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Case No: NG20C00204

IN THE FAMILY COURT

SITTING IN MANSFIELD and BIRMINGHAM

Rosemary Street
Mansfield
NG19 6EE

Date: 11 January 2023

Before :

RECORDER NORTON KC

Between:

NOTTINGHAM CITY COUNCIL

Applicant

- and -

	- and -	
	THE MOTHER (1) THE FATHER (2) E (3) (A CHILD VIA THEIR CHILDREN'S GUARDIAN)	<u>Respondents</u>

Ms Clelland of Counsel for the Applicant
Ms Cranny of Counsel for the First Respondent
Mr Posner of Counsel for the Second Respondent
Ms Beese of Counsel for the Third Respondent

JUDGMENT

Overview

1. These are Children Act 1989 Part IV proceedings brought by Nottingham City Council [hereafter the local authority] in respect of one child E, now aged 2 years and 4 months.
2. The parties to the proceedings are the local authority as applicant; the respondents are E's mother, E's father and E, through their Children's Guardian.
3. Proceedings were issued in August 2020. The statutory 26-week time limit ended in February 2021, but proceedings have been extended from time to time as circumstances required. As a result of assessments conducted in proceedings, the local authority has determined that E's welfare requires permanent separation from the parents and so, in February 2021, an application for a Placement Order under Adoption and Children Act 2002 was also issued.
4. Both the application for a Care Order and the application for a Placement Order require determination by me.
5. From that very brief overview, it will be immediately apparent that proceedings have been ongoing for effectively the whole of E's life and that E has been waiting what is, frankly, an excessive amount of time for a final determination to be made about the future.
6. There is a significant history to these proceedings. There is also significant evidence both written and oral evidence from both earlier hearings and the current hearing. Some further electronic evidence was adduced during the course of the hearing I conducted. There has also been reference by the advocates to numerous legal principles.
7. I have received and considered:
 - a) A written opening note from the local authority;
 - b) A Court bundle (which has been updated over the course of this hearing to include, material received during the hearing, for example updated reports from

CYFOR regarding phone analysis, mother's responses to a revised Threshold and a Transition Plan);

- c) A bundle of contact records;
- d) Audio and video recordings (explained later in this judgment);
- e) A statement of legal principles – updated as requested by counsel for the mother;
- f) A number of screen-shot phone records from Mr A (explained further below);
- g) A selection of some of the father's phone bills;
- h) A letter from the father's employer;
- i) A 'care plan' from the father outlining what protective measures the parents would be willing to contemplate if E was returned to the parents' care;
- j) Oral submissions for each party.

8. If all the material above was recounted in detail, it would extend this judgment significantly. I will endeavour to set out the key historical details, core evidence and legal principles as briefly as possible. Inevitably I will omit some detail in this judgment, but I have considered the complete history, evidence and submissions in reaching my judgment. My expectation is that sufficient detail is included in this written judgment so that any reader can put these proceedings properly into context and understand the decisions I have reached.

History

- 9. E is the mother's fifth child.
- 10. The mother's first child A, although not the father's child, lived in a household with the mother and the father (and a third adult, Mr K, to whom I will return in this judgment).
- 11. The mother and father have 4 children together, B, C, D and E.
- 12. A, B, C and D have been removed from the care of the mother and the father. Those children have since been adopted.
- 13. In June 2013, in proceedings relating to A, B and C, His Honour Judge Lea delivered a fact-finding judgment in which he made findings which can be summarised as follows:

- a) A had suffered large bruising symmetrically to the forearms, that would have been painful and memorable to A and A's care-givers;
- b) the mother, the father and Mr K (who lived in the household) had not provided an adequate explanation for the injuries;
- c) the injuries were consistent with forceful blows and that A had adopted a defensive position;
- d) the mother, the father and Mr K were in the pool of possible perpetrators, and none could be excluded.

I am conscious that the decision of HHJ Lea came at a time before guidance from cases such as *Re B (Children: Uncertain Perpetrator)* [2019] EWCA Civ. 575 and the more recent authority of *Re A (Children)(Pool of Perpetrators)* [2022] EWCA Civ. 1348 which suggest a different approach to identifying those who may be amongst a number of people who have inflicted injury. However, I am not in a position to determine whether HHJ Lea would have concluded in any other way had he approached the findings based on this revised approach. I note in particular that HHJ Lea found:

- (i) that either the mother or father or Mr K inflicted the bruising on A and, significantly that:
- (ii) whoever did not cause the injuries has knowledge or awareness of what happened; and that as a result
- (iii) whoever did not cause the injuries failed to protect by [not] revealing knowledge of the event [and thus] protected the perpetrator.

In addition to findings regarding A's injuries, HHJ Lea made further findings including:

- e) that the father had reacted extremely in a hospital setting and had forcibly slammed child B into a car-seat;
- f) overwhelming neglect of the children in terms of physical, emotional and developmental needs.

14. Although not appealing HHJ Lea's determinations and judgment, the parents have fully exercised their rights to seek to oppose adoption orders being made. The parents were refused permission to oppose adoption orders for B and C and the mother was refused permission to oppose an adoption order in respect of A. The mother sought to appeal

that decision but was refused at the permission stage. Lord Justice McFarlane (as was) determined that the mother was presenting no change of circumstances and was instead seeking to argue, on appeal, that HHJ Lea's initial factual determination was wrong.

15. Proceedings in respect of D also came before HHJ Lea, in November 2016. In his judgment HHJ Lea observed the following:

“The position on its face, therefore, is this as recently as September of this year the mother in seeking permission to oppose the making of an adoption order in A's case was arguing not that her circumstances have changed but that the findings that I had made three years ago were, in fact, wrong. Much time was spent by the parents in the course of giving their evidence before me in an attempt to show that they had learnt lessons from the past. Reliance is placed on the recent statement of the mother but this indicated only in the blindest of terms any acceptance that their parenting fell below a reasonable standard without any detail being given and any analysis as to why that had happened.

I do not accept here that the parents' attitude to the findings that I made in June 2013 has, in fact, changed. Deep down they do not agree that the criticisms that I made of them in many ways and have shown little insight into the reasons why the local authority took care proceedings when they did.

.....Thus, I conclude that very little, sadly, has changed in the three years since I delivered my fact-finding judgment. The parents still live in the same house, they are still enmeshed in the same relationship with the other potential perpetrator, Mr K.”

16. Proceedings in respect of D concluded, as I have stated, with D being placed away from the parents.

17. Proceedings in respect of E were issued in August 2020. The mother made an application for a residential assessment of her, the father and E. A residential centre was identified and the parents moved there, with E, in September 2020.

18. The placement was initially expected to last for 12 weeks but was extended because an expert psychological report had been commissioned, but its receipt had been delayed.
19. The mid-way report of the residential centre considered each area of assessment during the initial 6 weeks and made recommendations for the remaining 6 weeks (as was then expected to be the duration of the period of assessment). Work was proposed, amongst other matters, in relation to the mother accessing a Gateway programme to help her to challenge aspects of her relationship with which she was unhappy. It was recommended that the father engages with Addaction, regarding his substance misuse.
20. The final report from the residential centre recorded that neither parent recognised their role in safeguarding. Neither reflected what they could do differently and showed little insight into the emotional harm caused to A. The father was noted to be defensive and argumentative under pressure and the mother did not react or give an opinion on the father's behaviour. The father was observed in the residential centre to lose his temper.
21. Nevertheless, the report noted that the parents loved E and that the parents believed that they had the skill to care for E, with very little input at all. The report identified that the parents tried as hard as they could to demonstrate their abilities to care for E. However, the report concluded that the parents' poor skills [as outlined in the report] combined with their inability to work productively with others created an unmanageable situation when trying to find a plan to keep E with E's parents.
22. It is necessary to record that within their final report, the authors opined that they did not believe that the parents would ever harm E or intentionally place E in harm's way. Not surprisingly, in this hearing, counsel for the parents have referenced this observation and argue that this shows that the parents have moved significantly from the findings made by HHJ Lea in 2013. There is, they argue, professional assessment that the injuries caused to A are unlikely to be caused to E.
23. I will address that argument more fully later in this judgment but at this stage of the judgment, I observe within the chronology that there was a hearing before Recorder Sanghera in November 2021. In that hearing Ms Whalley, from the residential centre, gave evidence and was questioned about the observation referred to above. In evidence

Ms Whalley indicated that the opinion she expressed was based on observations of the parents caring for E during the period in the residential assessment. I take it from that acknowledgement, that Ms Whalley was not seeking to go behind the findings of HHJ Lea, but to record that during the time the parents were caring for E, the observations of the parents did not reveal an obvious propensity to harm E or put E in harm's way. I observe however that even during the time the parents were at the residential centre, there was contact with Mr K. I will address later in this judgment the status of HHJ Lea's findings in the context of the decision I have to make.

24. On the basis of the ultimate negative conclusion of the residential assessment, the local authority made an application for removal of E from the care of the parents. The Court sanctioned removal of E from the care of the parents. E has been in foster care since January 2021.
25. The mother and father have had contact with E since January 2021. It is accepted by the local authority that the parents have been consistent attenders at the contact. Observations of the parents with E reveal a loving bond between the parents and E. E recognises the parents and goes to them for comfort. It is argued by the local authority and the Guardian that limited supervised contact is not the same as E being in the parents' care full time. But it has to be accepted that the contact has not revealed any incident or behaviour of significant concern, and in fact has shown the parents able to work together for E's benefit.
26. As noted above, there has been a psychological risk assessment of the parents. Mr Alexander Marshall is a forensic psychologist. He saw the parents and undertook assessments of them towards the end of 2020 resulting in a report dated 3 December 2020. He answered questions relating to that report in January 2021. Mr Marshall undertook further assessment of the parents in April 2022 and provided an addendum report dated 28 April 2022.
27. Returning again to aspects of the chronology, in November 2021 proceedings came as I have said before the Court for a final hearing of the local authority's application for Care and Placement orders. The hearing was conducted by Recorder Sanghera. Recorder Sanghera heard evidence from the residential centre workers, Mr Marshall,

the (then) local authority social worker, the mother and father. The Recorder provided an ex-tempore judgment on 24th November 2022 granting the local authority's applications.

28. In March 2022 the parents successfully appealed the Recorder's decision. The Appeal was granted on the basis of inadequate reasons in the judgment to support the orders made. In delivering the decision of the Court of Appeal Lord Justice Peter Jackson observed as follows:

"It should first be said that the appeal succeeds because the judge's reasoning does not sustain his order. The decision is unjust because of a serious procedural irregularity: CPR 52.21(2)(b). Our decision has no bearing on the merits or demerits of the local authority's application for a placement order in respect of E, particularly as there will no doubt be updating evidence at the rehearing."

29. The local authority's applications therefore came back for re-hearing in May 2022 but regrettably at that time Mr Marshall was not available to attend and the hearing was adjourned. That hearing was to have considered not only the evidence before Recorder Sanghera but, additionally, an updating parenting assessment and the addendum report of Mr Marshall, referred to earlier in this judgment.

30. It is relevant to mention at this point in this chronology of the proceedings that in April 2022 the social worker, Ms Gough, had spoken to the father and examined the father's phone. It is the social worker's evidence that she saw multiple messages and call logs between the father and Mr K, despite it being the parents' case that they had ceased all contact with Mr K. The observations by Ms Gough were disputed by the father and so, when the case was adjourned in May 2022, directions were given for limited expert phone analysis by CYFOR. It was agreed that the father's phone should be analysed due to Ms Gough's evidence but additionally it was ordered that the mother's phone would also be analysed. The analysis was to consider, specifically, alleged communications with Mr K.

31. I will return to that issue later in this judgment.

32. Ultimately, the forensic analysis of the parents' devices did not reveal obvious communication with Mr K. Despite Ms Gough's clear evidence that she had seen such communication, the local authority took the view that CYFOR provided the best evidence. It seems that the local authority therefore determined it could not sufficiently establish communication with Mr K. As a consequence, the authority changed its care plan and proposed a period of further assessment of the parents and rehabilitation of E to the parents' joint care. An approach of further assessment under Children Act 1989 s38(6) was endorsed by the Court on 15 June 2022.
33. Six days after that determination, the local authority received communication from a friend of the parents, Mr A. He reported that he was aware that the father had purchased software that wiped key data from phone devices. Mr A subsequently provided a recording of part of a call he had made to the parents. The local authority asserts there is clear evidence of the parents discussing such software for the purposes of misleading the local authority. If true, this evidence would go some way to undermine the parents' case that they had no communication with Mr K and would suggest that the CYFOR report was not as clear cut as was once thought. Ms Gough's evidence of her communications with the father on 12 and 13 April 2022 once more came to the fore.
34. Following the provision of this evidence from Mr A, the local authority again changed its care plan. The local authority has reverted to a plan of permanence for E, by way of adoption.

The hearing

35. There has been a further significant period of delay in the case since the local authority's further change of position. The final hearing of the local authority's application was set down again and was listed before me with a time estimate of 5 days, to commence on 14 November 2022.
36. On Sunday 13 November 2022 I received communication from the clerk to counsel then instructed for the father. That communication revealed that for personal reasons counsel would not be able to attend the hearing listed to commence before me the next day. I entirely accepted why counsel could not attend, for the reasons explained to me. I however directed some attendance on behalf all parties at 2 pm on Monday 14

November 2022. By that time, alternative counsel, in the form of Mr Posner, had been identified for the father. Clearly however, Mr Posner was only able to meet the father for the first time at court. He had had no real time to prepare the father's case. It was therefore not possible to start the evidence that day. I heard submissions from all parties, including on the father's application to adjourn the hearing entirely. Given the history of this case and the fact that I could not identify a further hearing window until significantly into 2023 I declined the application in part and directed that the hearing would instead start on the Wednesday. I gave Mr Posner the remainder of the Monday and all of the Tuesday to prepare the father's case.

37. Inevitably, with a start on day three of the listing window, it was not going to be possible to conclude the evidence in the listed week and so, further dates were identified in December 2022 when I would again be sitting. By moving other cases which had already been listed before me, I was able to resume hearing the evidence and hear submissions, concluding on 16 December 2022. I am grateful to all counsel who assisted me in ensuring that the further dates I identified could be utilised effectively.

38. In reaching the decision not to adjourn the case entirely, I had regard to all matters of E's welfare, the principle of avoiding delay and of course the parties' Article 6 rights, particularly those of the father. No party made submissions at the conclusion of this hearing on this aspect of my case management. I am in any event satisfied that the hearing conducted was fair to all.

39. I heard evidence from:

- a) Social Worker, Ms Gough, who gave evidence on factual matters and had also authored the local authority final evidence and care plan before the case was transferred;
- b) Mr A;
- c) Social Worker, Ms Zireraza, who was the current social worker and who had produced a potential transition plan should the Court conclude that E ought to be placed in the care of the parents;
- d) The mother;
- e) The father;
- f) Mr Phillips, the Children's Guardian.

Parties' Positions

40. The local authority seeks a finding that Threshold is crossed for the making of Public Law Orders. The authority additionally seeks findings relevant to the welfare stage, as set out in a schedule to which I will turn shortly. If I determine that I can make the findings sought, the local authority ultimately invites me to make a Care Order and a Placement Order for E.
41. The local authority did, as recorded above, at one time adopt a position, of further assessment of the parents and a return of E to their care. At this hearing it has been clarified that, if I determine that the further, welfare, findings sought by the authority cannot be made, the local authority will once again propose a period of assessment and return of E to the parents' care during the assessment period. I have required, and ultimately received, clarification about that alternative position. The local authority position, absent findings, is that there would be a need for further assessment. It would remain a possibility that after further assessment, the local authority could still determine that E should not be in the parents' care in the long term. An application for Placement Order would then be pursued. Effectively therefore the local authority's position is one of final orders on their filed Care Plan, or a continuation of proceedings, and interim orders, with an adjourned final hearing in a number of months, if I decline to make the welfare findings sought.
42. The parents present a joint case. They concede Threshold based on an agreed document. They deny ongoing contact with Mr K and resist the further findings sought by the local authority. They seek for E to be returned to their joint care. They are content for this to be under such legal framework as the Court may deem appropriate. They do not invite me to make interim orders and would prefer final orders, with the local authority given time to amend its Care Plan, as required. I have referenced the father's production, shortly before he gave evidence, of a 'care plan' which I will address later in this judgment.
43. E's Children's Guardian supports the position of the local authority. He adopts a position that if findings are made, it would be untenable for E to be placed in the parents' care. He opines that no amount of support or supervision could satisfy him as

to E's safety in the parents' care in circumstances where I found the local authority's factual case proved. Like the local authority, he suggests that if findings are not made, further assessment would be required before final orders could be made.

The law

44. The law is uncontroversial. Nevertheless, I have been provided with an 11-page recitation of relevant legal principles and a further page specifically relating to welfare determination. I cannot recite each case that I have been referred to in this judgment, but those authorities (from which this very limited summary of the following principles) have guided my decision making:

- a) The burden of proof rests with the local authority. The standard of proof is the balance of probabilities;
- b) Expert – including Guardian- evidence is not in a special category – ultimately I am guided by opinions of experts, but the decision is mine;
- c) I cannot make a Care Order without first having determined that the Threshold for such orders is crossed;
- d) In determining facts, I must survey the wide canvas of evidence; findings made must be based on evidence and from inferences that can properly be drawn from the evidence;
- e) Lies are to be approached with caution; lies can be told for a range of reasons and do not, of themselves, indicate guilt;
- f) Delay in making decisions is likely to prejudice E's welfare;
- g) An application for a Placement Order represents a significant interference in the rights of the family life of the parents (and child). In particular:
 - (i) I cannot make such an order unless there is in existence a Care Order or the s31 criteria are satisfied;
 - (ii) E's welfare throughout E's life (considering the s1(4) welfare checklist) is my paramount concern and
 - (iii) I cannot make a Placement Order unless E's welfare requires me to take that step and that nothing else will do; in assessing realistic options I must undertake a global analysis of all the pros and cons of each realistic option and not simply consider and potentially rule out options until I am left with one which I ultimately approve;
 - (iv) Any order I make must be proportionate to the risks identified;

- (v) Severance of the relationship of E from the parents is an exceptional step not to be taken lightly;
 - (vi) I cannot make a Placement Order without the consent of those with parental responsibility or unless I determine that E's welfare requires me to dispense with that consent.
- h) Courts should be willing to accept a range of parenting styles and not engage in social engineering; even if there are deficits in parental care:
- "There must be a robust and realistic appraisal at the outset of what is possible within the child's timescales and an equally robust and realistic ongoing appraisal throughout of whether what is needed is, indeed, being achieved or not within the child's timescale. These appraisals must be evidence based, with a solid foundation, not driven by sentiment or a hope that 'something may turn up'. Typically, three questions will have to be addressed. First, is there some solid, evidence based, reason to believe that the parent is committed to making the necessary changes? If so, secondly, is there some solid, evidence based, reason to believe that the parent will be able to maintain that commitment? If so, thirdly, is there some solid, evidence based, reason to believe that the parent will be able to make the necessary changes within the child's timescale?" – Munby LJ in Re S (2014).*

Threshold

45. The local authority has presented a final threshold document dated 23 August 2021 to which the mother and father have replied. The local authority relies on findings made in proceedings relating to the older children. The local authority relies on the fact that the parents continue to deny having caused A's injuries and do not acknowledge the concerns raised in previous proceedings relating to emotional and physical harm and neglect.
46. Threshold is accepted to have been crossed on the basis of the parents' concessions which are limited to the first 4 paragraphs of the local authority's threshold document as follows:
- a) The findings of physical and emotional harm previously made about the older four children;

- b) The parents continue to deny inflicting the injuries found on A, they fail to acknowledge past concerns about their parenting and the risk factors that led to findings of emotional and physical harm and neglect, and the parents continue to reside with Mr K despite blaming him for A's injuries;
- c) The father has abused cannabis and there remains a significant risk that he will do so again;
- d) The mother's personality (as it has been assessed) renders her vulnerable to prioritising adult relationships over the needs of her child and she may fail to identify warning signs in any deterioration in her mental health or signs of abusive behaviour in any given relationship.

47. The time for considering threshold is the time that protective measures were first initiated. In this case that is August 2020. Threshold is essentially a gateway to the orders sought by the local authority. In this case, due to the passage of time and the steps the parents assert they have taken, findings as to Threshold, whilst essential, are not in reality the key aspect of the case with which I am concerned.

48. I formally record that, at the relevant time, I am satisfied that E was at risk of significant physical and emotional harm as a result of the matters the parents concede. My focus however, as I have considered the evidence and formulated my judgment at the conclusion of the hearing, is about the ability of the parents to care for E throughout E's minority.

Findings sought

49. In support of their case, the local authority highlights three further 'Threshold' facts relating first to the father's intellectual functioning, second the parents' minimisation of concerns and ability to work honestly and openly and thirdly the home conditions. In fact, the local authority concedes that findings as to home conditions are not proportionate to pursue and limitation as to the father's intellectual functioning has not formed a large part of the local authority's case at this hearing.

50. The parents' minimisation of concerns and their ability to work openly and honestly has however formed by far the majority of the focus of oral evidence at this hearing. In pursuit of final orders, the local authority invites welfare relevant findings on the following matters:

- a) The father has continued to be in communication with Mr K throughout the course of the proceedings including:
 - (i) Communicating at various times during the course of the residential assessment at the residential centre between November 2020 and January 2021;
 - (ii) Communicating by telephone with Mr K (on numerous occasions) between March 2022 and April 2022 (incoming, outgoing and video calls);
- b) The father has been dishonest about these communications and sought to conceal such communications by:
 - i) Changing the name of Mr K to "Ken" in his phones contact list whilst at the residential centre;
 - ii) Purporting that he was in communication with his "neighbour" when in fact was speaking/communicating with Mr K;
 - iii) Purporting that he had deleted Mr K's contact number when Mr K remained on his contact log and/or restoring him to his contact log without notifying professionals;
 - iv) Falsely claiming the call logs were as a result of pocket calls, incoming calls only and/or calls made in error whilst in the dark;
 - v) On the 12/13 April 2022 the father deliberately deleted call logs from his telephone to conceal the fact that he has been communicating with Mr K;
 - vi) On 13 April 2022 the father refused to allow the social worker to put Mr K's number back into his telephone to obstruct the social worker from completing an investigation into whether or not he has been in contact with Mr K;
 - vii) In April/May 2022 the father downloaded and used an 'Android Wipe' app or some similar app with the intention to frustrate the forensic analysis of his mobile phone;

- viii) On the 3rd and 4th May 2022, the father misled the court and the parties when he stated, via his counsel, that he only had one mobile phone handset. In respect of this finding alone, the local authority concedes that the Court may not be in a position to determine if in fact the father had two devices at the time the Court order was drawn or whether, shortly after the hearing, he bought a further device;
- ix) In May 2022 the father provided an alternative device to that which was required to be provided to CYFOR for forensic analysis thus frustrating the forensic analysis of his mobile phone.
- c) The mother is aware that the father has been communicating with Mr K and has misled professionals about the communication and her knowledge of the same;
- d) The mother is aware of the steps taken by the father to conceal his ongoing communication with Mr K and was complicit in the same;
- e) The mother has been in communication with Mr K throughout the course of the proceedings;
- f) The father is aware that the mother has been communicating with Mr K and has misled professionals about the communication and his knowledge of the same;
- g) The father is aware of the steps taken by the mother to conceal her ongoing communication with Mr K and was complicit in the same;
- h) The parents' failure to work openly and honestly with professionals and efforts to mislead them, would place E at a risk of significant emotional and physical harm were E to return to the care of the parents.

The evidence and findings

51. There is significant evidence in this case, which comes in various forms and at various times. Prior to the first hearing, in November 2021, there had been residential assessment of the parents, psychological assessment, social work assessment and a report from the Children's Guardian. The parents had also filed evidence in response to the matters raised by the local authority.
52. The hearing in November 2021 has generated further evidence for me to consider, in the form of transcripts of evidence from the workers at the residential centre, Mr Marshall the psychologist, the social worker and the Children's Guardian.

53. After that hearing there was additional parenting assessment and an addendum report from Mr Marshall. Evidence was further generated in May and June of 2022 to which I have referred. The parents have continued to attend contact and the recordings of that are, as I have said, before me.
54. The parties have filed further final evidence for this hearing.
55. I have heard oral evidence from the witnesses noted earlier in this judgment.
56. It is impossible for me to summarise each aspect of that evidence for the purposes of this judgment and so I will focus on those aspects of evidence which are either disputed or which form the basis of determinations I have made.
57. The local authority asserts that a key aspect of the case relates to the parents' relationship with Mr K. The local authority is supported in this approach by the Children's Guardian. As noted above, this aspect of the case has been the main focus of the oral evidence at the hearing before me. Analysing this aspect of the case and making determinations on the facts asserted by the local authority in this regard is, in my judgment, a necessary first step before considering how those findings impact the wider canvas of evidence on other aspects and ultimately guide my welfare determination.
58. Mr K was identified as within the pool of possible perpetrators of injuries to A in 2013. I cannot and do not seek to go behind the findings of HHJ Lea. There is no actual finding of causing harm against any one individual. What HHJ Lea determined is that harm was caused to A by one of three adults in the household and the non-perpetrator has knowledge or awareness of the circumstances of what happened.
59. The parents' case at this hearing is that they have determined that Mr K caused A's injuries. They reached that realisation, they say, whilst at the residential centre. They say they have reached that determination by a process of elimination. They know, they say, it was not them and so it must have been Mr K. They provide no detail as to their knowledge or awareness of what happened. HHJ Lea determined that a non-perpetrator would have this knowledge.

60. In that context, I turn at this point of this judgment to the evidence adduced by the local authority that, it is argued, proves the parents continue to be in contact with Mr K.
61. Mr K is a long-standing friend of the father. The father reports that he met Mr K whilst the father worked as an escort. The father's case is that he and Mr K have never been intimate but have been good friends. The parents lived with Mr K in 2013 and despite the findings of HHJ Lea, the parents continued to live with Mr K up until the time that the parents moved to the residential centre in September 2020. The parents' case is that they have not lived with Mr K since that time.
62. It appears that the father remains a beneficiary under Mr K's Will and it appears that the father is due to inherit Mr K's home.
63. The parents' case as to the extent of contact with Mr K since moving to the residential centre in September 2020 has not been consistent.
64. The residential centre provided a mid-way report in October 2020. Within that report it is noted that the father was clear with the workers that Mr K was not a risk nor had he caused any injuries to A. The father went further and stated that he wanted Mr K to be assessed as a potential carer for E so that Mr K could be around E when the parents were not present. When presented with three cards – one for the mother, the father and Mr K - the parents are reported to have decided Mr K was the perpetrator of harm to A by a process of elimination. Despite ongoing contact with Mr K, who they identified as a perpetrator of harm, the parents claimed they would not allow E to be harmed if E was to be returned to their care.
65. The father reported to residential workers that the parents had not been in contact with Mr K since the start of the placement. The residential centre however reported that there was one occasion when the father wished to have a replacement bank card delivered. The father had a series of exchanges with workers to suggest that his neighbour 'Ken' would deliver the card. When challenged, the father denied that he was referring to Mr K and provided an account of how the neighbour knew the address

of the unit as he had dropped them off in a hire car. The father even went so far as to try to show evidence of text messages on his phone.

66. Ultimately, the father accepted that the ‘neighbour’ was in fact Mr K. The father stated to workers that he lied, as he had panicked.

67. A second incident occurred when the workers by chance discovered that there was continued contact with Mr K. Both the mother and father were trying to deceive professionals about this. Again, the father reported that the neighbour ‘Ken’ had provided information to him about the death of his cat. Appendix B of the report of the residential centre provides clear detail that both the father and mother were lying (as they now accept). There is clear evidence that there were a number of messages from ‘Ken’ on the father’s phone. Staff also saw Mr K’s number on the father’s phone and the father gave an account that these were accidental calls. Staff noticed that they occurred regularly throughout the placement.

68. The concern of the residential centre at the time led to the revocation of unsupervised time for the family in the community.

69. In oral evidence in these proceedings, the father confirmed the truth of the statements he has filed.

70. In the father’s first statement he accepts that there were two occasions whilst at the residential centre when there was contact with Mr K. The father’s case is that these were the only two occasions. The father in his written evidence, approved in April 2022, states that he now no longer has any contact with Mr K and that the relationship is non-existent.

71. In oral evidence, when cross examined on behalf of the local authority the father stated variously as follows:

In [the centre]...I was dishonest about my contact with Mr K

In September 2020 I was in contact (about the bank card) and I lied. I changed the name to Ken on my phone to avoid detection.

On 17 October – 2020 – call about cat – I heard it from two different people a neighbour and Mr K

I was not in contact for the whole time.

In first week or two I was in contact

I was not in contact all the time – it was the specific dates

First two weeks in September; bank card and the October cat incident – phone was sent back to Mr K.

72. The father was further cross examined about a chronology of call logs made by the centre. When faced with that record, the father stated:

Some were Facetime which were cancelled – as far as I can remember I made that call

4 November - I cannot recall what that was for

7 November – those were accidental ones

I was making sure he was alright – he was attached to the cat as much as I was.

73. In the course of evidence there was some confusion as to whether the parents' cat had died in October or November. Initially, the father had stated that the cat died in October which is why there was contact. When it was clarified that the cat in fact died in November, the father's evidence then changed, and he accepted that:

Before cat was dying – I was in contact with him.

I had not been in constant communication with [Mr K]

I do not remain in communication now.

I cannot remember when we stopped speaking

74. In further cross examination, the father was asked about an occasion when he and the mother had been seen attending contact with E in a car that they had hired. The parents lied and told the contact workers that they had walked to contact, even though they had clearly been seen exiting a vehicle. In cross examination the father stated that:

at the time we denied having the vehicle- I knew I would get a million questions about where I got the money from.

This is well over a year ago

75. The relevance of that exchange arises, according to the local authority, in the context of text messages received during the course of this hearing. A series of text messages were provided by Mr A, to whom I will turn later in this judgment. Those messages record the father referencing a second bank account which he states he did not wish the local authority to know about. The father's account in evidence to me was that he simply did not wish the local authority to know that he had an account that was overdrawn as he "*did not want the local authority to use it against [him]*". The local authority invites the inference to be drawn that the father was keeping a second account hidden as this was used by the parents to receive money from Mr K. The father's case, as evidenced in his written statements, is that he no longer has financial connections with Mr K. He states that those ceased once he returned a phone to Mr K which had been financed by Mr K. The father repeated that the last communication with Mr K was whilst the parents were at the residential unit.

76. The mother's evidence before me was that she accepted that the father was in contact with Mr K. She repeated the father's assertion that this occurred on just two occasions. Those she said were the only calls she knew about. She denied being with the father at other times.

77. The local authority's case is that far from ceasing in November 2020 or at the latest January 2021 (when the parents left the residential centre), the communication with, and by inference the relationship with, Mr K has continued. The local authority relies in part on the evidence of the social worker Ms Gough in support of that assertion.
78. As referenced earlier in this judgment, Ms Gough, who was the allocated social worker for E, spoke to the father on 12 April 2022. In the course of that exchange, Ms Gough reports that she asked to see the father's phone. She told me in evidence that she was in fact surprised when she saw a number of logs on the phone that suggested that the father had made and received calls from Mr K.
79. The following day, Ms Gough spoke to the father again. On this occasion she video recorded her conversation. I have had the benefit of seeing that recording. That recording reveals that there were no call logs from Mr K evident on the father's phone on 13 April 2022.
80. Ms Gough gave evidence before me. Other than the correction of two small errors (relating to reference to options under a Care Order and placement in long-term fostering and the removal of a double negative in one paragraph of the final evidence), Ms Gough stood by her reports, as drafted.
81. In her evidence Ms Gough confirmed that the father had held his phone on 12 April 2022 whilst she looked through the logs. She stated that she immediately saw reference to Mr K. There were incoming, outgoing, missed and video calls from and to him. The father denied to Ms Gough that these were contacts with Mr K and repeated his position that he had no contact with Mr K since leaving the residential centre.
82. Ms Gough told me that the mother was sat next to the father on the sofa whilst this occurred. Ms Gough challenged the mother about the logs and the mother is reported to have just stood up and call a taxi. The mother's phone was not interrogated at that time.
83. The following day, 13 April 2022 Ms Gough reported to me that she videoed the exchange as the fairest way to gather evidence. The father accepted that he had deleted

call logs and gave the excuse that they were clogging up the memory on his phone. It is clear from the video that some call logs remain. The fact is that it is the call logs referencing Mr K that have been removed.

84. The father states that his calls to Mr K were as a result of him not being able to see his screen properly and he incorrectly called Mr K instead of another friend, who has the same first name.

85. I have watched the video a number of times. The social worker can be seen in the video asking the father to add Mr K's number back into his phone, as a contact, to see if that showed 'something he did not want to be shown'. The father gives an account of not wanting Mr K's number in his phone (even though the previous day Mr K had been a contact). The father gives an account of needing to leave the meeting to attend therapy. The social worker accuses him of being obstructive, which he denies.

86. The mother, in her written evidence filed in April 2022, makes reference to the allegations by Ms Gough but simply states that as it was not her phone, she 'cannot comment'. She asserts that the father has not been in contact with Mr K whilst she has been present. She acknowledges that if it is found that the father was in contact with Mr K, that would jeopardise the return of E to the parents' care.

87. In oral evidence before me, the mother was cross examined about the events of 12 and 13 April 2022. She accepted that she was present at the meeting on 12 April 2022 despite her having denied her presence to the psychologist Mr Marshall in an interview with him. The mother sought to explain that denial by stating that perhaps she meant that she could not see the father's phone. I have noted earlier that the social worker reports the mother being sat next to the father on the sofa.

88. I have noted earlier that the mother stated in this hearing that she knew of the two occasions when the father was in contact with Mr K at the residential centre. The mother accepted in evidence that she had not told professionals.

89. When challenged about whether the mother had sought explanations from the father after the meeting on 12 April 2022, the mother stated that the parents were tired and

she had not had any conversation. She further stated that she would not challenge the father whilst in the back of a taxi – which would not explain why there had been no discussion once the parents got home.

90. The mother also gave a vague account of the father probably having deleted calls when she was at work and that she only became aware of the deletion when confronted by Ms Gough.

91. The mother stated in oral evidence that “*if there was communication I would not be with him*”.

92. The passages above are not the only evidence of the mother answering questions by attempting to deny knowledge or to say simply ‘that is for the father to answer’. This is, in my judgment, the mother seeking to avoid awkward questions or challenge. The mother reveals in this approach a woeful lack of curiosity or in my judgment on the balance of the evidence most likely, a willingness to allow the father to act in a way she accepted in the hearing was harmful to E, but which she cannot or does not challenge.

93. The father in oral evidence claimed that Mr K’s number was on his phone because although he had deleted the contact, those contacts were in the cloud and had been restored to a new phone when bought. When challenged about why he had not then ‘re-deleted’ the number from the new phone, the father’s response was that he had been too busy and was constantly at work.

94. The father claimed, in cross examination, that the social worker was wrong to state that she had seen so many call logs from Mr K. When reminded about the clear account the father can be seen to give in the video of 13 April 2022 (where he clearly does not challenge that the logs were there) the father responded by saying that he did not recall that exchange.

95. As noted earlier in this judgment, in May 2022 a direction was made for the analysis of the father and mother’s phones. This was to be conducted over a limited period and in relation to communications with Mr K. CYFOR reported in May 2022 and, in

summary, no obvious communication with Mr K was found. As also noted earlier, this led the local authority to consider return of E to the parents' care. At that stage the local authority effectively abandoned the evidence from Ms Gough and sought no findings on her observations.

96. I should note that during the course of this hearing, Mr Posner, for the father, identified that CYFOR had inaccurately recorded the father's phone number in their report. The number recorded related to a different person. That person was contacted and it transpired he was also in proceedings and was having his phone analysed. Given the risks that there had been a real error by CYFOR, I gave directions for clarification questions from that company. Quite surprisingly, in my judgment, CYFOR refused to answer clarification questions without a further fee being paid to them. They have since provided the further report and accept that they had included the wrong number in their original report, in error.

97. CYFOR however confirm that they did indeed analyse the father's phone and that the phone analysis is therefore accurate. No party in these proceedings seeks to argue that there is anything in the analysis of the father's phone that is not properly attributable to him. Nor is it argued that there is anything in the analysis that is not attributable to the father's device. Thus, whilst CYFOR have clearly been in error, that error effectively amounts to recording the wrong number in the written report, rather than any error in the analysis itself.

98. At court in May 2022, a photograph was taken of the father's phone. This is included in the CYFOR report. It is clear from the analysis conducted by CYFOR that the father subsequently provided a different device for analysis than the one initially photographed at court.

99. Mr A was a friend of the parents. He had first met the father due to a mutual interest in planes. In June of 2022 Mr A contacted the local authority to report that he believed the parents had used a programme to manipulate the data on their phones.

100. Mr A has provided two statements in these proceedings and gave evidence before me, remotely. In the course of his evidence, it

was clear that Mr A had retained a number of text and other messages between him and both the father and the mother. These were requested and have been provided. They are now contained in three separate PDF files. Mr A also provides an audio recording of what is accepted to be only part of a conversation between Mr A and the parents. The parents argue that it is unfair to rely on that recording as it is only a part of the conversation, although they have not provided an account of what they say is missing that would affect the relevance of the parts that have been recorded. The parents have also argued that the conversation may have been edited but provide no detail of elements they say have been removed or altered.

101. In evidence, Mr A volunteered that he still had the recording. No party asked for it to be produced for analysis.

102. Mr A reports that he supported the parents, particularly when they were at the residential centre. Mr A himself has had children removed from his care by a local authority. He was questioned about that. He accepted that he had been initially hostile to social workers and accepted that he had in the past posted material online about that hostility, that he now regrets. He stated in his written evidence that he has turned his life around and now has children in his care. In oral evidence he clarified that these are grandchildren and they are not full time in his care, although they stay with him and his wife, with local authority approval.

103. Mr A states that he encouraged the parents to work honestly and openly with the local authority. Some of the text messages that have since been disclosed reveal Mr A telling the father to be truthful, which tend to support Mr A's oral evidence before me.

104. Mr A reports that the father told him that the father had been in contact with Mr K 'always' and not just as reported to the residential centre. Mr A reports that the father told him he would delete call logs and messages. Mr A reported that the father stated that the mother had also been in touch with Mr K. Mr A stated in oral evidence that the mother had also accepted contact with Mr K.

105. Mr A reports that he saw that the parents had posted on social media that they were getting E back. Mr A stated that he started to think about what he had been told regarding Mr K. Mr A was criticised on behalf of the parents for delaying contacting the local authority, if he was genuinely concerned for E, but Mr A told me in evidence that he had thought long and hard about what he was doing and wanted ultimately to do the right thing for E.
106. In oral evidence Mr A confirmed his statements. He reported that the father had approached him about phone analysis and asked if Mr A knew any software that could be used. Mr A said he did not. The father later told Mr A that he had obtained software.
107. Mr A accepted in cross examination that he deliberately phoned the parents and recorded them, to get evidence. He did not think he would otherwise be believed. In relation to the recorded call, Mr A accepted that most of the conversation was about the successful appeal that the parents had conducted and how that had provided more time for the parents to work things out. Mr A reiterated however that he was clear that the parents used the software to delete records relating to Mr K. Mr A denied advising the parents to use such software nor did he accept its use was to back up records before the analysis by CYFOR so that the parents would not lose any data that they wished to keep.
108. The mother and father in evidence denied using any sort of application to wipe their phones before analysis. The CYFOR analysis reveals that there was no deleted data, despite the parents stating that they had in fact deleted data (by way of call logs for example or Applications). CYFOR analysis also shows no use of 'Facebook Messenger', despite the mother clearly having sent messages to Mr A by Facebook Messenger, revealed from Mr A's phone. The mother, when challenged, claims that these messages must have been sent by her through another device. She claimed that she had not loaded Facebook Messenger onto her phone before analysis.
109. The transcript of the phone call between Mr A and the parents is clear. The parents accept in the call that they researched data wipe applications and the father has had to accept, as a result of the recording, that he in fact purchased the application. In the call he bemoans the fact that he keeps being charged £30 for it.

110. The CYFOR analysis in fact reveals very limited text messages between the parents. Some of these are of an abusive nature. The mother accepted in oral evidence that she had in fact wanted to use an application to wipe those messages before analysis. She did not want these revealed to the local authority.
111. This is a further example of the parents deliberately wishing to present a false picture to the local authority. Previous examples referred to already include the father changing the name of contacts in his phone and hiding bank accounts.
112. The parents deny that they actually used the application.
113. The CYFOR phone analysis does, as I have stated, reveal a few text messages between the parents. One of those, dated 10 January 2022, reveals a message between the parents with the mother saying that the father is meant to be at XX's [the first name of Mr K – anonymised for this judgment] by now". Both the mother and father claim this was a reference not to Mr K but to the father's other friend of the same first name.
114. In the phone call recorded by Mr A, the mother states that "Do you know she did not ask about XX". It is clear from the context of that comment that the 'she' referred to is the social worker who had spoken to the mother. It is the local authority's case that XX is clearly a reference to Mr K and not the father's other friend of the same name. Why, asks the local authority, would the mother have been surprised not to have been challenged about this text message, if it was not Mr K?
115. It is on the basis of this evidence, referenced in the preceding paragraphs of this judgment, that the local authority seeks additional welfare findings that I have outlined earlier.
116. The father and mother accept that they were dishonest about communication with Mr although the father, supported by the mother, asserts that this was just on two occasions. The father has accepted to the centre that he falsified the contact log to change the name of Mr K to "Ken".

117. It was evident from the father's oral evidence at this hearing that he became confused about the history he had told and when confronted about communications recorded by the residential centre accepted that there had been communication with Mr K even before the death of the cat in November 2020. On that evidence alone, it is clear that the father's assertion that there were only two communications whilst at the centre is false.
118. Ms Gough was in all respects a straightforward witness. She reported what she was certain she had seen on 12 April 2022. She herself expressed that she was surprised to see this level of communication. Although the father in oral evidence in this hearing sought to suggest at one stage that the social worker was wrong to report that she had seen logs relating to Mr K, the father accepts at times in the video recording of 13 April 2022 that he had deleted such call logs.
119. The recording of the interaction on 13 April 2022 speaks for itself. It is further evidence of clear dishonesty by the father and efforts by him to avoid interrogation of his phone.
120. I find the mother's attempt to mislead Mr Marshall was to avoid interrogation on a subject about which that she did not wish to answer questions. She sought to suggest that she was unaware of what Ms Gough and the father were discussing, despite, as I find, being sat next to the father at the time of the interrogation. The mother's account of not wishing to challenge the father in the taxi or being too tired, when home, to ask him questions about Mr K is implausible. There is real significance in this evidence. The mother accepted in oral evidence at this hearing that any evidence of communication with Mr K jeopardises her prospects of having E returned to her care. Her failure to interrogate the father about this issue, on 12 April 2022, leads to the inescapable conclusion that the mother had been aware of the communication and that she saw nothing wrong with the communication and that she therefore saw no need to challenge the father. She revealed no greater insight in her oral evidence at this hearing and maintained her position that she had nothing to challenge the father about or that she had no opportunity to undertake challenge.

121. I found Mr A also to be a straightforward witness. He accepted his past errors in the way he had communicated with social workers. His evidence is supported not only by the transcript of the call but has been further supported by the recently disclosed text messages passing between Mr A and the mother and father. Where his evidence is in conflict with that of the parents, for the reasons outlined above, I prefer Mr A's account and recollection of discussions.
122. Although the parents sought to impugn Mr A, they can realistically provide no reason why he would lie. In any event, the transcript of the call provides clear evidence of the parents' purchase of an application which the mother accepted was going to be used to manipulate evidence, albeit she claims in a different way. Despite the protestations of the parents, the fact that so much material that would ordinarily be found on a phone was not evident on the phones analysed by CYFOR, together with Mr A's evidence leads to the inescapable conclusion that the parents have deliberately manipulated phone evidence to avoid detection of contacts with Mr K.
123. It is clear from all the evidence that the parents knew what each was doing or had done in terms of communications with Mr K and attempts to hide such communications.
124. The text messages revealed by CYFOR analysis, in the circumstances of all the evidence about lies, deception and evasion, can only be read in one way. The mother was clearly surprised not to have been challenged about the message referring to 'XX'. It is clear that the father was in contact with Mr K. The context of the message in January 2022 is, in my judgment, evidence of an actual meeting.
125. I bear in mind the burden of proof rests with the local authority. I have reminded myself that people lie for a range of reasons. The father himself suggests his lies to the residential centre were a panicked reaction to being asked questions about Mr K. Reviewing all the evidence, including, as I find, clear evidence of the lengths the parents have gone to deceive and evade detection of their communications with Mr K, I cannot find otherwise that the lies [in this case by words and through action] were deliberate and designed to hide the truth. Having carefully reviewed the evidence which I have summarised above, I make the following findings on the balance of probabilities:

- a) The father has continued to be in communication with Mr K throughout the course of the proceedings including:
 - (i) Communicating at various times during the course of the residential assessment between November 2020 to January 2021;
 - (ii) Communicating by telephone with Mr K (on numerous occasions) between March 2022 and April 2022 (incoming, outgoing and video calls);
- b) The father has been dishonest about these communications and sought to conceal such communications by:
 - i) Changing the name of Mr K to “Ken” in his phones contact list;
 - ii) Purporting that he was in communication with his “neighbour” when in fact was speaking/communicating with Mr K;
 - iii) Purporting that he had deleted Mr K’s contact number when Mr K remained on his contact log and/or restoring him to his contact log without notifying professionals;
 - iv) Falsely claiming the call logs were as a result of pocket calls, incoming calls only and/or calls made in error whilst in the dark;
 - v) On the 12/13 April 2022 the father deliberately deleted call logs from his telephone to conceal the fact that he has been communicating with Mr K;
 - vi) On 13 April 2022 the father refused to allow the social worker to put Mr K’s number back into his telephone to obstruct the social worker from completing an investigation into whether or not he has been in contact with Mr K;
 - vii) In April/May 2022 the father downloaded and used an ‘Android Wipe app or some similar app with the intention to frustrate the forensic analysis of his mobile phone;
 - viii) In May 2022 the father provided an alternative device to that which was required to be provided to CYFOR for forensic analysis thus frustrating the forensic analysis of his mobile phone.
- c) The mother is aware that the father has been communicating with Mr K and has mislead professionals about the communication and her knowledge of the same;
- d) The mother is aware of the steps taken by the father to conceal his ongoing communication with Mr K and was complicit in the same;

- e) The mother has been in communication with Mr K throughout the course of the proceedings;
- f) The father is aware that the mother has been communicating with Mr K and has misled professionals about the communication and his knowledge of the same;
- g) The father is aware of the steps taken by the mother to conceal her ongoing communication with Mr K and was complicit in the same.

125. The above findings were those sought by the local authority (save as to lying at court in May 2022 about the number of devices the father had at the time). In addition to those findings, the evidence I have outlined supports the additional finding that the father, at least, has physically met with Mr K. The text message referred to extensively above reveals at least one meeting. From all the evidence it is safe to infer the meetings have been frequent.

126. No evidence can be considered in a vacuum and in reaching determinations on these facts I have considered the other evidence filed. There is however nothing in the wider canvass of evidence which would cause me to reach different conclusions on these particular facts.

127. I turn now in this judgment to consider further aspects of the evidence.

Mr Marshall

128. As I have recorded elsewhere in this judgment, the parents have undergone expert psychological assessment by Mr Marshall, Forensic Psychologist.

129. In his report dated 3 December 2020 Mr Marshall details the assessment conducted of each parent and answers the questions posed to him in the letter of instruction. Mr Marshall explored the parents' acceptance of findings. Mr Marshall reports that the mother had, by December 2020, reached the conclusion that Mr K had been responsible for injuries to A but at the same time she indicated that A may have sustained the injuries at school. Mr Marshall concluded that the mother did not in fact accept the Court's findings. Similarly, the father was considered to minimise the findings, in particular in relation to the father's treatment of A.

130. The mother was further reported to have a dependent personality style. The mother would rely on others emotionally and prioritise a relationship with that person over the needs of others, including a child. Mr Marshall opined that the father is likely to present inconsistently and may maladaptively use cannabis.
131. In assessing Mr Marshall's evidence, I have to take account of the fact that there is no current evidence of the father using cannabis. The father has maintained employment with a bus company that regularly drug tests employees. That abstinence is to the father's credit. It also demonstrates to me that not every risk identified by Mr Marshall has necessarily continued to be relevant. I note that Mr Marshall did accept in oral evidence in November 2021 that a cessation of cannabis use for a period of a year is a milestone which would suggest a risk had significantly reduced.
132. I record at this point that I give the father credit for his abstinence from cannabis. This is one particular example of the different approach I must take as to Threshold and welfare analysis. Threshold, as I have found crossed in August 2020 included a concession by the father that there remained significant risk of relapse of drug use by the father. He has shown that this risk has abated.
133. In his first report, Mr Marshall doubted the ability of the parents to work openly and honestly with professionals. He made recommendations for therapy for the parents to enable them to engage in reflective functioning. The mother would also benefit, it was reported, from work on domestic abuse.
134. Mr Marshall reported that both parents would have to demonstrate change over a sustained period. In an addendum report, Mr Marshall opined that a person's trajectory and ability to benefit from therapy differs but that he believed that given the long-term nature of the mother's difficulties, the mother would need to demonstrate ability to maintain changes over that sustained period
135. Mr Marshall also gave evidence at the hearing in November 2021. Mr Marshall was asked to clarify the 'period of sustained change' he referred to in his reports. He asserted that from a psychological perspective a period of one year would equal a

significant risk reduction and a period of two years would mean that risks were classed as historical.

136. Mr Marshall further opined that the father had continued, whilst at the residential centre and afterwards, to show impulsive behaviour. Mr Marshall indicated that a return of E to the care of the parents would be a further stress and that the father would need to demonstrate his ability to regulate his behaviour. The evidence presented to Mr Marshall of the father's behaviour at the residential centre and when challenged as to how the parents had attended contact in January 2021 was evidence, according to Mr Marshall, of the father not being able to regulate his emotions.

137. Mr Marshall was questioned as to the mother's motivations. Mr Marshall was questioned about the mother's comments that if she found out that the father was in contact with Mr K, she would leave him. Mr Marshall reported that the fact that the mother had, only the week before her meeting with Mr Marshall, known that the father had been in contact with Mr K, was evidence of the mother's priority of her relationship with the father over her relationship with E.

138. Mr Marshall was asked about the relationship between the parents and Mr K. At the time of that oral evidence, from Mr Marshall, there was no recent evidence of the parents maintaining contact with Mr K. Nevertheless, Mr Marshall observed:

... If there has been no communication even since last November, then we can describe that as being sustained with that relationship, but the problem is that there is evidence in the time since of ongoing lack of openness and honesty with professionals. So, if it is not that issue, there have been other issues that they have not been open and honest about and of course there have been incidents in the time since indicative, if correct, of aggression on behalf of [the father] that [the mother] does not appear to have acted upon for instance.

....The nature of the parents' relationship with Mr K, as I have discussed in the report, was one where there appeared to be a degree of dependence upon Mr K for housing and finances, even childcare, for instance. It is further evidence that they have not prioritised the need of their child or children maintaining the relationship when both parents from their perspectives were insistent that they have not caused the injuries but

had not acted upon in a protective manner to make sure the individual that could have caused the injuries did not have further contact. So they were not acting in a protective manner in that regard...

...The concern on behalf of [the mother] is dependence upon others broadly, not necessarily restricted to Mr K, for instance. The concerns regarding [the father] were more of an egocentric nature in that he is prioritising his needs only so the risk that remains is that both parents will remain in relationships like that, negative with each other. If they have not remained in contact with Mr K for a sustained period, a significant period, and dependent on the reasons, that relationship could be considered as one where, on both sides, there has been an agreement to dissolve or end the relationship, for instance, if the information is correct that it has not continued. The risks still remain for both parents in terms of unhealthy relationships broadly, so it is not just applying to Mr K.

139. Thus, even if the parents had separated from Mr K, Mr Marshall identified a risk of further unhealthy relationships developing that could impact the mother's ability to prioritise a child in her care.

140. Mr Marshall's updating psychological report filed in April 2022, carefully considers the changes made by the parents. Mr Marshall reported that the mother had by that time nearly completed three out of four recommended modules. Mr Marshall records what the mother reported she had gained from that work, but he expressed caution as the mother had not by then completed the fourth, key, module on interpersonal effectiveness.

141. I should record at this point of my judgment that the parents have shown significant commitment to attendance at therapy. They have self-funded (at considerable expense) all of the therapy attended to date and have made clear in this hearing that they would be prepared to complete the suggested therapy if E was returned to their care. Sadly, in light of the findings I have made about the parents' relationship with Mr K, and the steps they have taken to deceive the local authority and the court, that credit for self-funding is significantly undermined. I make the finding that, despite

attending, the parents have in reality failed to engage with the substance of the therapeutic process.

142. Mr Marshall identified that the mother saw her mental health difficulties as a result of local authority involvement. Mr Marshall identified that the mother was still not assertive when it came to her relationship with the father. Mr Marshall identified a lack of support networks for the mother. Mr Marshall further identified that if the mother was not being honest about her knowledge of the father's ongoing relationship with Mr K, this may be evidence of a more significant and continuing prioritisation of the relationship with the father.

143. I have of course made those findings about Mr K and so Mr Marshall's conclusions as to the extent of any benefit of therapy for the mother must be read in the light of those findings.

144. For the father, there was less evidence that the father had engaged with the actual therapy (despite attending). He could not describe much of the detail of the therapy – although that may be due to cognitive limitations. A lack of support for the father was also identified.

145. Mr Marshall reported a continued failure by both parents to accept the full extent of the findings of HHJ Lea.

146. Mr Marshall was able to consider significant contact recordings and identified a change in the parents' ability to provide care for E and recognise E's needs. A parenting course was identified which would enhance these improvements.

147. I address later in this judgment but record here that in respect of each apparent criticism of the parents' abilities to care for E, I have considered what, if any, measures could be taken to mitigate those deficits and support the parents.

148. Mr Marshall reported too that there was evidence, at the time of his assessment, of the mother's ability to work openly but this positive comes with a significant caveat

in relation to the parents' honesty. This is another area where Mr Marshall's report has to be considered in light of the findings I have now made.

149. Mr Marshall acknowledges the changes made by the parents I have referenced above could amount in his opinion to a "significant reduction in the risks identified in his original report". Again, such a conclusion has to be weighed against the Court's findings.

150. Mr Marshall was again asked further clarification questions on his updating report. In his response Mr Marshall expressed the opinion that:

"If [the father] has indeed been in contact with Mr K, then in my view this is continuing evidence of [the father] not prioritising E's needs and not working openly and honestly with professionals. For clarity, in my view [the father] demonstrated only limited improvement in terms of his retention for skills from the DBT course and based on his self-report, his attitude as well as the difficulties outlined in terms of his cognitive limitations and attachment style contribute to the limitations in his ability to draw upon support and on open communication. Additionally, if [the mother] is aware that [the father] has been in contact with Mr K, then despite the evidence of improvement in terms of her retention and application of the skills learned on the DBT course, this would be ongoing evidence of her prioritising the relationship over and above the needs of her child. If [the father] has been in contact with Mr K and is not being open and honest with professionals and [the mother] is aware of this, in my view there remains a significant risk that if E is placed in the care of the parents, that they will not prioritise [E's] needs, including by not working openly and honestly with services. This, in addition to both parents' level of acceptance of the findings, as set out in my previous report, as well as [the mother] seeming to defend [the father] in his obstructive behaviour when asked by the social worker to explore the possibility that he had been in touch with Mr K, is indicative of the parents not prioritising E's needs, with [the mother] prioritising the relationship with [the father], then in my view, [the father] is prioritising his own needs."

151. Although the hearing in May 2022 did not proceed because Mr Marshall was not available, no party has sought to call Mr Marshall at this hearing. The evidence of

Mr Marshall was challenged in November 2021 and I have the transcript of that evidence. The reality is however that Mr Marshall's evidence produced after the November 2021 hearing has not been challenged.

152. Mr Marshall's revised opinions expressed are predicated on the basis of meaningful engagement with therapy. In light of my findings that the parents have continued in their contact with Mr K and lied about it, this is, in my judgment clear evidence that the parents have prioritised that relationship over their ability to have E returned to their care. It also demonstrates that whatever the parents may have gained from therapy, they clearly have not engaged sufficiently meaningfully to recognise how damaging to their case is the continued relationship with Mr K [and by inference how they perceive risk from others generally] and their deceit about their current attitudes to Mr K and the findings of the Court in previous proceedings.

Parenting assessment

153. In this judgment, I have already referenced some aspects of the residential parenting assessment, relating primarily to Mr K and the final conclusions of the unit.

154. The local authority and Children's Guardian position is that even in the absence of findings about Mr K, there would need to be further assessment of the parents' abilities. I have therefore considered the evidence of basic parenting capacity carefully to determine if such further assessment would in those circumstances be warranted. I expressed some concern in the hearing about any suggestion of a need further assessment which would lead to yet further delay to the conclusion of these proceedings.

155. Delay is inimical to E's welfare. That is especially so in circumstances where E is 2 years and 4 months old. Further delay would mean that E's final welfare outcome may not be resolved until close upon E's third birthday. The local authority was clear that one outcome of any further assessment could still be pursuit, at that stage, of a Placement Order. It is recognised – and confirmed by the evidence of E's Guardian - that the prospects of a successful outcome for E of an adoptive placement reduce as E gets older. There is a risk in my judgment therefore that any further delay in resolving E's long-term placement may mean the range of welfare options that may then be

considered could be reduced and that in particular E could be denied the opportunity of a successful adoptive placement. Whilst delay can on occasions be legitimate, I must consider if there is a planned and purposeful reason for any additional delay.

156. The final report from the residential centre concluded that if E was placed in the care of the parents in the community, E would be at risk of physical and emotional harm and neglect.

157. Following the midway report from the residential centre, which could be seen as relatively positive, the parents' moved from the main house to a flat which was more akin to them living independently in the community. The parents' interaction and stimulation of E was such a significant concern during the parents' three week stay in the flat that the decision was made to return them to the main house so that support and monitoring could be re-introduced to ensure E was safeguarded.

158. The parents underwent a PAMS style assessment. That assessment identified areas of parenting where the parents still required ongoing support, intervention and monitoring. There were also two areas which were identified as potential safeguarding risk namely Safety & Abuse and Relationships, Support & Housing. The residential centre ultimately expressed the opinion that the poor skills, identified in these areas, combined with the parents' inability to work productively with others, created an unmanageable situation when trying to find a plan to keep E with the parents.

159. When evidence was heard from the residential centre in November 2021, Ms Whalley opined that she stood by her view that a placement of E in the care of the parents in the community would place E at immediate and future risk of physical and emotional harm and neglect. Ms Whalley was of the view that the parents had poor skills in recognising risk and poor reflection capabilities. That opinion chimes with those expressed by Mr Marshall.

160. After November 2021, Ms Gough has undertaken more work with the parents and the product of that work is recorded in her updating written evidence. As part of the work, Ms Gough looked again particularly at the areas of concern raised by the PAMS assessment.

161. Although much focus has been on the physical injuries sustained by A, the residential assessment and also Ms Gough's assessment has looked at the emotional harm that A endured. The residential centre expressed the opinion that there has been little insight or acknowledgement about the emotional harm the parents caused to A. They could see how A's father's behaviour had an impact upon A but not their own behaviour. The residential centre stated that the parents seek to recognise poor behaviours or difficult ways, but never refer to A as a child that needed nurturing, kindness, love or understanding Ms Gough revisited this with the parents and found the parents responses very limited. The local authority identifies that the partial acceptance of the findings evident from these opinions is also echoed in the updating psychological assessment of the parents by Mr Marshall.

162. It is of course essential to balance these observations with the positives noted in terms of the parents' ability to care for E. I have referred earlier to the significant contact that the parents have had with E and the absence of significant concern in those observations. This is of course contact of short duration – albeit over the very extended period of these proceedings. The residential centre, in their assessment, recognised that the parents were trying as hard as they could within the assessment. I must temper that observation with my finding, referred to earlier, that the parents were also engaged in active deception whilst at the centre. Ms Gough in her later assessment recognises the progress made by the parents but ultimately Ms Gough concluded that, given the father's continued deceit regarding Mr K, that the parents do not have the skills to assess risk and safeguard E.

163. I have of course considered whether there is support that could be provided to the parents to mitigate any deficits in their parenting capacity. The residential assessment identified those areas where support was needed and where, to their credit, the parents recognised that support was needed. The father has also produced a 'care plan' which demonstrates practical support that the parents would accept in caring for E. They recognise too that E attending nursery, for example, would be an additional safeguarding measure.

164. The reality is however that the unmanageable risk does not come from day to day ‘basic’ parenting. It comes from the fact that the Court does not know who caused the harm to A identified by HHJ Lea nor can I ignore the additional findings of emotional harm relating to all the children. Further, the level of deception that these parents are prepared to exercise means that there is no assurance that any professional working with the family will be presented with an accurate picture by these parents.

165. Ms Gough considers these issues in her updating statement filed in August 2022. In her opinion, confirmed in her oral evidence before me, Ms Gough expresses the opinion that only a plan of permanency by way of adoption will meet E’s welfare needs through E’s life. Ms Gough states that:

“[f]or any service to be able to provide support to this family in the future, it would need to be meaningful and based on honesty. However, [the parents] have continually acted in a dishonest way, prioritising their own needs in their relationship with Mr K over those of E. If they are unable to place E’s needs above their own, this will have a significant impact on [E’s] safety and development as [E] grows throughout [E’s] minority. If parents have a relationship with a man who they say (through process of elimination) harmed [A] and led to all their children being removed from their care, I would be incredibly worried about the associates they keep, relationships they build and persons they could expose E to”.

166. The Children’s Guardian assesses that the relationship with Mr K effectively is the key. The Guardian expresses the very clear opinion that if the Court finds that Mr K is still an associate of the parents, placing E in the parents’ care is untenable.

The risk to E and welfare analysis

167. I have, for reasons already expressed in this judgment, accepted the factual evidence of Ms Gough. I found Ms Gough also to be a reflective witness when considering options for E. She was challenged about the fact that in parts of her written report, she had not included the full range of options that may be open to E. In oral evidence, Ms Gough impressed me by her willingness to accept such criticisms, reflect on the matters put to her and consider further whether any omissions undermined her ultimate conclusions.

168. I have not yet in this written judgment made much mention of the detail of the Children's Guardian's evidence. That is only a consequence of the structure of this written judgment. I record, for the avoidance of any doubt, that before preparation of this written judgment and reaching my determinations, I have carefully reflected on all of the evidence, to assist me in reaching conclusions. I address some of the Guardian's evidence later in this judgment.
169. I record however at this point of the judgment that I have accepted the analysis of risk and assessment of E's welfare needs made by the local authority and the Children's Guardian. However, I have not done so without carefully assessing those risks myself and forming a welfare determination of my own.
170. This is a protracted case with a history of serious findings of neglect, physical and emotional abuse and dishonesty commencing in 2013 and continuing to 2016 in respect of other children. Both at first instance and on appeal in respect of proceedings relating to other children, judgments have been delivered that reveal the parents have not made necessary changes.
171. E's proceedings have been ongoing since 2020. Despite extensive assessment both in a residential centre and by the local authority itself, professionals continue to express concern that the parents have not been able to demonstrate real understanding of the risks that have been identified. Mr Marshall, having considered the therapy that the parents have undertaken, remains of the view that the changes that the parents have made, such as they are, still reveal that neither parent fully accepts the past judgments nor, importantly, do the parents in reality accept their role in the harm that children in their care have suffered.
172. Risk is not an abstract concept and I have carefully considered what risks E actually faces.
173. E has not suffered harm, although E has been waiting for over two years for a final determination to be made about the future. There is a risk that this period of effective limbo may impact E in the future, although E has thankfully received a high

level of care in the current placement. I am told that E's current carers are not able to provide E with a home in the longer term. If E is not able to transition to new carers soon, E may well suffer harm as a result of these protracted proceedings. I have addressed elsewhere in this judgment the harm caused by delay.

174. E is, in my judgment, at risk of harm if returned to the care of the parents. Whilst they have demonstrated the capability to care for E for short periods of time in contact, through the duration of these proceedings, the residential assessment identified that during extended periods, E's welfare was not promoted by the parents whose focus was on themselves and each other.

175. The risk is of physical harm. Findings have been made that A suffered harm in the care of the mother and the father. The perpetrator of that harm was not identified but, in light of my findings about Mr K, there is a likelihood, in the sense of a real possibility, that cannot be ignored, that E may well be placed in a setting where the mother father and Mr K are again responsible for E's welfare needs.

176. Mr Posner for the father put to witnesses that the circumstances in which A was injured no longer exist. He rightly put that Mr K was no longer a full time member of the household. It was suggested that Mr K is now apparently 78 years old. Some stresses, it has been submitted, no longer exist as the parents are both in full time employment with fewer worries over money, for example. E is the father's natural child. The parents, it is submitted, have benefitted from therapy.

177. There is an obvious logic to those submissions and clearly, circumstances for E are in some ways different to those for A.

178. However, the difficulty faced by this Court, as I expressed to Mr Posner and Ms Cranny for the parents, is that HHJ Lea has not made findings as to the trigger for injuries to A, nor as to the perpetrator. I do not know whether the trigger for A's injuries has been removed, or even if the perpetrator of the injuries to A is now no longer less present. The parents know what resulted in A's injuries and refuse to provide that detail.

179. HHJ Lea was satisfied that the mother and father could have caused A injury. Elsewhere in HHJ Lea’s judgment there are findings of the father’s rough handling of B. I have found that neither parent has fully engaged with therapy. There is evidence already referred to of the parents themselves expressing frustration with each other through texts messages. There is evidence of strains in the parental relationship. The father has been assessed as still having poor impulse control.
180. I cannot be satisfied on all the evidence that if E was in the full time care of the parents, E would be safe from physical harm. For reasons I have already outlined in this judgment, it is not possible to identify protective steps that could be in place to reduce such risk. Attendance of E at nursery would of course mean E was out of the home for extended periods and there would be some professional oversight in that setting. But without knowing the trigger for the harm suffered by C, the evidence I have from the residential centre, from Mr Marshall, from Ms Gough for the local authority and from the Children’s Guardian is that E would not be sufficiently safe in the parents’ care to warrant that risk.
181. The Guardian stated in his oral evidence that if the parents have been deceitful it calls into question their insight and ability to think about E. The Guardian accepted improvements in the parents’ abilities. They hold down jobs, the father has stopped cannabis use. Some positive practical parenting was observed at the residential centre. When challenged on behalf of the father and asked to agree that the risks of harm now are very low risk, the Guardian responded that “I do not agree. [The improvements made by the parents] is not something that would change my view about E being safe in their care”.
182. The Guardian further acknowledged that he was prepared to approve some level of further assessment in June 2022 at a time when there was some evidence of communication with Mr K through Ms Gough, albeit that the local authority placed greater reliance on CYFOR. The Guardian observes that circumstances are now different and the level of deception has been revealed. Any positives that can now be identified have been “undermined” by this further evidence, according to the Guardian.

183. Risk of physical harm is not the only risk that has been identified. I have already addressed, earlier in this judgment, the residential assessment of the parents and Mr Marshall's opinion about the parents' focus on each other and their relationship over and above their focus on the needs of a child. That evidence supports my finding that E would equally be at risk of emotional harm. Safeguarding or protective measures by regular social work visits (announced and unannounced) or oversight by nursery provides some protection, but for reasons already expressed (when analysing the risk of physical harm) I am not satisfied, given the parents' ability to deceive, that such measures are sufficient to reduce that risk to a manageable level. As Ms Gough stated in evidence "*that work is only beneficial if the parents are not deceiving [the local authority]. The services would not be able to see through deception to establish the true picture. [The local authority] can only keep E safe if we have the truth*".

184. There is a further risk of emotional harm from witnessing domestic violence between the parents. I accept that there is no evidence of police call outs or other reports of such behaviour between the parents for the significant duration of proceedings. But the text messages reveal strains between the parents. The parents have not had E in their care save for periods of time in the residential centre – and I have addressed elsewhere in this judgment the observations from that assessment and the need for a return to greater oversight in the unit. I accept the evidence from the local authority and Mr Marshall that caring for E is likely to bring strains to the parents that are likely, in my judgment, to lead to tensions between them.

185. The local authority has sought an additional welfare finding that "the parents' failure to work openly and honestly with professionals and efforts to mislead them, would place E at a risk of significant emotional and physical harm were E to return to the care of the parents". It follows from my analysis above that I make this finding.

186. E clearly has a knowledge of the parents. I have heard evidence that E seeks the parents out at times in contact. The Guardian reports that E has "*all the ordinary and normal needs of a child at [E's] age and stage of development. In addition, [E] is becoming much more aware of the wider world and E is at, or fast approaching the age where it becomes more difficult for [E] to cope with major changes*".

187. The Guardian observes that due to E's age, E is unable to express any awareness of the local authority's proposals or the plan to be placed permanently away from E's birth family. Nor is E able to express a view on the lifelong impact that such a decision will have on E.
188. The Guardian has been careful to ensure that the Court is aware of the impacts on children of ceasing to be a member of the birth family and research in this field on that topic, together with research as to the risks in an adoptive placement as well as the potential positives that such a placement may bring E.
189. The Guardian observes that E is likely, but not certain, to have a successful adoptive placement, subject to a careful matching process to ensure any adoptive family reflects E's "make up".
190. The Guardian observes, and I accept, that a placement move for E is likely to be upsetting and that any move must be carefully planned and managed to minimise the impact of a move. E is reported to have an attachment ability, but it must be recognised that this ability to attach to a new family will likely reduce the older that E becomes.
191. Any new family for E will have to ensure that E is given the tools to understand E's status as an adopted child. A placement away from the birth family will have lifelong implications for E. The Guardian reports that E will have a "*lifelong psychological task of having to emotionally come to terms with [E's] adopted status*".
192. The impact for E of being placed away from the birth family will be greater, especially if not well managed, by the fact that E has a relationship with and growing knowledge of who E's parents are.
193. Although the local authority and Children's Guardian agree that E should be placed for adoption, a limited, but significant, professional disagreement arises as between those parties over the issue of whether any change is required to the local authority's care plan on the issue of post adoption contact.

194. The Care Plan proposed by the local authority sets out a reduction in contact between E and E's parents from its current frequency of twice weekly in a stated way to monthly. Upon identification of a placement, the local authority's proposal is that there would be the opportunity for a final direct contact and that, thereafter, E's contact with the birth parents would be facilitated indirectly through letterbox contact.

195. E's Children's Guardian sets out in helpful detail the research on various placement options and recognises the growing research which suggests that ongoing contact with birth parents may give E the benefit of a new family but additionally retain knowledge and understanding of E's adoptive status through an ongoing relationship with the birth parents. The Guardian gives credit to the parents for their attendance at and commitment to contact throughout these proceedings.

196. In evidence E's Children's Guardian was clear that he was not of the opinion that this was a case where there *must* be ongoing direct contact. What E's Children's Guardian stated was that he was suggesting that the current Care Plan excluded direct contact as a possibility and this should be amended so that at the very least prospective adopters are asked whether they will consider that option. Any such proposal for direct contact would be dependent on a whole host of factors including the parents' reaction to any adverse judgment and their willingness to support E in the placement. The Guardian stated that he was:

Emphasising that should be the option – it should be that the local authority is openminded to match with adopters where direct contact issue is one of the discussions with the adopters.

Most adoption social workers will do that

That is in a parallel with matching considerations.

Even if I am not optimistic that should happen

197. I have been helped significantly by the Children's Guardian's report and recommendations and by the careful, balanced, oral evidence that was given before me.

He is right, for E, to raise the important issue of post adoption contact for me to consider. I am effectively being invited to reject the contact provisions of the current Care Plan and invite the local authority to revisit that issue and submit a further care plan to reflect the Guardian's recommendations.

198. I have found these parents to be deceptive to a significant degree. Professionals have believed that the parents have been engaging with assessment when in reality the parents have been engaging in active steps to hide the true position. Whilst not critical to E's current placement stability, the parents have, within these proceedings, demonstrated an ability to use social media to identify details of the carers' wider family.

199. It is submitted by the local authority and I accept, that the parents still do not fully accept the findings and significantly minimise the findings made by his HHJ Lea 9 years ago. The local authority says that there may have been some shift in the parents' narrative but that is because the parents have learnt what they should say. When there has been any exploration about their level of acceptance or understanding of risk, it is clear that any such acceptance is superficial if it exists at all.

200. I accept the analysis of the Children's Guardian that current research identifies the benefit, to some children, of direct contact as one way of helping to meet one of the goals of permanence. Ms Gough concedes that contact has been positive for E. I have considered, as part of my assessment of E's welfare needs, the benefit to E of a continuing relationship with the parents. But in this case, I am far from convinced that these parents have demonstrated any propensity to accept the Court's judgment. Nor am I satisfied that any assessment of the parents in the short timeframe from my determination to the search for a placement will provide sufficiently robust assessment of the parents' ability to accept E in a permanent placement.

201. I am grateful to the Children's Guardian for drawing this key element to the fore. But for the reasons I have identified, the important benefit to E of even considering direct contact cannot in my judgment be realised, without risking even more delay to a possible placement for E. There is, on the local authority's case, a risk

that a suitable placement will be put off by the possibility of direct contact even being under consideration.

202. For those reasons, I accept the local authority's Care Plan as drafted and do not invite them to make changes to the contact provisions set out there. The approach to direct contact is in any event ultimately for any prospective adopters to consider and I decline to exercise any power to require changes by the local authority as to their approach for a search for a possible placement match.

Assessment of realistic options

203. The local authority case is that the risk to E in the parents' care is assessed as high. The professional evidence that I have accepted is that in order to even to attempt to mitigate such risk there would need to be absolute openness and honesty in the working relationship between the parents and professionals and true insight by the parents into the risks posed.

204. I have determined that the honesty is lacking and insight and acceptance of past parenting deficits is in reality non-existent.

205. The realistic options before the Court are return of E to the care of these parents or permanent placement away from the parents. The local authority seeks such an order.

206. The Children's Guardian confirmed in his oral evidence the content of the reports and positions statements filed in these proceedings. Having heard the evidence from other witnesses he did not change the opinion expressed in those reports or his final recommendation. He therefore also supports the making of a Placement Order for E and suggests that a Placement Order is the only realistic option that meets E's welfare needs through E's life.

207. There has been some criticism of the local authority in their written evidence about options considered. Ms Gough in particular was challenged about the range of options that she sets out in her analysis. To her credit, she accepted that options such as return of E to the parents under an Interim Care Order had not been included in her

written analysis. Ms Gough sought to address any apparent deficits in her analysis in the witness box. Her evidence that the risks inherent with an Interim care Order and period of further assessment were the same as any risk of placement in the care of the parents.

208. The Children's Guardian reported in oral evidence that he had considered placement of E at home but under a Full Care Order.

209. The Children's Guardian has in his analysis carefully weighed all permanence options, including long term care for E in foster care.

210. In my judgment, the realistic options which call to be considered and which could conceivably meet E's welfare include placement with the parents under final orders or placement away from the parents. I do not consider that adjourning these proceedings for any period of time is realistic or in E's welfare for reasons I have already addressed in this judgment. To be clear, if it was the case that there was a focused, clearly time limited option for further assessment that could realistically lead the Court to an alternative conclusion, then I recognise that delay in those circumstances may be purposeful. However, Ms Gough and the Children's Guardian both gave evidence before me that what would need to be assessed was the parents' willingness to work with the local authority, their ability to accept and follow advice and as a result the parents' ability to put E's needs above their own. In my judgment, even before my findings, professionals had questioned the parents' ability to achieve these goals. Further assessment of those issues is not necessary for me to conclude proceedings justly.

211. Whilst therefore I have considered adjournment for further assessment, I reject that option. The local authority only sought further assessment in any event if I was unable to make the findings that I have already determined must be made.

212. The option of E remaining in the current placement does not exist. Any option for E therefore involves a change in circumstances.

213. There is an obvious advantage to E of being placed in the birth parents' care. E has a pre-existing relationship with them and although E has not lived with them since January 2021, the transition to them, as familiar individuals, is likely to be easier.
214. The difficulty however with such a move arises from the risks that E would then face, in my judgment, in the parents' care. Such risks are unmanageable for reasons I have outlined elsewhere in this judgment. No level of support for the parents mitigates this risk to an acceptable level.
215. If the mother was being honest in her answers to the Court, she herself accepted when cross examined in the hearing, that if there had been ongoing contact with Mr K, then E should not be placed in the care of the parents.
216. Move of E to a future adoptive placement is not without its difficulties. E would need to be prepared for such a move. I trust that the local authority's adoption team would carefully match E to carers who would be assisted to manage this transition. At E's age E will have a greater awareness of change than a small infant. E comes with a knowledge of the parents and that relationship would have to be carefully reduced to allow E the opportunity to attach to new carers and to leave the current placement.
217. Adoption, as the Guardian reported in his oral evidence, is not a panacea nor is it risk free. But placement with adoptive carers, who have been carefully assessed, is not likely to raise the risks of physical or emotional harm that would come with a return of E to the parents' care.
218. The Children's Guardian has assessed the options for permanence away from the parents but short of adoption. The benefit of a long-term foster placement for E would be the retention of parents who have shown a commitment to contact. E would be in a long-term placement but retain a sense of belonging to the parents. However, it is recognised that a long-term foster placement brings deficits such as remaining a looked after child and being subject to reviews and restrictions that come with that status. There is also a loss of permanence as foster carers may choose to end the placement and E would not be a legal part of the foster family. I recognise that the Guardian has quoted research that suggests that, in some cases, long term fostering can

be relatively stable but even those studies suggest that adoptive placement have a higher stability rate.

219. Looking at the welfare checklist factors that I have addressed earlier in this judgment and carefully analysing the options, my judgment is that placement away from E's parents is the only option that meets E's welfare needs throughout E's life. Whilst a continuation of contact is a factor in favour of long-term fostering, I have rejected the benefit of ongoing contact earlier in this judgment when I assessed the local authority's contact plans. For the reasons expressed in this judgment already, I determine that there is a likelihood that the parents would not fully support E's placement away from them. Whilst contact may provide some benefits to E if the parents otherwise supported a placement with foster carers, there is, in my judgment a real possibility that the parents would use opportunities to undermine the long term foster placement in the hope E would at some point return to their care.

220. I determine that the only realistic option is therefore to approve the local authority's application for a Placement Order. That option, whilst not a guarantee for E, provides E with the best chance of a stable childhood and provides a welfare benefit to E throughout E's life. The parents do not consent to that application. I do not consider that the parents accept past criticisms of their parental failings. They have not been honest in their dealings with the local authority or the Court. All professionals have determined that the parents are focused on themselves and not E. In the circumstances, as the parents decline to consent to the Placement Order and I have determined that their focus is not appropriately on E's welfare needs, I determine that E's welfare requires me to dispense with parental consent.

Orders

221. I have reminded myself that it is not enough that it would be *better* for the child to be adopted than to live with the child's natural family [*In re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17] as approved in [*Re B (A Child)* [2013] UKSC 33, paragraph 34]. E's welfare must make the permanent removal of E necessary and it must be a "last resort" [*Re B supra* paragraph 74]. Lady Hale confirms that, "a court can only separate a child from its parents if satisfied that it is necessary to do so and that nothing else will do." [*Re B supra* paragraph 145].

222. The orders sought by the local authority constitute perhaps the most significant interference with E's Article 8 rights and bring with them a significant restriction in the parents' rights as well as E's Article 8 ECHR rights. In reaching my decision I have been mindful of LJ McFarlane's decision (as he then was) in *Re G (A child)* [2013] EWCA Civ 965

“I should make reference to those occasions when judges may use a phrase such as 'first consideration' when referring to the weight that is to be given to the relationship between a child and her parents and natural family. In the light of *Re B (A Child)* [2013] UKSC 33, with the repeated use in their Lordships' judgments of phrases such as 'high degree of justification', 'necessary', 'required', 'a very extreme thing', 'a last resort' and 'nothing else will do', it is clear that the importance of a child either living with, or maintaining a relationship with, her parents and natural family has certainly not been reduced.”

223. In all the circumstances, I am persuaded by the local authority's applications and I therefore make a Care Order to the local authority based on the Care Plan dated 31 August 2022. I make a Placement Order in respect of E and dispense with the consent of E's parents to the making of that Order.

Recorder Norton KC

11 January 2023