



Neutral Citation Number: [2026] EWCA Civ 990

Case No: CA-2026-001246

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT CARDIFF
Her Honour Judge Scannell
CF25C50176

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2026

Before :

LORD JUSTICE EDIS
(Vice President of the Court of Appeal (Criminal Division))
LORD JUSTICE PETER JACKSON
and
LORD JUSTICE DINGEMANS
(Senior President of Tribunals)

F (Children: Placement Orders: Proportionality)

Matthew Rees KC and Kate Smith (instructed by **Caswell Jones Solicitors**) for the
Appellant Mother
Andrew Bagchi KC and Michelle Withers (instructed by **Evans and Greaves Solicitors**) for
the **Respondent Father**
Deirdre Fottrell KC and Colin Douglas (instructed by **Caerphilly County Borough Council**)
for the **Respondent Local Authority**
Chris Barnes KC and Harriet Edmondson (instructed by **GGP Law**) for the **Respondent**
Children by their Children's Guardian

Hearing date : 7 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 July 2026 by circulation
to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson :

Introduction

1. This is a mother's appeal from care and placement orders made in respect of her daughters, D (4½) and Z (1½) on 7 May 2026. The appeal, for which permission was granted by Baker LJ, is supported by the children's father but opposed by the local authority and the Children's Guardian.
2. The case has two somewhat unusual features. The first is that the parents and children are not British citizens and their immigration status is precarious. As a result, the arrangements for the children's future are harder to predict than they would otherwise be. The second feature is that the children have always lived with their mother and are apparently thriving in her supervised care. Although by the time of the decision under appeal the proceedings had continued for over a year, no one suggested that the children should be removed at any interim stage. As a result they are strongly attached to their mother and, to a lesser extent, to their father.

Background

3. The parents, Urdu-speaking second cousins in their mid-30s, were born in Pakistan and married in 2020. D was born in Pakistan in January 2022. In September 2022, the mother came to the United Kingdom to study at university and the father and D joined her in the following month. At first they lived with the father's sister and her family in South Wales, before moving into their own accommodation, also in South Wales, in January 2023.
4. Since then, the family has moved across several Welsh local authority areas and in each area children's services departments have been involved. This began after the mother contacted Women's Aid on 31 January 2023 to complain that the father had beaten and tortured her and that she wanted to leave him. The police attended. The mother told them that on the previous night the father had punched and kicked and dragged her by her hair while D had been in her arms. She showed marks to her face. She said that it was the fifth time he had beaten her and that it was getting worse. On an occasion in Pakistan he had strangled her until she was close to not breathing and then let go. However, she said that she did not want to make a formal complaint.
5. The mother was accommodated in a hotel with D. The next day, she signed a written agreement with the first local authority, LA1, that she would not allow the father to have contact with D. She said that she was not at risk of honour-based violence from him and his family. The father was arrested and bailed with conditions, including that he should have no contact with D except as authorised by social services.
6. In early March 2023, D's name was placed on the Child Protection Register under the category of emotional abuse. The registration continued until December 2023.
7. At the end of March 2023, the parents submitted a claim for asylum on the basis of a fear of violence from the maternal family in Pakistan. The claim was refused by the Home Office in 2024. The parents have appealed to the First-tier Tribunal but their appeal was recently adjourned to await the outcome of these Family Court proceedings.

8. In May 2023, the mother told LA1 that she had not been telling the truth about domestic abuse by the father and said that she had been coerced into making the allegations by her father (the maternal grandfather, who lives in Pakistan), who did not approve of the father.
9. In August 2023, the mother and D moved into Home Office asylum accommodation in the area of LA2 in North Wales. The father remained in South Wales.
10. In November 2023, LA2 held a Review Child Protection Conference. The mother was said to be engaging well and there were no issues with her care of D. In December 2023, the father's bail conditions were lifted and in February 2024 he too moved to North Wales.
11. The parents then reconciled and the mother told LA2 that she was pregnant. In August 2024, it closed D's case. Z was born in October 2024. On 28 December 2024, the police decided to take no further action in relation to the mother's domestic abuse complaint. On 30 December 2024, the family moved back to South Wales and into the area of LA3, the respondent to this appeal.
12. On 26 March 2025, the mother brought Z, then aged 5 months, to hospital with concerns about a swelling of her left ear, which she said she had noticed overnight. Investigation concluded that this was more likely to be a bruise than an infection. Also seen was a bruise measuring 1.5 x 1 cm on Z's abdomen, for which no acceptable explanation was given. The hospital also expressed concern that Z might have had a skull fracture and a fracture to her left tibia.
13. Z was discharged from the hospital on 2 April 2025, and the mother was placed by LA3 with both children in a residential assessment unit in North Wales under constant supervision. The father is currently required by the Home Office to live in Bristol. He maintains satisfactory supervised contact with the children by video and by weekly visits. In March 2026, the mother stated that she was ending her relationship with the father and she has apparently had no dealings with him since.

The proceedings

14. The LA issued applications for care orders on 28 April 2025 and on 14 May 2025 Her Honour Judge Scannell ('the judge') made interim care orders.
15. Parenting assessments of the parents were undertaken by an independent social worker ('ISW'), who reported in July 2025. She identified both strengths and risks. As to the latter, she concluded that the mother lacked acceptance and insight, and that both parents were dishonest and minimising. In later oral evidence, the ISW advised that if adverse findings were made about inflicted injury or failure to protect, meaningful change was unlikely within the children's timescales. She recommended a staged approach: the parents should have time to reflect on the findings, and their ability to show openness, honesty, acceptance of professional concerns and insight should then be assessed before any further rehabilitation plan was considered.
16. On 2 September 2025, a case management hearing took place at which the court considered whether it should hear evidence about the possibility of a skull or bone fracture, given that neither of the instructed experts was able to confirm that the

appearances were injuries as opposed to normal findings. The judge ruled that it was not appropriate for that issue to be investigated. As to the appearance of Z's ear, there was a disagreement between expert consultants about whether that was an infection or a bruise, which the judge in due course resolved in favour of the latter explanation. The only injuries that therefore formed part of the threshold were the bruises to the ear and abdomen.

17. In September 2025, the local authority's final evidence provided for care orders to be made under which the mother and children would move into the community, with a contingency plan of adoption.
18. Three substantial hearings followed involving some fifteen days of court time, with judgments being given about threshold (November 2025) and welfare (April 2026 and May 2026). They ended with the making of the care and placement orders now under appeal.

The first hearing

19. The intended final hearing began on 6 October 2025. On the third day, after hearing the evidence of the ISW and the allocated social worker, the judge expressed misgivings about the care plan and converted the hearing into a threshold hearing. This focused on the injuries to Z, domestic abuse of the mother by the father, and dishonesty by the parents towards professionals and the court. During the hearing, the parents made some formal concessions about the assault on 31 January 2023, but these were not accepted as a sufficient basis for welfare decisions and the hearing continued for a total of eight days. The local authority plan moved from proposed rehabilitation to a plan of further work to be undertaken in the light of the court's findings.
20. On 24 November 2025, the judge gave a substantial threshold judgment.

As to domestic abuse, she found:

- The mother's original account of multiple assaults, including non-fatal strangulation, was likely to be true.
- The mother had more injuries from the 31 January incident than she had admitted. The assault had taken place at the paternal aunt's home, in the context of pressure from the paternal family for the father to control the mother. D was in the mother's arms, or at least nearby, exposing her to domestic violence at close quarters with a real risk of being caught in the crossfire. There was "a real possibility D would have been crying" [154].
- The paternal family had been abusive to the mother, including by an assault on her by the paternal grandmother. The judge was sceptical about the father's evidence about a lack of ongoing contact with the paternal aunt and could not know the true current relationship with the paternal family.
- The mother had minimised the father's violence in order to reduce the perceived risk he posed.

- The mother had fabricated the allegation that her own father had coerced her into making the allegations, to assist her asylum claim and to make it more likely that the father could return to her life.

As to Z's injuries, she found:

- The ear and stomach marks were inflicted injuries caused by excessive force, such as pinching or squeezing.
- The judge could not identify which parent caused the injuries, but there was a real possibility that each was responsible.
- The father was likely to have been in the home far more often than the parents claimed, and both parents had shaped their evidence to exclude him as a possible perpetrator.
- If the father had caused Z's injuries, the mother had failed to protect her.

As to parental dishonesty:

- Both parents had lied repeatedly, not only in the proceedings but also to the Home Office, the immigration tribunal, police, social services and other agencies. The lies had obstructed the proper assessment of risk by child protection agencies.
21. The threshold was therefore met on the basis that the children had suffered, and were at risk of suffering, significant physical and emotional harm due to Z's inflicted injuries, D's exposure to domestic violence, the mother's failure to protect, and parental dishonesty affecting child protection.
22. Towards the end of her judgment, the judge stated:
185. ... If the local authority proposes any plan for rehabilitation, then the court has to be satisfied that risk and safety comes first and the local authority must... satisfy the court that an evidence-based approach to risk reduction is available and likely to reduce the risk.
23. The judge accepted the ISW's advice that there should be a two-stage approach. Stage 1 was a period of time during which the parents would have the opportunity to discuss the judgment with the social worker so that their ability to show insight and work with professionals openly and honestly could be assessed. Stage 2, if it was reached, would involve the reunification of the family.

The second hearing

24. On 11 December 2025, the local authority filed a statement from the children's social worker that the parents had not been reflective and did not accept the professional concerns. It had not been possible to move past Stage 1, and the local authority therefore revised its final care plan and issued an application for a placement order. Its final evidence did not identify placement with the parents as a realistic option and endorsed a plan for adoption. This was supported by the Children's Guardian.

25. The welfare hearing took place between 16-20 March 2026. Again, it did not achieve its intended purpose. By the end the judge was not satisfied that the analysis undertaken by the local authority and the Guardian conformed with the requirements of *Re B-S (Children)* [2013] EWCA Civ 1146; [2014] 1 WLR 563; [2014] 1 FLR 1035. She nevertheless gave a substantial judgment that dealt only with the issue of risk and adjourned for further evidence to be filed so that the court could reach final welfare conclusions.
26. We have an approved note of the second judgment, delivered on 2 April 2026, which contains these core points:

- About the mother:

32. I do not forget that there were real strengths identified that focused on the parents' commitment and love for the children, their ability to meet their emotional and cultural needs and in respect of Mother the fact she had engaged with a local mosque and acted on advice regarding the children's hygiene. She had also engaged with intervention around healthy relationships.

...

82. All professionals agree mother is a warm loving and attentive parent who is capable of meeting her children's emotional need to form loving attachments. She does not have a history of substance misuse nor a history of mental health difficulties. She is educated and capable of studying to degree level in a language which is not her first language. She was assessed by the ISW as conversing well in English. She clearly has a degree of intelligence.

- As to the threshold findings:

218. The extent of the abuse was significant. It took place on a number of occasions both in the UK and [LA1]. Mother has been assaulted by PGM and been abused in a threatening manner via email by the head of the family. Father's physical abuse has involved non-fatal strangulation. In acting in that manner father placed mother's life at risk. In January 2023 he subjected mother to a significant assault whilst D was in her mother's arms. He made a parenting decision when he did so. D was just 1 year old when he did so and her vulnerability must have been obvious to both mother and father.

...

268. Z has already suffered inflicted injuries. I acknowledge that the injuries themselves are not serious life-threatening injuries in or of themselves but they were inflicted on a young vulnerable baby in circumstances where neither professionals nor the Court have been able to identify the circumstances that led to them being inflicted nor who was responsible.

- In relation to the likelihood of future harm, the three-year passage of time since the last incident of domestic abuse had not reduced the risks. The parents had not moved on from the judgment, had not accepted the concerns, and remained unable to work honestly with professionals. There was particular concern that the mother would conceal father's involvement, fail to report future abuse, and prioritise her relationship with him over the children's safety. She had been externally protected in the residential unit, but that was a very different scenario to one where she and the children were in the community and accessible to the father. The paternal family, especially the sister and her husband, posed an additional risk because of their cultural attitudes, previous involvement in putting pressure on mother, and renewed contact with both parents. The parents had not been honest about the extent and nature of that contact, reinforcing the court's concern.

242. ... I am asked to consider the strength of the relationship [the mother] has formed with her children and their attachment to her and her fear of losing them. I readily do so and acknowledge she is a caring mother who has been able to foster a good attachment relationship with the children. This is a feature of the case that has caused the professionals to think long and hard about the plan for these children. However, those features have not been enough for mother to begin to acknowledge the risk that father poses to them and so in itself cannot be a foundation to say risk is reduced for these children and mother is therefore more likely to protect them from him.

...

284. In respect of mother I conclude she is not likely to change now. She has been in a highly supportive and protective environment for almost 12 months. [She has had] a social worker she acknowledges has worked well with her and with who she has established a relationship. She has formed friendships and attends her mosque. I accept the ISW's opinion in that respect and in light of events since judgment delivered.

285. [It is] unlikely in those circumstances that change will occur in a timescale that meets these children's needs. Mother's indication she will divorce father cannot be viewed as change in the circumstances I set out, it is likely to be a litigation position as was her earlier indications about the relationship.

- As to the possible consequences for the children of remaining in their family:

124. The social worker was unsurprisingly very clear. The consequences for the children [of future domestic abuse] were physical harm, worst case scenario death – crossfire, emotional harm, damage to wellbeing and self-esteem, which can affect all aspects of their development.

...

216. Domestic abuse always harms children who are exposed to it. It causes emotional harm that can have lifelong consequences for an individual's attainment and wellbeing, it can affect self esteem and the child's own future relationships. It places children themselves at risk of physical harm either because they are accidentally caught in the crossfire or because they step in to shield the parent being abused. The harm it causes is well known and recognised.

- As to protective measures:

129. [The social worker] had not considered the appropriateness of an injunction to keep father away. She accepted that this could be a valuable tool but again they would have to be satisfied mother would report that father had breached the injunction.

...

297. I agree with the local authority that without being satisfied the family will be open going forward, that risk reduction cannot be achieved in respect of domestic abuse.

...

307. I cannot identify any method by which the reduction of risk of physical harm might be reduced in the absence of such working relationships. LA entirely right to place significant weight on the deceit the parents engage in.

308. The Local authority have correctly identified the risks that remain and for the reasons I have given correctly concluded that safety measures will not work in light of the parents' dishonesty.

- There was no need for further assessment. However, there were serious flaws in the local authority's and Guardian's adoption analysis. In particular, the advantages of placement with mother, the immediate and lifelong impact of removal, and the comparative balance between realistic options and a welfare/proportionality analysis had not been properly set out. Because adoption is a draconian order, and because the decision was finely balanced and difficult, the court could not approve the plan without that analysis:

320. Nowhere can I find a comparative analysis of the competing options. The evidence is clearly constructed in such a way as to rule mother out as a realistic option and then to consider other options before deciding adoption is the right plan. The consequence of placing her in the unrealistic category is that there is no comprehensive analysis of the advantages and disadvantages of a placement with mother still less a comparison with the option of adoption.

27. The judge therefore adjourned to a further hearing on 6-7 May 2026. In the interval, the mother issued a divorce petition, stopped attending contact alongside the father and

attempted to sever her asylum claim from his. She argued that the judge should re-assess risk or adjourn for further assessment.

The third hearing

28. After considering further written and oral evidence, the judge gave a third and final judgment on 7 May 2026 containing these passages:

- As to the local authority plan:

34. In terms of the plan itself, the social worker told the court that she was intending to look at what placements were available separately or apart for the girls at a six month point from the time of the decision. That information would then be available to inform a sibling attachment assessment and subsequently the legal planning meeting that would follow in order to determine what searches and what the nature of them should thereafter be. She also acknowledged during her evidence that the local authority's plan would always involve two placement moves, with the worst case scenario being that both children were with foster parents for eighteen months leaving D around five years old – five years and three months, at the latest point that the local authority was envisaging an adoptive placement may be found.

- The judge recognised that sibling separation would cause harm but accepted the social worker's optimism and concluded that the risk of separation was minimal.

- As to the impact on the children of separation from their mother:

70. The evidence about the distress that would be caused to the children is very clear. These children have only ever known their mother's care. She has fostered a good attachment relationship with them and meets their practical needs. They are likely to find removal upsetting and it will cause them harm. It will mean a change to every aspect of their life. I do not ignore that they have also been kept particularly physically close to mother because she has not wanted to leave them on occasion but also because of her cultural approach which means, for example, they have been allowed to sleep in her bed. They will undoubtedly want and miss their mother if they are removed from her care and may well struggle to settle in foster placement. All of that represents something that the court is very mindful of, which is that removal from mother's care will amount to a significant disruption to what is acknowledged to be a secure attachment relationship. The social worker and Guardian considered that, with the right placement and support, the children could transfer their attachments and settle. The professionals were alert to the disruption and would provide support.

- As to the parents' relationship, the mother had taken steps to separate from the father, but she did not wish to do so and ideally wanted to live with him and the

children. Her position was motivated by fear of losing the children, not by genuine recognition of risk. She still saw the father as a good husband and father and was unlikely to maintain separation once external pressure reduced.

48. I acknowledge the level of mother's distress at the prospect of losing her children. It is something that has been apparent throughout the entirety of the proceedings. It is understandable and it is an emotion shared by many who find themselves in her position. I also acknowledge that her emotions stem from the fact that she loves the children and wants more than anything to stay with them. However, I cannot conclude that this makes it likely that she will maintain a separation from father. Neither does it allow me to reach the conclusion that the risk posed to the children has changed or that mother is more able to protect against it. Neither can I conclude that she is more likely to be open and honest with the local authority than I previously concluded.

- Divorce may be particularly difficult and stigmatising for the mother as a Muslim woman, and she had already encountered barriers. But the judge was not persuaded that the separation was genuine or protective. Rather, she concluded that the mother saw it as a last opportunity to retain the children.

- Even with parental separation, the risk would remain:

43. The welfare determination in this case has never been about whether mother and father stay together or separate, neither has it ever been about the parents' failure to accept the judgment I gave on threshold. It has always been about the risk that flows from that judgment and the parents' ability to acknowledge that risk and thereafter to work with the local authority safely, to effect change and mitigate that risk. That is the case whether they are separate or together.

- No risk reduction was possible:

63. It remains the case, in my judgment, that, as I found on 2 April, no protective mechanisms can be effective without her openness and honesty. Injunctions are worthless unless mother is willing to ring the police if it is breached and it is not likely, in my judgment, she would do so when I consider her emotional attachment to father and the fact she sees no risk from him.

64. Mr Rees KC also once more put the proposition that the existence of a care order makes it less likely mother would introduce father into their lives because of the threat of removal that it would amount to. On the facts I found previously and mother's historical behaviour, I conclude that that care order is not likely to be protective in and of itself. Because of the risk, mother would not be open [about] the role he played in her life and the very real risk she would prioritise her relationship with him over the children's safety.

65. It flows from what I have said, that my assessment of risk and how it can be managed remains the same as it was previously and nothing has changed as a consequence of the steps mother has taken.

- Concerning the advantages and disadvantages for the children of remaining with mother:

76. What do those findings mean for the analysis of the competing options in this case? I deal firstly with a placement in mother's care. Mother would undoubtedly meet the girls' practical needs, their attachment relationship would remain intact and she would meet their emotional needs in that respect. She would love them and they would feel loved by her. They would remain part of their birth family. They would have contact with their father. Their identity and cultural needs will be met. They would be protected from the disruption, upset and harm that would be caused by removal from her care.

77. There are, however, significant negatives. The children would be at risk of physical and emotional harm deriving from the potential for further injuries to be inflicted and the physical and emotional harm that they are at risk from in terms of domestic abuse. I have set out my analysis of risk in that respect in my previous judgment and, as I have made clear, it has not changed. In addition, mother would fail to work with the local authority to mitigate that risk and would in all likelihood conceal any child protection issues from the local authority in order to preserve the children in her care. She would not protect them from that risk because she cannot see or acknowledge it. There is no order the court can make to keep the children safe in her care in those circumstances. There are no protective arrangements that can work in those circumstances. I cannot be satisfied mother would maintain a separation from father and it is likely he would become part of their lives again if mother resided in anything other than supervised accommodation. That means the children would likely suffer significant harm, particularly of an emotional nature, and that harm would have lifelong consequences for their wellbeing and development affecting, as I have said before, their future life chances and future relationships.

- Foster care would preserve some family links and cultural identity and protect the children from parental risk, but it lacks permanence and carries risks of instability and repeated moves.
- Adoption would protect the children from parental risk, provide permanence, stability, lifelong family attachments, and avoid foster care instability. The negatives are loss of birth family, distress, delay, and of some risk of placement breakdown or sibling separation, but those risks are manageable or minimal.

29. The judge then came to her overall conclusion:

82. That being the comparative analysis, what are the court's conclusions? Firstly, the risks in this matter I consider to be high for all the reasons I have given previously. Mr Rees KC argues that the injuries suffered by Z were not the most serious and, of course, in that sense he is right. This court, and most others, will have experience of children suffering far worse than two bruises by way of injuries. But, in my judgment, that submission ignores salient features of this case. The first is that it forgets that one of these parents likely lost control and inflicted harm on a small, vulnerable baby entirely dependent on them, causing bruising to two separate parts of her body, one of them her abdomen. Neither parent has helped the court or the local authority to understand why that happened but the finding, in isolation, says much about the functioning of the parent who was responsible.

83. Secondly, I made findings in my last judgment that the risk of further injury is not diminished by virtue of either child's age. I also concluded that it had not diminished in circumstances where mother had been supervised 24/7 throughout and when the lack of further injury in mother's care was therefore to be expected. The risk of further injury, on the basis of my findings, is significant also when I consider the potential for greater injury which must exist if that which Z suffered was inflicted in a moment of loss of control. But it also has to be looked at in the context of the domestic abuse and the emotional impact of maltreatment on a child as they grow older and have a greater awareness of their own mistreatment for themselves. It is not possible to isolate the issue of the injuries and look at it in a compartmentalised way. It has to be placed and looked at in the context of the totality of these risks that the children face.

84. In that sense, Mr Rees KC was entirely right to say to the court that he does not seek to minimise the harmful effect of domestic abuse. This father had threatened mother's life when he placed his hands around her throat and strangled her. He also assaulted her in front of one of her children, whom mother was holding, in circumstances where she was left with marks to her face and her body; in other words, when he inflicted a significant assault upon her, all in order to bring her into line with his family's cultural expectations. Those, of course, were not the only assaults. As I have said, those risks have not diminished as father has done nothing to address his behaviour. I made that clear in my last judgment and, for reasons I have given in this judgment, mother is no more capable of protecting the children from that risk than she previously was.

85. In light of those observations and having considered the comparative analysis, I consider that the risks posed by mother's care of the children are too great to allow this court to come to the conclusion that the children can remain in her care. I do not seek

to diminish the harm that will be caused by removal from their mother's care but the risk of living in a home where violence is inflicted on these children and their mother and all that would flow from that outweighs the risk of removal and placement for adoption. If these children need to be removed from parental care they will need permanence and stability and an opportunity to form attachment relationships with a family that will be forever theirs. In my judgment, that gives them the greater opportunity of achieving the stability and the meeting of all of their needs, which is what they now need, alongside being kept safe.

86. On that basis, the only option which can meet those needs is a plan for adoption and so I intend to make a care and placement order, dispensing with parental consent, on the basis that their welfare requires me to do so. In light of what I have said about the magnitude of risk, I also conclude that this is an entirely proportionate interference with the rights of each member of this family.

87. That is my judgment.

30. The three judgments collectively stretch to over 110 pages. These summaries capture their core reasoning but they cannot convey the sustained and detailed attention that the judge gave to the case. By the end, she had conducted it for a year and seen the parents give evidence three times across a period of six months.

The appeal

31. There are two grounds of appeal:

1. The making of care and placement orders was neither necessary nor proportionate in all the circumstances particularly when considering:
 - the last domestic abuse episode occurred more than 3 years ago.
 - the inflicted injuries to Z were not the most serious in nature and there was no evidence that this was anything other than an isolated event.
 - the mother has complied with all professional requirements and safety plans for more than 12 months whilst in the residential placement; and
 - the likely emotional harm caused to the children by separation from their mother and potentially each other.
2. The Learned Judge over the course of her two Judgments conducted a welfare evaluation that was procedurally flawed and

amounted to a linear rather than a holistic assessment of the realistic options.

Ground 2

32. I start with this ground, which challenges the process by which the decision was made.
33. Counsel for the mother and for the father accepted that the welfare judgments should be read together, but contended that in the April judgment the judge in effect did what she then criticised the professionals for doing by prematurely ruling out the mother. Judicial interventions in the October hearing had already set the backdrop for how the professionals approached their welfare analysis, with the local authority homing in on adoption and ruling out the mother as a realistic option. That approach was perpetuated in the April judgment. It contained no reference to either of the statutory welfare checklists, but effectively discredited placement with the mother as a reasonable professional conclusion. Evidence of this is seen in these paragraphs, all cited above: 284-5 (mother's inability to change), 297 (no possible risk reduction for domestic abuse), 307 (no possible risk reduction for physical harm) and 308 (no possible effective safety measures).
34. This argument is worthy of consideration, but in the end I do not accept it. Considering substance, rather than form, the proper approach is indeed to read the two judgments as if they were a single simultaneous decision. Seen in that way, the judge's process of reasoning was interrupted, but it was not linear. Oral evidence was given in May by the main professional witnesses and there is no solid basis for concluding that they were improperly influenced by the course the judge took.
35. Even so, this was, as the judge recognised, a difficult and finely-balanced decision. Her task was not made easier by taking it in stages because in such situations there is a danger of the process of reasoning becoming compartmentalised. Here, the court focused sequentially on past facts, parental acceptance, insight, and risk. Those sub-issues formed a logical sequence, but where assessments are separated by time, it is important to ensure that they remain firmly subordinate to the global assessment of welfare and do not become narrower surrogates for it.
36. Having said that, I have not been persuaded that this argument prevails in the present case. It would, I think, have been better if, instead of giving a separate judgment in April, the judge had given a single judgment in May. It is not apparent that there was any benefit in making such strong statements about the risks for the children in the mother's care at what was by then another interim stage. Revealing the court's thinking in advance allowed for arguments, such as those we have received, about a perception of unfairness and of influence on witnesses. Indeed, the mother unsuccessfully applied to the judge in April for permission to appeal on that basis, but then took a pragmatic decision not to apply to this court in view of the imminence of the adjourned hearing.
37. Despite some misgivings about the course of events, I nevertheless do not consider that the way in which the decision was made amounts to a serious irregularity causing injustice. The appeal instead turns on the first ground, which concerns the substance of the decision, and whether it was incomplete or wrong.

Ground 1

38. The mother contends that in all the circumstances the making of care and placement orders was neither necessary nor proportionate. Four particular matters are relied upon: the passage of time since the last incident of domestic abuse, the level of seriousness of Z's injuries and the fact that they appeared to have been an isolated event, the mother's compliance with requirements and safety plans, and the emotional harm to the children from separation from their mother and potentially from each other.
39. When considering this ground of appeal, it is important to remember that there has been little challenge to the judge's findings of fact and her evaluations, which can be summarised in this way:
- The father perpetrated significant domestic abuse against the mother on five occasions between 2020 and 2023 in Pakistan and in the UK, two occasions being particularly serious and at least one (the last one) being in the presence of D.
 - One or both of the parents inflicted the bruises on Z in March 2025.
 - Both parents have lied extensively to the court and to a range of professionals about these matters.
 - The parents have not accepted the court's findings and the risks remain the same as they did when proceedings began.
 - The mother's efforts to distance herself from the father are born of necessity and she would be likely to reunite with him if she could.
 - The mother's lack of insight and inability to work honestly with professionals means that she cannot protect the children from risks posed to her and them by the father.
 - The father's family poses an additional risk of harm to the mother.
 - The risks cannot be reduced by protective measures.
40. The only conclusion that the mother challenges is the last one. Mr Rees KC had urged on the judge what he describes as the "external locus of control" as a protective factor and he continues to argue that a strong framework combined with the mother's intellectual appreciation of the consequences of default were bound to be a factor mitigating risk and that the judge was wrong to conclude otherwise. The father supports these submissions, arguing that a robust safety plan could be devised, including monitoring of the mother's contact with him, domestic abuse work, work around cultural pressures, and a clear understanding of the possible consequences of any breach. He argues that the evidence justified safeguarding by means of a care order, or at least a supervision order with a safety plan, but that the judge was wrong to select the most extreme form of safeguarding, namely adoption.
41. The local authority counters that delay was a factor, with the case having continued for over a year and the children needing a decision. It cautions against attempts to downgrade the judge's findings. The domestic violence had been towards the upper end of the scale, and was accompanied by unexplained injuries to Z and parental denial.

The judge was entitled to find that the risk of future harm was real and immediate. She took account of all the matters urged on her by the parents, but reached a clear and well-reasoned conclusion that the risk of harm was unmanageable if the children remained in the mother's care. The Children's Guardian supports these submissions, arguing that this ground is a mere disagreement with the relative weight attached to various matters, which is no basis for a successful appeal.

Analysis

42. I have not found this an entirely easy appeal. On the one hand, the judge directed herself correctly in law and, reading the judgments as a whole, she identified, to a greater or lesser extent, the relevant factors for the welfare decision. The strictures against unjustified interference by this court must therefore be kept well in mind. Only if the decision is so plainly wrong that the judge must have given far too much weight to a particular factor is the appellate court entitled to interfere: *Re J (A Child)* [2005] UKHL 40; [2005] 3 WLR 14, [2005] 3 All ER 291; [2005] 2 FLR 802, per Baroness Hale at [10-12]. To like effect is the statement of the Supreme Court in *Re H-W (Children)* [2022] UKSC 17; [2022] 4 All ER 683, per Dame Siobhan Keegan at [49]:

“In a case where the judge has adopted the correct approach to the issue of necessity and proportionality, the appellate court's function is accordingly, as explained in *In re B*, to review his findings, and to intervene only if it takes the view that he was wrong. In conducting that review, an appellate court will have clearly in mind the advantages that the judge has over any subsequent court - see Lord Wilson in *In re B* at para 41 and the earlier decision of the House of Lords in *Piglowska v Piglowski* [1999] UKHL 27; [1999] 1 WLR 1360.”

An appeal can therefore only succeed if it has been shown that the judge's welfare evaluation and proportionality assessment was inadequate or wrong in the senses described.

43. On the other hand, while the outcome in every case will depend on its facts, this was not an obvious case for adoption. Well-attached children in families without many of the main markers for harm (such as addiction or mental health issues, neglect, criminality) are not usually adopted on the basis of findings of this intermediate level of seriousness.
44. The judge appropriately referred to *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; [2013] 1 WLR 1911; [2013] 3 All ER 929; [2013] 2 FLR 1075, where Baroness Hale stated at [198] that:

“... it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do. In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions.”

Also resonant here is the well-known statement of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050; [2006] EWCC 2 (Fam) at [50], with emphasis added:

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

45. These statements are an essential bulwark against any lowering of the test that public authorities must meet when they propose or approve a plan for adoption. They are directly in play in a case of this kind, and it is therefore necessary to look closely at the reasoning behind the conclusion that adoption was necessary for D and Z.
46. In *Re H-W* at [56] the Supreme Court confirmed that, in discharge of the obligations imposed under the Children Act and the Human Rights Act, these questions need to be asked and answered by a court that is considering the removal of children from their family:
 - (1) What was the likelihood that the children would suffer harm in parental care?
 - (2) What would be the consequences of such harm arising?
 - (3) What are the possibilities for reducing the risk or mitigating the consequences?
 - (4) What are the comparative welfare advantages and disadvantages of the options presented?
47. A structured approach of this kind is also found in a series of decisions of this court, referred to by the judge in the April judgment at [77-78]: *Re F (A Child: Placement Order: Proportionality)* [2018] EWCA Civ 2761; [2018] All ER (D) 94 (Dec); [2019] 1 FLR 779; *L-G (Children: Risk Assessment)* [2025] EWCA Civ 60; and *Re N* [2025] EWCA Civ 1541. I made similar observations in *Re T (Children: Risk Assessment)* [2025] EWCA Civ 93; [2025] 4 WLR 97; [2025] 2 F.L.R. 263, setting out the questions in this way:
 - (1) What type of harm has arisen and might arise?
 - (2) How likely is it to arise?
 - (3) What would be the consequences for the child if it did?
 - (4) To what extent might the risks be reduced or managed?
 - (5) What other welfare considerations have to be taken into account?
 - (6) In consequence, which of the realistic plans best promotes the child’s welfare?

(7) If the preferred plan involves interference with the Article 8 rights of the child or of others, is that necessary and proportionate?

48. In the April judgment, the judge considered the nature of the risks at [79-93] and the issues of managing/reducing/mitigating them at [278-308]. In the May judgment, she showed that she understood the mother's core argument about proportionality.

21. She continues to put the case that the conclusions reached by the local authority are also not proportionate when one considers the nature of the risk, both in terms of the injuries caused to Z and the domestic abuse and when one considers the impact on the children of being removed from her care.

49. In my view, the judge was fully entitled to conclude that there was a substantial possibility that these children would suffer further significant harm if they were placed with their mother in the community, due to the history of domestic abuse and injury, compounded by dishonesty. However, in a case where there were very strong countervailing welfare factors, that conclusion alone could not be decisive. The court's next task was to assess the possible consequences for the children of the harm arising and the extent to which the risks might be reduced or managed, and then to factor those matters into its welfare and proportionality evaluations.

50. The judge described the risks as "high". What then did she find was their likely impact? With the help of counsel, we identified just four passages in which there is any reference to the consequences of future harm to the children if they remained with their mother. Two are from the April judgment and two are from the May judgment. They are cited above, but I repeat them for convenience.

124. The social worker was unsurprisingly very clear. The consequences for the children were physical harm, worst case scenario death – crossfire, emotional harm, damage to wellbeing and self-esteem, which can affect all aspects of their development.

Ms Fottrell KC for the local authority frankly accepted that there was no good evidential basis for considering that these children were at risk of death in their parents' care.

216. Domestic abuse always harms children who are exposed to it. It causes emotional harm that can have lifelong consequences for an individual's attainment and wellbeing, it can affect self esteem and the child's own future relationships. It places children themselves at risk of physical harm either because they are accidentally caught in the crossfire or because they step in to shield the parent being abused. The harm it causes is well known and recognised.

Domestic abuse is of course a scourge for the direct victim and for children who witness it. But that truth had to be connected to the actual situation of these children. Fortunately, there was no evidence that the father's appalling behaviour towards the mother had yet caused actual harm to either of them, beyond speculation in the November judgment at [154] that D, then aged 1, may have cried during the incident in January 2023.

77. ...The children would be at risk of physical and emotional harm deriving from the potential for further injuries to be inflicted and the physical and emotional harm that they are at risk from in terms of domestic abuse.

This passage identifies the type of harm, but not its likely consequences.

83. The risk of further injury, on the basis of my findings, is significant also when I consider **the potential for greater injury** which must exist if that which Z suffered was inflicted in a moment of loss of control. But it also has to be looked at in the context of the **domestic abuse and the emotional impact of maltreatment** on a child as they grow older and have a greater awareness of their own mistreatment for themselves. It is not possible to isolate the issue of the injuries and look at it in a compartmentalised way. It has to be placed and looked at in the context of the **totality of these risks** that the children face.

51. This last passage is the only place in the judgments that bears directly on the critical question of the likely consequences of any future harm, and I have highlighted the key issues for the judge.
52. As to the possibility of future injury, any injury inflicted on a baby is a very serious matter and minor injuries to a child may of course be harbingers of more major ones. At the same time, the court has to have regard to what it knows about a child's environment when judging the realistic range of possibilities. Here, the bruises to Z appear to have been inflicted at or around the same time and no injury had ever come to D. There was nothing in the wider evidence to show that the parents had any general propensity to cause deliberate or serious physical injury to a child, and significant counter-indications in what the judge described as their commitment to and love for both of these children.
53. As to domestic abuse, the judge rightly regarded the father's deplorable behaviour as being serious, but it then had to be placed somewhere on the scale of domestic abuse that the Family Court regularly encounters, and considered in the context of an assessment of the father's overall personality.
54. The judge was also right to look at the totality of the risks, but again the court must always maintain a sense of proportion and base its risk assessment on conclusions that can fairly spring from the evidence.
55. A further feature is that this decision was not fundamentally based on past harm suffered by the children but on the likelihood of future harm arising from past events and present attitudes. As against that, the judge accepted that the children faced a certainty of future harm by separation from their mother, followed by a placement with strangers, followed by a move to another set of strangers, with no guarantee that they could remain together or that their cultural and identity needs would be fully met in any of these placements. The care plan provided for parental contact to take place until adopters were identified, something that would be bound to be extremely difficult, particularly for D.

56. The judge vividly acknowledged most aspects of this certain and significant harm, for example in the May judgment at [70], but despite repeated readings of the judgments I cannot identify why she considered that it was so outweighed by the future risks as to make permanent separation and adoption necessary. If she considered that any undetected resumption of domestic abuse would be unacceptable, that would be disproportionate. As Hedley J said, some children will experience disadvantage and harm and, as I put it in *Re T*, risk assessment is not about the elimination of all risks.
57. As to the further question of whether a resumption of domestic abuse would in fact be undetectable before the children came to irrevocable harm, the assessment in the May judgment at [63] and [77], challenged on this appeal, was that no external measures could reduce the risks to the children to any degree. It is a disappointing, even bleak, conclusion that the child protection system could contribute nothing towards increasing the safety of the children of this unreliable but otherwise able victim of domestic abuse. That is particularly so when the parents are currently in the grip of immigration controls over their places of residence.
58. The judge found at [63] that an injunction would be “worthless” unless the mother was willing to enforce it, and that she was unlikely to do so in the light of her emotional attachment to the father and the fact that she saw no risk from him. However, the mother had once shown herself to be capable of reporting the father to Women’s Aid and the police when she experienced serious abuse in this country. The judge also found at [64] that a care order would not be likely to be protective “in or of itself” because the mother would not be open about the father’s role. No doubt for the same reason, she did not consider the protective possibilities of a one-year extendable supervision order at all.
59. Taking all these matters into account, my conclusion is that, despite unanimous professional advice and the care that she evidently took, the judge’s welfare assessment fell short in two linked ways. The first is that there was an insufficient focus on the realistically likely consequences for these children of such harm as they were likely to suffer in maternal or parental care. The second was that there was an insufficient recognition of the potential ability of the state to support these children within their family by means of a combination of:
- supervisory or coercive measures under s.31 of the Children Act 1989
 - a Domestic Abuse Protection Order (DAPO) under the Domestic Abuse Act 2021, which can exist without limit of time and breach of which is a criminal offence
- and
- any voluntary interventions by local authority support services and by other agencies working with the parents, who might (if properly briefed) add another layer of vigilance.
60. Ultimately, the current decision does not in my view satisfy the very strict requirements for severing these children from their family. That is either because the proportionality assessment was not undertaken effectively (as held in *Re H-W*) or because the judge’s conclusion was wrong (as asserted in *Re B*), or for both reasons. I would therefore

allow the appeal and set aside the care and placement orders. In consequence, the interim care orders will revive. The judge's unappealed threshold findings, as recorded in the December judgment, are preserved and are not open to challenge by the parents.

61. In these circumstances, the parties were agreed that the matter must be remitted to the Family Court for a final welfare determination and it will be listed for an early case management hearing before the Family Presiding Judge, Mrs Justice Morgan. It will be for her to determine the scope of any further hearings in the light of the parties' up-to-date positions.
62. Finally, I have read and agree with the judgment of the Senior President of Tribunals.

Lord Justice Dingemans, Senior President of Tribunals :

63. I agree that this appeal should be allowed for the reasons given by Peter Jackson LJ. I add these paragraphs to emphasise the importance of liaison between the Family Court and the First-tier Tribunal (Immigration and Asylum Chamber) (FTT(IAC)) where a person's continued presence in the United Kingdom might be in issue. There are protocols on communications between judges of the Family Court and the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal signed by the President of the Family Division and Senior President of Tribunals dated 19 July 2013, and a Form EX660 for communications between the Family Court and the Home Office pursuant to a protocol agreed between the President of the Family Division and the Home Office issued on 16 May 2018.
64. It is apparent that the possible outcome of family proceedings may be relevant to decisions in the Immigration and Asylum Chambers, see generally *RS (immigration and family court proceedings: India)* [2012] UKUT 00218 (IAC), at paragraphs 1 to 3 of the ruling and directions. It is also, however, apparent that the outcome of proceedings before the FTT(IAC) may be relevant to the Family Court. As Peter Jackson LJ has noted in paragraph 2, the immigration status of the parents is precarious. For example, if the father in these proceedings did not have a right to remain in the UK, that might be a relevant factor for the consideration of the Family Court. The need for speedy hearings in cases such as this is obvious, but there are statutory provisions about to come into force requiring the determination of certain proceedings in the FTT(IAC) within a short period of time. It is not always the case that proceedings in the FTT(IAC) should await the decision in the Family Court.

Lord Justice Edis (Vice President of the Court of Appeal (Criminal Division)):

65. I agree with both judgments.
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