a fact finding hearing to inform the welfare decisions of the children. The care plans are accepted. The structure is there, namely threshold is accepted in attributing the emotional harm to total breakdown in family relationships and Y accepts any future contact should be supervised. To the extent there is any ongoing uncertainty that is no different than with many other children in care and the local authority are experienced in managing such situations.
43. On behalf of the local authority, Mr Dean takes issue with whether the concessions made meet the relevant test in s 31 CA 1989. The local authority threshold document sets out details in relation to harmful and abusive behaviour alleged by the children. What Mr Dean describes as the *'bland'* concessions made by Y and X in reality place the responsibility for causation on A's behaviour. As he set out in his skeleton argument in relation to X's concession *'(i) the parents had difficulty in parenting [A]; (ii) by reason of trying to manage [A's] behaviour (which implicitly was poor) [X's] emotional availability to [B] and [C] was limited; (iii) as a result of that limit, [X] was unaware they were unhappy and unable to express their feelings; (iv) that unhappiness led to them leaving home; and (v) taken overall [B] and [C] have thus suffered significant emotional harm.'*
44. Mr Dean submits X's concession is insufficient to cross the threshold as the ultimate attribution in the chain of events in X's concession response is to A's behaviour in that, in being so caught up with dealing with A, X was unavailable for the children. Alternatively, Mr Dean submits, it is so narrow and simply does not address any of the specific allegations in the local authority threshold document and its evidential foundation is limited to a repetition in X's statement of X's threshold response.
45. Turning to Y's response it does not respond to any particularised allegation. It invites the court to infer from the fact that the children left home and do not wish to return that they must have suffered significant harm. It is, Mr Dean submits, insufficiently specific and has no evidential foundation. Alternatively, it is too narrow.

46. In essence what is relied upon by X and Y are the fact the children left home but not any facts as to why they left home. The gulf, submits Mr Dean, is too wide to provide any useful basis to manage the care plan. By way of example, C is reported to express a wish to return home if there was a change in behaviour. To enable the local authority to assess that now or in the future it needs an understanding of the facts that resulted in the children leaving their home. Mr Dean submits the children's experience in care and the decisions made to support them are likely to be on a more secure footing if there is a fact finding hearing.
47. In relation to the *Oxfordshire* factors Mr Dean submits there is a wide gulf between the case of abuse asserted by the local authority and the concessions by X and Y where they have sidestepped the allegations relied upon by the local authority. He submits without a fact finding hearing there will be no resolution to the disputed reasons for the children leaving the parents' care and not returning to it. Knowing the truth of these matters is necessary for the local authority and the court to inform future care planning. C has already expressed a wish (variously) to return home or have contact with X and Y although he is unaware of X and Y's position of not seeking to resume his care. Bearing in mind the age of B and C their views are likely to change over time. Without a proper factual foundation (agreed or determined) there will be difficulties in assessing future risk, or the need or prospect for change, and no confident analysis of how realistic and durable any placement would be. Similar considerations apply to contact, whilst X and Y agree supervision now that may change and the similar difficulties extend the wider family members. These considerations also apply to A's future relationship with B and C. The parents allege that A has caused or contributed to B and C's allegations so the truth or otherwise is likely to have a direct effect on the nature and supervisions of A's future contact with B and C.
48. In this case Mr Dean submits there is a significance for these children of knowing the truth and for those making decisions about their future care being in the same position. It is recognised there will be a delay but that has to be balanced with the benefits of the other factors. There is no issue the children should remain in foster care and the children and parents have been interviewed. Mr Dean recognises further cost will be incurred but that needs to be balanced with the benefit of future care planning being on a more secure footing.
49. Mr Dean submits a fact finding hearing is necessary in this case. This is a case where the children have made consistent serious allegations against their parents. If they are established they would reveal a different quality of relationship and history between the parents and the children than if they were found not to be true. If they remain undetermined every discussions and decision about the family interactions will be premised by an unknown foundation. By contrast, if the allegations are resolved, Mr Dean submits, there will be a clear, common factual foundation to those interactions. He submits a factual framework will *'weigh heavily in future care planning, including as to contact (both whether it happens and in what form). If certain of the allegations are proved there will be a basis for recommending work and engagement with services to address the concerns, to benefit the family relationship, and against which any progress can be measured'*. It is entirely likely the children's wishes will change over time, factual determinations will inform whether it is safe and appropriate for the children's wishes to be followed.

50. Mr Dean recognises the evidence as to the impact of any fact finding process upon the other parties, including the children. However, weighed in the balance is the wider welfare benefit of the children knowing their allegations have been taken seriously and their safety can be assured by knowing what, if any, adverse experiences they have suffered. If the parents' accounts are correct they will have the security of knowing that the local authority will approach its functions without unfounded suspicion. The process itself will cause stress and upset but, Mr Dean submits, its purpose and benefit are meaningful and outweigh the contrary considerations.
51. There is no reason to conclude there would not be a fair trial, the allegations are recently made, all parties have had access to material produced by the police, there will be the opportunity for parties to adduce such further evidence as they wish and all witnesses (subject to decision on vulnerability) are available to give evidence and all parties are represented by specialist legal teams. If the allegations had to be returned to at a later stage the evidence would be older and staler.
52. Mr Dean acknowledges the objective of the court procedure is to deal with the cases justly, having regard to any welfare issues involved. Mr Dean summarises the local authority position as follows:
- a) The children have made serious allegations and wish for them to be investigated. Doing so would ensure that they know their reports and concerns are afforded due weight.
 - b) Given the dispute, it is essential that there is a common factual foundation to function as the basis for all future assessments and care planning.
 - c) The parents deny all of the particularised allegations, such that the gulf between the parties is significant. They offer threshold concessions that do not meet the extent or gravity of the allegations. There is no realistic likelihood that there can be a mutual starting point for any future discussions about risk.
 - d) The children's situations will not be frozen in time between now and their eighteenth birthdays. They may wish to have contact with the parents; and they may even (as [C] has started to indicate) wish to return home. There can be no assessment of concerns, and required changes, without knowing what happened when the children were in the parents' care. Similarly, there might be a future application to discharge the care orders.
 - e) The need for a factual foundation is not limited to considerations about the parents. Other family members are alleged to have been involved, or to have had knowledge, of the matters in issue.
 - f) There might be future disagreements about care planning even if the children do not express a wish to have contact or return to the parents' care. The parents will retain parental responsibility and might disagree with important parts of the proposed plans. Resolving the issues now,

rather than (if required) much later when the evidence is not fresh, will avoid potential disagreements.

- g) Even if there is no future direct engagement with the parents, the children will be entitled to receive life story work. That in itself requires the local authority to know what happened, to ensure such work is meaningful and reflects the children's experiences.
- h) The local authority invites the court to conclude that there should be a fact-finding hearing to resolve this central dispute between the parties, and to ensure that the children's reports are listened to and, if true, validated.

- 53. A's position on this issue was raised as a preliminary point. This hearing had also been fixed to be a final hearing in relation to A (as to which in the end there was no material dispute between the parties) and to consider the *Oxfordshire* argument regarding the continuing care proceedings regarding B and C. Prior to the hearing there had been directions sought about A's attendance at the hearing. This resulted in A having a short meeting with me in the presence of his solicitor, counsel and Children's Guardian which no one objected to and a note was taken. A attended remotely with his solicitor. It was agreed A's hearing would take place first, he would attend that part remotely with his camera turned off and the camera only pointing at me. It was agreed following that part of the hearing he would leave and he did.
- 54. Prior to hearing submissions on the *Oxfordshire* argument Mr Tughan submitted A no longer had any role in the proceedings as final orders had been made and, in the alternative, he objected to A becoming an intervenor at this stage. He had flagged this issue in his position statement filed the day before.
- 55. Having heard submissions I determined that A should remain, directions had been given on the basis that A would take part, a skeleton argument had been filed on his behalf, he remained a party for this hearing and if I am wrong about that he should be permitted to intervene to be heard on the argument.
- 56. On A's behalf Ms Fottrell KC made the following points. The threshold concessions were carefully crafted with only what she described as a '*light touch of emotional unavailability*' which simply did not reflect the evidence and left a real gulf as described in the *Oxfordshire* case at [30]. It is a tactical concession, not child focussed and relies on a reductive explanation to explain what has happened. Put simply the idea that an unhappiness overcame the children due to A's behaviour does a great disservice to the children and does not reflect the evidence relied upon by the local authority. Ms Fottrell submits it is important for the children, as outlined in the Children's Guardian's report, what the narrative is in this case. A made allegations in 2022, B and C made similar allegations in January 2024. It is difficult, Ms Fottrell submits, to marry that chronology with emotional unavailability. Ms Fottrell took the court to the various references in the Guardian's report to the way A is described by X and Y. They refer to him as '*dangerous*' and '*manipulative*'. C told the Guardian A was called by his parents '*the disease of the family*'. B reports he was told A got his disease from his mother. In corresponding with the Guardian X described A as a danger. At the Family Group Conference Y's mother referred to A as a womaniser and the social workers had been taken in. In the light of that information, Ms Fottrell submits, this narrative should not

be left unresolved as it is unclear how long A has been characterised in this way but these views were known by B and C at the same time as they made their own separate allegations of physical and emotional maltreatment in the household.

57. The resolution of these issues is not just important for the children themselves, but has a significant impact on their relationships with the wider family, including their parents and siblings. Ms Fottrell submits it is a more complicated picture and it is necessary for the court to conduct a fact finding hearing because of the importance for these children of there being a settled narrative upon which decisions can be made regarding their future care, including contact.
58. Ms Holloran, on behalf of the Children's Guardian, outlines the Guardian's involvement in this case; she has been allocated for six months, and has seen each of the children on four separate occasions. She last saw all three children on 12 June 2024 and spoke to them individually. The children are aware the allegations are not accepted but are not aware of the position the parents take regarding their future care. Whilst A and B remained clear they did not wish to return to the care of either parent or have contact with them C had previously expressed differing views about whether he could like contact with them. As Ms Holloran sets out in her position statement *'whilst speaking to [C] it became apparent that, despite the allegations he has made, he would like to be able to return to the care of his parents. His view was, however, predicated upon him identifying a need for change in parenting style by [X] and [Y]'*.
59. Ms Holloran agrees with the local authority submissions regarding the threshold concessions which she characterises as exculpatory, as being factually and intellectually dishonest and there is no real evidential basis for what the parents say as A was out of the home from May 2023 and in the period leading up to B and C leaving was a regular visitor to the home.
60. In her detailed written skeleton Ms Holloran deals with the *Oxfordshire* factors as follows. The difference in the narratives that have emerged between the children and their parents and the wider family is *'stark'*. Ms Holloran continues *'There is little, if any, room for explanation by way of difference in perspectives. The allegations made by all three children are of a serious, significant and pervasive nature which would, if true, amount to a parenting regime that was controlling, punitive and physically and emotionally abusive. Alternatively, on the narrative of the parents these are children who have had a privileged, almost idyllic experience of childhood, in which appropriate boundaries and discipline were imposed. This, they say, was marred and disrupted irreparably by the behaviour of [A] and consequently the impact that this behaviour had on both the children and the parents. Going forward it is hard to envisage how the children will be able to make sense of their circumstances without the assistance of a properly conducted investigation and determination of which version of their lived experience is the more accurate. If the allegations made by the children are, in fact, untrue, exaggerated or misconceived then assisting them to understand how that has come about will be essential. Alternatively a decision that the children's allegations are (in whole or in part) true will be a validation of the view that they hold with some conviction that their experiences were outside the norm and were, in fact, abusive. As such they can be helped to come to terms with what happened to them'*. Ms Holloran submits the consequences for these children of making the allegations have been *'severe and profound'*. They have not only left their home but they have experienced the almost total withdrawal of parental involvement and support and their relationships

with the wider family. The impact on these particular children of the allegations not being investigated will be profound and long lasting. Their welfare needs are met by a ‘safe and reliable narrative’ to inform decisions about their future emotional welfare. Without this there remains the deep chasm between their current beliefs and the accounts of other family members, this is particularly so in circumstances where the children cannot be reassured by their parents continuing desire to be in their lives.

61. Ms Holloran acknowledges there would be a delay but sets out how any *Re W* assessments can be undertaken, the proceedings would retain judicial continuity and careful case management. She recognises the cost to public funds but in circumstances where there is a necessity for a hearing this needs to be balanced with that and the longer term costs of making decisions for the children in a vacuum.
62. Ms Holloran characterises the submissions on behalf of the parents regarding the necessity of a fact finding will not impact on the care or welfare outcome of the proceedings as being ‘*superficially compelling*’ but she submits it ignores the complexity which the approach adopted by the parents brings to this case. As she submits ‘*In completely and absolutely refuting the allegations (and providing an alternative exculpatory narrative) there is no opportunity for professionals to explore with the parents whether there is room to understand how their parenting approach may have impacted the children or ways in which their behaviours and actions might be mitigated in the future. This is exacerbated rather than diminished by their current refusal to contemplate an ongoing relationship with any of the three younger children, including [C] who is aged only 9 years*’. Their position, and that of the wider family members, may become more reflective over time but without a proper factual matrix it will be difficult for the local authority to identify the proper approach at that time. There is currently contact between A and B and C, which is supervised driven in part by the suggestion by the parents that A has adversely influenced B and C to adopt/support his false allegations against them. The contact has been positive, particularly in circumstances of no parental or wider family contact, and is an important part of nurturing the children’s attachments and identities. The outcome of any fact finding will be essential to the evaluation of the benefits and/or disadvantages of this contact in the future and the need otherwise for supervision.
63. Ms Holloran submits that the Guardian’s view is that in the unusual circumstances of this case ‘*care planning is not straightforward and requires to be underpinned by an accurate understanding of the children’s care to date and the role of various family members in the abuse they allege they have suffered*’.
64. Ms Holloran submits the Guardian recognises the impact these proceedings have had on the parents and the delay on the children but considers if the truth can be established it is in the interests of all parties as findings, whatever they may be, may allow for a process whereby the children’s welfare interests are able to take centre stage rather than be part of a process of negotiation which, arguably, has expedience at its heart. The Guardian recognises the attraction in a swift conclusion to proceedings but in this case what is proposed ‘*fails to engage fundamentally with the experience of the children and to the extent to which they have suffered harm*’.

Discussion and decision

65. This is an unusual case as there is an instinctive attraction to resolving cases early, avoiding the costs and delay of contested hearings, particularly where it is said there is no dispute about the proposed outcome. For very understandable reasons such an approach should be encouraged in an appropriate case.
66. However, as the recent authorities have made clear, each case is fact dependent and in reaching its conclusion the court must carefully consider what have been termed the *Oxfordshire* factors before undertaking a balancing exercise in making a decision. In reaching that decision the court will have regard to the need for a proportionate approach that focuses on the necessity for any hearing to be related to the relevant welfare considerations and issues in the particular case.
67. In this case the local authority have filed their final evidence in relation to the orders they seek with care plans for B and C that propose plans that they will remain in foster care on a long term basis. In relation to B they do not propose any contact between B and his parents as that accords with his wishes, but will keep it under review. As regards contact between B and A that takes place each week and is supervised. The plan recognises that this arrangement does not offer a natural arrangement and there will come a time to consider unsupervised contact. The plan refers to the difficulties in the recent Family Group Conference, that feelings remained '*raw*' with no real plans about ongoing contact with the wider family. As regards C's care plan it reports his views on 11 June 2024 in a meeting with the social worker and Guardian when they discussed what a care order means in terms of where he may live for his minority. C is reported as saying he thought he '*might go home if the judge tells [X] not to shout, swear or hit him ever again and makes [X] promise that, he said he misses the house and pets. [C] wonders if in the future he might be able to live with [A] who will be an adult in a years time*'. It also refers to him considering whether one of his older brothers, not the subject of these proceedings, could care for him but realised his shift work may prevent that. The care plan outlines, as for B, that the question of contact with the parents, siblings and wider family will be kept under review recognising that C has not been consistent in his wishes.
68. In my judgment the reality in this case is that although the parents don't take issue with the care plan that does not fully engage with the realities of the plan and the welfare outcome for the children which the court can only endorse having considered the welfare needs of each of the children. The parents' position, whilst superficially attractive, ignores the complexity of the children's position and the parents' approach to this case.
69. The gulf between what the local authority set out in their threshold findings based on over 5,000 pages of police disclosure and their own involvement with the family and the one paragraph concessions made by the parents with only limited evidence to support their position, particularly by X, is stark. The starkness is such they could almost be said to be two separate cases, as described by Ms Holloran.
70. The court is not in a position to know where the truth lies at this stage and must guard against any suggestion of a 'mini trial' but equally as McFarlane J stated in the *Oxfordshire* case at [30] '*In addition I am struck by what, with respect to him, I may call the intellectual dishonesty of the father's position. His stance on the factual dispute (which is in effect to accept no culpable behaviour) is completely incompatible with his acceptance of limited, long-term, supervised contact. This, as is candidly admitted, is a*

'pragmatic' position to avoid the feared consequences of the proposed investigation. It is a tactical position. It is not child focussed and has no internal logic. The apparent unanimity of view about the final orders hides the reality of a very substantial and important factual dispute between the father and the other parties'.

71. In this case the position of the parents is that they no longer seek the care of the children and if there is to be any contact it should be supervised. This is on the basis that they fear further false allegations being made. It is submitted on their behalf that the local authority are used to managing such situations, through the structure of the Looked After Reviews and can assess any risk accordingly as any views of the children and others may change. Mr Parker and Mr Tughan submit there is no welfare necessity for there to be a fact finding hearing due to the lack of welfare issues to be determined and bearing in mind the consequences of delay, the pressure on resources and the detrimental impact on all the parties of a contested hearing it is not necessary or proportionate to undertake such a hearing.
72. Having carefully considered the relevant factors I reject that submission for the following reasons:
 - (1) The interests of the children, which I accept are not paramount, require a determination of the issues. There is a significant gulf between what the local authority allege and what the parents concede. Whether the allegations made by B and C are true is directly relevant to their welfare needs even taking into account the parents' position in not opposing the care plan. In making decisions about them and for them in the future it will be important for those who have that role to know whether what they report is their lived experience is true or, as the parents maintain, is false and have been made up at the instigation or influence of A. Determination of those allegations will impact on decisions made about their future, in particular in relation to contact with the parents, A and the wider family and, possibly, about future care in the light of C's views about being cared for by A. S 31(3B) CA 1989 places an obligation on the court to consider the impact of the harm on the child and the way in which his needs are to be met.
 - (2) The concessions made by the parents, in particular X, are insufficient to properly meet the threshold criteria in this case. They are exculpatory and do not have any evidential foundation other than limited self-reporting by the parents. Whilst it is possible for the court to consider findings other than those sought by the local authority they still need to have evidential foundation upon which the court can base its reasoning, which is absent in this case on the way the parents seek to concede the threshold is met. In many of the cases (such as *H-D-H* [44]) the parent has made significant concessions on threshold and/or the factual substrata. That is not the case here.
 - (3) I have weighed carefully in the balance the issue of delay but in this case the evidence will be ready in a relatively short period of time which will coincide with likely court availability for a 10 day hearing later this year. There is no immediate welfare issue regarding the placement of the children so whilst delay is inimical to their welfare it will not delay immediate decisions and has the benefit of enabling longer term decisions to be better informed. In addition, as the evidence is filed both the local authority and the court will keep under active review any further evidence filed and its impact on the need for a fact finding hearing.

- (4) I have weighed in the balance the impact on the parties. The parents' evidence is powerful and has detailed the significant impact on them of these proceedings continuing. It has been obvious for the court to see during the hearings. However, I have to balance that with the other factors and take into account the fact that both parents have sought and are in receipt of medical and psychological support, as well as having experienced legal teams. As regards the children I recognise that there may be applications for them to give evidence and the potential impact on them of being questioned about the veracity of what they have said. Whilst not underestimating the consequences of that on each of them they are aware the allegations are not accepted and the court will take such steps as are necessary in determining any application for them to give evidence, and if they do, any special measures that should be put in place.
- (5) I am very conscious of the pressure on resources in every sense of the word in this case. The pressure on the court lists are known as is the pressure on the resources of each of the parties in this case, funded as they each are by public funds. That has to be weighed carefully in the balance but is not determinative and can be managed by judicial continuity, effective case management to ensure any fact finding hearing, even for as long as 10 days, remains proportionate and relevant to the welfare issues in the case.
- (6) I agree with the submissions and analysis by the Guardian that the care planning in this case is not straightforward and the children's welfare requires it to be underpinned by an accurate understanding of the children's care to date and the role, if any, of the various family members in the abuse they allege they have suffered. In my judgment, it is necessary and proportionate to do so, as avoiding doing that will not meet the justice of the case. There is an attraction to a swift conclusion of the proceedings but it is important the integrity in the court process is maintained where it is right and necessary to inform relevant welfare decisions and is not sacrificed on the altar of expediency where having undertaken the relevant balancing exercise the facts of a particular case require that a fact finding hearing must take place.
73. The court having determined this issue the parties must now urgently liaise with each other regarding any case management directions that are required.