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Neutral Citation [2023] EWFC 104 (B)

ZW2245019

IN THE FAMILY COURT AT WEST LONDON (BARNET)

SITTING AT THE ROYAL COURTS OF JUSTICE

**Royal Courts of Justice
3 July 2023**

Before

RECORDER MCKENDRICK KC

Between

LONDON BOROUGH OF Y

Applicant

AND

(1) A MOTHER

AND

(2) A FATHER

AND

(3) T AND Z (By their Children's Guardian)

Respondents

Mr Theodore Bunce instructed by Local Authority Solicitor for the applicant
Ms Elpha LeCointe instructed by Wilsons & Co for the first respondent mother
Ms Sophie Prolingheuer instructed by Duncan Lewis for the second respondent father
Ms Jacinta Lonnen of Eszinazi & Co for the third and fourth respondent children

Hearing Dates: 26-29 June 2023

JUDGMENT

The Recorder:

Introduction

1. These proceedings have been listed for a four day final hearing to determine the applicant's application for care and placement orders in respect of two girls: T, who is 4 years and 1 month; and her sister, Z who is 1 year and 1 month. The respondents to the application are the girls' mother, the girls' father and the girls themselves represented by their Guardian.
2. Regrettably it has not been possible to justly determine the care and placement order applications at this hearing, notwithstanding the careful and detailed case management orders and directions which have led up to this hearing. For reasons which I will endeavour to explain the hearing has been used to determine the contested threshold and to make findings of fact which are relevant to the future welfare decisions which will fall to be made in respect of T and Z and further case management to provide for further necessary evidence. The urgent welfare decisions for the girls will be made at an adjourned three day final hearing before me on 7 November 2023.
3. The mother is a young woman who is vulnerable by reason of additional learning needs and likely attention deficit disorder. She has three children, two of which are subject to these proceedings, plus an older child with a previous partner. Her eldest child was subject to care proceedings in 2018, which concluded with a special guardianship order to a paternal relative. The parents' relationship commenced at some point in mid-2018 and ended in or around December 2021/January 2022. The family came to the attention of the local authority in October 2018 when a referral was received from a midwife at [redacted] Hospital advising that the mother was pregnant. Unborn T was made subject to a child protection plan given the concerns in the previous proceedings. T was born in May 2019. Some months later, the family began to come to the attention of professionals worried about a number of police callouts to the property. None of these, however, resulted in any further action. Moving forward, it appeared that the Child Protection Planning was having the desired effect, and on 17 February 2020, T was stepped down to a Child In Need plan.
4. The second period of local authority intervention began in June 2021, following concerns that the mother was subject to domestic abuse and controlling behaviour on the part of the father. The family was put back on a Child Protection Plan on 21 September 2021. The family did not engage with the Local Authority and in October 2021, the Local Authority progressed the matter to the Public Law Outline pre-proceedings. Again, the family did not engage. Matters came to a head in December 2021 when the mother left the family home on Christmas Eve, and the Father placed T in the care of his sister. The mother returned to the home on/around 27 December and, believing T to have been kept from her care without her consent, called the police. In the course of her conversations with the police about this incident, she made allegations of domestic abuse against the father. The father was arrested, but no charges were brought, save that he was subsequently charged and convicted of assaulting an emergency worker in his attempts to resist arrest. It is around this date that the relationship between the mother and father ended.

The Proceedings In Outline

5. The applicant issued proceedings in respect of T on 20 January 2022. It sought relief by way of an interim care order and a care order. The proposed interim plan was for the mother and T to be accommodated in a ‘mother and child placement’. T was born in May 2019 so she was at this stage around 2 ½ years old. The applicant noted the mother was 24 years old (she was born in December 1997) and was diagnosed with learning difficulties and likely Attention Deficit Disorder. Litigation capacity issues were raised. The father was then 37 years old (born in September 1984).
6. The early directions made noted the 26 week time limit would expire on 21 July 2022.
7. A hearing to determine the application for an interim care order came before Recorder De Silva on 24 January 2022. The applicant, mother and children were legally represented. The father attended in person and sought an adjournment. This was refused and an interim care order was made in respect of T.
8. The applicant made a Part 25 Family Procedure Rules application for permission to instruct experts to assess the parenting capacity of the mother and the father; for psychological assessment of the mother and the father; and for hair strand testing of the mother and father. The mother’s solicitor made an application for an assessment for an intermediary. These applications were determined before HHJ Karp at a case management hearing on 14 February 2022. The father was legally represented at this stage. On his behalf his counsel confirmed that he consented to a parenting assessment but refused to consent to a psychological assessment. It was also said on his behalf that as a Rastafarian he could not provide a hair strand test but was willing to provide a nail and blood sample for drug and alcohol testing. HHJ Karp ordered various drug and alcohol tests of the mother and father and approved the instruction of an independent social worker, Mr Eric Dooley. Cognitive and psychological expert evidence was directed in respect of the mother and a psychological assessment directed in respect of the father. Further directions were made to Communicourt in respect of an intermediary for the mother. The court noted she was vulnerable. A variety of other case management directions were made through to Issue Resolution Hearing.
9. Z was born in May 2022. When she was five days old, the applicant issued an application in respect of her seeking an interim care order and a care order. The application noted Z (and her mother) were living in voluntary section 20 Children Act 1989 (hereafter “the 1989 Act”) accommodation. It noted T’s father under “other” in the application, noting he did not have parental responsibility for Z. A hearing in respect of this application took place on 20 May 2022. The mother did not oppose the interim care order and the proceedings with T were consolidated. The applicant agreed to undertake DNA testing of the putative father. Mr Dooley’s instructions were extended to cover Z’s welfare. Directions were made in respect of viability assessments of all alternative carers. Other evidential directions were made.
10. A further hearing took place on 3 October 2022. By this stage, the Local Authority care plan was for the mother and children to be placed with their maternal aunt

under a 12 month supervision order, with a recommendation for a child arrangements order to the aunt.. The recitals noted the applicant and the mother agreed an attached threshold. I understand Z's putative father had not consented to DNA testing and the order noted in a recital that the mother consented to DNA testing between T and Z to establish paternity. I understand the mother had issued an application for a non-molestation order against the father and this was listed to be determined at a hearing on 10 November 2022 alongside an issue resolution hearing. The father is not mentioned as a party in the recitals to this order and it appears he did not attend. Paragraph 6 of the order states:

The Local Authority shall serve the final threshold document, as agreed with the Mother, on [the father]. [The father] must respond to the document by 4pm on 17 October 2022. If he does not respond, he shall have to seek the permission of the court to dispute the Local Authority's threshold.

11. I note that paternity testing established the father is the biological father of Z. He does not, however, have parental responsibility. He is named on the birth certificate of T and has parental responsibility. I also note whilst the father engaged with Mr Dooley in his parenting assessment he has not engaged, to date, with a psychological assessment.
12. A further hearing took place on 10 November 2022. The recital recorded the fact the father did not attend and was not represented. The maternal aunt was invited to attend but did not do so. A recital noted she had not taken up the offer of funded legal advice. The recitals noted she wished to be assessed as a Special Guardian for the girls, but because of holidays such assessment could not be concluded before the end of March 2023. A recital noted the court accepted the threshold as set out in a document agreed between the mother and Local Authority dated 3 November 2022. It was noted the girls may be made subject of a care order and placed with the maternal aunt under a special guardianship order and as a foster carer. Further directions were made in respect of evidence.
13. The hearing of the mother's non-molestation order against the father was heard on 5 December 2022. The application was served on the father. He did not attend and was not represented. The court was satisfied he had notice of the hearing and had been served. The court made no findings of fact. A non-molestation order was made against the father in standard terms in respect of the mother and the girls. The father has never sought to set aside this order. It remains in force until 4 December 2024.
14. A further hearing took place on 18 April 2023. The father did not attend and was not represented. The recitals noted the paternal aunt had withdrawn from assessment and no longer wished to play the role previously envisaged by the applicant. Directions were made requiring the applicant to set out its final evidence, setting out its case for a care plan of adoption for both girls. Recital D noted:

AND UPON the Father continuing to refuse to engage in proceedings, or instruct solicitors, but saying to the parties in email correspondence that he opposes the final care plan and wishes for contact with the children.

15. A further recital recorded that the Guardian and the mother requested the applicant to continue to identify suitable long term placements for the mother and children including at K Placement.
16. A final hearing was listed.
17. The father instructed solicitors on 10 May 2023. He made a formal application, dated 20 June 2023, to seek permission to contest the threshold findings previously agreed between the applicant and the mother. His application noted: “*The father is now willing to fully engage with these proceedings and wishes to be given the chance to contest what is alleged by the local authority in court*”. He made a further formal application for a further parenting assessment on the basis that whilst he engaged with Mr Dooley, he considered his assessment flawed for various reasons.

The ‘Final’ Hearing

18. The applicant has been represented by Mr Bunce, counsel; the mother by Ms LeCointe, counsel; the father by Ms Prolingheuer, counsel; and the girls, through their guardian, by Ms Lonnen, solicitor. I am very grateful to the advocates for their helpful position statements filed and served the working day before the hearing and for their professional advocacy at this hearing.
19. Detailed and sensitive participation directions were made by HHJ Karp for the mother in advance of the hearing. She has had the assistance of an intermediary who has sat beside her and assisted her throughout. Regular breaks have taken place. At the outset of the hearing I inquired of the parties what further measures were required having regard to Practice Direction 3AA and arranged for a screen to be provided.
20. After some reading time, the hearing commenced at 12pm on the first day. Mr Bunce’s position was that: the father’s application to oppose threshold was opposed as was his application for further assessment. As for viability assessments the applicant’s position was:

“It is extremely late in the day and the Local Authority is greatly concerned about the degree of delay in this case. [T] is now four years old and further delay will further reduce the prospects of successful adoption. The court is respectfully reminded that the amorphism ‘nothing else will do’ does not dictate that it is necessarily in the child’s interests to either be cared for by natural family member (see Re W (Adoption: Approach to Long-Term Welfare) [2017] 2 FLR 31), nor that an extension of the timetable is automatically justified to assess a family member at the last minute. The Local Authority may continue to progress viability and special guardianship orders after these proceedings have been concluded. At this stage, there is no positive viability assessment of either family member. They are not ‘realistic options’ before the Court. The children’s welfare dictates that the final hearing proceed.”

21. I was invited to proceed to make care and placement orders.

22. Ms LeCointe's position on behalf of the mother was that:

"The mother strongly opposes the local authorities care plan for the children and would seek to retain care of the children.

The mother would not oppose [an adjournment] for the purpose of assessment of extended family members. The mother was also in agreement with the guardian that an assessment is required in relation to [T].

The mother would be opposed to an adjournment for the sole purpose of an assessment of the father or the paternal grandparents."

23. The mother supported the Guardian's position that T required an assessment. She also urged the court to permit written evidence to be filed to explain the K Placement option where she hoped she could reside with the girls. I noted the applicant appeared to refuse to fund this, albeit without evidence of what was to be offered.

24. Ms Prolingheuer's position for the father was that:

"a. For the final hearing to be adjourned and his Part 25 application for further

Parenting assessment allowed;

b. For the final hearing to be adjourned and for him to be permitted to file and

serve evidence, including in respect of challenging threshold;

c. If the court is not minded to deal with the above applications as preliminary matters for the court to determine threshold and consider his Part 25 application for further assessment after the evidence has been tested;

d. To refuse the local authority application for care and placement orders and leave the children in the care of the mother with all necessary and relevant support and assistance, with the children to spend time with the father. He would accept this is supervised at a contact centre in the first instance."

25. The father failed to attend the first and second days of the hearing. He was present on the third and fourth days, albeit he arrived late on each day.

26. Ms Lonnen, on behalf of the girls' Guardian, submitted:

"[F] seeks permission to dispute the threshold – this is required as a result of an order of HHJ Karp that he could not do so without permission as a result of his failure to file a response document. The guardian's view is that as he was not instructing solicitors at that time and was not present at the hearing it would be reasonable to allow him to challenge matters within the threshold document if he wishes to do so. This should not in itself justify adjournment of the final hearing, and could be dealt with at the listed final hearing.

The guardian is concerned that with a plan presented to the court for placement for adoption, all possible avenues within the family must be explored. There is a gap in the evidence, in that the paternal grandmother and paternal aunt are said to wish to put themselves forward but no viability assessments are available. The local authority has been asked to produce

these. In addition, the local authority will need to urgently liaise with the social workers at LB XY who are dealing with [F's] older children. This is because F says that LB XY have asked him to care for his four older children because of concerns about their mother, and he is doing so. It is not clear how or why the two local authorities have taken such differing approaches to [F] as a potential carer and information is needed urgently as to the position of LB XY and how they have reached this conclusion. If any written assessments, case notes, or child protection or child in need meeting minutes and reports are available, those would be helpful, but at the least the social worker will need to liaise with the LB XY social worker and produce a case note or updating statement to assist the court.

Without viability assessments in relation to the children's paternal aunt and grandmother the guardian is not in a position to make a recommendation to the court that "nothing else will do" and that a plan of placement for adoption should be pursued. The father should have engaged solicitors and put forward these potential carers much earlier, and he has caused delay to planning for the children, which is highly regrettable. However, this does not mean that [T] and [Z] should miss out on a possibility of care within their birth family, and their paternal relatives must now be explored.

It appears possible that the final hearing may need to be adjourned and relisted for this reason. If this is the case, the guardian is likely to recommend that the additional time be used to obtain an assessment of T's needs from a child psychiatrist/psychologist."

27. In addition, Mr Bunce informed me that the foster carer with whom the mother and children were placed for some considerable time, had very recently (validly) served notice and the placement would be terminated on 5 July 2023. I was told this was because of the foster carer's significant concerns in respect of T's emerging additional needs and behaviours. A witness statement by a social worker was produced on the afternoon of the first day. It was suggested this be sent to Mr Dooley, who was overseas, and that he consider this before giving his evidence remotely on the first day (he was not apparently available for the rest of the hearing).
28. Taking stock it appeared there were some significant issues in respect of what may be described as evidential gaps as follows:
 - a. there was updated evidence from the foster carer about T's behaviour which had caused the foster placement to come to a premature end. This evidence had not been seen by Mr Dooley, the Guardian or the parties.
 - b. The Guardian and the mother submitted that T needed to be the subject of an assessment by a child psychologist. This evidence was said to be critical to the placement order application. It was suggested it may raise the possibility of different care plans for the girls and raised, for the first time, that it may not be inevitable they are placed together.
 - c. There were potential paternal family members who may be carers who had not been the subject of viability assessments. This was largely disputed by the applicant who considered they had made proportionate searches.

- d. There was missing evidence from the social services department of another London Borough who were involved in the care of the father's four children from another relationship (these children are aged 5-12).

29. As I considered whether to: (i) proceed and determine the applicant's application within this hearing; (ii) adjourn from the outset, obtain the further evidence and re-list; or (iii) hear some evidence and make as much progress as possible and consider the need for further evidence after having heard the evidence with the possibility of an adjournment to a further short hearing, I found myself increasingly troubled by the threshold agreed between the applicant and the mother.

30. The threshold agreed between the applicant and mother in 2022 is as follows:

“Concerns regarding the parenting of other children

4. Both [M] and [F] have had social services involvement with their older children [C4]:

4.1 On the 28.01.18 care proceedings concluded in respect of [M] first child, [E]. [E] was made subject to a Supervision Order to A CC and a Special Guardianship Order was granted to [E's] Paternal Aunt. Care proceedings were issued by the London Borough of Z due to concerns about the parents capacity to care for [E] due to [M's] learning difficulties, domestic violence and illicit drug use.

The parents exposed the children to emotional and physical harm due to incidents of domestic abuse between the parents

5.1 On the 17.04.19 [M] disclosed that she was assaulted by [F] in the 16.04.19. [M] reported she was hit on the head with a glass saucepan lid which broke on impact.

5.2 On the 12.07.19, [M] called the police and reported that she had stabbed [F] although she had not actually done so.

5.3 On the 09.08.19 [M] reported she had been kicked in the genital area. [M] was inconsistent when the incident was discussed with her (but confirms it is true) and appeared scared and nervous to discuss the incident.

5.4 On the 10.02.21, [F] and [M] went to the police station after a verbal argument in the supermarket where [M] had belittled the Mother in front of T. As a result [M] was upset and screaming whilst T was present.

5.5 On the 14.06.21, the Local Authority received a referral from maternal aunt that [M] is a victim of domestic abuse by [F] and that his behaviour is very controlling.

5.6 On the 01.01.22, police referral was received due an incident whereby [M] called the police because [F] had taken [T] to his sister's house and left her there from 24.12.21 to 01.01.22 and would not allow [M] access to her daughter.

5.7 On the 05.01.22, [M] informed the social worker that she has separated from [F] due to his violent and abusive nature [C34].

The children are at risk of neglect due to the parents non engagement with professionals to address concerns

6.1 On the 21.09.21 neither parent attended the initial child protection conference where [T] was made subject to a child protection plan under the category of neglect. The Mother was subject to the control of [F] and he did not wish to engage with the Local Authority and, as a result, the Mother felt unable to properly engage.

6.3 Neither parent attended the PLO meeting scheduled for 01.11.21. The Mother was subject to the control of [F] and he did not wish to engage with the Local Authority and, as a result, the Mother felt unable to properly engage.

6.4 On the 09.12.21, [F] attended the social workers office to inform the social worker that he does not want to work with social services.

6.5 On the 10.12.21 neither parents attended the review Child Protection Conference. The Mother was subject to the control of [F] and he did not wish to engage with the Local Authority and, as a result, the Mother felt unable to properly engage.

6.6 Neither parent attended the core group meetings on 28.09.21, 21.10.21 and 18.11.21. The Mother was subject to the control of [F] and he did not wish to engage with the Local Authority and, as a result, the Mother felt unable to properly engage.

The children have suffered and is at risk of suffering emotional harm and neglect due to [F] history of aggressive behaviour towards professionals

7.1 On the 21.10.21, the midwife described [F] as aggressive during a telephone call when requesting for his name to be put in the maternity book.

7.2 On 9.12.21 [F] presented aggressively towards staff at Children's Services reception.

7.3 There has been various emails from [F] to the social worker where he presents as aggressive and intimidatory. On 10.12.21 and 12.12.21, [F] sent the social worker emails and presented very aggressive and uncorporative." (sic)

31. I canvassed with the advocates my concern that the threshold did not seek to fully determine whether the father was violent to the mother and whether she was, more widely, the subject of his domestic abuse. Very properly Mr Bunce accepted that and he raised with me his concerns as to whether the threshold was compliant with the dicta of Sir James Munby P in Re A (A Child) [2015] EWFC 11 and in particular what was said at paragraph 10:

“The second practical and procedural point goes to the formulation of threshold and proposed findings of fact. The schedule of findings in the present case contains, as we shall see, allegations in relation to the father that "he appears to have" lied or colluded, that various people have "stated" or "reported" things, and that "there is an allegation". With all respect to counsel, this form of allegation, which one sees far too often in such documents, is wrong and should never be used. It confuses the crucial distinction, once upon a time, though no longer, spelt out in the rules of pleading and well understood, between an assertion of fact and the evidence needed to prove the assertion. What do the words "he appears to have lied" or

"X reports that he did Y" mean? More important, where does it take one? The relevant allegation is not that "he appears to have lied" or "X reports"; the relevant allegation, if there is evidence to support it, is surely that "he lied" or "he did Y"."

32. It seemed to me that the threshold, whilst it had been agreed between mother and the applicant, crucially did not fully grapple with whether domestic violence and domestic abuse had taken place. It is understandable that because of the father's lack of engagement the threshold may have been drafted in this way. When I checked Ms Prolingheuer's understanding of the applicant's case she also agreed that the threshold was mainly focused on report or allegations. On that basis much of the threshold would not be contested by the father as he did not dispute the mother, and some members of her family, had alleged or reported domestic abuse. Whether it did take place or not is, in my judgement, an important issue to resolve to permit the court to properly consider what welfare orders that should be made, should the threshold be crossed.
33. I was also concerned that the threshold document did not fully set out the mother's learning difficulties and again this seemed to me to be an important part of the background facts which were directly relevant to T and Z's welfare.
34. Initially the advocates were rather resistant to this idea. Noting it would involve delay; would require a vulnerable mother to give evidence; and the hearing had not been set up as a contested fact finding to consider allegations. In addition, it was rightly noted that the father had not attended on the first day. He told his legal team that he had taken his other children to school and was then attending a medical appointment in respect of one of the children.
35. I was sympathetic to the arguments about further delay occasioned to the resolution of these crucial issues for T and Z. These proceedings have involved too much delay, given the need to account for Z's birth and the late decision of the maternal aunt to withdraw from being a potential special guardian. However, the significant nature of the applicant's application for placement orders has weighed heavily in the balance on the need to: (i) obtain all the relevant evidence; (ii) ensure a proper understanding of what has happened between the mother and the father and how this impacts on the future welfare of the girls.
36. My primary reason for acknowledging an adjournment was needed was driven by the desire to have a Re A compliant threshold document before the court. I also had regard to Re W [2008] EWHC 1188 (Fam) in which McFarlane J (as he then was) held at paragraph 72:

"It is important that the planning in the future for these children, particularly C, is based upon as correct a view of what happened to R as possible. It is not in the children's interests, or in the interests of justice, or in the interests of the two adults, for the finding to be based on an erroneous basis. It is also in the interests of all of the children that are before this court for the mother's role to be fully understood and investigated."

37. I also considered McFarlane J's (as he then was) decision in the A County Council v DP, RS, BS (By their Children's Guardian) [2005] EWHC 1593 (Fam) 2005; 2 FLR 1031 at paragraph 24. Following a review of case-law relevant to the issues he stated that:

"... amongst other factors, the following are likely to be relevant and need to be borne in mind before deciding whether or not to conduct a particular fact finding exercise:

- (a) the interests of the child (which are relevant but not paramount)*
- (b) the time that the investigation will take;*
- (c) the likely cost to public funds;*
- (d) the evidential result;*
- (e) the necessity or otherwise of the investigation;*
- (f) the relevance of the potential result of the investigation to the future care plans for the child;*
- (g) the impact of any fact finding process upon the other parties;*
- (h) the prospects of a fair trial on the issue;*
- (i) the justice of the case."*

38. I also considered the father's application for permission to challenge threshold. It is right to observe he has caused damage to T and Z's welfare by delaying these proceedings by not directly engaging in the proceedings from around March 2022 to May 2023. However, he instructed solicitors in May 2023 and filed and served written evidence which addressed threshold. A C2 was issued dated 20 June 2022 seeking permission to contest threshold and included a consent order with a direction he file and serve final evidence.. His counsel told me she had prepared questions which had been largely approved by the intermediary to put to the mother to challenge aspects of her evidence.

39. I was not referred to any case law encapsulating the test for the 'grant of permission to challenge threshold'. However, I note the following:

- a. Pursuant to section 31 (2) it is only if the 'threshold' test is found by the court to have been met, that the court can proceed to consider care and supervision orders, powers which contain very significant interferences in the Article 8 ECHR rights of family life.
- b. There is no likely permissible statutory construction of the relevant sections of the 1989 Act which permit an interpretation of 'reading in' a 'permission' test.
- c. The application for a placement order is also subject to the gateway of threshold being crossed and a placement order has been described as requiring 'very exceptional circumstances'.
- d. The father has common law rights. The rules of fairness apply. Subject to the case management, he is entitled to the protections offered by the common law to a fair hearing.
- e. The father has Article 6 ECHR rights to a fair hearing. Those rights are absolute.
- f. The over-riding objective found in rule 1.1 of the Family Procedure Rules 2010 applies and that requires me to consider these proceedings justly having regard to any welfare issues involved.

- g. The demands of sections 32 (4) and (5) of the 1989 Act must weigh heavily on any court considering granting permission of this nature, to a parent in circumstances of non-engagement.
 - h. Pursuant to section 1(2) of the 1989 Act, the court is obliged to have regard to the general principle that any delay in determining the question of T and Z's upbringing is likely to prejudice their welfare.
40. Having reflected and considered the language of section 31 of the 1989 Act, I am not persuaded the court, applying the Family Procedure Rules, can apply a permission requirement to somehow modify the clear language of section 31 of the 1989 Act. The terms of the statute do not provide for any such gateway test. If Parliament had considered such a test could be applied it would have said so. As I understand the previous order made, it provides for, in effect, a case management decision which restricts the father filing and serving a pleading and/or evidence to permit him to contest the threshold document without the court's permission. I proceed on that basis. The touchstone for determining setting aside such a direction is justice, having regard to issues such as delay, cost and proportionality. In proceedings such as these, which seek a placement order, I must also consider the potential need to engage, in due course, sections 1 (4) (e), section 21 and section 52 (1) (b) of the Adoption and Children Act 2022 and in particular the circumstances which lead to the court considering whether the welfare of the child/children requires the court to dispense with the consent of the parents to adoption.
41. Notwithstanding the delay, in my judgement, it would be unjust not to permit the father to file and serve evidence to permit him to challenge threshold given the belated steps taken place to permit him and his legal team to do so. Satisfaction of the section 31 (2) 1989 Act test is of fundamental significance to 1989 Act public law proceedings. Further, in circumstances where a placement order is sought, the obligation on the court to ensure fairness at all stages is heightened (albeit fairness applies to all courts at all stages). I also had regard to the dicta of McFarlane J (as he then was) above to assist me, by analogy, in determining whether permission should be given. I also had regard, in proceedings of this nature, to the profoundly personal and emotional response of parents to state interference in the lives of their children. Some hesitation is required before applying an overly rigid approach to procedural requirements.
42. I was very concerned on the first day of the hearing that the father had not attended and considered whether to grant him permission to proceed, conditional on the basis he attend the rest of the hearing. I determined that the principled way to proceed was to determine his application and then consider what weight to attach to his evidence dependent upon my assessment of his written and oral evidence and whether he was present to be cross-examined. As will be explained below, he finally attended the hearing on day three at 11.45 approximately and promptly entered the witness box and was questioned until around 15.30.
43. In permitting the father permission, I also took into account my concern about the rather weak nature of original threshold findings. Mr Bunce indicated he would apply orally to seek permission to file and serve an amended schedule before 12pm on the second day of the hearing, should the father be granted permission. No party submitted such a course of action would cause them unfairness.

44. I granted permission to the father to challenge threshold and granted permission to the applicant to amend its schedule and directed it to file and serve the amended threshold document by 12 pm on the second day of the hearing. It was filed and served around 10.30 on day two. I am grateful to Mr Bunce and his team for their industry. The amended schedule was set out in the following terms:

Other Children's Services Involvement

1. *Both the Mother and the Father have / have had social services involvement in respect of their older children:*
 - 1.1 *On the 28.01.18 care proceedings concluded in respect of the Mother's first child, 'E'. 'E was made subject to a Supervision Order to A CC and a Special Guardianship Order was granted to E's Paternal Aunt. Care proceedings were issued by the London Borough of Y due to concerns about the parents capacity to care for E due to the Mother's learning difficulties, domestic violence and illicit drug use [A8].*
 - 1.2 *The Father's four oldest children were made subject to Child Protection Plans under the category of neglect in September 2020 by LB ZH [C9].*
 - 1.3 *[F]'s 4 elder children are currently open to LB ZH children's social care Child Protection planning and pre-proceedings [C24, Updating Statement 26.6.23].*

Assessment of Parenting Capacity

2. *The Mother has mild learning difficulties and attention deficit disorder. Her personal limitations restrict the degree to which she can provide the children with consistently good care. In the absence of 'live-in' or '24-hour' support, the children are at risk of suffering significant harm by virtue of the gaps in the Mother's parenting.*
[Not to be determined at this hearing]
3. *The Father is unable to put the needs of T and Z above his own and is thus unlikely to meet their emotional needs. The children are at risk of suffering significant harm due to the Father's oppositional attitude, lack of awareness, rigid thinking and inability to compromise.*
[Not to be determined at this hearing]
4. *The Father denied his paternity of Z and, despite genetic testing confirming parentage, has never met Z. He has refused and/or failed to have contact with T since the Interim Care Order was made in January 2022 [C76].*

Domestic Violence

5. *The Children have suffered or are at risk of suffering significant emotional and/or physical harm due to incidents of domestic abuse and/or violence:*
 - 5.1 *In the course of their 3-year relationship, the Mother was punched in the face, spat on, pushed and kicked by the Father [H2].*
 - 5.2 *On or around 16.04.19, the Father assaulted the Mother by hitting her on the head with a saucepan lid which broke upon impact [A8, G37, H2].*
 - 5.3 *On or around 09.08.19, the Father kicked the Mother in the genital area. This caused her to bleed heavily [A9, C6].*

- 5.4 *On or around 10.02.21, the parents attended a police station after a verbal argument. The Father had belittled the mother in front of T and his other children. The Mother was upset and screaming. T was present [A9, C34].*
- 5.5 *The Father was controlling of the Mother during their relationship. He would use denigrating and belittling language, utilising her learning needs as a means of exerting control [C11, G18].*
- 5.6 *On or around 24.12.21 the Father unilaterally took T to his sister's house and refused to return her to the Mother. He would not allow the Mother access to T [A10, G15, H2].*
- 6. *The Mother obtained a non-molestation order as against the Father on 5 December 2022. F failed to contest or respond to the Mother's application, despite being on notice of the same [H19].*

Domestic Abuse: Alternative Case

- 7. *In the alternative, the relationship between the parents was one characterised by volatility, arguments and/or conflict, often in the presence of T. The conflict was to such an extent that on occasion the parents would attend the police station or call the police to the home and make allegations against one another. The mere fact of the police callouts and allegations demonstrates the level of conflict in the relationship, likely to cause and/or risk significant emotional harm to the children [E98, E99].*

Failure to Engage with Professionals

- 8. *The children are at risk of neglect or other significant harm due to the parents' non-engagement with professionals:*
 - 8.1 *Neither parent attended the initial child protection conference on 21.09.21 where T was made subject to a child protection plan under the category of neglect [A10, C34].*
 - 8.2 *Neither parent attended the PLO meeting scheduled for 01.11.21 [A10, C34].*
 - 8.3 *Neither parent attended the Review Child Protection Conference on 10.12.21 [A10, C34].*
 - 8.4 *Neither parent attended the core group meetings on 28.09.21, 21.10.21 and 18.11.21 [A10, C34].*
 - 8.5 *On or around 09.12.21, F attended the social workers office to inform the social worker that he did not want to work with social services [C34].*
 - 8.6 *The Mother was subject to the control of the Father, who did not wish to engage with the Local Authority. As a result, the Mother felt unable to properly engage [A10].*

Father's Hostility Towards Professionals

- 9. *On or around 21.10.21, F was aggressive to staff at during a telephone call when requesting for his name to be put in the maternity book [C34].*
- 10. *On or around 9.12.21, F was aggressive towards staff including receptionist and duty Social Worker at Children's Services reception at XY House [C34].*
- 11. *On or around 1 January 2022, the Father actively resisted arrest at the parents' home, barging a police officer down the stairs with his left shoulder. The Father*

was further arrested and charged with assault on an emergency services worker [G11, G24].

12. *F has sent a number of threatening and/or aggressive emails to professionals including the children's allocated social worker. By way of example, in an email to the social worker on 10 December 2021, he wrote:*

'I am asking all my ancestors to help me and give me the strength to stay strong and protect me from a demon like you. The pain pain pain what you cause me, you will receive the same pain and if you escape this pain, what you cause me. I pray to God to give you the strength to keep you strong for you to keep your children strong when the pain this pains!!!! what you cause me start to walk all over your children. You have course me pain pain pain!!!!!!!. This pain what you bring to me, you shall receive it back 10 times stronger than the pain what you cause me in my life. God is not sleeping and the wicked shall not prevail. Amen... You shall feel my pain.'"
(sic)

45. Upon receipt of the revised schedule, I was fortified in my decision to grant permission to the father to challenge threshold and to the applicant to amend the former threshold. The allegations contained in the amended threshold appeared to me to be a more comprehensive series of allegations, which could properly be tried and in respect of which the outcome would likely influence the evidence of the expert witnesses and more particularly the court, when/if it comes to make welfare decisions, including the profoundly important placement application decision. The father was also given a full opportunity to give oral evidence to challenge these allegations.
46. No party sought to argue the amended schedule was unfair. All parties were given time to consider it. The amended schedule was properly based in the evidence which had already been filed and served.
47. At the end of this judgment, I summarise the further case management directions which I considered were essential to justly resolve these proceedings. The result of them is that, whilst progress could have been made at this hearing, it is unlikely the applicant's placement order application could have been determined within these four days. It is obvious that knowledge of that is something I considered when determining the father's application for permission to challenge threshold because I considered it unlikely all matters could be resolved and therefore any delay occasioned by considering contested threshold would be ameliorated by the necessity of further evidence and a further short hearing.
48. These directions will provide the court with further factual and expert evidence to finally resolve the future welfare issues for T and Z. That evidence will have the benefit of being grounded in the findings of fact and the threshold as set out below. It will plug factual gaps in the evidence; it will fully grapple with the applicant's duties to a learning disabled mother (see Re H (Parents with Learning Difficulties: Risk of Harm) [2023] EWCA Civ 59) and the further expert evidence is necessary (having regard to the terms of s.13 of the Children and Families Act 2014) in particular expert psychological assessment of T and Z, particularly in circumstances where the foster placement has recently broken down.

49. I note the very recent learning of Lord Justice Baker (with the agreement of Singh and Arnold LJJ) who gave judgment in E (A Child) (Care and Placement Orders) [2023] EWCA Civ 721. His Lordship emphasised the overall need for considerable care when placement order applications are before the court. I note in particular paragraphs 28 to 35 and in particular what was said at paragraph 30 (my emphasis added):

“Under Article 8, any interference with the exercise of the right to respect for family life should be proportionate to its legitimate aim. There can be no greater interference than the permanent removal of a child. In YC v United Kingdom (2012) 55 EHRR 967, the ECtHR said (at paragraph 134):

“The Court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family.”

50. Determining the “unfitness” or otherwise of the mother and the father in these proceedings to care for T and Z and considering the safety and security of their environment emphasised to me the need to determine the amended threshold. Further, fairness and justice required permitting the father to challenge the threshold given the threshold is the gateway to the placement order which may lead to “interference” in family life.

51. I add that whilst some of the advocates were initially (although not latterly) concerned with evolving this hearing into one to contest threshold, it should have been clear to all parties and their legal teams that, given the terms of paragraph 6 of the order of 3 October 2022 and the father’s written application to seek permission, it was a possibility there would be a contest and that preparations were required for such an outcome.

52. I have been acutely conscious throughout the hearing of the challenges for the mother given her vulnerabilities. I appreciate the hearing did not evolve as she might have anticipated. I appreciate it was stressful for her, but with the assistance of her intermediary and the sensitive ground rules, I am entirely satisfied the hearing was fair. I also commend the advocates for their adroitness in proceeding with the contested threshold hearing.

The Witnesses and the Evidence

53. The court heard from: (i) the social worker; (ii) the father and (iii) the mother.

54. I had anticipated hearing from the social worker first, then the mother and then the father. This seemed the fairest way to proceed. However, the father failed to attend on both the first and second days of the hearing. He arrived late on the third day. His counsel informed me that he had provided fuller instructions on the allegations of domestic abuse made by the mother beyond that which was set out in his witness statement (see below). I was asked to provide time for a solicitor to meet with him and to provide a fuller witness statement. I was concerned about the fairness to the vulnerable mother of late evidence being provided and her being taken by surprise. The father has been the author of his own misfortune by not attending the full hearing. I determined the fairest way to proceed was for the father to give evidence first and gave permission for his counsel to elicit some further evidence in chief and that the mother would give evidence the following day. That way delay was avoided and the mother was not unfairly taken by surprise by the father's late additional evidence.
55. The social worker filed five statements between 18 January 2022 and 25 May 2023. Much of her written evidence is not relevant to the issues I have to determine to inform this judgment. The important background is set out in her first statement and I quote the following background paragraphs which evidence the concerns which led the applicant to issue proceedings in respect of T (with redactions):

“M has been known to Social Services following the birth of her first child E on [] April 2017. The incident precipitating services involvement was a serious burn suffered by E in 2017. There were concerns about the explanation M gave for the burn and the fact that there was a delay in her seeking medical attention. At this time M was in a domestically abusive relationship and was reported to be smoking cannabis excessively. Professionals also had concerns due to M having learning disabilities and was vulnerable as a result. Ms M had her child placed with a paternal aunt in []. Subsequently [] initiated care proceedings, which ended with a special guardianship order being made to the paternal aunt. A Psychological Assessment was completed during the care proceedings by Dr Julia Heller on 28/08/17 which advised that M has mild learning disabilities and likely Attention Deficit Disorder. The assessment concluded that M would require extensive ongoing support and supervision in order to parent adequately. It further advised that M would need someone who would be present daily who could supervise her parenting at close quarters and be available to advise on important decisions.

T's first period of child protection planning 22/03/2019 – 17/02/2020:

On 29/10/2018 M came to the attention of the local authority when a referral was received from a midwife at A Hospital advising that M was pregnant with her second child, T from a relationship with F. T was made subject to a pre-birth child protection plan due to concerns in relation to M's first child E being removed because of a suspected non-accidental injury (NAI), domestic violence, and excess cannabis use by M.

During a health visitor's visit (17/04/2019) M disclosed that she was assaulted by F the previous night and was hit on the head with a glass

saucepan lid which smashed and broke on impact. M also disclosed that this was not the first incident as when she commenced her relationship with F, he punched her in the face which resulted in an injury and bleeding. This incident was reported to the police however it did not progress due to the nature of the injuries to M not being consistent with her allegations. There was a further police report on 28/04/2019 where police attended M'S home to the sounds of a woman 'screaming'. On engaging police, M ... did not account for her extreme reaction, and the police left the scene with no further action. This report of domestic violence 17/04/2019 appears to be the second report of DV made by M in her relationship with F . After T's birth professionals were concerned that M had the responsibility of caring for F's four children from a previous relationship, in addition to T. These 4 children were all under the age of ten-years-old, and professionals were concerned about M's ability to cope with parenting so many young children. In order to address this issue a family group conference (FGC) was arranged. The agreed plan from the FGC of the 24th June 2019 not to leave M with T without support in place.

5. Subsequently the local authority were concerned about the following incidents occurring between M and F: on the 11/07/2019 police were called as M reported stabbing F, on arrival F said that he'd cut his own fingers by accident whilst cooking; on the 25/07/2019 at midnight M and F attended a local police station to complain about their housing situation (overcrowded), F told police this was M's idea; on 09/08/2019 (see chronology), M called the ambulance service as she had been kicked in the groin and was bleeding heavily. Police attended the incident with the London Ambulance Service (LAS). F later explained that there was not an assault on M and her calling LAS was due to her tending to get anxious and call emergency services. She did not expect the police to come out on this occasion. When a social worker queried this incident with M was inconsistent with what happened and seemed scared and nervous about discussing the issue. These 3 significant incidents involving police, suggest that following T's birth there was some disharmony in the couple's relationship, and further that F appears to be controlling the explanation of the incidents.

On 13/06/2021, Police officers attended MGM's (T's adoptive maternal grandmother) home in response to an allegation of domestic abuse (coercion and control) perpetrated by F. The police report was made by T's auntie, [] on behalf of M. The allegations made to the police were as follows: (1) [] alleged her sister is undergoing domestic abuse by being controlled to keep her children by staying with the father (M's self-appointed carer) as she suffers with learning disabilities. [] explained that that she and (MGM), had been concerned that the F has been controlling M for a number of years, excluding her at times from family events and controlling her money. [] disclosed texts from F to M of a hurtful nature for example, "YOU ARE EMBARRASSING ME THE WAY YOU BEHAVE AND SLEEP WITH MEN, PEOPLE SEE ME ON THE STREET AND LOOK AT ME AS IF I AM LESSER THAN THEM BECAUSE I AM WITH YOU!" [] added that M had had her hair shaved by F, in a manipulative manner which I interpret as F subjugating M's wishes. [] told me that the hair was shaved so that M does

not look attractive to other men. As a final part of the initial referral to social care [] reported being sent a video where M was carrying holding T and was visibly upset [reason unknown], and F was smiling and videoing her. I view this as a form of harassment, and an attempt by F to humiliate her, at a point of emotional vulnerability. When the Police spoke directly with M at the time of this referral, she denied the allegations to police and said it was a disagreement between her and F It is worrying that M failed to recognise F's behaviour towards her which is extremely controlling as abuse.

M will usually be quiet when F is speaking, and my concern is that she is not being heard over F who is very vocal. In my view this could be a tactic to keep her quiet and also imply that she does not have the intellect to speak or make sense due to her learning disabilities. It appears that F has made M believe that she cannot look after T without him and therefore she believes she must maintain her relationship with him in order to be able to continue to care for T. It is difficult for M to express her views about what may go on in her relationship with F due to fear that she might lose T as she previously lost her first child, E. This is a complex case as in my view M often does not disclose to the domestic abuse to professionals she suffers, or withdraws complaints, or F creates an alternative explanation to mask abuse as noted in paragraph 5.

The local authority has become increasingly concerned about the safety of T because the last time social workers were able to visit and see her was 18/06/2021, (until very recently I visited T 05/01/2022 at her paternal aunt's home) as F was preventing social workers access to the family home. In addition, T was withdrawn from nursery 20/09/2021. It should be balanced against this that a police welfare visit took place on 16/10/2021 and M brought T to see the health visitor in clinic on the 28/10/21, and no immediate safeguarding concerns were noted. Notwithstanding this, the local authority is unable to assess T's situation satisfactorily or protect her with such scant professional contact. To compound this lack of contact with T I worry that M, due to her vulnerability might not be able to protect herself from domestic abuse, therefore she will not be able to protect her daughter. And worryingly the parents have not engaged in the child protection process. As evidence of the parent's lack engagement they avoided attending an Initial Child Protection Case Conference on 21/09/2021, and core group meetings on 21/10/21, and 18/11/21.

The local authority's records reveal that F has a history of perpetrating domestic abuse to women in his life. F is known by LB XY in relation to repeated episodes of domestic violence, including controlling behaviour. F has been known to police regarding domestic violence since 2010 perpetrated to the mother of his older children (13 police reports dated 21/09/14; 01/07/15; 13/08/15; 01-02/02/16; 07/02/16; 09/08/17; 28/08/17; 10/11/17; 03/03/18; 04/09/18; 30/11/18; 11/01/19; 09/3/19;). In a core assessment of F's oldest child 'X' dated 06/09/2011 it is noted there are allegations about domestic violence made by 'X' s mother against F. These allegations dated back 2010. F denied any form of domestic violence or abuse and made counter allegation that his former partner was smoking cannabis, neglecting

her children, and was making up the allegations so she could obtain her own accommodation.”

56. The evidence goes on to explain the social worker’s interaction with F by telephone and email. It details some of his emails. It notes the mother was hospitalised in November 2021 with COVID when pregnant with Z. The social worker notes this was the first time she had been able to speak to the mother about the concerns. Her evidence is that the mother engaged and expressed a willingness to work with social services but that the father “would not support the idea”. The mother expressed her fear that if she separated from the father she understood she would lose T because she had been told previously her learning difficulties meant she was not capable of parenting alone. The background of the loss of E haunted her.
57. In the witness box the social worker was calm and composed. She was thoughtful and reflected before giving her answers to questions. She told me she found the father’s emails intimidating and frightening. She said: “I was scared to have further communication with” the father. She said his emails came across as very aggressive and that he spoke to her like that too. She explained the mother had disclosed to her the allegations of domestic abuse. This was largely at a meeting in late December 2021. She explained that around the time the mother and father separated the mother explained to her that she wanted to engage with social services. The social worker gave evidence that she believed the mother was afraid and was being controlled by the father. She told me that since the couple have separated she has “no difficulty working with [the mother]”. When cross examined by father’s counsel she accepted she had not witnessed the allegations of domestic violence that the mother alleges but she did say: “my own experience of the father is that he has the potential of being aggressive. I am very frightened of him”.
58. I accept the social worker was a reliable and credible witness.
59. The father has produced one witness statement undated and unsigned but approved by him by email shortly before this hearing. The material parts state:

“I do not accept that there was domestic violence in mine and M’s relationship.

Myself and M were in a relationship for a long time and I cared about her deeply.

The health visitor met myself and M in 2019 and saw that we were in a happy relationship. I therefore do not accept the allegations made that I caused harm to M.

I did not hit M with a glass saucepan lid and I did not kick M in the genital area causing bleeding as the local authority have said. These things did not happen and I think it is very unfair that such allegations have been made against me.

Our family were on a child in need plan in 2019 however this was closed in 2020. This was closed due to the progress made while social services were involved. If the allegations made about me were true, I am sure social services would not have closed their involvement with our family. I attach at “Exhibit CH/1” letter from the local authority confirming the child in need case was closed.

I have made an application to challenge the local authority's threshold document.

I do not accept that I have put T and Z at risk as I have not been violent towards M. I therefore do not understand why the local authority need a risk assessment of me to be done before I can see T and Z. I have my older children in my care without a risk assessment."

60. The father's oral evidence was at times challenging to follow. He often answered a question with a question. He was fixated on the fact T was removed from the child protection register in 2020 and could not understand why there were any concerns. He denied the allegations of abuse but I understood his evidence to be that he agreed he had not attended many meetings. He evaded answering many of the questions with long rambling and often irrelevant accounts. He spent much time discussing his other children. Importantly he refused to provide his own address and gave only his mother's. When questioned by me directly on that, he refused to provide his address telling me he could not trust social services and was afraid of them. However, it is important to note when asked to re-focus and to answer questions directly he did try and apologised for his rambling accounts. He appeared under pressure, drinking a lot of water. He cared about what he was saying and whilst much of his evidence was not relevant, he wanted to be heard and he wanted me to listen to his evidence. He demonstrated care for his 4 older children and interest in the welfare of T and Z. I also take into account some cultural and linguistic differences with how he presented.
61. Given the father's fixation on T's removal from the child protection register and inability to engage in the allegations before him, I was not able to conclude he was reliable. His view of the applicant is sufficiently soured that his evidence was unreliable and tainted by his overwhelmingly negative views of social services. His refusal to provide his address evidences this. I also considered his evidence was often not credible. When I pointed out to him there had been, on any evidential basis (including his own), multiple engagements between the police, him and his former partners, he refused to accept any responsibility for this. This is not credible. It was also pointed out to him by Mr Bunce that paragraph 10 of his witness statement was incorrect but he refused to accept he had given untruthful evidence. He obfuscated. His poisoned attitude led him, in my judgement, to provide self-serving evidence that defended himself rather than truthfully and accurately engage with the allegations made.
62. The mother has produced witness statements dated 22 November 2022 and 8 June 2023 in these proceedings. They do not address directly her allegations against the father. She did however provide a witness statement in her application for a non-molestation injunction dated 28 February 2022:

*I am applying for the Non Molestation order against my ex-partner [F]
We were in a relationship for about three years, the relationship was very verbally abusive, he would belittle me in front of our daughter (T) using explicit language which caused her great upset and myself also.
Over a period of time F behaviour escalating to physical abuse , where I was punched in my face, spat on , pushed ,kicked and and this was also during my pregnancy.*

The abuse was also financial where he would leave me with very little money and food for myself and would leave for hours at a time.

On one occasion in 2019 the police attended our address as F hit me over the head with a saucepan lid which broke. F stated to the police that I had learning difficulties and that I was hormonal because I was pregnant. Therefore this case was NFA.

F in December 2021 took out daughter and was refusing to return her to me, this caused me great stress as I am currently pregnant with our second child. I have been placed in a Mother and Baby Foster placement to remain safe and free from the abuse that was perpetrated by F towards me.

The address is unknown to F and must not be disclosed to him.

Since I have been placed in foster care F has been trying to contact me setting up fake Facebook accounts and ringing me from Facebook Messenger, also sending numerous emails.

This causes me great stress and upset as also in pregnancy as I wish not to have this contact and would like a Non Molestation Order to prevent this happening.

I am really frightened that he will locate me and continue to harass me as I have blocked all my accounts and contacts but he is still manage to contact me when I called to speak to his sister who I have now blocked.

I urgently need this order to protect myself and my unborn [] and my daughter T." (sic)

63. There is a further more detailed witness statement of October 2022 produced for the injunction application. It was not in the bundle but was circulated to the parties and their representatives during the hearing. Given its late emergence in these proceedings I approach it with a little caution but ultimately no party objected to its admission.

64. The mother was assessed by Dr Heller a chartered clinical psychologist. She assessed the mother in March 2022. Her executive summary states:

M's mental health is stable and she does not have a personality disorder. She has made very positive changes in her use of illicit drugs and refrained from Cannabis use in the last few years. This has reduced the risk issues to her child.

There remain significant concerns as to her capacity to protect herself from further abusive relationships and exploitation.

A further concern is her lack of engagement with Child Protection conferences.

She will require supervision for her parenting on a regular basis to protect her child or children from the potential for poor decision-making and judgments. This stems from her compromised intellectual functioning and general vulnerabilities.

The risk to her child/children are general and non-specific and relate to her compromised capacity to make competent judgments in relation to more complex parenting demands.

65. There is also a detailed Communicourt report about the mother, dated 1 April 2022 authored by Laura Tsuma. It recommended the mother be assisted by an

intermediary and led to a number of recommendations. HHJ Karp made a detailed series of sensitive and comprehensive participation directions which directed how the mother should give evidence which were followed at this hearing. These were followed. Ms Prolingheuer provided questions which were agreed with the intermediary. The mother gave evidence from behind a screen and sat beside the intermediary. She was given breaks. Questions were short, clear and introduced by topics. The intermediary at times re-phrased the questions. Father's counsel sensitively but forensically conducted her client's case.

66. The mother's additional difficulties, described above, led me to form the view that she was largely reliable but not always so. Understandably, recalling the details of her domestic life over 4 years or so was challenging for her. She appeared mostly credible. She accepted (as she did with Mr Dooley) that she sometimes "threw the first punch". She also accepted there were periods of happiness with the father. She had previously told Mr Dooley an allegation she had made that the father held a knife to her belly and threatened to abduct her to [redacted] was untruthful. She told me in evidence this in itself was not truthful because she found this allegation sensitive and difficult because the father had told her, her family would not come and find her, and she was sensitive to discussing with a professional the fact her family might not support her. Observing her, I am not persuaded she was telling the truth and on balance consider what she told Mr Dooley was more likely to be the truth and that she did make a false allegation. Her vulnerability may explain this. I give myself a R v Lucas [1981] QB 720, direction in respect of this aspect of her evidence.
67. There is also written contemporaneous material from the police disclosure, but I note it is not complete.

The Law In Respect of Fact Finding and Threshold

68. The advocates helpfully agreed a note of the law during the hearing. That has assisted me and I set it out below with some minor amendments and additions.
69. The burden lies on the Local Authority to prove the allegations it makes on the civil standard of the balance of probabilities, Re B [2008] UKHL 35.
70. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.
71. The Court must decide if the facts in issue have happened or not. There is no room for finding that it might have happened. The law operates a binary system in which the only values are 0 and 1, per Lord Hoffman in Re B. This applies to the conclusion as to the fact in issue (e.g. did it happen; yes or no?) not the value of individual pieces of evidence (which fall to be assessed in combination with each other).
72. In S & H-S (Children) [2018] EWCA Civ 1282, McFarlane LJ (as he then was) gave the following guidance in relation to the form and content of judgments where the threshold criteria are in issue:

[56] In the course of a necessarily long judgment covering a range of issues and a substantial body of evidence, where the threshold criteria are in issue, it is good practice to distil the findings that may have been made in previous paragraphs into one or two short and carefully structured paragraphs which spell out the court's finding on threshold identifying whether the finding is that the child "is suffering" and/or "is likely to suffer" significant harm, specifying the category of harm and the basic finding(s) as to causation.

[57] When making a finding of harm, it is important to identify whether the finding is of "significant harm" or simply "harm".

[58] A finding that the child "has suffered significant harm" is not a relevant finding for s 31, which looks to the "relevant date" and the need to determine whether the child "is suffering" or "is likely to suffer" significant harm.

73. In Re A (A Child) [2015] EWFC 11, Sir James Mumby P, gave detailed guidance in relation to the establishment of the threshold criteria and the need to specify in the case of each allegation how and why it would, if true, give rise to a risk of significant harm to the child. A rigorous approach to the threshold criteria is particularly vital where the care plan is adoption. This guidance was later approved by the Court of Appeal in Re J (A Child) [2015] EWCA Civ 222, where it was said that the requirements could be summarised as follows: i) it is for the local authority to prove, on the balance of probabilities the facts of which it relies, ii) if the local authority's case on a factual basis is challenged, the authority must adduce proper evidence to establish the facts it wishes to prove iii) hearsay evidence may have strict limitations, iv) the formulations of the threshold and proposed finding must be done with the utmost care and precision and the distinction between a fact and evidence alleged to prove a fact is fundamental and must be recognised v) it is for the local authority to prove the link between the facts and the threshold, and vi) it is vital that local authorities, and even more importantly Judges, bear in mind that nearly all parents will be imperfect in some way or other.
74. Findings of fact must be based on evidence and not speculation. As Mumby LJ (as he then was) observed in Re A (A Child) (Fact Finding: Speculation) [2011] 1 FLR 1817, "*it is an elementary position that findings of fact must be based on evidence and not suspicion or speculation*".
75. And later as President in Re X (Children) [2015] EWHC 3651 (Fam) (at §22 onwards) he said :

"First, that the legal concept of proof on a balance of probabilities "must be applied with common sense", as Lord Brandon of Oakbrook said in The Popi

M. Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd [1985] 1 WLR 948, 956.

Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15): “There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

Thirdly, that the fact, if fact it be, that the respondent (here, the mother) fails to prove on a balance of probabilities an affirmative case that she has chosen to set up by way of defence, does not of itself establish the local authority’s case.”

76. The court must consider all of the circumstances of the case as confirmed by Baroness Hale in Re B (Children) (care proceedings; Standard of Proof) [2008] UKHL 35. The Court must take into account all the evidence and, furthermore, consider each piece of evidence in the context of all the other evidence. The court must survey a wide canvas.
77. The evidence of the parents and of any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (see Re W and another (Non-accidental injury) [2003] FCR 346).
78. In R v B County Council ex parte P [1991] 2 All ER 65 (at 72J), [1991] 1 FLR 470 at 478, Butler-Sloss LJ observed that, '*A court presented with hearsay evidence has to look at it anxiously and consider carefully the extent to which it can properly be relied upon.*' When assessing the weight to be placed on hearsay evidence the Court may have regard to the matters set out in section 4 of the Civil Evidence Act 1995 even in cases where the Act does not strictly apply. I remind myself of the terms of section 4.

79. Credibility is an important aspect when considering the reliability of the evidence of each witness. If the court concluded that a witness had lied in their evidence it should remind itself of the direction in R v Lucas [1981] QB 720, that a witness may lie for many reasons including for example, shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that a witness has lied about some matters does not mean that he or she has lied about everything.

80. I have also considered Re A, B and C (Children) [2021] EWCA Civ 451 and what Macur LJ says at paragraphs 57 and 58:

“58. That a tribunal’s Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel’s submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court. “

81. In Re B-M (Children: Findings of Fact) [2021] EWCA Civ 1371 the court held at paragraph 25:

No judge would consider it proper to reach a conclusion about a witness’s credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed in family cases, where the question is not only ‘what happened in the past?’ but also ‘what may happen in the future?’, a witness’s demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.

82. I have read and considered Mr Justice Hayden’s judgment in F v M [2021] EWFC 4 and sought to absorb what he says about coercive and controlling behaviour.

83. I remind myself of Peter Jackson LJ's comments in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (§61), cited with approval in *Re H-N* at §32 that:

"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour."

84. Lastly, I also remind myself of the need to be careful when approaching a schedule of allegations in a threshold document and the need to ensure fairness to the parties when considering making findings, see the recent judgment of Baker and Snowden LJ in Z v A Local Authority [2022] EWCA Civ 1659 where they quote the succinctly helpful line from Peter Jackson LJ in Re A (No 2) [2019] EWCA Civ 1947:

"Judges are entitled, where the evidence justifies it, to make findings of fact that have not been sought by the parties, but they should be cautious when considering doing so."

Submissions

85. All advocates helpfully addressed me on whether threshold is met by way of submissions on fact finding and harm with reference to the oral and written evidence. The applicant asked me to find threshold met on the basis of the amended document. When I inquired, Mr Bunce accepted whilst the relevant date for T is 20 January 2022, the document needs further amendment to reflect that the date for Z is 26 May 2022. He also accepted that allegation 11 was not in an 'alterative' finding and that I could make this finding alongside the more specific allegations of domestic abuse. Ms LeCointe did not contest threshold or the point I raised about paragraph 11. Ms Lonnen observed the Guardian did not advance submissions on the detail of threshold.

86. Ms Prolingheuer advanced articulate submissions on behalf of the father. She reminded the court of the purpose of threshold and the need to link factual matters to the language of harm or risk of harm as required by the language of section 31 of the 1989 Act. She acknowledged the father should not obtain an advantage from his limited engagement in proceedings and the resultant fact that not all evidence that could have been obtained to support the applicant's threshold, was before the court. She noted there was not complete police, medical or social services documentation. She sought to persuade the court many factual findings could not be made, as advanced and that even if they were, they did not evidence harm or the risk of harm to T or Z.

Threshold

87. The oral evidence was completed on the morning of day four (29 June 2023). Submissions were made that afternoon and then time was spent on the case management order. As a result of other commitments, I determined I would send an embargoed written judgment to the advocates on the following morning at 10 am, would require the usual typographical corrections and submissions on ancillary

matters and would formally hand down judgment, using the remote protocol on Monday 3 July 2023. For that reason, whilst I have considered matters carefully over the last four days, my reasons are necessarily succinct.

88. In terms of the 'older' children's services involvement, I find as a fact:

Both the Mother and the Father have had social services involvement in respect of their older children:

- On the 28.01.18 care proceedings concluded in respect of the Mother's first child, 'E'. 'E' was made subject to a Supervision Order to A CC and a Special Guardianship Order was granted to E's Paternal Aunt. Care proceedings were issued by the London Borough of Y due to concerns about the parents capacity to care for E due to the Mother's learning difficulties, domestic violence and illicit drug use.
- The Father's four oldest children were made subject to Child Protection Plans under the category of neglect in September 2020 by LB ZH.
- [F]'s 4 elder children are currently open to LB ZH children's social care Child Protection planning and pre-proceedings.

89. I also find as a fact:

The children are at risk of neglect or other significant harm due to the parents' non-engagement with professionals:

- Neither parent attended the initial child protection conference on 21.09.21 where T was made subject to a child protection plan under the category of neglect.
- Neither parent attended the PLO meeting scheduled for 01.11.21.
- Neither parent attended the Review Child Protection Conference on 10.12.21.
- Neither parent attended the core group meetings on 28.09.21, 21.10.21 and 18.11.21.
- On or around 09.12.21, F attended the social workers office to inform the social worker that he did not want to work with social services.

90. At the different relevant dates for both T and Z were likely to suffer significant harm brought about by the combination of non-engagement and neglect because both the mother and the father are challenged in meeting their older children's needs and those challenges create the risk of significant harm to T and Z. The mother's learning difficulties and her non-engagement in essential safeguarding meetings (whether her fault or not) mean that T and Z are at risk of significant harm by being neglected. T appears to have additional needs. She needs able and engaged parents or parents who can work with and engage professionals to meet the full range of her needs. Z's age makes her vulnerable and her relationship with T, who I am told is already creating sibling relationship challenges, add to her vulnerabilities. Therefore she needs protection. Whilst the mother, rightly, does not contest threshold, it is no answer to state that after her separation from the father she was engaged with social

services. The risk of harm arises out of her vulnerabilities caused by her additional needs and her susceptibility to permitting a partner to dominate her and occlude her engagement with professionals, which is necessary to protect her children.

91. The father asserts that his older children are subject to social services input arising from their mother's care and therefore these findings have no link to the risk of harm in respect of T and Z. However, that overlooks the facts that he should be acting to protect his children from neglect as he is their father and, as his own evidence demonstrated, he plays a meaningful role in their lives. If their mother has deficiencies, then he should be capable of stepping in to protect his children from neglect. His limited engagement with the applicant's professionals and non-engagement with professionals combined with deficiencies in capability of protecting his older children from neglect without social services involvement lead me to conclude on the relevant dates T and Z were likely to suffer significant harm, namely neglect, in circumstances when both are vulnerable and in need of protection.

92. I also find as a fact that:

- The Father denied his paternity of Z and, despite genetic testing confirming parentage, has never met Z. He has refused and/or failed to have contact with T since the Interim Care Order was made in January 2022.

93. There is no factual dispute that the father disputed his paternity of Z and has never met her. As a result she is at risk of significant harm because she is denied paternal involvement in her life and consequent emotional harm by being denied that involvement. The father and T lived together until early 2022. She has not had contact with her father since. He said he would have contact with her, but only on his terms with her older half-siblings. He has failed to focus on her needs and prioritise her needs to emotional attachment and stimulation. That arises because of his rigid thinking and his own conflict with the applicant's social services team. T deserves more and has been denied her family love and support. At the relevant dates T was at a risk of suffering significant harm, mainly emotional harm as a result.

94. I find as a fact:

- On or around 16.04.19, the Father assaulted the Mother by hitting her on the head with a saucepan lid.
- On or around 09.08.19, the Father kicked the Mother in the genital area.
- On or around 10.02.21, the parents attended a police station after a verbal argument. The Father had belittled the mother in front of T and his other children. The Mother was upset and screaming. T was present.
- The Father was at times controlling of the Mother during their relationship. At times, he would use denigrating and belittling language, utilising her learning needs as a means of exerting control.

- On or around 24.12.21 the Father unilaterally took T to his sister's house and refused to return her to the Mother. He would not assist the Mother access to T. The mother left the home and spent Christmas with her family from 24.12.21 until around 27.12.21.
- The relationship between the parents was one characterised by volatility, arguments and/or conflict, often in the presence of T. The conflict was to such an extent that on occasion the parents would attend the police station or call the police to the home and make allegations against one another. The mere fact of the police callouts and allegations demonstrates the level of conflict in the relationship, likely to cause and/or risk significant emotional harm to the children.
- The Mother was subject to the control of the Father, who did not wish to engage with the Local Authority. As a result, the Mother felt unable to properly engage

95. First, I am satisfied that the paragraph 11 allegation is not one in the alternative and is not a finding that can only be found on the basis that I do not find the other specific allegations proven. I understood that all parties accepted this through their advocates at the hearing. The written and oral evidence makes clear there has been repeated involvement of the police in the life of this family. The mother's evidence was that whilst the relationship was at times loving, she did at time "throw the first punch". She also gave evidence that she involved the police in inappropriate situations such as seeking better housing or because the father cut his finger, was bleeding and she panicked. These are not neutral acts, particularly when T was present. The involvement of uniformed police may well be bewildering or frightening. Such situations are mostly unplanned. They give rise to a risk of emotional harm. Furthermore, I am satisfied on all the evidence, particularly the evidence of the social worker, that their involvement was because of conflict between the parents. I pay particular regard to the example of the text message provided in the social worker's statement, set out above. Such communication is bound to be conflictive, upsetting and disharmonious. It places obvious risks of significant emotional harm to T and Z when in the presence of such conflictive parents or directly witnessing the fallout of this volatility. I also survey the wider canvass of the social worker's evidence set out in her first witness statement and quoted above. This was a family unit which existed in a state of some conflict and chaos, hence social services involvement. That background paints the wider canvass of the risks of significant emotional harm to T and Z at the relevant dates.

96. Surveying all the evidence also assists me to resolve the more specific allegations. Having heard both the mother and father's oral account of the 'saucepan lid' assault I accept the applicant has proven this is more likely than not to have taken place, even although there is no corroborating medical evidence. The mother was clear it happened, was questioned about it and gave evidence that as a result she had a bump on the back of her head and has a result, when in the safety of a hotel, she had difficulty sleeping. I do not discern any material discrepancy from reading the police disclosure. The absence of medical evidence does not detract from the cogency of the other evidence, to find the applicant has proved its case on the balance of probabilities. The father's evidence that he is a strong man and as such it is inherently improbable he assaulted the mother with a saucepan lid because the injury would have been worse is not persuasive. I decline to find the lid was broken

on impact with the mother's head. It hit the back of her head and may or may not have broken when it impacted the floor.

97. I also prefer the mother's evidence over the father's that she was kicked in the genital area. Her description was clear. The text message set out in the social worker's evidence and the mother's oral evidence about sexual jealousies reinforces the evidence that tensions arose between this couple. The father's blanket denial as seen against the totality of the written and oral evidence was not persuasive. I am satisfied this finding can properly be made without contemporaneous records after having heard the mother's evidence.
98. There is no dispute the parents attended a police station in February 2021 and T was present. This presentation with T present was typical of the type of engagement the family had with professionals. It paints of a picture of some chaos. I consider it more likely than not the father was belittling the mother. He came close to doing so in the witness box when he spoke about her (e.g. "the state" she was in after Christmas 2021 and at times by the deployment of the term 'learning disability') and he also has done so before, as is evident from the written evidence of the social worker (see the text message) and the reference to shaving her hair (albeit I note this was not canvassed in oral evidence).
99. There was not much dispute at the hearing that Christmas 2021 was difficult as the relationship was deteriorating and fast coming to an end. There is a lack of clarity in the evidence, on balance I find the mother left the family home, leaving T with her father to spend Christmas with her family. She did not return until around 27 December 2021. The father sent T to his sister and she remained in the care of his sister for some days. The father could and should have assisted the mother and T to be reunited much sooner than in fact took place. This was obviously harmful for a small child, no doubt like all children looking forward to Christmas and family time. I acknowledge the father's sister was known to T, but the parents once again prioritised their own needs over T's and she was not provided with the emotional reinforcement she would need and was deprived of her mother, which on balance I find to have been significantly harmful. At the relevant date risks of this nature remained.
100. I also make the finding more generally that the father was at times controlling and coercive. The finding above is a particular example of this. He would not let the mother take T to her family over Christmas and then sent her to her aunt's. It is also entirely clear that the mother could not engage with social services when in a relationship with him. She did not attend the meetings, but from January 2022, once the relationship had ended, was able to do so and has engaged since. It follows therefore that I make the finding that the mother did not engage with social services until after the relationship. I find, surveying the written evidence and from the parents' oral evidence and the social worker's informed professional view, this arose out of the father's coercive and controlling behaviour. Observing both parents over the last few days and reflecting in particular on how they gave evidence it is clear a significant power imbalance exists between them and the father was dominant and has used his dominance. T's needs were not prioritised and she was at risk of emotional and wider developmental harm due to her parent's dysfunctional relationship. Those risks remained to her but also to Z at the relevant dates.

101. All that being said I do not make the finding that “In the course of their 3-year relationship, the Mother was punched in the face, spat on, pushed and kicked by the Father”. This is not a particularised allegation but leaving that aside it is not borne out in the written and oral evidence. It was not the evidence of the social worker. It was in the mother’s written evidence for her injunction application, but I have already concluded she is not always credible or reliable. Overall, I am satisfied this was not a relationship characterised by the father being continually regularly violent to the mother. There have been, as I have found, occasional moments of violence, possibly occasioned by arguments over romantic or other jealousies, but there has not been constant or regular violence. For much of the relationship it was a loving one and I understood both parents to accept that in their oral evidence. I also accept father’s counsel’s submission that the contemporaneous records do not support such a finding and in particular this assessment of the family recorded in the social worker’s evidence:

“There are strengths within the family. M and F have worked well with the social worker and health professionals. F’s parents and M’s adopted father and mother continue to support the family. M told today’s conference that she recognises how different things are now compared to when she had E and F said that he does not recognise the M which was [d]escribed in assessments related to E which he has read. F is a supportive partner who makes her happy. He helps her, listens to her and is an involved father. M spoke about valued support from F’s sister and mother. She is very much part of F’s wider family. T is doted upon by the whole family. Positive attachment has been observed between T and her mother and she is very much loved by the parents and wider family. M is very attentive and attuned with her daughter. She has sought advice from the health visitor. The couple did not want to participate in the recommended parenting assessment and cognitive assessment. The local authority exited the Public Law Outline. M has completed 2 out of the planned 8 sessions and said she would continue. The health visitor reported that T is meeting her developmental milestone, M has sought advice in baby and completed a 6 week 1 st Mum’s group. There have been no incidents involving the police during the review period. It is positive that there have been no concerns noted about the couple’s relationship. F sees his 4 children from a previous relationship regularly. There have been no reports of M caring for all the children alone.”

102. I find as a fact that:

The Mother obtained a non-molestation order as against the Father on 5 December 2022. F failed to contest or respond to the Mother’s application, despite being on notice of the same.

103. It is not necessary to debate, as I was invited to do, whether this finding is related to the section 31 harm/risk of harm threshold. It is factually correct and is part and parcel of the wider findings above about the relationship which was at time characterised by domestic abuse, as I have found.

104. I find as facts that:

- On or around 9.12.21, F was aggressive towards staff including receptionist and duty Social Worker at Children’s Services reception at XY House.
- On or around 1 January 2022, the Father actively resisted arrest at the parents’ home, barging a police officer down the stairs with his left shoulder. The Father was further arrested, charged and convicted with assault on an emergency services worker.
- F has sent a number of threatening and/or aggressive emails to professionals including the children’s allocated social worker. By way of example, in an email to the social worker on 10 December 2021, he wrote:

‘I am asking all my ancestors to help me and give me the strength to stay strong and protect me from a demon like you. The pain pain pain what you cause me, you will receive the same pain and if you escape this pain, what you cause me. I pray to God to give you the strength to keep you strong for you to keep your children strong when the pain this pains!!!! what you cause me start to walk all over your children. You have course me pain pain pain!!!!!!!!. This pain what you bring to me, you shall receive it back 10 times stronger than the pain what you cause me in my life. God is not sleeping and the wicked shall not prevail. Amen... You shall feel my pain.’” (sic)

105. The second two findings are not factually disputed. I accept the social worker’s written and oral evidence to find the first and prefer that over the father’s unreliable evidence. There can be no doubt whatsoever that the father has shown aggression to professionals. He cannot understand why when his relationship deteriorated, social service became involved in T’s life again, despite the optimistic assessment I have just set out above. That inability to understand has caused much of his aggression and I have firmly in mind the oral evidence of the social worker that she is frightened of the father. That unquestionably, at the relevant dates, gave rise to the risk of significant harm to T and Z in circumstances where they need protection and support, their mother is learning disabled and had been in a controlling relationship and the father has carried out acts of domestic violence. The inability of professionals to supervise and support because of the fear of father plainly gives rise to the risk of significant harm to these vulnerable girls, at the relevant dates.

106. I accept the submissions that the third hand hearsay evidence makes a finding about the October 2021 purportedly aggressive call to staff by the F is insecure and do not make that finding.

107. That concludes the fact finding for now (noting the two unresolved findings will be considered in November 2023) and I have no hesitation when surveying the findings found above, that the section 31 1989 Act threshold is crossed for T and Z at the relevant dates, looking at the findings individually and collectively. In the light of these findings it is entirely clear that at their respective relevant dates both T and Z were at risk of significant harm for the reasons explained above.

Case Management

108. With the assistance of counsel I have made detailed directions. Those directions deal with the missing evidence from London Borough of XY, the need for a conclusion on the search for alternative family carers, the essential psychological assessment of T in particular but also Z, a psychological assessment of the father (which he tells me he will engage in) and, crucially, evidence from the mother and the applicant in respect of the mother's needs, what support she needs, whether this support can be offered/funded and whether such support is compatible with the children's welfare. I refuse the father's application for a new parenting assessment. This is unnecessary and would be wholly disproportionate for the brief reasons I gave at the hearing.
109. I end this judgment by acknowledging my disappointment this hearing could not resolve the urgent welfare decisions for T and Z. I am acutely conscious that adoption remains the applicant's preferred professional view for both, and that if T and Z are to be adopted (which is currently unclear) each passing month is likely to create greater challenges for them to make attachments with new adoptive parents. That has weighed heavily on me this week. But for the reasons set out above, acknowledging the need for fairness to all parties, and the need for robust but proportionate evidence in respect of the welfare options for T and Z, properly rooted in the findings above, an adjournment has been necessary.