

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 12/03/2019

Before:

HIS HONOUR JUDGE WILLANS

Between:

THE LONDON BOROUGH OF EALING

Applicant

- and -

(1) The Mother

Respondents

(2) The father

(3) A (a child by his children's guardian, Della Jackson)

Mr William Dean (instructed by **Legal Department, London Borough of Ealing**) for the **Applicant**

Mr Peter Horrocks (instructed by **Vickers & Co**) for the **First Respondent**

Mr Malek Wan Daud (instructed by **Hanne & Co**) for the **Second Respondent**

Mr Kieran Pugh (instructed by **Myria Pieri & Co**) for the **Third Respondent**

Hearing dates: 11 – 19 February; 28 March & 8 April 2019

JUDGMENT

His Honour Judge Willans :

Introduction

1. Can **A** be cared for by his parents (or one of them alone) or must his care be passed to the local authority with a plan for him to be adopted? This is the question posed within these proceedings. The local authority supported by the child's guardian advocate the plan for adoption. The parents disagree and seek to care for the child together, but if I were against this then they would ask me to consider the mother caring alone. The decision is mine to make. I do so having considered the documents in the final hearing bundle; the live evidence of a number of witnesses¹ and the arguments made on behalf of each of the parties. This judgment provides an overview of the evidence and focuses on those matters which requires determination to fairly resolve this case. I will not

¹ SO (initial allocated social worker); KH (Family Finding Social Worker); O (current allocated social worker); SM (Assessment Practitioner: 11CC); RK (Manager: 11CC); SB (Manager: 11CC); GH (Violence Prevention Worker: DVIP); SD (Women's Support Service Worker: DVIP); PK (Systematic and Family Therapy Lead); AC (Consultant Clinical Psychologist); the mother; the father; DJ (Children's Guardian)

mention every aspect of the case or indeed every factual dispute. I have however continued to bear in mind all the evidence in reaching my decision.

2. Within this judgment I will use the initials set out in footnote 1 below and will refer to the parents as ‘mother’ and ‘father’. I will refer to the child under consideration as **A** and his half-siblings as **B**, **C** and **D**. The father of **B**, **C** and **D** is **Z**. The father and **Z** are brothers. I will refer to the country from which the parties derive as country **AA**. I do so to preserve anonymity given this judgment may be published. No discourtesy is intended to any of the parties or witnesses.

Legal Principles

3. In a judgment dated 18 May 2018² I considered the welfare needs of **B**, **C** and **D** and in doing so set out the relevant legal principles (§6). These remain relevant and I note: -

- **A**’s welfare is my paramount consideration. I will approach this by reference to the welfare checklist within s1(4) Adoption and Children Act 2002 and in doing so to **A**’s welfare throughout his life.
- Disputed matters remain allegation only until proven as fact. A party making an allegation must prove it and does so by establishing it on the balance of probability. The party facing the allegation is not required to disprove it. All evidence and particularly that of the parents will be relevant in deciding the issue. In assessing the credibility of a witness who has been shown to be untruthful elsewhere in the evidence I must remind myself as to what is known by shorthand as the *Lucas Direction*³.
- Where a fact is raised with respect to establishing threshold I bear in mind (a) the need for a causative relationship between the fact if proven and the question of significant harm, and (b) the evidential requirements for an allegation to be proven⁴. Further, just because a parent has acted in a manner which is criticised does not mean that on proof of the action threshold is proven. I must be willing to accept a range of parenting styles⁵ including ‘*the eccentric, the barely adequate and the inconsistent*’.
- In considering the making of a care order I must first consider whether the legal threshold has been crossed. I refer to section 31(2) Children Act 1989 and the test as to whether the child has suffered significant harm or is likely to suffer the same having regard to the care provided to him (or likely to be provided if an order is not made) not being what the Court would expect of a reasonable parent. In this case threshold is agreed as being crossed. But a finding that the threshold has been crossed is not in itself a justification for the making of final care orders. The question of disposal is a wholly separate question requiring a qualitative evaluation

² <https://www.bailii.org/ew/cases/EWFC/OJ/2018/B91.html>

³ Namely that such a witness must not be taken or assumed to be generally untruthful. I must have an eye to the context and circumstances of the proven lie and guard against drawing an over easy inference against the individual

⁴ Re A (A Child) [2015] EWFC 11

⁵ Re L (Care: Threshold Criteria) [2007] 1 FLR 2050 per Hedley J at para 50;

of the evidence before the Court with A's welfare as the paramount consideration.

- When considering disposal, I bear in mind my decision has the potential to amount to a very serious, indeed profound, interference in the private life of this family. Consequently, I must subject my assessment to a test of proportionality and ask whether the proposed order is reasonable, necessary and lawful: **Article 8**.
- In being asked to make a placement order I am asked to act at the extremes of family interference. Such a level of interference requires justification having regard to its obvious and draconian implications. Consequently, I would have to ask myself whether "nothing else will do". Furthermore, given the absence of parental consent I would have to dispense with such consent and would only do so if A's welfare required me to do so.
- In carrying out my analysis I must confront the realistic options for A. I should consider each option in turn weighing the benefits of the option against its detriments. I should then take care to balance each option against the other taking a holistic rather than a linear approach. It is only by this form of careful analysis that the Court can be confident A's welfare and the test of proportionality is met.

Issues in the case

4. This case focuses on the issue of domestic violence (DV) and its impact on the parental relationship, and the consequential relevance for A. DV/domestic abuse⁶ is a broad concept including not only physical violence but also non-physical behaviour such as controlling and coercive behaviour (which may be physical, sexual, financial or emotional / psychological in nature). Ultimately domestic abuse is about control and the inappropriate misuse of an unequal power relationship.
5. DV has the potential to have profound impact upon any child experiencing life within such a setting. Whilst there are obvious physical risks attendant upon DV (directly or by being caught up in an incident of violence) of equal relevance is the impact at an emotional level. Any child living with DV is confronted by a myriad of emotional issues ranging from simple fear for their care giver subject to DV to more complex issues touching upon the predictability of care given by a parent who may at the personal level oscillate between focused care and angry/unpredictable presentation. It is for these reasons that the Court takes a sophisticated approach to DV and is wary about arguments which seek to minimise or downplay the significance of the same. A further complication is the often-intimate nature of the abuse. Played out in the private sphere there may be only the most limited available evidence as to what is taking place and the key participants may be unwilling or unable to be fully open in their disclosure.

⁶ See Family Procedure Rules 2010, Practice Direction 12J

6. This case is not about parenting capacity in the classic sense of the concept (albeit I bear in mind parenting capacity includes the capacity to keep a child safe and so domestic violence has relevance). I make this clear at outset. The local authority made it quite plain its case does not turn on this feature and **O** made this clear in his evidence. I accept there is within the evidence aspects of questionable care which have been brought to my attention. I bear in mind the guardian's evidence in this regard. However, the case progressed throughout on the basis this was part of the landscape for consideration rather than an issue going to disposal and as such I consider it would be wholly unfair to allow this point to morph into a matter of prime relevance at such a late stage. This being the case the structure of this judgment will focus on a factual investigation of issues relevant to the question of domestic violence with a follow-up application of these findings through a holistic welfare analysis.

Background Detail

7. The adults were born and brought up in the European State of **AA**. The mother remains married to the father's brother and the children considered in the previous proceedings were born out of that relationship. The father is therefore the paternal uncle of **B**, **C** and **D**.
8. In my previous judgment I summarise the relevant background as follows (§14-17):

...both [the mother and Z] (and likely [the father] given the family connection) experienced a traumatic upbringing surrounded by instability and rejection. Difficulties continued at a prominent level into their adulthood and relationship. Prior to arrival in the UK they were experiencing significant disruption in the daily life with various relocations and continuing family disapproval, their relationship was then fractured from 2015 with moves between [AA] and the UK and during this period there is evidence of the children suffering. Their arrival into the UK was into an environment of financial deprivation and inappropriate accommodation. [B and C] came to share these experiences with their parents. After about 4 months [the mother] and [B and C] returned to [AA] but their experiences on return were negative with continuing rejection, some abuse and deprivation. Superimposed upon this has been the establishment of a relationship between [the mother] and [the father] and the impact that this had had on [Z]. It appears [the father] came to the UK at the request of [Z] in 2015 and has remained here since living at various locations...I appreciate this is but a brief summary of a significantly problematic history experienced by all the relevant adults in the case. It leads the professionals to conclude that there will be significant work required for all adults to address the impact that this upbringing and experiences has had upon their own approach to parenting and the experiences of the children. To her credit [the mother] accepted this was the case...

In October 2016 [the mother] returned with [B and C] to the UK for the second time. She was at that time approximately 7 months pregnant with [D]. She joined [Z] in shared accommodation with other migrant workers. In about December 2016 there was a violent incident when [the father] struck [the mother]. She was heavily pregnant at the time. It is alleged he then proceeded to break into her room with the children. In January 2017 [D] was born. In April 2017 there was the precipitating event when the children were found with injuries and removed. [The mother] agrees she struck the older children with an implement. On 6 April 2017 proceedings commenced. The children have remained in foster care since removal on that date and have had regular contact with [the mother], [Z] (prior to his leaving the jurisdiction) and [the father]. On 29 April 2017 it is alleged [Z] hit [the mother] with a phone and strangled her. On 9 May 2017 within the parenting assessment [the mother] was expressing the wish to be with [the father]. On 16 May 2017 at a home meeting as part of the assessment there is a suggestion of [the father] having attempted to strangle himself. On 23 May 2017 [the mother] alleged [Z] had raped her. She later withdrew the allegation whilst maintaining its truth. On 1 June 2017 [the father] withdrew from the assessment. On the same day [the mother] and [Z] were said to be back together. On 9 June 2017 there was an incident between [the mother] and [Z] which ended with each hitting the other. On 26 June 2017 [Z] withdrew from the assessment and [the mother] indicated she wished to resume her relationship with [the father]. In early July 2017 the parents attended together but were arguing about their ongoing relationship. This culminated with [Z] indicating he wished to be assessed alone. On 7 July 2017 [the father] contacted the assessor upset about the indication of a likely negative assessment. On 29 July 2017 [the mother] suffered a black eye at the hands of [Z]. In about late August / Early September 2017 [A] is conceived. There is doubt as to which of [Z] or [the father] is the father. In September 2017 [Z] returned to [AA]. He was refused re-entry to the UK later in the month and then in February 2018 sought to enter the jurisdiction via Scotland. He was detained and has been kept in detention pending this hearing being recently moved closer to the Court Centre.

9. The father was a central figure within the previous proceedings and the father, mother and Z were assessed and gave evidence to the Court. At final hearing the mother and father presented as a couple seeking to care for the children. Threshold was agreed by reference to the mother's physical mistreatment of the children. However, I made findings of fact within my judgment (§21) which I summarise as follows:
- The triangular relationship between the adults was a standout feature and worthy of description as *toxic*. It acted as a distraction to the adults getting in the way of their ability to prioritise the needs of the children, including the manner in which it impacted upon the assessment process.
 - The children were exhibiting problematic behaviour patterns deriving from the care they had received. A central issue was as to the attachments they had established. This in turn was hampered by the parent's own deprived upbringing. This left the parents poorly prepared to manage such behaviour with the mother becoming easily overwhelmed, particularly where her emotions were already distracted by the adult difficulties. I was therefore of the view that improved parenting and resolution of adult relationship issues would likely need to progress in tandem.
 - The adults had an unacceptable level of tolerance of domestic violence in their relationships. The father having regard to the incident of violence in December 2016 has *a very low threshold for resorting to violence and a very significant need for intervention work at an intensive level to correct his behaviour style*. I was clear the DV was not limited to violence alone in finding evidence of controlling behaviour. I found minimisation on the part of the father. I made an equivalent finding in the case of Z. I characterised the mother as essentially victim to this behaviour. I was concerned she accepted DV as the norm in all likelihood flowing from her own upbringing. She also minimised what had occurred. I had regard to her social isolation as a contributing factor. I considered a period of close to 1 year's engagement with DV work and therapy would be required to correct the mother's deep-rooted difficulties. I commented that the father would also need to undertake work to support any progress made by the mother. In the light of the father's evidence I expressed some scepticism as to whether there was *fertile territory for positive change* in the relationship. I had regard to the failure of the mother to take an opportunity with respect to therapeutic work. I felt this was a missed opportunity as I considered she had potential.
 - I had no doubt the children were very much loved but sadly their needs were too regularly lost in the emotion of the adult moment. The children consequently sought attention and acted out by poor behaviour when attention was not available. The proof of this was found in the dramatic change in presentation of the children when their needs were met in foster care.
10. I was sadly led to conclude the children's needs could only be met by the making of both care and placement orders. During the course of this hearing I heard evidence which by way of update suggested the children (albeit not all together)

were close to being placed for adoption. As at May 2018 the mother was known to be pregnant. Any issue as to paternity has now been resolved confirming the father's paternity of A. Within days of my final order A was born and in the light of my judgment the local authority issued proceedings.

11. I would summarise the significant steps taken within the proceedings as follows:

- At outset the Court (Her Honour Judge Downey) made an interim care order but also approved a Part 25 application placing the mother and child in a residential assessment unit (**11CC**).
- Steps have been taken to inform the Consulate of **AA**. I am satisfied they are aware of these proceedings. There has been no attendance from any representative of **AA** at any point during the proceedings.
- Initially the mother indicated an intention to be assessed alone. However following confirmation as to paternity, the parents sought to be assessed together. Subsequently the father joined the mother at **11CC** until his later removal.
- On 28 June 2018 I refused an application to transfer the proceedings to **AA**.
- On 19 September 2018 the father left **11CC** following an incident. Since this time the parents have maintained their relationship although the mother continues to reside with A in the unit whilst the father has contact on a supervised basis.
- On 6 November 2018 Her Honour Judge Jacklin QC extended the proceedings to permit the listing of this final hearing. I heard a repeat IRH on 11 January 2019.

I. Overview

12. I identify three strands requiring of consideration when considering DV in this case: (a) the historical position found within my May 2018 judgment; (b) the nature of work undertaken since that date; and (c) factual developments occurring since the May judgment which shed light on continuing concerns with respect to DV. My sense is that each of the key witnesses have attempted to draw together these strands in formulating their independent view as to the appropriate way forward for A. I consider a fair analysis demands proper evaluation of each strand along with any other material matters touching upon this area of risk.

The May judgment

13. I was encouraged by counsel for the Guardian not to lose sight of this feature of the case and to avoid conveying it to a historical compartment. I agree. The judgment is not just a base camp against which to consider progress but remains a feature of relevance in the ultimate analysis. I must not lose sight of the findings I made nor the prevailing context in which they were made. At the same

time, I must retain an open mind as to the current position evaluating the broad canvas of evidence to assess whether there has been sufficient progress to permit continued family care of A.

Work undertaken

14. I was asked to consider the assessment undertaken by **11CC**. In addition to this my attention was drawn to work undertaken by the mother with respect to the Freedom Programme; DVIP; couple's counselling and individual therapy. I was also told the mother is due to commence a further piece of DVIP work in the near future. When considering these features of the case I was urged by the mother to have regard to what she perceived as a lack of assistance on the part of the local authority and those contracted to assess the parents. In the case of the father I was asked to also consider the assessment undertaken by **11CC** together with a piece of work commissioned through DVIP. Further I was asked to have regard to the father's participation in couples counselling. The father was critical of those commissioned to work with him.

Incidents

15. During the hearing my attention was drawn to 5 incidents which were said to be of relevance when considering actual progress in behaviour and attitudes. I loosely identify each as follows: (a) the August 2018 argument; (b) the build-up of tension prior to 19 September; 2018 (c) the incident on 19 September 2018; (d) the November argument; (e) the incident at contact in February 2019. I queried whether these matters should be viewed as the 'tip of the iceberg' or the 'iceberg itself'. My understanding of the evidence was that these matters were an exhaustive list of concerns within this category. I of course remind myself of the findings within the May judgment. In the context of a concerning relationship involving DV it is relevant to examine the available detail to understand how the relationship appears to be progressing. A failure to do so runs the risk of either determining matters on a historical footing alone or assessing the relationship at a purely theoretical level and I would fear that for some parents (and particularly where there are cultural complications) this might be an unfair approach. Parents are entitled to ask the Court to have regard to the realities of their daily existence in considering the future planning for their child. In this case the mother positively argues that she has seen positive progress in the case of the father and whilst the Court may naturally approach this with caution it must nonetheless apply careful consideration to the point.

II. Evidence

Work undertaken

16. The analysis of works undertaken and the learning achieved can be found in the evidence of **11CC** (**SM** and **RK**) the DVIP professionals (**GH** and **SD**); from the systemic therapist (**PK**) and from the psychologist (**AC**). In large part the child care professionals (**O** and **DJ**) draw from these conclusions albeit **DJ** additionally brings to the assessment her longitudinal understanding of the family.

17. The overview of evidence is that the father still has significant work to do and is at an early stage (*pre-contemplation stage*). His character is a function of his upbringing with deep rooted and likely neurologically set patterns of response. Progress for him will be slow over a period of 9-12 months and will require a professional who fully understands the issues confronting the father.

There is a risk identified that [the father] does not fully accept and or understand the concerns around his abusive and controlling behaviour as valid and therefore is not motivated to fully engage in such discussions and to change the controlling nature of his behaviour. If this continues to be his thinking, any engagement would be tokenistic and not effective and fail to address abusive behaviours which have the potential of a harmful impact on [A's] development [11CC interim report]

In some senses, [the father's] engagement has been constructive. He has demonstrated a willingness to disclose ongoing arguments with [the father] and analyse them in a constructive way to find non-abusive alternatives. [the father] has appeared to show a good cognitive understanding of some of the elements of the programme, particularly with regard to the impact of domestic violence upon children. Furthermore, at times [the father] has shown some accountability for his abuse. He has admitted elements of his domestic abuse and stated his aim to improve and not cause harm to [the mother]. [GH: E122]

However

[The father] has also frequently denied responsibility and presented him (sic) as a victim. By way of a representative quote, in session 12 he stated (with regard to the incident that led to him being excluded from the parenting assessment centre): He insisted, "didn't do anything wrong - I shouldn't have been kicked out.... [the woman who moved my item] was disgusting, pushed it away as if it was a pile of garbage... [Her partner, who asked if he saw it] insulted my intelligence... [and the worker in the centre] is probably paid to make me do something wrong... [professionals] want to see me fail... they caused it all... they throw people into conflict." In session 17 he reported telling [the mother] that she and her lawyer 'should jump in the Thames'. He was unable to identify this as particularly negative or abusive, despite admitting that it was likely to have hurt her feelings, and instead insisted, 'I was helping our relationship's There are therefore elements of [the father's] presentation that are both in alliance with and in conflict with the aims of a Domestic Abuse Prevention Programme. In considering the weighting to give to each element I believe the following factors are relevant. 1. In terms of quantity, the amount of statements of empathy and accountability that [the father] makes is vastly outnumbered by the amount of statements he makes to justify his acts of abuse and violence and present himself as a victim. 2. [The father's] statements of empathy and accountability are only made after challenging on my part. When he volunteers an opinion on his abuse it is almost exclusively a justification and an insistence that [the father] is a victim rather than a perpetrator. 3. There are incidents that other people present consider abusive, such as the incident recorded on CCTV in the parenting assessment centre, but [the father] fails to identify these as abusive. [GH]

GH told me the DVIP course was suspended as the father was consistently struggling to engage with material as he was preoccupied with his own victim status with this issue developing as the father was pulled into the territory of confronting internal rather than external issues. He felt the father would struggle to complete the programme unless he engaged with the issues raised. **AC** spoke of the need for a fully briefed professional to work with the father. His assessment was of a damaged and closed individual who was immature and insecure. It would take some time for him to open and his rough side would likely reappear at times. He was cautious as to the timescales (being artificial) but cited the 9-12 month period:

He has room to develop...A lot of this is cold to him and he just reacts at a crude primitive level...he struggles in any event but needs warmth to make progress...change will be a slow burning process as he makes developmental progress...he positively needs an intervention as matters will not resolve spontaneously [AC]

AC felt there were too many issues for the father to do this while co-parenting. He is a victim as well and a professional working with him should have this in mind. However, he is short fused irrespective of his victim history, it is part of his repertoire which needs to be considered. He is driven by hurt and is not motivated to be malign. His focus on his son is not sufficient to keep the chaos at bay. There is no easy solution for him other than to work with those offering help and to listen to their advice. It was important to acknowledge the father is

a victim as well and it is wrong to simplify matters to the level of him as perpetrator alone. Both he and the professionals need to see him from both sides. It is likely the impact of his upbringing impacts on the father at a neurological level. He will need a repair element which will be painful and may be anger inducing as he realises his experiences were not fair. The difficulty is the father is fragile and the expert was not sure he had the capacity to engage with this. The impact on **A** of his emotional impulsivity would depend on the quantum and intensity of the response. The DVIP report support the suggestion the father has a deep sense victim status which is likely rooted in his traumatic upbringing. The report with respect to the father does not make for optimistic reading and **GH** commented that it is difficult to see how he could go on without further work. The expert was far less certain the father was a dangerous man. He does need more DV work to help him understand these complex issues.

18. The conclusions with respect to the mother were more positive but ultimately somewhat limited by her dependence on the relationship with the father. She was felt to be at the *contemplation/action* stage but this represented the start of a journey. The unit workers did recognise the mother as the victim in the situation and measured their approach accordingly. During her residence she engaged with the Freedom Programme:

Having participated in the DVIP and Freedom programmes, [the mother] demonstrates a developing awareness of domestic violence and the range of behaviours that constitute it...[I]n the parents' case, it appears that the awareness development is more progressed in [the mother] than it is with [the father] and this is increasing the level discord [sic] within the relationship. An important element of the DVIP programme is using the victim's experiences of change in the abusing partner to measure the impact of the programme. [11CC interim report §6.5]

There was little question the mother had fully engaged with work offered to her. The mother had been open in her engagement with **SD** and this was positive in showing a capacity to work in a positive manner over a sustained period. The issues with this particular engagement were that it was tailored to the mother's needs in addressing issues she brought to the meeting and as such could not provide quantified progress. Further **SD** accepted she had limited details as to the underlying issues. However, with these caveats in mind the witness felt the mother had a real potential to make change, she was reflective and there was a real acknowledgment as to the impact of DV.

AC viewed the mother as damaged and with a sense of few choices in life. She had a number of things going for her (intellectually / her language skills / thoughtfulness / capacity for nuanced thinking) and was less damaged and defensive than the father. With confidence she could do better and it would help if she was not solely dependent on her partner. Of equal importance to her is the establishment of a social life of her own. She needs the oxygen of life as much as professional intervention. Her life is currently akin to being in an incubator. She is motivated to do the right thing but is conflicted by her relationship with the father. She currently can only see a future within that relationship. Whilst she might have the capacity to go it alone it is questionable whether her '*stomach is in it*' ~ see her externalisation of the decision making. However, she does understand DV is not tolerated and came across as learning something and shifting in her thoughts. She could see how her issues related to her own upbringing and was in the process of seeing a way out but had not yet arrived at

the point of taking that route. Therapy was important in the form of psychodynamic counselling over a period of about 6 months.

19. As to conclusions as to the relationship:

Domestic abuse has been a focus of the assessment. There has been a clear tendency on the part of both parents to minimise the incidence of domestic abuse and to obscure the facts relating to the incidents...The incidence of violence within their lives has led to a normalisation of violent behaviour...it is our view that when in those situations of heightened emotions, stress, disappointment, frustration, they do not think about the implications for themselves, their children, or their children's experiences. This is evidenced by the incident in December 2016 by the parent's decisions throughout the assessment (paras 11.7 and 14.3), and [the father's] emotional volatility. [my emphasis] [§14.2 & 14.13]

The dynamic of the parent's relationship is a complicated one. The relationship features domestic violence although the factors underlying the violence are not clear-cut and so the appropriate remedy/intervention are not straight forward. We believe the underlying issues involve cultural context, psychological needs, emotional impulsivity [11CC]

SM confirmed the unit had not witnessed DV during the period the parents were in the unit and that the units understanding of the family came from their observations. They had advised couples counselling to allow an open discussion between the parents as to their relationship. The concern was the mother could see the problem but could not separate. The father was unable to take responsibility for his actions and so the relationship was unlikely to change. The suggestion made by the mother that she would separate from the father if this was the decision of the Court was not satisfactory as it didn't suggest real acceptance on her part.

AC felt the couple appeared poorly suited. The mother does not see herself as coping as a single parent. The mother is quite verbal and thoughtful whereas the father is frightened, insecure and lost. The mother finds herself socially and personally isolated and is reliant on the father for a sense of relationship. The father comes across as institutionalised and is finding family proceedings very trying. This touches on his sensitivities to do with loss, marginalisation and perception of being devalued. In essence they are emotional refugees. They come from a culture where DV is not a clearly defined misdemeanour and both have deprivation and aggression in their background and have been under huge pressure. They are trying to find a way to improve and become more functional and have got the message they need to find other ways to solve problems and manage life's stresses.

20. The parents have engaged with couples counselling with **PK** [see E134 & E149]. Aside from some issues with attendance the evidence in this regard was positive as to engagement and a wish to work positively on their relationship by improving communication and reducing instances of conflict and violence. My sense was the parents had established a good working relationship with **PK**. In live evidence **PK** indicated the purposes of the work extended to improving emotional regulation. He agreed the work would benefit from related programmes and these could be pursued in tandem. The parents had participated well in the sessions, the dynamic has been successful and the practitioner could see no reason why the work would not proceed to a successful outcome. Although he had received limited information he had received **AC**'s report and was aware of the DV by way of the parents self-reporting, this reporting included the fact of *hitting the mother in the face whilst she was pregnant*. The sessions are fortnightly and will continue for some further time. My sense was there may

be the opportunity for extension if this were required. **PK** also told me about the mother's recent commencement of individual therapy on a weekly basis. This was being managed by a different practitioner but the mother had engaged and this was ongoing. **AC** felt the work needed to be challenging to have effect and could not be simply supportive. He considered the work with **PK** had not got to the point of putting them under calibrated pressure. Without this not much will happen.

Incidents

21. For reasons I will explain below there is relatively little factual dispute as to what took place during each 'incident'. Taking them in order the summarised detail is as follows:

(a) *The August argument:* There is no doubt the parents argued on about 24 August 2018. The clearest account of the incident is found at E24 (§6.4). The father agrees he spoke unkindly to the mother telling her words to the effect that 'hitting children was in her blood' and I understand he accepts he said, 'she and her lawyer could throw themselves in the Thames'. As I understood the evidence the mother agrees she spoke unkindly to the father as well using rude words but the detail of the same is unclear. Further reflections of the mother are found in the identified extract although the mother claims she was misunderstood when she spoke about the father after the incident. It can be seen the incident is essentially agreed but the dispute is as to the weight that should attach to this argument. Resulting from this incident the parents took part in a safety planning meeting aimed as I understood it to lessening the risk of troubling incidents. As part of this they were encouraged to share the points that caused them to become more agitated. The father expressed concern when the mother would not let a matter drop and continued to pursue him on a point. I am told (although this is not agreed by all) there was consideration of a 'safety word' to be used to signal developing frustration.

(b) *The build-up of tension prior to 19 September:* The clearest source for this point is found at I41-42 which is complemented by daily logs records for 17 and 18 September 2018 found at I28-38. **11CC** point to this material as demonstrating a concerning escalation of tension and aggression on the part of the father which fed into their decision making in respect of the incident on 19 September 2018. From the documentation one can see the following:

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- On 17 September the father was upset at a LAC review meeting. **SO**, told me that concerns had been expressed as to the nature of the parent's relationship. Although the exact timing is unclear it is apparent the father responded to the situation by expressing the view that he would take **A** from the unit. This in turn led the unit to reconsider the opportunity for the parents to have unescorted time outside of the unit [I29-30].

- On 18 September the father expressed upset at the unit questioning whether another (female) resident was in his room. He said this had been suggested before and was ‘disgusting’ [I35]
- On both days there appeared to be a developing issue as to the use of the unit phone with the father in particular expressing upset as he felt he was being listened to during his conversations or not given appropriate access to the phone [I34-5]

Again, there is limited dispute as to this event(s). The relevance is as to the light it shines on the insight, impulsiveness, aggression and other behaviour patterns of the father in particular. For the father I am asked to have regard to the context of the discussions and the potential for misunderstanding arising out of cultural/language issues. Furthermore, there is an overarching criticism made of **11CC** as to having ‘made their minds up about the father’ as a DV perpetrator and the impact this has had upon their interpretation of these matters.

- (c) *The incident on 19 September 2018:* I have a CCTV of this incident. There is no audio although I am led to understand this is not a significant point. In the incident the father is seen to kick a child’s blanket following a disagreement with another resident (or member of a resident’s family) surrounding the use of a sofa in the common room. This incident directly led to the termination of the father’s placement. The local authority and guardian draw particular attention to this incident when considering the father’s conduct. The guardian expressed concern as to how this might have escalated but for being interrupted by staff. It is argued the father loses focus on the needs of **A** and acts in a manner which was violent and aggressive and which might have led to **A** being harmed. The mother was not present during the important moments of the incident. The father accepts he acted inappropriately but argues the incident has been taken out of proportion. He argues this did not justify his placement being terminated. Aside from the CCTV I have the daily log which charts the steps taken following the incident I53-59 along with a detailed narrative found at I42-52.
- (d) *The November argument:* The detail of the incident is found at E127 [§3.7]. In summary the criticism attaching to this event is directed at the mother. Having heard all the evidence, I did not sense anyone raised residual criticism of the father. The mother was reported to be raising her voice to the father and saying hurtful things. He responded by asking to leave. I did not understand the mother to challenge this account.
- (e) *The February contact:* The information relating to this incident is contained within a contact note provided during the hearing. The incident is again largely factually uncontroversial. During supervised contact between the father and **A**, the mother had to leave to attend an appointment. To do so she had to be let out of the building but this required the supervisor [**SM**] (who was working alone) to accompany the mother and given the contact was supervised she required the father to give her **A**. Father agrees he objected to this request and raised the point that he had been left temporarily

with the child on previous occasions. There was then a standoff for about 45 minutes with the father calling the police and refusing to pass over **A**. The mother was separately assisted to leave the building. The local authority/guardian point to the impulsivity of the father and his inability to keep focused on the needs of the child. They relate this to his reaction to perceived slights and question how this will appear for the child receiving unpredictable care. The guardian asks me to have regard to the fact that these incidents show the father losing patience with the mother; a third party and a professional. The father accepts he acted wrongly but seeks to explain his behaviour in the context of his feelings of being treated unfairly.

III. Impression of witnesses

22. In considering the impression I have formed of each witness I bear in mind the cautionary guidance of Leggatt LJ. in *Sri Lanka v The Secretary of State for the Home Department* [2018] EWCA Civ 1391 at 41:

No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.

My focus should be on the content rather than the presentational qualities of the evidence. With this in mind:

- Neither **SO** and **O** were challenged as to their conduct of the case. In fact, the mother was complementary of their assistance and it was quite clear they had come to the case with an appropriate professional attitude. **O** was plainly struck by the enormity of the decision under consideration and whilst he could form a professional judgment it was clear to all he did so from a position of being deeply affected by the responsibility. I was impressed by both witnesses and accept their evidence as genuine and reasoned.
- **KH** gave family finding evidence. Her evidence was straightforward and informational. I accept her evidence without reservation.
- **AC**'s evidence was insightful and helpful. His clinical assessment of the parents chimed with my own assessment. He gave balanced and reasoned evidence which I found helpful.
- I found **GH** and **SD** straightforward and credible. I found **GH** to be a witness doing his best to assist the process and I found no material grounds for criticising his approach to his task. **SD** was not challenged as to her credibility and I accept her evidence.
- I found **PK** helpful. He came across as a well-meaning professional who is skilled in developing relationships and working with those with troubled lives. I formed the impression he appeared a good match for the

parents and I was heartened to hear his evidence as to his potential to keep working with the parties.

- Turning to the unit workers. I was not overly impressed by the challenge mounted against **SM**. Having heard her evidence, I formed the impression she was an honest witness who was doing her best to assist the Court. **RB** was a witness of relatively limited import. **RK** was more controversial and particularly so as to the decision making surrounding the eviction of the father. In my assessment little in fact turns on the decision-making process. Her evidence as to the incident is of limited relevance as I have the best evidence in the form of the CCTV.
- The father gave evidence with difficulty. Even allowing for the use of the interpreter it was at times difficult to follow what the father was seeking to tell. It was clear to me he was finding the process very difficult. It is of note he was calm throughout the hearing and compliant and civil when questioned. At times during the hearing I noticed his physical interaction with the mother (particularly when she was distressed) and he appeared to be sensitive to her needs and gentle in his response. My sense of the father fitted that provided by **AC**.
- The mother attended Court having lost her last three children before me and facing the loss of her fourth child. Notwithstanding this she has been engaged throughout the process and at all times conducted herself in an appropriate manner. She gave her evidence (largely) in English and I remain of the view she is an individual with some promise given the chance. I found her a genuine witness who plainly loves her son very much.

IV. My analysis on the question of DV

23. Having set out the relevant strands relating to the issue of DV I now bring together my assessment of these features. I will draw upon these conclusions subsequently when considering the welfare evaluation.
24. It seems to me quite clear the experts have placed significant relevance on the *incidents*. To an extent there is an element of circularity, in that **11CC** have formed conclusions and others have adopted these conclusions in reaching their own view (e.g. **AC** in considering the *November argument*; **GH** referring to those matters viewed by others as abusive but not by the father). In making this point I don't overlook the fact that various individuals have formed their own opinions (e.g. the Guardian has taken an independent view on the *19 September incident* having viewed the CCTV). Plainly if I concur in my judgment then the structure remains sound. However, if I depart from their assessment I will need to think through the consequences of such departure.
25. The difficulty is that I have formed a materially different judgment on the *incidents* and ultimately, I do not consider these matters deserve the significance attributed to them. At the same time, I have been troubled by the failure to reflect on features which point in the other direction. Given my difference of view it is crucial I set out with clarity why I disagree. I do so as follows: -

- An easy starting point is the *November disagreement*. I find it surprising this matter still appears to be held as indicative of the father's poor behaviour. By the time the evidence concluded my clear assessment (shared by the Guardian) was that this incident in fact indicated the father putting into practice the strategy he had been encouraged to use by **11CC** (the safety plan). Far from indicating problematic behaviour it is, if anything, a positive indicator. When faced by the mother being 'difficult' the father calmly sought and the took 'time out' as advised.
- I am equally troubled by the reliance on the *August argument*. I agree the father's attitude on this day is open to criticism. He spoke unkindly to the mother and should not have. But she agrees she spoke unkindly to him. I am sure this was an example of his 'rough side' showing through. But is it fair and appropriate to treat this as indicative of DV within the relationship? Alternatively, is this not better understood as a heated disagreement in difficult circumstances. My real concern is that there has been an over ready willingness to regard an incident such as this as being a further act of DV when there is room for a more nuanced assessment. I consider it is wrong not to leave open room for the potential for non-DV disputes and disagreements (even where these are at times heated and unkind words used). A failure to do so and an automatic categorisation of such behaviour as DV runs the risk of misunderstanding the situation and placing the assessment of risk too high and the hurdle for finding such behaviour correspondingly too low. In the context of this family, assessment is, I accept, complicated by culture and context. My assessment is that words used such as '*treating us like animals*'; '*disgusting*' and '*like the mafia*' have to be evaluated with a degree of acceptance that language may be more passionate or hyperbolic than expected within our culture. Ultimately, I sympathise with the argument for the father that he was labelled as a perpetrator of DV and everything was then interpreted with that understanding. In my assessment this event is an example of the same. In legal terms I do not consider it more likely than not that this was in fact an act of DV.
- I next turn to the events of September 2018. I consider it is appropriate to consider these together as they formed the assessment leading to the father's eviction from the unit. It is clear to me the unit have justification in sensing a developing tension. The reasons for this can be found in the evidence. I note the following:
 - a) I have no doubt the assessment process (which is always likely to be stressful) was particularly stressful for this father. I accept the assessment of **AC** as to his character and his sensitivity to being slighted. By the end of September, he was the best part of 8 weeks into a process which was likely to touch on his sensitivities on a daily basis.
 - b) It is quite clear the setting was complicated by financial stresses. It seems clear the family were facing complications with their financing and the issue of a return to work was part of the issues

raised at the LAC on 17 September. Having considered the evidence I am in little doubt that a mix of culture and personal character left the father feeling he was not meeting his responsibility to look after his family.

- c) In addition, there does appear to have been some niggling difficulties which in the case of this father left him feeling upset.
- d) The final straw arose out of the father's poor choice of language around removing **A** from the unit. The notes make clear he very quickly retracted any intention to take such action but it led (understandably) to further restriction on the family.

So, there is no doubt, I accept the reports of the father's conversations in the preceding days. I accept he was upset when questions were raised as to whether a woman was in his room; I accept he expressed upset around the use of the phone; I accept he spoke rashly about removing **A** from the unit. However, I struggle to see how any of this would have carried weight at this final hearing viewed without reference to the events of 19 September. They would have suggested a father who struggles to work with professionals and is overly sensitive as a result of his experiences in life but no more. For the avoidance of doubt, I accept the conclusions of **AC** in such regard.

- I then turn to the *19 September incident*. I have viewed the CCTV numerous times. I have a very clear understanding as follows:
 - a) The father was planning to set up 'camp' at a sofa which (I understand) looked onto a TV set. There were other seats available but as the father was present alone in the relevant area he started to prepare the position [8:37:00 – 8:37:30]
 - b) A second family enter the room and move the father's playmat. There is no need to do this as there are alternative seats in the room, indeed there would be alternative seats at the end of the same sofa. Still they move the father's playmat so that they can seat on the cushion of the sofa previously selected by the father [8:37:30]
 - c) There then follows a period when the father and the male of the other group are in conversation from a distance. It seems clear the father is raising the fact they have sat where he was planning to sit. The male appears to suggest the father can sit elsewhere on the sofa. During this period the mother enters and leaves in a space of about 10 seconds. The conversation between father and the other male does not appear particularly heated although it is clear they disagree as to the seating [8:37:30–8:38:45]
 - d) The male of the other group then leaves his seat (I can only assume this was the point at which he went to speak to staff as per the daily logs), the female of the family returns and appears

to reposition the playmat where the father previously placed it. The male of the group then returns and despite the female appearing to indicate there are other seats he again moves the playmat so that he can sit where he previously sat [8:39:49]

- e) The father then returns to the shot and appears to be in conversation with the other male from a distance. My sense is the conversation continues whilst the father disappears off shot [8:40:12-8:40:27]
- f) The father then returns to the playmat and kicks it with his right foot away from the other male. It moves a short distance. A table close to it moves slightly but items on the table do not fall. At this point **A** is in his bouncer behind the father to his left. The other male does not move from his seat or show any perceptible response [8:40:30]
- g) A staff member (**RK**) then enters the room and speaks to the father before leaving [8:40:45-8:41:00]
- h) Thereafter the other family and the father remain in the room whilst the father appears to begin cleaning up his stuff. There are no obvious communications between the adults. The CCTV then ends with the father in the room tidying [8:41:00-8:44:18]
- i) Throughout the video **A** is in his baby bouncer although at one point the father moves him a short distance.

The heart of this issue is the kick of the playmat. It is said the father's actions were violent. It is said this behaviour placed **A** at risk of harm or potential risk of harm. It is also questioned how this might have escalated were the staff member not to have intervened. I have considered these points but have ultimately ending up questioning whether a sense of proportionality has been lost.

My assessment is the father acted wrongly in kicking the mat. He demonstrated the impulsivity and poor judgment suggested by the expert assessment. The incident flowed from his sensitivity to feeling slighted. This justified him being warned as to his behaviour. It is wholly appropriate for the unit to operate a policy with a low level of tolerance. But the motion I saw fell short of violent conduct. The movement is more than a push of the mat but not a great deal more. It is clear the father is seeking to make a point to the other family but there is no sense on the CCTV of any alarm being caused by his conduct. The force is not directed at them and I can sense no physical reaction from the other party. The table does move but only to a limited degree and nothing falls from it. On my assessment **A** is insufficiently proximate to the table to run any risk of harm. For my part I did not wonder what might have happened but for staff intervention as for a period of two minutes after the incident the father is left with the family in the room and nothing happens – in fact the incident cools without further intervention.

In considering this incident it is instructive that I first read about the incident before viewing it. My sense on reading was of a more significant incident and I was surprised when I came to view the CCTV. This leaves me wondering to what degree those who have relied upon reports have an exaggerated view of what took place. I think **AC** viewed the CCTV (although I might be wrong), but **GH** spoke of incidents such as this in which the father's sense of the moment is different to those who view it is abusive. For the record I am critical of the father but I fall short of defining the moment as abusive.

It is no part of my assessment to carry out a procedural review of the decision to evict the father. That is a matter for the unit. All I can say is that I am surprised as to the decision making. I have considerable experience of considering assessment unit reports and my experience tells me such behaviour (not exact of course) is not wholly unexpected. There are often verbal disagreements and sometimes significant standoffs between staff and parents. But in my experience, this does not necessitate the cessation of the placement. Having considered the evidence, I consider the unit had a low threshold in respect of the father. They understandably approached him as a risk (based on my findings) but were too willing to translate otherwise unexceptional behaviour into a category beyond that which it demanded. For the purpose of this judgment I do not consider I need to resolve the dispute but it is noteworthy that **SM** indicated a decision to evict had been taken prior to the point that **RK** considered the decision had been taken.

The difficulty this poses is that this was just the wrong approach to be taken to the father. His character makes him particularly susceptible to being slighted. To approach him negatively as a risk to his child and then to disproportionately respond to matters very much fell into a situation in which he would likely respond poorly (hence the language about leaving the unit).

- *The February incident:* It is noteworthy this incident occurred after each of the professional's witnesses concluded their views and as such it did not contribute to their reasoning. As such it is likely to have confirmed or confounded their views rather than fixing their views. I have a note of the session. I accept the note as being correct. It is quite clear the father again acted unwisely in the circumstances and in doing so lost sight of **A's** needs. The evidence is clear that **A** thoroughly enjoys his time with his father and for him to be caught up in this disagreement was simply not only a lost opportunity for valuable time with his father but also had the potential to be unsettling for him.

I accept the father's account as to the 'cause' of the disagreement. I do so because there was no challenge to his evidence in such regard. I accept on previous occasions of supervised contact he had been left for short periods of time with **A**, for instance if the supervisor visited the toilet. I also bear in mind the context of the supervision. Whilst in the unit there is no suggestion of the father acting consciously to harm **A**. Indeed, the need for supervision of the family outside of the unit (17 September

2018) arose out of a fear of abduction. The supervision of the father in contact must be understood in that context. Whilst I accept the unit would have rules and I am not critical of **SM** in keeping to those rules by requiring the father to hand over his child, at the same time I can empathise with the father who appears to be questioned as to whether his child is safe in his hands for a very short period while the mother is let out of the building. During this period abduction would seem the most remote concern.

I accept the father refused to hand **A** to **SM** so she could leave to let the mother out (the mother was subsequently helped by someone else). Thereafter the father was on the phone to the police reporting what was happening. His decision making on this occasion was short sighted and does not withstand any analysis. He plainly should have co-operated but did not because he could not overlook the slight to him suggested by the need for his child to be protected by being passed to **SM**.

I share the criticisms of the father voiced by the other witnesses. There is little room for excuse. It is a clear example of impulsive decision making. The father has now expressed regret whilst seeking to explain what caused him to act in the way he did. Ultimately, I accept this incident does give grounds for concern as to emotional control. Of course, it is not an incident of DV but I need to be mindful of the potential for such impulsiveness to cross into the relationship sphere and be acted out by some form of DV. Looking back the incident in December 2016 was plainly a more serious incident but it had at its heart the father's tendency to impulsive behaviour.

26. It can be seen I have reached a materially different analysis on the same information. It is important to note that I am essentially acting on the information taken at its highest and in the case of the most significant incident I have the best evidence available (CCTV). In this regard I am placed in no different position to those other witnesses who are dependent on the same information. I bear in mind **DJ** in her evidence suggested that '*these are examples...there is a whole lot more*'. But I am left asking where is the evidence of the other examples and why have these not been pulled out from the closely monitored daily logs. I would be surprised if within the evidence there was a striking example of poor behaviour which has not been referred to whilst at the same time I have been asked to consider the *November argument*. I consider it would be most unfair to make the findings I have but then to determine the case based on material neither referred to me nor identified clearly in evidence. In what way could that be a fair process?
27. However, my concerns go one step further. Whilst considering these matters I feel sight has been lost of the absence of concerning action (having regard to the surrounding circumstances). The Guardian (§9) touches upon this point but I struggle to see where in the assessment balance the point has been fully considered by the professionals. It may be helpful if I elaborate:
- One needs to consider the conduct identified. One has the violence in December 2016 and the finding of controlling behaviour in 2017. One

then has the incidents examined above. The unit told me that they did not see DV during the father's tenure (which I interpret in this conduct as being physical violence given their view on the other matters). Both **AC** ('*he is not a dangerous man*') and **GH** (as quoted by the unit) consider the risk from the father is likely to be emotional in character. So, over a period of the last two years I have limited evidence of continuing DV

- Yet it is clear there is good evidence of the father's impulsive character during this period (*the February contact* and in suggesting he would remove **A** from the unit)
- However, this has occurred during a period of the most intense stress imaginable for the family as follows:
 - a) The assessment has taken place in the fallout from the making of care and placement orders for the older children. The evidence suggests this will have had a real impact not only on the mother but also the father
 - b) Further the mother and father have over this period engaged in the process of cessation of contact with these children
 - c) The loss of the children can be traced to the parent's relationship. I cannot believe this would not be a source of potential internal conflict
 - d) This is then followed almost immediately not by a period of 'bereavement' and a chance to reflect on what has happened but rather an intense and closely monitored assessment
 - e) It seems clear to me that the parents have been conscious throughout of a strong likelihood of history repeating itself with a negative outcome
 - f) In addition, there have been significant financial issues
 - g) Finally, there is the physical separation of the parents
- In my assessment the striking feature is the limited nature of the issues experienced rather than the fact of the same. Yet I cannot clearly identify where in the balance this has been brought in as a countervailing factor. It seems to me having regard to my findings above that one should be asking whether the lack of issues is itself a positive indicator. This is particularly so as I was told there is no evidence of anti-social behaviour on the part of the father other than within the unit; there is evidence of the parents continuing their relationship but no further evidence of concerning behaviour.
- I appreciate the point made (by **DJ**) that this is to be expected in the context of a highly regulated unit. However, this appears to me somewhat simplistic. In my experience the nature of an intensive and

closely monitored environment often demonstrates (rather than masks) the difficulties parties are experiencing. Indeed, if it did not permit this then one would wonder what purpose it served. In any event on the facts of this case I am told the father has acted impulsively whilst within the assessment process. This being the case I question the validity of the argument that little can be drawn from self-control whilst within the unit.

28. The net effect is that I have been left with a distinctly different conclusion with respect to the period of the assessment insofar as it touches upon evidence of continuing DV in the adult relationship or indeed as to the father acting out concerning behaviour. I agree there has been evidence of problematic behaviour but this has at least to be considered in the context of the very challenging circumstances
29. This does not change the fact of my findings from May 2018. I turn to this next.
30. I am uniquely placed to carry out this evaluation given it is my assessment which forms the May judgment. Looking back, I expressed real concerns as set out earlier in this judgment. Given my reflections on the works undertaken it would be naïve indeed to relegate these matters to the mists of history. Still I bear in mind the following:
- There are material changes that bear consideration. First, there is the departure of **Z** from the scene. I accept the evidence in this regard. This removes the *stand-out feature* as I referred to it. It was a toxic relationship which permeated the previous proceedings. It is no longer relevant and to that extent permits the parents a greater opportunity to focus. It is a serious distraction which is no longer in play.
 - Second, I consider something must turn on the fact that **A** is the child of the parents. This is likely to have some impact on the dynamic. It is also relevant he is a single child to care for.
 - Third, **A** is not marked by the life experiences of **B**, **C** and **D**. He is likely to be easier to care for and less of a challenge. The evidence of the unit of very positive care of **A** by the father supports this point.
 - Fourth, the mother has in these proceedings taken all opportunities to engage. She has confirmed my view of her as someone with the capacity to engage and the intellect to make progress. I note **AC** is in broad agreement with me in this regard. I accept progress has not been total but this is a further difference.
 - Fifth, I have my own analysis of what has happened since. From my viewpoint this is somewhat confounding of my own expectations without being totally so. I must say my sense of the relationship was of one which would see further crisis and occasional eruptions. If I had been required to consider how the parents would have likely coped subject to the process they have undergone then I would have expected a significantly worse outcome. That they have navigated this with difficulty, but without such an outcome should not be overlooked.

31. However, I cannot overlook the expert assessments. In this regard it would help if I set out my conclusions:

- I consider **AC**'s conclusions robust and fitting with my own non-clinical assessment of the father. He is plainly damaged by his own upbringing and the impact this has on him is relatively simple to understand. I agree he will find it very hard to engage with challenging work. For him this means digging deep and this will be painful. It is understandable he may wish to avoid such a process. I also agree he suffers from not having the same reflective capacity of the mother. He is plainly a more closed and emotionally dampened individual. His culture appears to impact on his ability to open himself to his feelings. At moments in his evidence he became emotional and I could see how hard it was for him to demonstrate such emotions in a public arena.
- I agree with **AC** that the prognosis for engagement must be considered with caution. Yet there is some hope to be found in the engagement with **PK**. It is striking the father has been able to work positively with the systematic therapist. I understood **AC** to agree this was a form of psychodynamic counselling having heard **PK**'s evidence. I accept the work has been less challenging and as such will be limited as to what it can achieve but it questions whether the father may be in the process of developing a capacity to work openly. My sense is that **PK**'s work comes closer to the approach of seeing father as both perpetrator and victim. I consider it is likely this is part of the reason for its comparative success. Still one must be guarded as my sense is **GH** had an equivalent relationship until matters deteriorated. I agree with the experts as to the tendency of the father to react to challenge by becoming defensive and negative about the assessors. To a limited extent the mother responds in a similar fashion. Whilst there is room for debate as to some of the decision making I consider the parents evaluation of the **SM** and **RK** and the fathers of **GH** as being unfair and contrary to reality. My strong sense is that for the father when things are working the relationship can be productive. However, when **GH** became more challenging (albeit in a wholly professional manner) the father became emotionally unavailable.
- I also agree that there are poor grounds for believing a separation of the parents is likely to be manageable given the nature of their relationship. I accept the externalisation of this point (*'if the Court decides...'*) does not give grounds for optimism.

To make it clear I accept there is a good evidential basis for being pessimistic about the father's future engagement with work and the likelihood therefore that he will continue on occasion to be impulsive in his actions. On such occasions he may lose sight of what is important and focus instead on the issue that is preoccupying him. I don't rule out engagement but this will be slow. I consider the father is not completely closed to such work but it will be a real challenge to not only get it off the ground but sustain it as it becomes emotionally challenging. I consider the mother is placed in a much better place insofar as motivation and capacity to engage are concerned. Her character makes the

prospects of success much higher than that of the father. On balance I consider it is likely she will successfully complete a programme of works.

32. This touches upon my May conclusion when I contrasted the difficulty that would arise if it were only the mother making progress but not her partner. If I understand the **11CC** assessment they develop this point by noting the potential for problems arising where one partner is developing insight in contrast to the other. My dilemma is how I balance the points set out above. I need to have full regard to the specialist advice whilst at the same time reflecting not only upon my differential assessment as to what has been taking place, but also as to the implications this has for assessments which relied upon such behaviour in reaching conclusions. I will return to this balancing exercise later in this judgment.

Other matters

33. For reasons explained the focus of the evidential assessment has been on the question of DV. Before turning to my welfare assessment, I will briefly consider some other matters arising in the evidence:
- I have considered the evidence from the unit as to issues with the mother's care of **A**. I accept the evidence of there being a dip in care following the father's removal from the unit and of there being a limited number of issues where guidance was required. However, the totality of evidence was of good enough care.
 - It is clear from the evidence that there is a strong bond between the parents and **A**. **DJ** notes this at §10-11 of her report but it is remarked upon by all the witnesses. However, beyond this there is also good evidence of focused care on the part of the father. Generally, his care is viewed as being of a very good quality and meeting the needs of his child.
 - I heard evidence as to issues relating to the mother leaving the unit and requiring significant support by way of child minding. However, it cannot be overlooked that the mother had significant commitments whilst in the unit and once the father left this was aggravated. Of course, I also bear in mind **AC's** views as to the benefits of the mother being given the chance to enjoy the 'oxygen of everyday life' away from the 'incubator' of the unit.
 - I heard from the family finder as to the placement options. It is reasonably clear **A** would likely be placed within a reasonable time frame having regard to his age and his general good health without complications. At the time of the hearing there was a potential for a placement which came close to but not provide an exact cultural match. I accept this evidence.
 - I heard argument as to whether the assessment was a fair one. Having heard the evidence, I have no reason to call into question the essential fairness of the assessment or the approach taken by the workers. My

sense is the criticisms levelled arise out of the circumstances of the termination and the end conclusion rather than the actual work undertaken at the time. I note the positives in the initial assessment which suggests other than a wholly closed mind. On the termination of the father's placement it was suggested the assessment continued in the community. I must say I struggle with that suggestion given the evidence I have heard. I accept some form of assessment arose out of observing contact but that was the extent of any assessment of the father. The structured work previously undertaken came to an end.

- I heard evidence as to the meeting at which the father was told the DVIP work was being suspended. This meeting was attended by both **O** and **GH**. I consider it unfortunate that the father was not given any forewarning **GH** would be raising the issue of suspension at this meeting. The father was asked by **GH** whether he would be assisted by his attendance at this first meeting with the new social worker. The father agreed and **GH** attended. Whilst I accept there would ultimately have had to have been a suspension meeting it is unfortunate this occurred in circumstances in which the father felt **GH** was there to help him. I am not particularly surprised this then led to a heated outburst from the father ~ taken objectively he must have felt somewhat let-down by the way in which this was managed.
- I note the criticisms of the final social work evidence (not **SO** or **O**). It is clear there is a poor use of language in certain regards. I accept this point and bear in mind the evidence I received as to generally good care.
- I accept it would have helped for therapy to commence earlier: see **AC** but this was not the responsibility of the unit. I agree with **DJ** as to a sense of the local authority contracting out responsibility to the unit. I agree it cannot have helped for there to have been three different social workers. However, I note both **SO** and **O** were viewed positively by the mother and so I consider it would be unfair to level the blame at their level.
- Finally, I heard disagreement as to the circumstances in which the father came to join the mother in the unit. I do not consider it necessary to resolve any disputes in this regard. The reality is the father did join and the assessment proceeded on that basis.

My Welfare Assessment (1): The welfare checklist

34. **Ascertainable wishes and feelings:** Given **A's** age it is not possible to ascertain his wishes and feelings. It might be assumed he would, if he had the age and understanding, wish to be cared for by his biological family so long as the care was of a good enough quality.
35. **A's needs:** He is a child of tender years and is therefore peculiarly vulnerable. He is wholly dependent upon his care giver and has no self-protecting capacity. This elevates the need for safe care. He shares with all children a series of common needs for good basic care and the provision of food and housing and

to be kept warm and clothed. In addition, his emotional needs will be for consistent and predictable care. Such care will set him on the appropriate path in his personal development which will in due course see him acting as an independent individual. Inconsistencies in care may impact upon his development and understanding of appropriate social interactions. If he receives inconsistent or poor care then he may come to demonstrate poor interpersonal skills with his peers and other third parties. Poor care may be modelled with **A** acting out disturbed and challenging responses disproportionate to the issue that face him. One can see in considering the challenges faced by the parents where deprived and poor/inconsistent parenting leads and I am conscious of the potential life-long implications of the same. Needs in addition include educational needs and from time to time medical and other needs provided by third party agencies. It is important for **A** that his care givers can navigate interaction with such agencies in the interests of **A**. It would be positively unhelpful were his parents to allow their own issues to cloud their ability to permit **A** to fully benefit from these needs/opportunities.

36. The evidence tells me the father can provide good loving care for **A**. He appears attuned to his son and there is a warm and loving bond. This is a crucial prerequisite upon which to build. The evidence tells me the mother is equally attached to **A** (and he to her). These parents adore their son and want the best for him. The evidence is clear that neither would consciously seek to do him harm. This case is not about malignant attitudes. My reading tells me that **A** is the centre of their world and they cannot see a future without him. The evidence suggests the father is the more attuned of the parents but this is not in my judgment a significant feature other than it suggests the mother would benefit from his involvement and suffers when the same is unavailable.
37. The mother has made some progress in her work and is understanding of the impact on a child in her care of inconsistent care (particularly insofar as DV is concerned). This understanding is unlikely to be restricted to DV though and will generally inform as to the implications for a child of disrupted/problematic care. All witnesses agreed this case would not meet the threshold on care issues. This cannot be categorised as a neglect case. My assessment of the evidence tells me the mother has the capacity to make further progress and has the motivation and the commitment to make progress. I assess her as someone who is genuinely interested in these issues and wants to improve. She has the intellect and language skills to make progress.
38. Sadly, however she is socially isolated. This takes on weight in the circumstance of a difficult relationship. The process of developing personal autonomy and independence through social activity is not only freeing at an emotional level but provides a counterpoint against which to assess any problems in the relationship. Interacting with individuals who can portray positive and nurturing relationships is an important fortification for the mother's progress. To transfer from the 'incubator' of the unit to a different but equivalent 'incubator' with the father is no solution. This mother deserves but would also benefit from establishing her own personal connections.
39. The father has further to go and the future is far from clear. He like the mother is a product of his upbringing. In his case the effect is particularly found in his

difficulty in dealing with situations which he perceives as slighting or humiliating of him. In daily life in the UK he will often face such challenges and it would be a concern were he to allow this to impact on him and his care of **A**. Counsel questions how he will deal with challenges posed by a school or other institution. How will he cope if his partner develops her personal relationships? Will this be a source of disagreement and if so what form will this take? These parents are the ‘emotional refugees’ suggested by the expert and one must question how either would respond if they developed a sense the other was being ‘rescued’ from the situation by outside forces. On the evidence available I can only really progress on the basis that change will be slow (this is not only a clinical judgment but is supported by the hard facts) and may be limited in quality. My view is the father is willing to undertake work (see the couples counselling) and where this is sympathetic he can engage and show motivation. I would be surprised if this did not have benefits for him: in opening himself to the concept of such work and giving him a sense of what such work involves but I accept substantive change will require a more challenging approach.

40. I accept his impulsivity is a real issue. **A** needs consistent and predictable care. If the father is distracted then **A** will suffer whether this is the father’s intention or not. The concern is that the father is not just distracted from prioritising **A** but that this operates at such a level that **A**’s needs are unmet causing him significant harm.
41. **Effect of A becoming an adopted child:** At one level one can say **A** is young and is likely to be resilient to change. Were he to move to an adoptive family he would likely settle and the reality is within a relatively brief period his birth family would fade into history. At this level he is likely to be able to manage such a process. The evidence of the family finder does to an extent temper the concerns arising out of **A** being unlikely to be placed with a family from **AA**.
42. However, the effect on **A** needs to be considered at a deeper level. He has a good and loving bond with his parents and separation from them will cause a period of disruption and upset to him. I accept this could be managed with appropriate and skilled replacement care. However, his birth family may fade but they will always be part of who he is. A time will come when he will likely discover the fact of his adoption. This may arise earlier rather than later if there is the potential for half-sibling contact with **B**, **C** or **D**. At such a point **A** will want to understand why he could not be raised by his mum and dad. Poorly managed or unmanaged **A** is likely to suffer emotional harm as he tries to come to terms with this. I consider the risks to him will be magnified it is not readily understandable why he could not remain with his parents.
43. **Personal characteristics:** I have in mind his age and cultural background. This background is an important part of who **A** is and there is real likelihood of his understanding of the same being significantly limited on adoption. Identity and a sense of place in the world has the sense of being somewhat ‘airy-fairy’ but it is at the heart of who **A** is.
44. **Harm:** As can be seen above this element has been at the heart of this judgment. I have taken great care setting out my analysis. It leads me to the conclusion that

DV is an important feature of the parent's relationship but that there has been an important diminution in more worrying behaviour during this period of intense and highly stressful assessment. Fairness requires proper weight to be given to this development. In considering risk I cannot ignore the theoretical/clinical evaluation but I must set against it the reality of observed behaviour. I have commented as to the naivety in dispensing with consideration of this risk but having critically analysed the level of risk I find a reduced level of concern when compared with May 2018. I have highlighted factors which have played into this change.

45. **Relationship with relatives:** A only has his mother and father. There is no readily available wider family. His mother and father want to raise him together. Their capacity to do has been central to this judgment. I am in no doubt this would be of immense benefit to A if they could care for him in a consistent manner at a good enough level.

My welfare assessment (2): Holistic analysis

46. The realistic options in this case are either adoption or placement with the parents. I will deal with each in turn:

- a) Placement with the parents has the central benefit of preserving family life. It will enable A the opportunity to experience a life growing up within his biological family. It will preserve the positive aspects of his care found within the evidence. Whilst such a plan would necessitate change in that the mother would need to move from the unit this would likely be manageable if it were associated with the maintenance of A's key carer. It would fortify his identity and give him the opportunity to develop a full understanding of his place in the world. Those caring for him will be best placed to answer the questions he will have about his background. Such a placement will remove the need to address the emotional difficulties that are likely to arise in some form should a time come when he questions separation from his birth family.

The issue for such a placement rests with the potential for the placement to be destabilised by the presence of discord in the parental relationship. It would be deeply harmful for A were the family placement to continue only to fall apart in the foreseeable future. This would be a disaster for A. As noted above the issues are as to the likely availability of predictable care and the risks of impulsivity.

- b) Adoption would bring greater certainty as to a secure and reliable placement. I can assume the prospective carers would have the skills and commitment to ensure A has a settled and predictable level of care. The key benefit would be for A to have permanence (which he demands at this age) with the risk of failure reduced to a low level. Whilst adoptions can fail I take the view an adoption in this case would be unlikely to show any strains in the immediate future. Issues may develop as A ages but with good groundwork the risks might be limited.

Against this adoption would amount to a severance of family life. There really is no prospect of ongoing direct contact with the parents and no tangible evidence to suggest the potential for half-sibling contact (although I do not rule that out as a possibility). **A** would be severed not only from his parents but from the only link to his culture and heritage. This would be a lifelong decision of the upmost significance.

Conclusions

47. I am simply not persuaded it is proportionate to make the order sought by the local authority. This has been a difficult decision and I have spent considerable time (delaying my judgment in the interim) whilst I have considered and reconsidered the balancing exercise to be undertaken. Whilst the factual matrix to this case has not been intellectually complex I have found this decision one of the harder decisions I have been called upon to make.
48. My difficulty flows from the conflict between my acceptance of the clinical/expert evidence in contrast to my assessment of the actual behaviour on the ground. I accept the reservations found within the expert evidence. Ultimately, I conclude this may be a case where the father gains only a limited breakthrough in respect of repairing the historical damage done to him. As a result, it is likely his relationships will not be simple and there will be occasions when emotion gets in the way of best decision making. I find it very difficult to conclude other than that there will be occasions on which his ‘rough side’ shows and that on such occasions arguments may arise and become heated. At such times there is a risk of the father failing to properly focus on **A**’s needs. By way of example I would not be surprised by disagreements such as evidenced in August 2018.
49. Against this though are my finding as to the actual conduct evidenced within the relationship during this period of the most intense pressure. This causes me to question the likely level of difficulty that will arise when issues occur. On balance I have reached a more optimistic viewpoint as to the prospects of classic DV. I bear in mind the conclusions of both **AC**, **GH** and **DJ** as to the father not being a dangerous man. The risks are more likely to be of emotional outbursts. I have evidence covering a period in excess of 2 years and during this period the concerns arising have not met a level which justifies the order sought. By way of analogy I would not have found threshold made out on any of the matters dealt with explicitly above. On balance the evidence suggests it is not only less likely but less likely than not that behaviour will approximate that found in December 2016.
50. I am minded to reflect on the words of His Honour Judge Jack⁷ (words approved by the last President in Re A):

I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink...The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence (now very widely defined) and where parents on occasion drink more than they should, I am not condoning that for a

⁷ North East Lincolnshire Council v G & L [2014] EWCC B77 Fam

moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts.

I bear in mind this concept is of relevance when considering the question of threshold. But the principle of social engineering cannot be limited to the threshold question alone. The test of proportionality requires the Court to ensure intervention is set at no higher level than is required.

51. I share the view of the Learned Judge. There are boundaries over which the Court should hesitate to tread. So, there can be no doubt the situation was markedly different in 2018 having regard to not only the more recent serious DV but also the toxic adult relationship and the problematic life histories experienced by those children. Matters have moved on and this must be brought into the equation. I wonder what A would make of being adopted if he were to come to his files aged 18. I believe he would be very troubled to understand that his removal and consequent life story flowed from an incident which took place nearly 18 months before his birth and from an inability on the part of his father to succeed with therapy. He might well ask where was the proportionality in such a decision?
52. I can see how I have, through my decision making, influenced the process which has played out before me. I reached firm decisions in May 2018 and anyone reading my decision would have likely approached the question of future parental care with caution. When I came to this case I had the same caution and took the same approach. But it is incumbent on the Court to keep an open mind and to ensure regard is had to the whole canvas of the evidence. Clinical judgment and predictions are important and sometimes the best evidence the Court has available to it to assess the future. But where there is evidence which does not fit the jigsaw this must be properly evaluated and if the picture does not fit the Court must do its best to ascertain what the true picture is.
53. Having taken this approach, I have ended up disagreeing with the experts in this case. I do so with some diffidence as I respect the effort they have put into this case. I have done my best, and at some length, to explain why I disagree. The decision has not been made easier by the quality of the submission made in favour of the local authority planning. But I have reached a clear decision that removal would be neither proportionate, reasonable or necessary. I am not satisfied that 'nothing else will do' for A. Rather I conclude A should have the opportunity for a future life with his parents.
54. I don't favour the alternative plan of mother separating from the father. Most importantly I don't think it would work. I have no doubt the mother would try but the evidence firmly suggests she is not in the right place to achieve such a plan. Further, separation would bring, alongside the perceived benefits, some important deficits. There is the question of the financial sustainability of the unit and the importance of the father. There is the positive role the father can offer to A. Most importantly there is the need for mutual support to allow the process, which will remain challenging, to work.

55. Plainly, I have rejected the need for a further period of assessment.

What should now happen?

56. A's welfare requires the making of a supervision order for a period of 12 months. It is clear the threshold test is crossed and such an outcome is justified by the Article 8 assessment.

57. A will benefit from his mother continuing her individual work and starting the further piece of DVIP work referred to within the hearing. I also consider there is continuing value in the couples counselling. It is important for the father to continue to be engaged at some level and this in my judgment is of help. I would very much hope the father can follow the mother into individual work and can return to DVIP sooner rather than later. I would ask him to reflect not only on this judgment but the evidence he has now seen which explains why this will not only help him but more importantly A. My strong feeling is that the father wants to be the best father for A that he can be. This is more likely if he engages as suggested.

58. There is a continuing role for the local authority. My feeling is that O would be able to work well with the parents. There was a touching piece of questioning when it was stated he was the first social worker to hold the baby. It seemed to me he has an open mind and is unlikely to struggle to work within the confines of my judgment. This local authority will need to provide support to the family. There will need to be a careful transition plan and a support plan. I look to the local authority to draft this plan in the light of my judgment. I am sure the guardian will have valuable points to make.

59. Pending judgment I received notice of an application made by the father for contact with A. Given there is no order permitting the refusal of contact (indeed no request for the same) there could be no reasons for stopping contact. I was not asked to make such an order at the final hearing. However, I judged it inappropriate to fix an interim hearing given my judgment was pending. It is clear the contact must now recommence as part of the transition planning.

60. I intend to hand this judgment down at the Family Court at Barnet on 28 March 2019 at 10am. I appreciate this falls outside of the 28-day period for handing down judgment but I bear in mind I have supplied my judgment in draft form within this period and I also bear in mind the need for the local authority to reflect on my judgment in settling their support plan.

61. I will accept any requests for clarification and corrections sent to me by 4pm on 18 March 2019. I will leave it to the parties to draft an order for my consideration. I thank the professionals for the care they have brought to this case and counsel for the skill and care with which they advocated their cases.

HIS HONOUR JUDGE WILLANS
