



Neutral Citation Number: [2019] EWHC 3662 (Fam)

Case No: LN18C01043

AT THE ROYAL COURTS OF JUSTICE

Date: 29/11/2019

Before :

MR JUSTICE WILLIAMS

Between :

<b>M County Council</b>	<b><u>Applicant</u></b>
- and -	
<b>1<sup>st</sup> Respondent</b>	<b><u>1<sup>st</sup> Respondent</u></b>
- and -	
<b>2<sup>nd</sup> Respondent</b>	<b><u>2<sup>nd</sup> Respondent</u></b>
- and -	
<b>3<sup>rd</sup> Respondent</b>	<b><u>3<sup>rd</sup> Respondent</u></b>
- and -	
<b>The Children</b>	<b><u>4<sup>th</sup> – 5<sup>th</sup></u></b>
<b>(By their Children’s Guardian)</b>	<b><u>Respondents</u></b>

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**Anita Thind** for the **Applicant**  
**Nigel Sleight** for the **1st Respondent**  
**Emily Mitchell** for the **2nd Respondent**  
**Anne Williams** for the **3rd Respondent**  
**Susannah Johnson** for the **4th - 5th Respondents**

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR JUSTICE WILLIAMS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their

family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice Williams:**

1. On 21 May 2019 I delivered my judgment on the application brought by M County Council for care orders in respect of two children A (13.9.16) and B (18.12.18). In that judgment I concluded that A's stepfather the third respondent (R3), had:
  - i) Between October 2018 November 2018 R3 assaulted A on at least one occasion and inflicted bruising on him.
  - ii) On or about 27 October 2018 R3 assaulted A by punching, kicking or pushing him against a wall fracturing 6 left ribs and his left scapular and causing serious facial bruising.
  - iii) On 26 November 2018 R3 assaulted A by punching or kicking him in the abdominal region lacerating his liver and causing the associated damage to his mesentery which resulted in the secondary organ failures and gangrene leading to the operations on 4<sup>th</sup> and 6<sup>th</sup> December.
2. At that time the first respondent mother accepted that she could not put herself forward as a carer for A. As I recorded in my judgment she accepted that he should go to live with his father both because she conceded that she had failed to protect him from emotional abuse and had failed to seek medical treatment sufficiently swiftly but also arising from the fact that she was homeless and unable to provide any sort of home for him. That was what she accepted. In fact, I found that she failed to protect him in the following ways:
  - a) From the risk of serious physical injury, she having good reason to believe that R3 was assaulting A and causing serious injuries to him.
  - b) By seeking timely medical treatment for him.
  - c) From significant emotional harm through exposure to domestic violence perpetrated upon her by R3.

At paragraph 72 I set out the basis of these Findings. A non-molestation order was made on 21 May 2019 to protect the mother from R3.

3. At the conclusion of the hearing I made an order that placed both children in the interim care of M County Council. Subsequently agreement was reached that a child arrangements order should be made which would provide that A would live with his Father and have supervised contact with the mother. He returned to the full-time care of his Father on 24 June 2019.
4. I also gave directions to progress the case to a final determination. In particular I directed a psychological assessment of the mother in order to look at whether there were any particular psychological issues in relation to the mother's functioning which were relevant to her failure to protect in the past and her ability to protect in the future. That psychological assessment was delayed as the mother experienced difficulties getting to

her appointment due to train cancellations but it was eventually completed on 30 August 2019. In the meantime the mother had been referred to the Freedom Programme, which aims to assist the victims of domestic abuse to understand abusive relationships, to understand the effect of domestic violence on children and to guard against them in the future. Although the first meeting took place in early July it was not until October that further face-to-face meetings with the mother began. I shall return to this in due course. The local authority noted with concern that the mother had been seen with R3 in the vicinity of his home on 8 June 2019. The mother and R3 both deny they were together and this is an issue which I will need to determine. Over the summer the mother secured work and moved away from X. She continued to see both B and A although there were a number of missed contacts. She subsequently moved into lodgings. At some point I think in late October she injured herself at work and has been off work for four weeks. At about the same time the reflective face to face work in the Freedom Programme began and the mother also began to see a counsellor from an organisation called Free From Concern. Thus the mother has recently had fairly intensive ‘therapeutic’ input in relation to issues connected with domestic abuse and the Findings I made.

5. On 31 October the R3 was arrested in X for drink-driving, driving whilst disqualified and driving without insurance. He was subsequently sentenced to a period of 10 weeks imprisonment which he is still serving at the time of this hearing.

### **Issues for this hearing**

6. The principal issue which remained to be resolved regarding these children at the commencement of this hearing was whether care and placement orders should be made in respect of B or whether she should live with either the first respondent mother or the R3, B’s father. However the mother accepted that she was not in a position to ask for the immediate return of B to her care at the conclusion of this hearing but rather submitted that the court ought to adjourn the final decision to enable her to progress her work with the Freedom Programme and with Free From Concern with a view to obtaining an updating report from the psychologist Dr B by March 2020 with the hearing being resumed as soon thereafter as possible in April or May.
7. Although in his statement dated 28 October 2019 R3 had put himself forward as a carer for B, in his Position Statement he did not pursue the placement of B with him but rather supported the placement of B with the mother and sought contact with her. Shortly before he gave evidence his position changed again and he confirmed that in order to support a placement of B with the mother, he was willing to withdraw from B’s life and to forego the possibility of a time when he could have a relationship with her. Although his position in relation to B’s care has altered his position in relation to the Findings that I made has remained steadfast; he does not accept any wrongdoing and maintains the position he did at the fact finding. Given the fact that he is currently in prison for further driving offences and does not accept the Findings made against him aspects of his change in position were no more than facing up to the inevitable.
8. Thus the main issue became whether an adjournment should be granted to enable the mother’s proposal to be pursued or whether I should proceed to a final determination. Although one could compartmentalise the two decisions there is clearly an interplay between the two.
9. Within this principal issue are a number of factual and other evidential issues including

- i) whether the Mother and R3 met on 8 June 2019
  - ii) whether the Mother has engaged with the support offered and follow-up work
  - iii) the Mother's commitment to contact with B
10. At this hearing the local authority have been represented by Miss Thind. The mother is represented by Mr Sleight, the Father by Ms Mitchell, the R3 by Ms Williams and the Guardian by Ms Johnson.
11. In addition to that principal issue concerning B, the final orders relating to A also need to be determined. All were agreed that he should be the subject of a supervision order for six months together with a Child Arrangements Order providing for a 'live with' order to the Father. Prior to the commencement of the hearing there remained an issue as to the extent of contact between the Mother and A both as to frequency and as to nature. However the mother accepted that her contact should take place fortnightly and should be supervised either in the family centre or more loosely in due course at a Children's Centre.
12. Lastly there is an application issued on 6 November 2019 by the Police seeking disclosure of the evidence heard at the fact-finding hearing. That is listed for determination on the afternoon of the final day of this hearing.

### **The Parties' Positions**

13. The local authority's position is that the court should refuse the mother's application for an adjournment and make care and placement orders in respect of B. In support of their position Miss Thind makes the following essential points
- i) The combined effect of the psychological assessment by Dr B and the parenting assessments carried out in respect of the mother demonstrate that there is an ongoing risk to B arising out of the mother's ongoing relationship with R3 and her inability to prioritise B and keep her safe. The evidence points to an ongoing association between the mother and R3; a finding can be made in respect of 8 June 2019 when they were seen together and the evidence in relation to the phone and the registration of R3's vehicle point to an ongoing association.
  - ii) The application for an adjournment lacks any basis for optimism for rehabilitation within a reasonable timescale
    - a) The mother says she accepts the Findings but her evidence shows a minimisation of them.
    - b) She has not demonstrated any real insight into or acceptance of the nature of the Findings. Although she is intelligent and knows what she needs to do she is unable to do it. She cannot act on what she needs to do. She has demonstrated a lack of commitment to undertaking the Freedom Programme and to contact with B until relatively recently.
    - c) She is either not being open or does not understand the importance of previous violence. She did not tell the EHW about her first relationship which was violent.

- d) She has acquired knowledge from the process but not understanding and what B needs is a mother who understands the nature of the risks and is able to act upon them. She currently is beginning to see someone and yet his background is unknown.
  - e) She fundamentally lacks understanding of how to be a protective parent; she looked at it from what A had done to generate the R3's violence rather than placing the responsibility on the R3.
  - f) The EHW said that even this stage of the work with the mother focusing on abusive relationships and the impact of domestic violence on children will take six months
  - g) Dr B advised that the mother's inability to protect arose from multiple factors. Domestic abuse is only one of them. The other factors such as the lack of a supportive network, the pressures of finance and housing and her psychological functioning are all unchanged. He talks about her needing social work support and surveillance for 18 months to 2 years if B were to be rehabilitated to her.
- iii) There have been adequate assessments of the mother and the local authority have supported her in undertaking work but she has not taken full advantage of it. No further assessment will significantly change the position.
  - iv) A viability assessment of the mother's sister W was negative and has not been challenged and the maternal grandmother was unable to offer care.
  - v) A is thriving in the care of his father and a live with order together with a 6-month supervision order should be made. The duration of this would be reviewed and if it was considered appropriate an extension would be applied for. Contact should be weekly for two hours supervised by social workers or perhaps ultimately by his Father who will be given support to strengthen his ability to supervise contact. This would only change if his Father was content to take responsibility for supervision. The child arrangements order should specify the consequences of the mother failing to abide by the contact arranged. If the order does not then the associated safety plan should do so. This should allow his Father to terminate contact if the mother does not attend.
14. Although the mother ultimately seeks the return of B to her care she accepted (albeit I think reluctantly) that she had not made sufficient progress to justify seeking B's return at present. Hence she sought an adjournment. She agreed the proposal in respect of A in terms of supervision and child arrangements orders but initially sought more contact; she would have liked to see him once a week for a full day. She did not oppose the Father providing some supervision but in essence sought unsupervised contact in a public place which is activity based. But relevant to the extent to which the mother recognises the reality of the risk that she poses. In support of her application for an adjournment Mr Sleight made the following points.
- i) Her application demonstrates real substance and purpose justifying a delay. She is committed to pursuing therapy, can gain insight and thus address the risks that might be posed either by R3 or another partner.

- ii) Dr B can provide an updated report by 10 March if he sees her in February. Arrangements could be made so that if the mother's attendance at counselling or therapy is not consistent the matter could be referred back to court so that the delay is minimised. She knows if she does not demonstrate full commitment the consequences will be very serious.
- iii) The delay will not be great if the court could hear the matter again within six months. By then B will not yet be 18 months and she will remain in her current placement in the meantime. It will not have a significant impact on the ability to place B with adoptive parents if progress is not made.
- iv) The possibility of rehabilitation is worth pursuing. It will enable B to maintain not only a relationship with her mother but also most importantly with her brother A. The concession by R3 that he will not seek contact lessens the risk that option would pose.
- v) Her journey since June 2019 is a solid foundation for delay:
  - a) She has committed to making progress. She has sought out a referral to the Solihull Programme and counselling from Free From Concern.
  - b) She has completed the part of the Freedom Programme she needed to undertake, accessing the program in English when she found it unsatisfactory in Lithuanian. She has now started work on the reflection and feedback sessions and has attended all but one. She is on the right track
  - c) The Guardian and local authority may have closed their minds to the possibility of her making progress.
  - d) The EHW is satisfied that it is worthwhile continuing with the Programme. At its conclusion it may provide information which demonstrates the mother has insight into the risks posed by R3 and possible future partners
  - e) More information might be available even now had the EHW been provided with Dr B's report and the judgment. The submission that the mother had not been candid with the EHW could not have been made if Dr B's report had been available to the EHW.
  - f) She has begun her own counselling with Free from Concern. The in-depth conversations with her therapist do now convey a sense of emotional congruence with the events she was describing. This is progress. She is opening up which was a point Dr B was concerned about. By February she will have had 15 sessions.
  - g) It may be that her regular attendance at contact recently and her good parenting in contact is a product of the effect counselling is having.
- vi) The court should be wary about reading too much into some of her answers in oral evidence, particularly those given at the end of her evidence.

- vii) The evidence of an ongoing association with R3 is tenuous. The court should accept her account of 8 June and she denies his presence or of ignoring the social worker. The evidence about the phone and the vehicle registration are tenuous indeed. The concern she expressed about the disclosure of her address to R3 was genuine and can only be based on her not wishing him to know where she is. She volunteered to the social worker that she was seeing someone albeit as a friend. The position is now significantly different to June.
15. Ms Mitchell on behalf of the Father agrees the proposal for a live with and a supervision order. A is flourishing in his care. He is willing to continue to work cooperatively with social services. He is cautious about a move away from supervision by social services. He wants to know that the mother understands the risks she poses and has made progress before he would want to consider a move away from supervision.
16. Ms Williams on behalf of the R3 emphasised the following:
- i) A rehabilitation with a package of support from social services would be a perfectly legitimate proposal. It is common and far from the need for such a package ruling out rehabilitation as an option it might make it a realistic option.
  - ii) He very much wants B to be cared for within the family and not be adopted. He wants her to be cared for by the mother and so he supports an adjournment. He has been realistic in his acceptance of the fact that he cannot put himself forward as a carer for B.
  - iii) He has put B's needs before his own desire for contact with her by his offer to withdraw from her life in order to eradicate a risk to the rehabilitation of B to the mother. He cares for his daughter very much and has a good relationship with her and is child-centred in his interactions with her. It is a concession which is of great significance to him given what he will lose. It is not strategic but his own decision in his daughter's best interests.
  - iv) In relation to 8 June the court should accept his account which is consistent. He has behaved in other ways which are inconsistent with him wanting to have an ongoing relationship with the mother. He moved away from X in order to avoid coming into contact with her.
17. Ms Johnson on behalf of the Guardian adopted the local authority's submissions in support of a refusal of an adjournment and the making of care and placement orders. She emphasised the following in support of his position
- i) An adjournment is to unjustifiably delay a decision for B who has been in care most of her life. Her attachment with her carer is growing and a further six months will be a significant period in her life.
  - ii) The mother is really at the very beginning of her journey in counselling or therapy and thus in processing this and in demonstrating that she has changed.
  - iii) Her failure to protect had near fatal consequences and was not simply neglect or a one-off assault but very serious repeated assaults on her and A. She should have been able to search inside herself long before now.

- iv) She has struggled to engage with the Freedom Programme such that she is only recently really making progress. Notwithstanding her difficult personal situation others would have done more. It may be that she finds confronting her emotions overwhelming or she may not have a full appreciation of the need to engage. Ultimately though that is what B required and she has not done more than scratch the surface or make superficial changes so far
- v) It is not clear that the mother has fully separated from R3. The Guardian acknowledges that separation is not necessarily one event and there may be ongoing contact as referred to by Dr B. However if the mother had insight she would acknowledge she had been with R3 on 8 June and would explain herself. Her denial is a contra indicator for change.
- vi) Her lack of openness about the abuse in her first relationship is another contra indicator. Either she is not being open or she does not appreciate the significance of an earlier violent relationship.
- vii) If her psychological make up is a reason for her failure to protect and if it goes back to her childhood it is unrealistic to expect her to process in a short timeframe. If the causes are deep rooted it is unrealistic to expect her to be able to change her personality.
- viii) What she has said about relationships is a cause for concern. She told Dr B she did not think she would have a relationship for some years. However she now appears to be thinking about a relationship, although she characterises it as a friendship. Her statement that she did not want to know much about the man she was seeing is concerning.
- ix) Overall the Guardian is concerned that she has demonstrated neither the commitment, openness, nor insight that would justify further delay. Her understanding lacks any depth. She may struggle to face what happened and the end result may well be that there has not been a substantial change. The level of uncertainty is unacceptably high.
- x) Whilst the Guardian sympathises with her position and her need to access therapy ultimately this must not eclipse B's needs. The balance is in favour of making care and placement orders now given the absence of rehabilitation within a reasonable timescale. The only realistic option for B is that her best interests will be met by the making of Care and Placement Orders

### **This Hearing**

18. In preparation for this hearing I was provided with two lever arch files containing the documents relevant to this part of the case. I have also had the benefit of position statements from the parties and the Guardian's final analysis. The R3 attended court pursuant to a production order. Regrettably the mother did not attend on the first day of the hearing. On making enquiries with her Mr Sleight was told that she had not received an email the day before giving her details of the court and her train tickets. The Father has attended some days as and when his work commitments allowed. He has left early in order to return home to care for A.



19. In the course of the hearing I have heard evidence from
- i) the social worker
  - ii) EHW
  - iii) The mother
  - iv) R3
  - v) The Guardian
20. The report of Dr B was agreed and he did not give oral evidence. The Father did not give evidence; no party wished to ask him questions.

### The Legal Framework

21. I have regard to the general principle that any delay in determining the issue is likely to prejudice the welfare of the child. However ultimately the welfare of the child is paramount and if, contrary to the general principle, delay promotes the welfare of the child then delay will be the right course to pursue. Thus planned and purposeful delay which is likely to promote the welfare of the child should be pursued. On the other hand delay which is unlikely to promote the welfare of the child should not be. In cases such as this where the delay is linked to the viability of rehabilitation and where the consequences of proceeding immediately are so profound, involving care and placement for adoption, the court must also bear in mind the issue of proportionality.
22. In considering the Local Authority's application for a care order, I must have regard to s.1 of the Children Act and since the plan is for adoption, also to the welfare checklist in s.1(4) of the Adoption and Children Act 2002: see *Re C (A Child) (Placement for Adoption: Judicial Approach)* [2013] EWCA Civ. 1257 and *Re R* [2014] EWCA Civ. 1625. I note that in *Re W-C* [2017] EWCA Civ 250 Lord Justice McFarlane (as he then was) said it was not necessary in a case such as this to consider the case through the prism of the s.1(3) welfare checklist but rather should focus on the ACA s.1(4) welfare checklist. Likewise, I must treat as my paramount consideration in accordance with s.1(2) of the 2002 Act, the child's welfare throughout her life.
23. Section 1(4) of the Adoption and Children Act 2002 provides:
- “The court or adoption agency must have regard to the following matters (among others)-*
- (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),*
  - (b) the child's particular needs,*
  - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,*
  - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,*
  - (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,*

- (f) *the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including*
  - (i) *the likelihood of any such relationship continuing and the value to the child of its doing so*
  - (ii) *the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop and otherwise to meet the child's needs,*
  - (iii) *the wishes and feelings of any of the child's relatives or of any such person regarding the child.*

24. In respect of placement, s.21 of the Adoption and Children Act and s.52 apply to that application. Section 52(1)(b) provides:

*“The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that-*

...  
(b) *the welfare of the child requires the consent to be dispensed with.”*

In this case, R3 does not have parental responsibility and so, does not fall within the definition of a parent within the meaning of s.52(6), but of course the mother does. I do of course take into account what the R3's position is but I am not required by the statute to dispense with his consent.

25. In *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625, the Court of Appeal held that the word “requires” has a connotation of the imperative (i.e. what is demanded rather than what is merely optional or reasonable or desirable. What has to be shown is that the child's welfare throughout her life requires adoption as opposed to something short of adoption. The child's circumstances may require statutory intervention, perhaps may even require the indefinite or long term removal of the child from the family and his or her placement with strangers, but that is not to say that the same circumstances will necessarily require that the child be adopted. The question at the end of the day is whether what is required is adoption.

26. It is for the Local Authority, since it is seeking to have B adopted, to establish that nothing else will do: see *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ. 1146 and *Re R*. As Baroness Hale of Richmond said in *Re B*:

*“...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do.”*

27. This echoes what the Strasberg Court said in *Y v. The United Kingdom* [2012] 2 FLR 332:

*“...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. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained."*

28. The judicial task is always to evaluate all the options and undertake a holistic evaluation of the child's need. In *Re B-S*, the Court of Appeal stressed the following three points:

- (1) "Although the child's interests are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.
- (2) the court 'must' consider all the options before coming to a decision.
- (3) the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer."

29. In *Re B-S*, the court held that the following two elements are essential when the court is being asked to approve a care plan for adoption and make a non-consensual placement order or adoption order:

- (a) There must be proper evidence both from the local authority and from the guardian. The evidence must address *all* the options which are realistically possible and must contain an analysis of the arguments *for* and *against* each option; and
- (b) There must be an adequately reasoned judgment by the Judge.

30. In *re-M-H (a child)* [2014] EWCA Civ 1396 the Court of Appeal considered the test for dispensing with consent and the '*nothing else will do*' test. Lady Justice Macur observed that that phrase was often taken in isolation from the preceding words referring to exceptional circumstances and the overriding requirements of the child's best interests. She noted that

*"it stands to reason that in any contested application there will always be another option to that being sought. In some cases the alternative option will be so imperfect as to merit summary dismissal. In others, the options will be more finely balanced and will call for critical and often anxious scrutiny. However, the fact that there is another credible option worthy of examination will not mean that the test of "nothing else will do" automatically bites. The holistic balancing exercise of the available options that must be deployed in applications concerning adoption is not so as to undertake a direct comparison of what probably would be best but in order to ascertain whether or not the particular child's welfare demands adoption. In doing so may well be that some features of one or other option taken in isolation would produce a better outcome in one particular area for the child throughout minority and beyond. It would be intellectually dishonest not to acknowledge the benefits. But this is not to say that finding one or more benefits trumps all and means that it cannot be said that "nothing else will do". All will depend upon the judge's assessment of the whole picture determined by the particular characteristics and needs of the child in*

*question no doubt often informed by the harm which she has suffered or been exposed to.”*

31. It is always important to bear in mind what Mr. Justice Hedley said in *Re L*, which was that:

*“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”*

32. That approach has been endorsed by the Supreme Court in *Re B*, where both Lord Wilson and Baroness Hale emphasised the very diverse range of parents and the diverse standards of parenting that society must be willing to tolerate:

*“the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs.”*

33. Sir James Munby, in *Re G*, emphasised the task of the court in relation to carrying out the global holistic evaluation and the need to undertake a multi-faceted evaluation of the child’s welfare taking into account all the negatives and positives, all the pros and cons of each option. To quote Lord Justice McFarlane:

*“What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives, and each option is then compared side by side against the competing option or options.”*

34. I must take into account B’s welfare throughout her life: the short, medium and long term welfare interests. I approach it on the basis that, if adopting a solution of permanent separation from her parents, it is on the basis that “nothing else will do” and that if a placement order is to be made that her situation requires it rather than it being only desirable. Delay is likely to be prejudicial to her welfare, although planned and purposeful delay may be appropriate.

35. I take account of the Article 6 and Article 8 rights of B and the parents. I remind myself that, where there is a tension between the Art.8 rights of the parents on the one hand and the Art.8 rights of the child on the other, the rights of the child prevail: see *Yusuf v. The Netherlands*.

36. In determining what order to make, to the extent that it infringes the Art.8 rights of the mother and the father, the court must be satisfied that it is necessary and proportionate.

Any conflict between the interests of the child and that of the parents should be resolved in favour of the solution which best promotes the child's welfare. In determining the proportionality issue, I approach it on the basis that if, on welfare grounds, the option of placing the child with a parent is only marginally outweighed by placing them away from the parent, that may be disproportionate. Conversely, if the option away from the parent is clearly more likely to promote the child's welfare that will be a proportionate interference.

37. In carrying out the assessment, plainly some factors will carry far more weight than others. The balance sheet approach advocated by Lord Justice Ryder, whilst helpful, cannot convey the relative importance of any particular issue. The holistic evaluation is not a map without contours, but rather one in which there are very significant features on the landscape which may ultimately come to dominate the outcome.

### The Evidence

38. I have read the statements of the various witnesses and have heard oral evidence from several. This summary cannot reflect the considerable body of evidence that I have read and heard. Aspects of my previous Findings in particular in relation to the nature and characters of the mother and R3 remain highly relevant as do the Findings I made.

### Dr B

39. At the conclusion of the fact-finding hearing I indicated that I considered that a psychological assessment of the mother might be required. Ultimately this was commissioned from Dr B, a forensic and clinical psychologist. Some of the salient points in his report are as follows:
- i) The mother accepted she had not protected A but said she couldn't do anything else at the time. She said she did not think he had suffered mental harm although she later said she thought he would be scared and in pain. She had no insight as to why R3 might have behaved that way.
  - ii) Dr B noted that during her interview she had not shown any strong emotion when talking of R3's abuse of her or A's injuries. She queried whether it might be a function of her childhood experiences.
  - iii) She said she had no plans to get into an intimate relationship over the next few years. She said she would be alert to aggressive tendencies, drinking, bad language etc.
  - iv) She had a straightforward understanding of the Findings and she accepted them. It is unfortunate in my view that Dr B did not explore in more detail what the mother meant when she said she accepted them. This may be a function of the questions he was asked but nonetheless it means that he has not expressed an opinion on the extent to which the mother has processed them or truly accepts the full import of them.
  - v) Dr B opines that in November 2018 the mother was vulnerable and had an impaired parenting capacity at the time arising from several issues including

violence, dependence, isolation. He considers that she was depressed at that time. He says

*'...the mother's failure to protect has to be considered to be a function of the collision of multiple factors in my opinion. These are factors which relate to her personality (such as her being relatively under assertive and passive), factors relating to her circumstances and the infrastructure that supported her (her being removed from her country of origin, her facing financial hardship, and her experiencing a relative lack of social support), factors which relate to her relationship at the time (her being in an abusive relationship and her involvement with a relatively sophisticated abuser who had been capable of exploiting her vulnerabilities), factors which relate to her psychological functioning (her being a parent who perhaps had experienced shame at her circumstances and a lack of confidence) and also given the breakdown of her relationship to the Father...'*

- vi) Dr B considered the mother to have a mild form of depression when they met and also to have traits of low self-esteem. He did not think she suffered any learning difficulty or global learning disability. He considered that if she continues to be depressed this could impair her emotional energy and resilience.
  - vii) He thought she has not as yet addressed in full the legacy of intimate partner violence. He said that until she has addressed in full her understanding of the nature of intimate partner violence and various other factors and until she fully understands its impact on her both in the short and the long term and the relevance of this for future protection strategies that care must be taken not to over estimate her protective capacities at this point. He was mindful that she tends to be somewhat passive and under assertive and that there is an argument that until she has developed such skills that her protective abilities will not be fully developed.
  - viii) His prognosis for the mother's psychological state and health was uncertain. He considered further intervention was required. She needed to get the support of her general practitioner in relation to her mood and anxiety levels with medication if necessary. She needed to build on the Freedom Programme and to work with a counsellor to develop her insight. He thought this would take several months to progress across some 20 sessions or more. He said 'we must be cautious when considering prognosis in this case' He thought if B were placed with the mother she would need input from children's services for at least 18 months to 2 years.
  - ix) He considered R3 to have been a powerful presence in the mother's life and that ending the relationship would not be easy. He thought she was well motivated to achieve B's return to her care. He said he would be unsurprised if there have been times she had been drawn to R3 or persuaded into contact with him possibly against her will.
40. What emerges from Dr B' report it seems to me is that there are a number of factors that contributed to the mother's failure to protect A, that the mother has some acceptance of the Findings and some motivation to address her problems, that the timeframe for doing so is many months or longer and that the prognosis is uncertain.

The absence of any detailed analysis of the mother's acceptance and understanding of the Findings and a fuller consideration of the associated 'detachment' of the mother's emotions is unfortunate although overall the report is of significance.

### The Social Worker

41. In the initial parenting assessment of the mother carried out in March 2019 the social worker made the following points
  - i) There are a number of positive aspects of her parenting. Within a controlled environment she can meet the children's basic needs including age appropriate stimulation. She loves the children and positive interaction has been observed.
  - ii) She has knowledge of basic parenting skills.
  - iii) Her ability to safeguard the children is compromised and she has failed to prioritise A's needs both in relation to seeking appropriate hospital treatment and in being frank with the local authority, police and hospital about concerns she had about the R3.
  - iv) She lacks the protective factors required to parent the children.
42. The later parenting assessment emphasised this following the incidents in late March 2019.
43. The protective carers assessment conducted by the social worker in September 2019 was undertaken with the benefit of the psychological assessment provided by Dr B. The purpose of the assessment was to explore her ability to parent B and to identify what level of support might be needed. The report acknowledges that the first respondent has experienced domestic abuse. The report observes that:
  - i) The mother needs to engage in meaningful support and intervention in respect of domestic abuse before she will be able to provide consistent and effective care for the children. Although she attended one session on 4 July she failed to engage with the Programme and could not be contacted by the supervisor to discuss progress. She did not seek assistance in accessing the Programme or the material and thus has not completed the course.
  - ii) The local authority therefore does not consider she would access support in the future or demonstrate the ability to safeguard herself for the children.
  - iii) The mother has missed 10 contact sessions since May. Some have been explained but others were not.
  - iv) The mother has changed her employment plans in order to work in an egg factory in Y. R3 is also working at Y in a chicken factory
  - v) The local authority is concerned that the mother is still not being open with them and is not accessing support from professionals or others.
  - vi) Overall the local authority conclude that the mother does not have the necessary parenting capacity in particular in relation to protective factors. In particular

they are concerned that the mother would be unable to recognise signs of abuse or report them in order to provide the necessary protection.

- vii) She is unable to provide B with stability and the level of consistent care without addressing her own issues. In order to do so would require a timeframe which is not consistent with B's, particularly given the lack of progress so far. Although there are positives in terms of the mother's basic parenting skills and her attachment to B there would be a significant risk of harm to B if the mother were to resume care for her given the lack of progress in relation to her ability to protect B.
44. By the time the social worker's final statement was prepared on 19 September 2019 12 contact sessions were listed as having been missed. Again it was noted both by the contact supervisor and the social worker that contacts were good and the mother was able to respond to both children's needs without prompting. The work identified by Dr B had not been taken very far. This would need to take place over several months with interpreters and across some 20 sessions or more. At that time the mother had only met once with the EHW and it was said that although the mother accepts the facts found she maintains that she was not aware of how the injuries were inflicted on A or that she was fully aware he had been harmed.
45. The social worker concludes that the mother has basic and good enough parenting skills and is able to provide a positive experience in contact for the children. Her conclusions as to her basic capacity to meet the physical needs of the children is consistent both with what the Father says and my Findings in my judgment as to her character and ability to care for A prior to her relationship with the R3.
46. In relation to the R3 the social worker says from her observations of contact it is evident that he loves his daughter and enjoys seeing her each week. He has shown positive affection to her and is committed to coming to the contact sessions and taking on board some of the advice.
47. The social worker's evidence did not alter significantly in oral evidence.
- i) She acknowledged that the mother was engaging with the EHW but said there was a long way to go.
- ii) Dr B identified other areas which were of concern and she had not seen positive change in relation to them. The mother remained passive, her support network was poor and her housing and work position was limited. Her landlady does not even know that she has children. She has not been proactive in pursuing the Freedom Programme over the summer but needed to be followed up by the EHW.
- iii) The present position is that prospective adopters have been identified for B and may be placed by January. If this opportunity is missed there is no guarantee as to what her position will be in six months' time.
- iv) The mother had told the EHW that she was seeing someone. She was surprised because the mother had said she didn't want to enter a relationship and wanted to put the children first.



48. The initial parenting assessment undertaken by the local authority in respect of the Father was that the Father was engaging with the process, making steady progress and that he needed further work to promote his ability to meet these physical and emotional needs. The Social worker says

*“The Father has made excellent progress and has fully acknowledged his responsibilities in respect of A. The Father has engaged in all work and embraced the support offered to him and A by different professionals. The Father continues to access support and guidance in line with the outlined plan. He is proactive and will communicate with professionals when he needs support” [C254-255].*

EHW

49. The EHW was asked to support the mother complete the Freedom Programme and look at healthy and safe relationships. She initially met with the mother on 4 July 2019 to discuss the Programme. They discussed whether the mother would attend the weekly sessions (conducted in English) or whether she would complete it online in Lithuanian. It was decided she should complete it online. The EHW said there was no fixed time within which the Programme should be completed and that she gave the mother her telephone number in order to allow her to speak to raise any queries she had or to let her know when she had completed it in order to then meet to undertake the reflection sessions. The EHW said she gave the mother a piece of paper with the login details and her telephone number on it. She then did not hear from her despite sending text messages to her on 31 July and 21 August. Having not received any response the EHW spoke to the social worker and sent further text messages on 2 and 10 September. On 18 September the social worker gave the EHW a new contact number for the mother and she texted that and the mother replied. It was arranged that the mother would text her again on 20 September to let her know her address but she did not do so. On 25 September they met for the first time and arranged future sessions. The content of those sessions is set out in her statement.
50. The EHW noted that the mother had described her first relationship in terms which referred to control but no violence. In her oral evidence and in her discussions with Dr B the mother confirmed that that relationship had in fact been physically violent. The EHW was concerned that this had not been disclosed. The EHW noted that the mother described R3 as being different to the Father; he was a real man and he would buy her things. The mother in her evidence said that he seemed like a man who would protect her. She also described R3 as treating A ‘like a dog’. She noted that it was positive that the mother had started the reflection work and had asked for a referral to another parenting Programme. She also recorded a number of concerns relating to the delay in commencing the reflection work, some of the mother’s comments and her not having let her know whether she wanted to complete a referral to rape crisis. In her oral evidence she said that it was early days. There was no reason not to progress the Programme; the mother had attended 5/6 sessions so far and there were a further 5 to take place. She thought it was too soon to get a true picture of what impact the Programme had had so far there were several further areas to go into including looking at new relationships, safety planning and the effect of domestic abuse on children. She thought it would be another 4-6 months to do that work and to assess its impact. She said that the mother appeared very matter-of-fact about the abuse A had suffered and

her knowledge of it. The EHW was clear that the mother had told her that she had met someone through a Lithuanian dating site. She confirmed that the mother had told her that she was worried that her address had been disclosed and R3 might find her.

Ms S

51. The mother made an application to adduce further evidence in the form of an interim report from Free From Concern. I am not sure what Ms S's qualifications are. In her report she sets out the nature of the discussions that they have had in the four sessions which have been undertaken. Ms S says that the mother has appeared to be committed to the sessions and has done the homework which she has been asked to. She said she believes she is making good progress and is beginning to associate her memories and emotions around her own childhood and the impact of this on her own thoughts and behaviours. She says she agrees with Dr B that it will take a significant amount of sessions to fully explore and unravel the details and trauma not only that she has faced but also that of her son and the implications of such. She said she is making very good progress. It seems clear from the description of the conversations that are being undertaken that this work is beginning to delve beneath the surface of the mother's response to the Findings and is requiring her to engage at a deeper level with what happened and how she feels. The account of the mother's emotions when she spoke of A in hospital calling for her and the extent of the distress which she displayed when recalling this was clearly genuine. However her answers to the questionnaire which is attached to the report are very limited indeed and show little real reflection. This may of course be a function of writing in English but it suggests that the views of both Dr B and Ms S that there is a lot of work to do is accurate.

The Mother

52. The mother has filed two statements; the first dealing with 8 June and the second a much more detailed statement setting out her final case. She gave quite lengthy oral evidence and did her best to give it in English. She has clearly tried to improve her English but occasionally had to resort to the interpreter. On occasions I was concerned about whether she fully understood or was simply agreeing with questions put but on clarifying with her she was clear that she did understand. In the main I believe she did understand what she was being asked and was able to give accurate answers. There were perhaps occasions when there was a degree of misunderstanding but overall although she was not giving evidence in her first language I'm satisfied that she was able to give evidence appropriately.
53. Aspects of her evidence were undoubtedly positive. She clearly has been able to make progress in her life in that she has obtained work and now obtained accommodation. She has managed to clear the majority of her debts. She has undertaken the Freedom Programme and has begun the reflection work with the EHW and in tandem with that has begun to work with Free From Concern. In her statement and in her evidence, she spoke about the process of undertaking the Freedom Programme work. In evidence she said she had been doing it after work and in her statement she said she had been completing it on her days off. She explained that the Lithuanian version seemed poorly translated and so she had completed the work in English. She said that when she finished it she told the social worker and asked to be sent the EHW's number. Although only a small point she said she had lost the EHW's number. As a result of the delay in completing the work and making contact with the EHW the reflective work did not start

until three months after the EHW and the mother had first spoken. Given the discussions the mother had with the EHW and given the importance of the EHW and the Programme I cannot understand why the mother did not prioritise retaining her number. It is also surprising that she did not contact the EHW when she realised the Lithuanian information was so poor that she needed to switch to doing it in English. The Programme could be completed as quickly as you wanted or over an extended period of time; it depended on the individual. The time that the mother took to complete it and her lack of engagement with the EHW in July, August and September suggest either that the mother was not prioritising it or she was finding it very difficult to engage with. No doubt her new job, moving home and maintaining some level of contact made it difficult but this work was critical to the mother's case for B to return and yet she was unable to commit sufficiently to it to move the process rapidly along. If she was finding it difficult to engage with, one might have expected her to contact the EHW.

54. In her statement and in her evidence, she described various matters that she had learnt from the Programme. What was not very evident was an application of that theoretical knowledge to her own situation. When she does relate it to her own situation I found it to be limited. She could identify that the R3 had been a drinker and had used abusive language for instance but she was unable to give any reason as to why he might have assaulted A. She acknowledged that she had not told the EHW about the domestic violence in her first relationship. Given that domestic abuse was the central focus of the work with the EHW and this was reflective work the failure to mention it is hard to believe. Whilst I accept that she had told Dr B and that had the EHW had Dr B' report she could have explored this, one cannot avoid the fact that during counselling about domestic violence the mother failed to mention a domestically violent relationship. Either the Freedom Programme was not gaining traction in the mother's mind or the mother was minimising her own exposure to domestic violence. Similarly the mother's evidence that she does not want her landlady to know she has children or that they are in care suggests the mother has not appreciated the benefits of being open with those who might be important in your life. Whilst it is only her landlady and a relatively recent one this is somebody who would potentially be part of her support network. Whilst on a human level the desire to keep such sensitive matters secret is understandable if she cannot talk about what has happened to her she is unlikely to build a support network.
55. Miss Thing submitted that the mother had knowledge but not understanding. Clearly the process of translating knowledge into understanding is something which may take time but I am concerned at the mother's limited progress. Her demeanour while she gave evidence was very similar to how she gave evidence in May. In my judgment I noted that she appeared detached from events and that there did not appear to be an emotional connection. Dr B also noted this. The same was evident now. When she was asked about how A he had suffered she was very matter-of-fact in describing the injuries he had sustained but there was almost no connection with either the terror and pain he must have felt or with the fact that he had nearly died. The mother herself acknowledged that she could come across as unemotional but was unable to explain why that was or to get close to the emotions that might be expected to be invoked in relation to the terrible abuse that her son had suffered and which she had allowed to occur. When she was asked to reflect upon the judgment she was able to say that she had failed to protect A and went as far as to say that she hated what she had done and that she knew when

and where she had made mistakes but what she said did not appear to touch upon her emotions or to engage them.

56. Ms S says that on 14 November the mother had been able to engage with her emotions and this is recorded in quite vivid detail on page 5 of her report. This is nearly one year on from A nearly dying and some 13 months on from him having sustained fractured ribs and scapula. That it has taken this long for the mother to face up to the reality for her son troubles me greatly. Her detachment from her emotions seems likely to be highly relevant to her failure to protect. A capacity to distance herself from the real consequences for A of the behaviour of R3 goes a long way to explaining her inactivity. Had she really connected with the pain and terror that her son experienced when he was brutally assaulted by R3 in October 2018 it is hard to see how she would not have acted differently. By remaining detached from her son's feelings she was able to 'justify' remaining in the relationship.
57. Although the mother says in her statement and has said to Dr B and in evidence that she accepts the Findings that I made, when more closely examined this acceptance appears to have relatively shallow roots. When she was questioned about her failure to protect arising out of the assault on A in October she said that she had only been aware of R3 smacking A. This was far from a full acceptance of my finding that she believed that R3 had seriously assaulted A causing obvious injuries which she did not seek immediate medical treatment for but which led her to tell R3 social services were investigating in an attempt to curb his violence. When asked about why she thought he had been violent she did not focus on R3 but rather asked rhetorically what A had done to provoke this. Whilst I do not think she was blaming A it is troubling that even after having undergone the Freedom Programme and reflective sessions together with therapeutic sessions with Free From Concern, I am concerned that she was not able to identify R3 as the problem or articulate why he might have behaved that way notwithstanding that I had explored that in my judgment. Ultimately it seems to me that she has made only limited progress in understanding the Findings I made. I do not believe she has been able to get much beyond a simple acceptance that I have reached those conclusions. Converting those conclusions into something meaningful in terms of her understanding of what she did and didn't do and being able to learn lessons or modify her behaviour are a long way away. As I said in my earlier judgment it may be that the mother fears being overwhelmed by the emotional consequences of fully engaging with the reality of what happened to her son and to her. One can envisage the terrible feelings of guilt, shame, anger and grief that must be the inevitable consequence of truly grappling with what happened but until she has the courage to embark on that process and to process those feelings I cannot see how she will truly understand what happened or will be able to start make the changes necessary to prevent it happening again.
58. Her evidence of why she had found R3 attractive was only a small example but it again illustrated the lack of progress she has made in understanding what might be important in a partner; particularly against the backdrop of what she has experienced. She told both the EHW and said in evidence that a strong man who could protect was what she had seen in R3. She did not attempt to explain how wrong she had been but appeared to be saying that these were still qualities along with provision of material gifts. Given that the Father has featured heavily in this litigation and has demonstrated the qualities of a good father her inability to identify what might be important in a future partner

troubles me. Although she maintained that the man she has seen on four occasions is really no more than a friend and she does not see it as a relationship I do not believe that the EHW misinterpreted what the mother had said to her. I do not accept the mother's evidence that this relationship is and always has been just friendship. In the context of the work the EHW is doing it is inconceivable that she would have misinterpreted what the mother said. I did not find the mother's evidence on this point persuasive. Given that she had told Dr B she was not interested in a relationship her embarking on the first steps towards another relationship at this particular point in time points to an inability on the mother's part to prioritise her therapy and her children. I appreciate her need for company and support but embarking on another relationship is unlikely to be the best way of achieving this. Her evidence that she knew little about the man's background and did not want to know was so inconsistent with the lessons that she must be learning in the Freedom Programme that it suggested she had learnt nothing from that.

59. The mother was also asked about the missed contact. She said that on occasions she had simply been busy and had forgotten to make the call and she said '*sometimes you just forget*'. She was also asked about missing contact review meetings and did not accept that they had been missed. Although I have no doubt that she loves B and enjoys the time they spend with each other and very much wants her to return it is hard to avoid the conclusion that the mother struggles to translate good intentions into effective action. There is no excuse for failing to call to confirm contact and there is no excuse for missing meetings.
60. Overall I found the mother little changed from May of this year. There are still significant issues over her credibility when it comes to matters which may reflect badly on her. Her explanations for missed appointments or mislaying numbers were unsatisfactory.

### The Third Respondent

61. R3 made two statements. The first dealt with the alleged incident on 8 June and the second was his final statement. In that statement which was filed on 28 October 2019 he stated that he did not accept the Findings made and he put himself forward as a carer for B. By the time the position statement was filed for this hearing he had withdrawn his proposal that he care for B and sought only contact with her. By the time he came to give evidence he said that in order to support the placement of B with the mother he would withdraw from B's life and would not seek contact with her.
62. R3 was arrested on 31 October 2019 for driving offences and on 1 November for assault. In respect of the latter R3 said that he has no idea what it relates to and the police disclosure sheds no light on the subject. He has subsequently been sentenced to 10 weeks imprisonment in respect of the driving offences. His changes in position are undoubtedly linked to his imprisonment.
63. R3 gave brief oral evidence. He spoke of his daughter with affection and with some appreciation of her needs. When he spoke of ending his relationship with her in order to support a placement with the mother he appeared to be genuinely affected by that prospect. However his evidence in relation to important matters of fact or which reflect badly on him remained wholly unsatisfactory.

64. As I found in my earlier judgment not only is he capable of serious violence with relatively little prompting but he has little respect for the law; driving whilst disqualified soon after his disqualification; breaching bail on at least two occasions that are known of. His recent arrest on 31 October 2019 demonstrates there has been no change in his attitude. He purchased a car in June when he still had eight months of his ban to serve. He bought it to drive. His evidence about the insurance policy was as improbable as his evidence about the registration of the car. He plainly was dishonest with the insurance broker if indeed he did secure insurance. His denial of the Findings and his continuing willingness to ignore the law demonstrate he remains a significant risk to his daughter, the mother and probably any intimate partner or child. The additional consequence of his continuing disregard for the law and his dishonest evidence to me is that I can set relatively little store by his concession that if B is placed with the mother he will not seek contact. He plainly is attached to B and he became emotional when contemplating her and the end of their relationship. Whilst I am prepared to accept that in the court environment his concession is sincere I have no doubt that it would not survive very long in the real world once court proceedings ended. His impulsivity and complete disregard for the law leave me in no doubt that the intensity of his feelings for his daughter would override any order this court might make and that he would seek out contact with B were she in the care of the mother. I doubt that as things stand at the moment he would have much difficulty in tracking her down through the Lithuanian community. At present I doubt that the mother would be able to resist him and in any event there is every chance he would resort to violence in order to see B were she to do so.

#### The Guardian

65. The Guardian has filed two reports. The first was dated 8 October and the second 15 November. He gave oral evidence. He had considered the interim report from Ms S. His report and his oral evidence demonstrate that he has thought long and hard about the case and in particular in relation to B and the possibility of rehabilitation to the mother. In support of his ultimate conclusion that an adjournment of the decision in relation to B should not take place and that care and placement orders should be made now the following important points emerge from his evidence.
- i) The mother's basic care of the children continues to be good. Fundamentally her capacity to provide basic care in terms of meeting their physical needs and providing emotional warmth is reasonable.
  - ii) The mother is not without strengths; she is resourceful and she has neither drug or alcohol problems.
  - iii) The most important issue though is her ability to protect B from the R3 or another abusive partner. There is a question over whether there is ongoing contact. Her ability to ensure that there is no future relationship in particular a resumption of a proper relationship is critical. Even if she has properly separated her ability to remain separated remains untested. The underlying vulnerabilities that led to her failure to protect in the first place need to be tackled. Her low self-esteem, her social isolation, her detachment, her depression will make her vulnerable. Her poor engagement with the freedom programme and the early help worker and her non-attendance at contact show she is not connected to the

services that could help and monitor her. She has not shown a proactive or engaging approach in order to address the concern of a continuing association.

- iv) In discussions with the mother the Guardian questions whether she has taken true ownership of her failings other than on a surface level. Her oral evidence confirms this even after further sessions of therapy.
- v) The outcome of therapy is very difficult to gauge. She needs to make great strides in order to become a protective parent and she is only at the beginning really of that process. The psychological assessment is neutral and expresses some caution about the mother's ability to make changes and the timeframe. Her engagement has been moderate she could have done more. She has not been open; her failure to explain 8 June incident assuming they were together is a concern. Her failure to tell the EHW about the abuse in her first relationship also supports the conclusion that the mother is only just beginning the journey. She should be far longer down that path given the period between November and now. What is going to happen now which really changes it? The mother's depression and lack of support network are weaknesses when one considers her resilience and ability to reject the father. She has not begun to address really the psychological issues which may have also played a role.
- vi) Whilst one has considerable sympathy for the mother's position given the difficulties she has faced, ultimately this is about B's welfare over the short, medium and long term. The uncertainty in relation to the mother's ability to make progress combined with the growing detriment persuade the Guardian that a decision should be taken now. If the mother was further down the journey to addressing the issues connected to her failure to protect it might be a different balance would emerge.
- vii) The risk which arises from a resumed relationship with R3 is a very grave one. A could have died. The risk of harm is very significant indeed. If B is returned to the mother's care, all direct contact between B and the R3 should cease. Indirect contact would maintain her sense of identity.
- viii) Even if the mother maintains an association currently with the R3 this does not mean that it would always be unsafe for B to be rehabilitated to the mother.
- ix) The evidence from Dr B and from Ms S points to the process of the mother making sufficient changes to be confident that she would neither resume a relationship with the R3 or enter another relationship which might expose B to harm being an extended one.
- x) The evidence about the mother and her engagement with the Freedom Programme, her therapy, her commitment to contact, her openness all suggest that she is only at the beginning of the process and so it has a long way to run. The evidence from Ms S does appear to be positive but it is very late. The fact that the mother has been off work for four weeks may have allowed her to engage more both in contact and with the EHW and with Ms S. The Guardian is not confident that the mother is far enough along the journey to give him any confidence that progress will be maintained such that in a period of months it would be possible to rehabilitate B to her care.

- xi) The six months delay proposed is a significant period in B's life and will have an impact on whether she can be adopted if at that point the mother has not progressed sufficiently to allow reunification. At present the adoption team are indicating that B could probably be placed with an adoptive family in January or February next year. If a decision is delayed until April or May the probability is that she would not be placed until perhaps early 2021 when one allows for the changes in her adopt ability.
  - xii) B has settled well with her foster carers and has developed appropriately. She has a secure attachment with her foster carers.
  - xiii) B may be able to maintain direct sibling contact with A post-adoption. It might be possible for there to be direct contact between the mother and B but this would have to be dealt with by the Adoption Team.
  - xiv) If B cannot be rehabilitated to her mother the only realistic alternative is adoption. B's whole life will change. It is unlikely that her national and cultural heritage will be maintained. B has developed positive relationships with her parents through contact. Her principal attachment is to her foster carer. She is likely at this stage to be able to make a successful transition from her foster carer to an adoptive parent. The emotional wrench will be less from her parents than from her foster carer. She is likely to settle well at this stage as she has never lived with the mother or the father. As time passes and as she passes through further significant developmental stages adoption will become more difficult. At 18 months there will be fewer prospective adopters. She will have become more attached to her foster carers. She will be in a different developmental stage. The risk of a breakdown in the adoption will increase albeit she will still be below the age range where breakdown often occurs.
  - xv) The evidence in relation to A and to the Father show that he has settled well with his father and his father is capable of meeting his needs. He is willing to support contact with the mother against whom he holds no animus and is willing to contemplate sibling contact were B to be adopted.
66. It was clear from his evidence in the witness box that the Guardian has not prejudged matters in relation to B and that he had thought very carefully about what one could draw out of the more recent evidence about the mother's therapy. Ultimately his view was that the weight of the evidence suggested that the mother was only at the beginning of the process and that the outcome of the therapy could not be predicted with any confidence. In the absence of confidence in the mother being in a position within a few months to offer a realistic home for B which would be either low risk or risk free he concluded that an adjournment was not appropriate.
67. I have to determine only one real factual dispute and that is whether the mother and R3 were seen together on 8 June.
68. The social worker said that on 8 June she was walking in X with her family and happened to be in the vicinity of the R3's home. She says that she saw the mother walking along closely followed by the R3. Both looked down (she inferred seeking to avoid her eye). She says she had to step aside to allow them to pass on the narrow pavement and there is no doubt that it was the mother and R3. Later she saw the R3



alone and he acknowledged her. When cross-examined she remained steadfast in her evidence and was clear that the mother and the R3 were together. She inferred this both from how close they were to each other but also from their avoidance of her. She said she had seen the mother the week before when the mother had said hello and so drew a distinction between the mother's response then and on 8 June.

69. The mother denies this in her statement of 1 August. She says she has not had any contact with him since 21 May 2019. She says she was walking through X that day in the rain and said hello to the social worker. She denies that the R3 was with her and says she was not aware of him being in the vicinity. In her oral evidence she said that she had gone to X to collect a suitcase in order to move her stuff to Z. She said that she was rushing to get the train and she maintained that she had acknowledged the social worker. She said in effect that she had no alternative but to walk by his house. The R3 says that he saw the mother walking in the same direction as him on 8 June but that he crossed the road in order to avoid breaching the non-molestation order that is in place. He acknowledges seeing the social worker later that day and saying hello.
70. As I have found before neither the mother nor the R3 are reliable historians. R3 is clearly prepared to lie in order to protect his position. The mother also is at times prepared to suppress the truth or to lie in order to support her position. It is self-evident that ongoing contact between herself and the R3 is highly detrimental to her case. Given the Findings I made in May and the making of a non-molestation order this hardly needed to be emphasised. The history shows that even after serious assaults upon her and in circumstances where the mother had options to avoid the R3 she was unable so to do. This led to the assault on 20 March 2019. I acknowledge what Dr B says in his report about the mother's vulnerability to ongoing contact and the difficulty that she would likely face in finally extricating herself from contact with the R3. I did not consider that either the mother or R3 were telling the truth about 8 June. The social worker's evidence about it was clear and compelling. She has no reason to fabricate or to exaggerate what she saw. Her evidence had the ring of truth about it. The inference she drew that they were together is an entirely reasonable one and is consistent with both what I know about the mother's inability to keep herself away from the R3 and with the opinion of Dr B. What precisely was the nature of the contact that took place between them on 8 June I cannot tell. It may have been that they bumped into each other or it may have been that the mother had visited the house that she used to share with the R3. Either way they were together on that day and the mother has not been able to tell the truth about it. Whilst it may be understandable in August that she could not tell the truth when she filed her statement it becomes less understandable when she has undergone the Freedom Programme, received the report of Dr B and had the benefit of therapy with Ms S. Her inability to tell the truth during this hearing is a powerful indicator of the lack of progress that she has made. She continues to prioritise protecting her position which is understandable in one sense but this fails to appreciate that in protecting her position she is prioritising her own agenda to seek B's return rather than prioritising the children's need to be kept safe. In order to protect herself and the children from R3 or further abusive relationships she needs to be completely open with those who are seeking to assist her in order to make the changes that are necessary.
71. The social worker also gave evidence about the mother's recently acquired phone which has a voicemail message which invites the caller to leave a message for 'R3'. The mother gave evidence that her old number had been erroneously reassigned to another

individual and hence her need to acquire a new number. The voicemail message is automated save for the name which is said in a woman's voice. The social worker and the Guardian are concerned that this may indicate some continuing relationship or involvement between the mother and R3. The mother says that she acquired this phone from the market and that initially the voicemail did not contain any reference to 'R3' she says it is only recently that it has started to refer to this. The evidence she gave on this I thought appeared to be spontaneous and genuine. If the phone had been obtained directly from R3 surely the message would have referred to 'R3' from the beginning although of course it is conceivable that the mother for some inexplicable reason subsequently put his name on it or that somebody else managed to do so. Although it is hardly surprising that the local authority and the Guardian are concerned that this represents some form of ongoing liaison between the mother and the R3 I am not satisfied on the balance of probabilities that it does. The truth of how the R3's name came to be referred to I cannot determine.

72. In relation to the fact that the car that R3 was driving on 31 October is registered to the mother I do not believe that this is evidence of any ongoing link between the mother and R3. His evidence on the issue was wholly unbelievable. The idea that he handed over a damaged phone to the seller of the vehicle who happened then to come across the mother's name and entered it was frankly ludicrous. Far more likely that he provided the mother's details rather than his own fearing that registering the car in the name of a person with an eight months period of disqualification still to serve might draw attention to him. The mother as someone without a licence and with no profile on the DVLA would not raise any alarm.
73. Thus there was some on-going relationship in early June 2019 but no evidence of that continuing to date.

### **Discussion and Conclusions**

74. As I set out in my earlier judgment the mother was aware both that the R3 was violent to her but also that he was capable of some violence to A. She knew that A was scared of him and believed that he had caused the serious facial bruising towards the end of October. She was then complicit in the delay in taking A to hospital because of the fear that social services would intervene.
75. Subsequently and despite the life-threatening injuries A had sustained she was unable to prioritise A over her own needs as set out in paragraph 72 of my judgment. I concluded then that the full story was still not being told by her. No further significant revelations have been made by her since. Thereafter she was unable to break away from the R3 and he was present at her home on 18 January 2019 in breach of his bail conditions. Subsequently she stayed at his home in the period 15 to 20 March and suffered further violence at his hands on 20 March 2019. She also alleges he raped her. Subsequently on 8 June they were together for a purpose I cannot ascertain. At the present time I'm prepared to accept that the mother and the R3 are not and have not been in direct contact with each other for some time. However set against the backdrop of the toxic relationship that they were in and the mother's previous inability to keep herself separate from the R3 notwithstanding police and social services involvement and the assistance of the courts I cannot be confident that the mother is now in a position

where she will remain separated from the R3. Incarceration and the build-up to this hearing have of course been powerful disincentives or barriers to any contact. The fact that the court was alerted to a possible ongoing relationship in June may also have played a role in them remaining separate. However the R3 appears to have a considerable power in respect of the mother. Her attitude to him ranges from saying that she hates him through to still appearing to value the early part of their relationship and identifying qualities in him which she still adheres to. It seems likely that she is making progress in extricating herself from the various psychological and physical ties that bind them but she is not there yet. Given his utter disregard for the law and his impulsivity and prioritisation of his needs I consider that there is a real risk in coming months that he will seek out the mother for his own purposes and that she will struggle to resist.

76. In reaching my conclusions in respect of the mother's application for an adjournment and in respect of the local authority's application for a care and placement order I bear in mind very much that B's welfare is the paramount consideration and I take into account the section 1(4) welfare checklist. I also very much have in mind that adoption should only be authorised where nothing else will do, in the sense that it is required by the child's overriding welfare interests because there is no other realistic placement option for the child or perhaps no purposeful welfare reason for delaying. In undertaking a holistic evaluation I take into account all of the evidence that I have read and in particular what I have set out in this judgment. I bear in mind the arguments addressed to me on behalf of all of the parties. In undertaking the holistic assessment the realistic options are care and placement orders or adjournment with the possibility of rehabilitation to the mother. No family placements are available and long-term foster care for a child of B's age is not realistic.
77. Adjourning the matter for an updated assessment by Dr B after further work with the mother has the potential advantage to B of being able to live with her mother in the future. That would be a huge advantage to her. It is probably what she would want. It would enable her to maintain a relationship with her older brother and also the wider maternal and possibly paternal families.
78. If that were a realistic option it would not only be preferable to adoption but it would be disproportionate to pursue adoption.
79. Adoption has the undoubted disadvantage of permanently severing B's ties with her mother and her extended family. Although some contact may be possible between B and A and between B and the mother those relationships would be very limited. On the other hand adoption has the advantage of providing B with a forever family. She is at an age where she could be expected to make that transition and to transfer her emotional attachment to an adoptive parent successfully, notwithstanding the considerable dislocation she will experience as a result of leaving the foster carer with whom she has been placed since she was a few days old and to whom she has developed a primary attachment.
80. In the year since A suffered the near fatal abdominal injuries and in the 13 months since he suffered the rib fractures, scapula fracture, and extensive soft tissue injuries from which I have found the mother failed to protect him the mother has I am afraid made relatively little progress. From November through to May she maintained a position that the R3 and A had a positive relationship and that she had no reason to suspect him

of having done anything other than low level disciplining. Since I gave judgment she has referred to the R3 treating A like a dog and she says she has accepted the Findings I made but on exploration it seems to me that her acceptance has shallow roots. Although she says she now appreciates what the R3 did and she says she hates him for what he did when pressed she showed little understanding of what may have prompted his behaviour or the true nature of the assaults he committed on A. Even allowing for linguistic difficulties and the difficulty in expressing oneself freely in court her level of detachment from the reality of what this amounted to A was worrying. Her detachment has been noted by Dr B, by the Guardian, by the social worker and by Ms S. The latter has begun to see more emotionally congruent behaviour by the mother but this is a development within the last two weeks and was not evident in court.

81. The mother had the opportunity from May onwards to demonstrate her commitment to her children and the priority she placed on their welfare. Whilst she has made some progress it has been far less significant than it ought to have been. She has maintained some association with the R3 at least up until 8 June and has not been open about it. Her engagement with the Freedom Programme was frankly poor in the early days. Giving all allowance for linguistic difficulties, the pressures of a new job and the emotional difficulty of addressing those difficult subjects her explanations for why it took from 4 July until early October to get to the stage of face-to-face meetings with the EHW simply demonstrated a lack of commitment, assertiveness, prioritisation. In short the mother did not grasp this opportunity with both hands and extract anything like the benefit that she could have done.
82. At the same time and over the same period the mother showed a failure to properly prioritise the children in terms of her contact with them. Simply failing to ring in order to confirm contact is to fail to appreciate their position.
83. Whilst the mother no doubt loves both of her children her ability to empathise with their position and to understand how they might be feeling and what they need is limited. Her detachment is a significant component in this. I do not fully understand the reason for this detachment or lack of empathy for the children's feelings. It may be the product of some life experiences or it may simply be an adopted mechanism the mother has learned in order to protect herself from distressing feelings. However it seems to me that the net result is that it means that she is not attuned to the children's emotional needs. Her failure to protect A from July through to November, and in particular from October to November was in my view probably a product of her failing to have the emotional wherewithal or courage to face up to how it was for A. This was to prioritise her own position over A's position. As a consequence he might have died. It is in my view significant that in the year that has passed since she has been unable to come to terms with what happened to A. Her ability to recount the physical injuries to the exclusion of the emotional consequences for him is another demonstration of her lack of engagement with the Findings and what it really means. I find it hard to understand why she has not in the past year been agonising over how A must have felt and why she had not been able to protect him from it. Although in her statement she expresses the words and on 14 November with Ms S she began to get in touch with the reality of the situation the totality of her evidence makes it clear that this is at present a very shallow engagement and requires far far greater commitment by the mother to confront the negative consequences for her and the incredibly difficult emotions which must be faced up to in order to truly change her behaviour.

84. The mother has addressed some of the multiplicity of factors which Dr B thought contributed to her failure to protect. She is more independent and stable financially and so not entirely reliant on the R3. However her lack of assertiveness remains unchanged. She is not proactive but reactive. Although only a modest example she was unable to take steps to get herself to the first day of this hearing because she had not received an email from her solicitors; I hardly need to set out what she could have done if she were not so passive. Her support network remains extremely limited. She does not appear to have friends or family who can support her. The person with whom she lives-albeit only a landlady-does not know even that she has children. The one route which she has pursued in order to reduce her isolation appears to be the pursuit of a potential relationship. I do not accept the mother's evidence that this was only a friendship. And yet she says she has not sought to find out anything about this individual or his past. How can she possibly protect the children if she knows nothing about an individual she is seeking to associate with. That she is still capable of saying this after having undertaken the Freedom Programme and various sessions of reflection work with the EHW and therapy with Ms S is troubling. The same is true in respect of her acceptance of the Findings and her true understanding of the meaning and effect of the Findings. Her insight into her own behaviour and the behaviour of others is still very limited. The extent to which she has begun to engage with any issues which arise out of her childhood and out of abusive relationships is so far limited. The Father said during the fact-finding hearing and I agreed with this, that there is much more to come from the mother in terms of what has happened to her over her life or within her relationship with the R3. So far little more has emerged from her.
85. The broad consensus from Dr B, the EHW, Ms S and the Guardian is that the process that the mother will need to undertake in order to attempt to get to grips with the underlying issues is several months upwards. Dr B is cautious about the prognosis. Ms S is more optimistic. The EHW is neutral. The evidence in relation to the mother's engagement so far, her commitment to the process, her openness and the lack of progress from November to May and most importantly from May until now in her understanding suggest to me that she is truly only at the beginning of the process. It also seems to me that it is a process she will genuinely struggle to make progress with. It involves her confronting feelings which she has hidden from. In relation to A and in relation to abusive relationships this may have only lasted for a matter of months or years. However it also seems that she will need to contend with issues from her childhood which may have been present for years. I therefore conclude that the process of the mother tackling the emotional and psychological issues which she needs to in order to deal with her failure to protect and in order to build her resilience to the R3 or other potentially abusive relationships is likely to take a minimum of six months to a year. The relative lack of progress so far means that the outcome at six months or even a year is really impossible to predict. At present it seems to me that it is as possible in six months' time that the mother's progress will have stalled as it will have made successful advances. I have to bear in mind that the recent developments take place in the shadow of an imminent court hearing with extensive input from her legal team and with the advantage of being off sick at work. There is a risk that away from the focus of an imminent hearing that the mother's ability to prioritise this will slip and the pattern seen in July and August will re-emerge. I very much hope it will not and I very much hope that the mother will continue to make progress. However hope is not a solid foundation for adjourning these proceedings.

86. The reality is that in six months' time or a years' time which might be more realistic for the very significant progress that the mother would have to make in order to put herself in a position to resume care of B there is a real risk that the court will find itself in a position where only limited progress has been made. B might then be rising two and the chances of her obtaining a secure home for life and being able to change her attachments successfully will be diminishing.
87. Balancing all of these factors in taking account of the section 1(4) welfare checklist leads me to conclude that no further delay be permitted. Particularly delay which in reality is largely speculative in terms of where the mother will be in terms of her ability to protect in six months or a years' time. B has been with her foster carer for nearly a year and I do not think she should stay very much longer with an ever-developing attachment which will inevitably then come to an end. She needs a long-term placement and at the moment she has a very good prospect of making a successful transition to an adoptive placement. At present the mother does not present a realistic option. I do not consider that in six months' time there is a real probability of her then representing a realistic option. She may make limping progress. Less likely she may make very good progress. However in any future assessment of B's welfare the risk of harm and the mother's capability to protect her from harm will be the most prominent features given the severity of the risk to B having regard to what happened to A and the mother's ability to protect her. The strength of all of the other factors which point to the benefits to B of the possibility of reunification with her birth family and everything that carries with it are of course significant. But they do not in my view get close to outweighing the risks of harm that currently exist and which in my view will endure for some considerable time to come. Only the most successful outcome in the therapy will ameliorate the very serious threats that B might potentially face if rehabilitated to her mother.
88. To leave her with her foster carers on a hope that the mother can make the necessary progress is not in B's welfare interests. As I have said whilst there are positives there are many indicators that this process will be far from a straight line to success. B cannot afford to wait. She needs to be able to begin the process of making attachments to a family for life in the very near future in order to secure the best chance for emotional development in the future. She cannot wait for the mother any longer.
89. I have considerable sympathy for the mother personally. Her life has not been easy prior to coming to England. In England she has experienced domestic abuse. None of this is her fault. However her failure to protect A, whatever its roots, is her ultimate responsibility. More importantly it has been her responsibility since November last year to seek to put herself in a position where she might resume care of her children. For reasons which I in part understand but in others I do not she has not been able to do this. As the Guardian said, this is not about helping the mother it is about meeting B's welfare needs. Meeting the mother's need for therapy leaves B in limbo with no real prospect of the delay leading to it being viable to place her with the mother on a permanent basis.
90. In particular, her age, the harm which she is at risk of suffering and the relationship she has with her mother are all factored into this. In the holistic evaluation the most prominent features on the landscape are the risks that this mother continues to pose to her and which are largely unaddressed so far, her age and the prospect of a successful long-term placement, the absence of any deep or meaningful relationship with any other

relatives and the likely effects on her of ceasing to be a member of her original family and becoming an adopted child.

### Conclusion

91. I therefore agree with the submissions of the local authority and of the Guardian and I refuse the mother's application for an adjournment of this hearing to enable the mother to undertake further work and to be further assessed by Dr B. Having ruled out adjournment as a realistic option the only remaining realistic option is for a care order on the basis of a plan for adoption. Making a care and placement order is both necessary and proportionate. I consider that B's welfare requires that the mother's consent be dispensed with. I do not need to dispense with R3's consent as he does not have parental responsibility for B.
92. In respect of A his placement with the Father has been successful. It will need to have continued support which can be provided through a supervision order. That will have to be kept under review depending on developments over coming months. A child arrangements order providing that he will live with his father is plainly in his paramount welfare interests. There is no other option for him but in any event his father represents a good home for him. Maintaining a relationship with his mother is also in his welfare interests provided that it is safe. Given the ongoing risk that the mother represents to him their time will have to be supervised or supported in the way proposed. Further attention will need to be paid to the wording of the conditions on a spending time with order in order to strike the right balance for A in order to maintain that relationship but also to ensure he is not exposed to unnecessary uncertainty if the mother is unable to maintain her commitment.
93. That is my judgment.