



Neutral Citation Number: [2023] EWFC 121

IN THE FAMILY COURT

Case No: PR22C50337

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between :

A Local Authority
- and

Applicant

X
-and-

First
Respondent

Y
-and-

Second
Respondent

Z
-and-

Third
Respondent

M

Intervener

Ms Samantha Bowcock KC and Ms Danielle Woods (instructed by **the Local Authority**) for the **Applicant**

Ms Gillian Irving KC and Ms Jacqueline Wall (instructed by **Switalskis**) for the **First Respondent**

Mr Shaun Spencer KC and Ms Christina Chinnock (instructed by **Ridley Hall**) for the **Second Respondent**

Mr Michael Jones KC and Ms Joanna Moody (instructed by **WHN Solicitors**) for the **Third Respondent**

Ms Julia Cheetham KC and Mr Lewis Donnelly (instructed by **Ramsdens**) for the **Intervener**

Hearing dates: 13 July 2023

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with a case management decision in proceedings under Part IV of the Children Act 1989 with respect to Z, born on in 2012 and now aged 11 years old. The proceedings are brought by the local authority, represented by Ms Bowcock of Kings Counsel and Ms Danielle Woods of counsel. Z is represented by Mr Michael Jones of King's Counsel and Ms Joanna Moody of counsel. The mother of Z is X (hereafter 'the mother'), represented by Ms Gillian Irving of Kings Counsel and Ms Jacqueline Wall of counsel. Z's father is Y (hereafter 'the father'), represented by Mr Shaun Spencer of Kings Counsel and Ms Christina Chinnock of counsel.
2. Z has two older sisters. P, who has a child of her own, and M, who intervenes in these proceedings. M had a child called E, who was born in November 2014 and who died in August 2015, and a child called C, who was born in February 2022 and who died in August 2022. M (hereafter 'the intervener') is represented by Ms Julia Cheetham of King's Counsel and Mr Lewis Donnelly of counsel. P is currently placed with her child in a mother and baby foster placement and is not party to these proceedings.
3. Prior to the commencement of the proceedings in respect of Z, the mother and Z resided with his sisters and C. The matter now comes before the court to determine whether it is necessary, by reference to the factors set out in *Oxfordshire CC v DP, RS and BS* [2005] EWHC 1593 (Fam), for the court to hold a finding of fact hearing in respect of the cause of C's death in order to determine the proceedings in respect of Z.

BACKGROUND

4. For the present purposes, the background to this matter can be stated shortly. Disclosure from the police indicates that there was involvement by the police with the family in 2011 and 2013 owing to the parents' association with a relative of the mothers. That relative had been accused of the rape of a 15-year-old girl and had also cared for a male who had been accused of the rape of a male child and sexual abuse of a female child. The parents are recorded as siding with both accused individuals in their protestations of innocence and allowing both to visit their home. In consequence, the parents' children were made the subject of Child Protection Plans between September 2011 and March 2012 and again in September 2013. The parents were assessed as not accepting of risk of sexual abuse to the children. The family moved to a different local authority area in or about February 2015.
5. Neglect of the children has been a persistent feature during the involvement of the present local authority. Z was known to CAMHS but was discharged from the CAMHS in 2018 service due to non-attendance. From September 2021 onwards, poor home conditions were reported. Whilst the family were supported by a support worker, who would ensure that cleaning of the family home took place at her direction, any improvements were not sustained. Z's school attendance was poor. In April 2021 the mother and the intervener were barred from school owing to an incident captured on CCTV whereby the mother was alleged to have been seen to mark Z's arm before taking him back into school and alleging that the headteacher

had assaulted him. As at June 2022 Z's attendance stood at only 54%, with a considerable number of late attendances.

6. In October 2021, the mother and father were arrested on suspicion of two separate offences of blackmail. On 4 October 2021 the mother reported an allegation made by Z that the intervener's former partner had taken him into the bathroom of the family home and asked him to engage in sexual acts. On 25 October 2021, Z was the subject of an ABE interview, the contents of which raised concern that Z had been coached into making the allegation. Z also asserted that the intervener had been raped and that P had been raped by a former boyfriend. P declined to make a complaint when asked but indicated that she may tell the police about it in the future.
7. Within these proceedings drug testing was undertaken in respect of Z. That testing was positive for passive exposure to ketamine between July to early October 2022, passive exposure to cocaine between the same period, passive exposure to methamphetamine (including amphetamine) between November 2021 and July 2022 and passive exposure to Mirtazapine between July to early October 2022. Lamotrigine was also detected but would require further analysis. Drug testing of the father has identified passive exposure to tramadol, hydrocaine (a prescription only medication for severe pain), lidocaine, paracetamol and prilocaine and possible exposure to hydroquinidine. The latest drug testing of the mother identifies exposure to Fluoxetine, hydrocaine, paracetamol and Quinine. Drug testing of the intervener indicates use of paracetamol and Mirtazapine.
8. The detailed circumstances of Z's life whilst residing at home are set out in the statement of the Real Care Support Worker. I agree with the submission of Mr Jones and Ms Moody that the conditions of Z's home life can only realistically be described as constituting a state of chronic neglect.
9. In the foregoing circumstances, the Designated Family Judge gave permission within these proceedings for the parties to jointly instruct Professor Billington to undertake a psychological assessment of Z. In his report, Professor Billington concludes that Z has suffered multiple adverse childhood experiences during his early years and notes multiple missed health and social care appointments. It was noted that Z has nightmares, sleep difficulties and social communication difficulties. In addition, Professor Billington noted that Z has severe toileting difficulties and dental and ophthalmological needs that require ongoing treatment and monitoring. Professor Billington considers that there is sufficient evidence in this case to indicate that Z's functioning and the trauma that he has experienced relates primarily to his experiential and environmental circumstances and that he struggles to make sense of his experiences. Professor Billington considered that Z has an insecure attachment to his mother and a limited attachment to his father, noting that Z was quick to attach to his female foster carer, on whom he is now dependent. Within this context, whilst Z is a young man who functions at a much lower level than most children of his chronological age, Professor Billington concludes that Z has potential to develop further if protected from harm and given above average levels of care. Professor Billington considers that Z's ultimate prognosis will depend on the quality of care, security and experiences in his 'forever' home, together with the necessary support. With respect to therapeutic intervention for Z, Professor Billington concludes as follows:

“Subsequent therapeutic work (bereavement / trauma-related) would have to be delivered at a level appropriate to a child of his developmental age (i.e. currently in the range of 6 to 8 years). The precise nature of the required therapy could be decided upon once he is secure in a ‘forever’ placement. Given his loyalty to his birth family a non-verbal therapy could be considered, for example, art or play-based work.”

10. Z is able to remain in his current placement on a long term basis should he not be able to return to the care of his parents. Z remains extremely well settled in foster care. The parents seek the return of Z to their care and challenge the conclusions of the ISW assessment that they are not capable of parenting Z to the required standard, although a degree of appropriate realism with respect to the prospects of success having regard to the evidence in this case was evident in the submissions made by leading and junior counsel on their behalf.
11. In addition to the assessment of Z by Professor Billington, the court also has a PAMS assessment of the parents undertaken by an independent social worker. The PAMS assessment identified multiple risk factors associated with the parents’ capacity to provide safe care to Z. The conclusions of that report can be summarised as follows:
 - i) The mother struggles with all aspects of parenting, including providing stability, maintaining routines and firm and consistent boundaries, ensuring a clean home, providing adequate meals and ensuring school attendance. There is a clear disparity between her knowledge base and practical ability. The mother struggles to parent the child to a good enough level. The father does not have the skills, motivation or desire to parent Z either by himself or together with the mother.
 - ii) Whilst the parents were living with M the home conditions remained poor and the parents did not appear to “see” the mess surrounding them. Poor and unhygienic conditions have been a longstanding issue. The mother is not able to see her own deficits in respect of maintaining hygienic conditions. During visits the ISW witnessed the home as untidy, cluttered and dirty, with odours of animals and people. The upstairs was particularly cluttered and untidy.
 - iii) Neither the mother or the father accept the concerns of the local authority. They do not understand the many difficulties that Z is experiencing and do not accept the concerns about Z’s behaviours and needs as identified by Professor Billington or take any accountability for the difficulties which Z’s has.
 - iv) The mother’s mental health represents a significant barrier for her and impacts on her day to day functioning, her mood, her view of herself and her view of others. The mother is unmotivated, lacks any positive self-esteem. She presents as disinterested and has no motivation, she has no routines or goals, she feels dejected and unworthy. The mother lacks trust and places blame on social workers, teachers and medical practitioners for her situation, not taking accountability or responsibility. The mother’s own neglectful and abusive childhood experiences, previous relationships, experience of loss and her current relationship with the father all impact on how she views herself. Until the mother can prioritise her own significant needs she will not be able to prioritise the needs of Z.

- v) The parent's issues are long standing, with positive changes made but then not sustained. The best predictor as to whether they can make future positive changes is the evidence of their past behaviours and their continuous neglectful parenting. Neither parent has the capacity or desire to change.
 - vi) In the foregoing circumstances, there is little parenting support, training and teaching that could be recommended as this would be ineffective for the parents. Whilst the mother's mental health remains poor, and until she addresses her childhood experiences and accepts her past neglectful parenting, the implementation of any training recommendations would set the mother up to fail. It is difficult to identify any teaching programme for the mother given the vast range of her difficulties. The mother would be unable to effectively engage or take on board any of the work that could be identified.
 - vii) To be able to parent Z, the mother and father would require extensive support, close monitoring, and a sustained level of parenting intervention throughout Z's childhood. The mother requires a high level of support in her own right due to her complex difficulties. The mother is however, socially isolated, has little support and relies heavily on the father and on the intervener for support. The mother's relationship with the father is however, a matter of concern and the father cannot be considered a supportive partner to the mother.
 - viii) Z will remain at risk of significant harm should he be rehabilitated back to the care of his parents together or separately.
12. With respect to the intervener's children, in August 2015 an ambulance was called after her first child E, born in November 2014, was reported to be in cardiac arrest. E was taken to hospital where he was pronounced dead. In 2015 the intervener had contacted EDT stating that she was having ideas about harming E. A Coronial and police investigation was launched, the outcome of which was that the cause of E's death was not capable of being ascertained. The Children's Guardian informs the court that the police now intend to open an investigation into the death of E in light of the death of C.
13. As I have noted, in August 2022 the intervener's second child, C, died. An ambulance was called to the family home after, it is said, P had been woken by the mother shouting for her to fetch a neighbour. The intervener states in her statement provided in these proceedings that C was in the lounge and that the mother and Z were present. The intervener further stated that she left the lounge and when she returned about ten minutes later, she could see blood coming from C's nose. C was noted to be unresponsive. The father was not present at the family home on the day that C died and asserts that he has no direct knowledge of the circumstances surrounding C's death.
14. At the time of C's death, it is alleged that the house was dirty with bags of food and clothing and with flies prevalent. Multiple beds were in the home. Following C's death, Z was removed into foster care following the arrest of his mother and the intervener on suspicion of the murder of C and for neglect/cruelty in respect of C and Z.

15. There has been limited disclosure from the police in relation to C's death. As noted, the Children's Guardian informs the court that the police now intend to open an investigation into the death of E in light of the death of C. In her statement, the intervener states that she has been informed by the police that they may widen their investigation to cover an incident when her older sister was 2 years old and stopped breathing. The local authority has not been so informed.
16. The post mortem report in respect of C remains outstanding. Ahead of this hearing, the Children's Guardian understood that the Home Office Pathologist who is preparing the post mortem report has requested genetic testing, which is now complete. However, whilst the pathologist had indicated that once the genetics report is available she would be in a position to finalise the post mortem report, no timescale was offered in that regard. At this hearing, Ms Bowcock informed the court that the local authority did not have a "constructive update" on when the post mortem report might be received in circumstances where the report on genetic testing has, in fact, still not been received. Within this context, and as conceded by Ms Bowcock, I am satisfied that were the court to accede to an adjournment of this hearing to await the post mortem report it would be doing so for an indeterminate period to an unknown point in time.
17. Within the foregoing context, the local authority, the father and the intervener now invite the court to adjourn the determination of that question until the receipt of the post mortem report in respect of C's death and to list the question of the necessity of a finding of fact hearing concerning that event for a further hearing. The mother invites the court to determine the issue today and emphasises the relevance of the cause of C's death to the question of future contact between the mother and Z and the mother and her grandchildren. The Children's Guardian submits that the court is in a position at this hearing to determine the question of whether it is necessary and proportionate for the court to hold a finding of fact hearing in respect of the cause of C's death, and that the court should answer that question in the negative.

THE LAW

18. As I have noted, the decision for the court is one of case management. The 'overriding objective' set out in FPR 2010 r. 1.1 provides as follows:

"The overriding objective

1.1

- (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.
- (2) Dealing with a case justly includes, so far as is practicable –
 - (a) ensuring that it is dealt with expeditiously and fairly;
 - (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
 - (c) ensuring that the parties are on an equal footing;

- (d) saving expense; and
 - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.”
19. Whilst it is a matter for the local authority to determine whether to bring proceedings under Part IV of the Children Act 1989, once those proceedings are before the court, it is for the court to decide which issues require determination (*In Re W (Care Proceedings: Functions of Court and Local Authority)* [2014] 2 FLR 431). To that end, the court has broad powers of case management pursuant to FPR 2010 r. 4.1. Those case management powers include the power to direct a separate hearing of any issue pursuant to FPR 2010 r 4.1(3)(j), to exclude an issue from consideration pursuant to FPR 2010 rule r 4.1(3)(l) and to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective pursuant to FPR 2010 r 4.1(3)(o).
20. One of the functions of case management under the FPR 2010 is to reduce delay in the determination of proceedings. The court is required by statute, in the form of s.1(2) of the Children Act 1989, to have regard to the principle that any delay in determining the question is likely to prejudice the welfare of the child. In the context of public law proceedings, which these are, the principle articulated in s.1(2) of the Children Act 1989 was reinforced by the amendments introduced by the Children and Act 2014. As a result of those amendments, pursuant to s.32(1) of the Children Act 1989 the court is required to draw up a timetable with a view to determining the application without delay and, in any event, within 26 weeks of the application being issued. Pursuant to s.32(3) of the Children Act 1989, the Court to have particular regard to the impact the timetable will have on the welfare of the child to whom the application relates and on the conduct of the proceedings. Pursuant to s.32(5) of the Children Act 1989, the court may only extend the 26 week time limit if to do so is necessary to resolve the proceedings justly. In this regard, only fair process or the child’s welfare will suffice (*Re M-F (Children)* [2014] EWCA Civ 991).
21. Within the foregoing context, the law governing the case management question of whether or not to conduct a particular fact finding exercise is now well settled. The question falls to be resolved by reference to the factors identified in *Oxfordshire CC v DP, RS and BS* [2005] 2 FLR 1031 (hereafter *Oxfordshire*). In that case, McFarlane J (as he then was) set the following, non-exhaustive list:
- “[24] The authorities make it plain that, amongst other factors, the following are likely to be relevant and need to be borne in mind before deciding whether or not to conduct a particular fact-finding exercise:
- (a) the interests of the child (which are relevant but not paramount);
 - (b) the time that the investigation will take;
 - (c) the likely cost to public funds;
 - (d) the evidential result;
 - (e) the necessity or otherwise of the investigation;

- (f) the relevance of the potential result of the investigation to the future care plans for the child;
- (g) the impact of any fact-finding process upon the other parties;
- (h) the prospects of a fair trial on the issue;
- (i) the justice of the case.”

22. In *Re H-D-H (Children)* [2021] EWCA Civ 1192, the Court of Appeal confirmed that the principles set out by McFarlane J (as he then was) in *Oxfordshire* continue to represent the principles by which the court should determine the question of whether or not to conduct a particular fact finding exercise. Peter Jackson LJ, noting that those principles had stood the test of time and remain authoritative, observed as follows:

“The factors identified in *Oxfordshire* should therefore be approached flexibly in the light of the overriding objective in order to do justice efficiently in the individual case. For example:

(i) When considering the welfare of the child, the significance to the individual child of knowing the truth can be considered, as can the effect on the child's welfare of an allegation being investigated or not.

(ii) The likely cost to public funds can extend to the expenditure of court resources and their diversion from other cases.

(iii) The time that the investigation will take allows the court to take account of the nature of the evidence. For example, an incident that has been recorded electronically may be swifter to prove than one that relies on contested witness evidence or circumstantial argument.

(iv) The evidential result may relate not only to the case before the court but also to other existing or likely future cases in which a finding one way or the other is likely to be of importance. The public interest in the identification of perpetrators of child abuse can also be considered.

(v) The relevance of the potential result of the investigation to the future care plans for the child should be seen in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met.

(vi) The impact of any fact finding process upon the other parties can also take account of the opportunity costs for the local authority, even if it is the party seeking the investigation, in terms of resources and professional time that might be devoted to other children.

(vii) The prospects of a fair trial may also encompass the advantages of a trial now over a trial at a possibly distant and unpredictable future date.

(viii) The justice of the case gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been

taken into account. One such matter is whether the contested allegation may be investigated within criminal proceedings. Another is the extent of any gulf between the factual basis for the court's decision with or without a fact-finding hearing. The level of seriousness of the disputed allegation may inform this assessment. As I have said, the court must ask itself whether its process will do justice to the reality of the case.”

23. In *Re H-D-H (Children)* at [20], Peter Jackson LJ made clear that, in determining applications of this nature, it is unnecessary to refer to other authority beyond *Oxfordshire*, notwithstanding that it predates the incorporation of the overriding objective into the Family Procedure Rules and the 26-week requirement, Peter Jackson LJ considering the decision remains valid when read alongside the statutory framework set out above. In *Re H-W (Care Proceedings: Further Fact-Finding Hearing)* [2023] EWCA Civ 14, the Court of Appeal again reiterated that it is the factors set out in *Oxfordshire* represent the definitive metric against which the question of whether or not a particular fact finding exercise is necessary falls to be determined. In that case, Baker LJ observed as follows at [37]:

“The decision whether or not to hold a fact-finding hearing is one of the most important case management decisions to be taken in the course of proceedings under Part IV of the Children Act. It is not always a straightforward decision. Care proceedings are quasi-inquisitorial. They are not confined within the tramlines of adversarial pleadings. There is therefore a recurrent danger that they veer off track. In a case with a complex family history, the court will often be encouraged by one party or another to explore an issue that has been unearthed during the investigation. Judges have to be very careful before acceding to such an application to avoid the unnecessary use of the limited resources available. In deciding whether to hold a fact-finding hearing, it is imperative that they conduct a proportionality analysis by reference to the factors identified in the *Oxfordshire* case and *Re H-D-H*.”

24. In their Skeleton Argument, Mr Spencer and Ms Chinnock rely on two authorities concerning the question of paternity and an authority concerning disclosure. Specifically, Mr Spencer and Ms Chinnock cite the observation of Lord Hodson in *S v McC (Otherwise S) and M (DS Intervener), W v W* [1972] AC 24 at [57] that in respect of paternity “The interests of justice in the abstract are best served by the ascertainment of the truth and there must be few cases where the interests of children can be shown to be best served by the suppression of truth”, and the observation of Thorpe LJ in *Re H and A (Paternity: Blood Tests)* [2002] EWCA Civ 383 at [29] that “The interests of justice are best served by the ascertainment of the truth”. They also cite the decision of *Re Z (Children) (Disclosure: Criminal Proceedings)* [2003] EWHC 61 (Fam) in which Munby J dealt with an application to allow the disclosure into criminal proceedings of a witness statement made in family proceedings. Ms Cheetham and Mr Donnelly also cite the additional case of *Re X (A Child)* [2016] EWHC 1342 (Fam). In the context of the observations of the Court of Appeal in *Re H-D-H (Children)* and *Re H-W (Care Proceedings: Further Fact-Finding Hearing)* however, I am satisfied that the reliance on the foregoing authorities is misplaced. The proper approach is set out in *Oxfordshire*, as reiterated in *Re H-D-H (Children)*, and that is the approach this court must take.

25. Finally in respect of the law, in this case it is said by the local authority, the father and the intervener that the court should adjourn the question of whether it is necessary to have a fact finding hearing with respect to the death of C until the post mortem report on C is available. The question of delay in receiving post mortem reports was dealt with by the President in *Re G (Child Post-Mortem Report: Delays)* [2022] EWFC 55.
26. The President made clear in the opening paragraphs of *Re G (Child Post-Mortem Report: Delays)* that, in circumstances where the court had not ultimately been required in that case to make a judicial decision, the matters set out in the judgment cannot be taken as binding authority for any proposition. Within this context, in *Re G (Child Post-Mortem Report: Delays)* the President makes clear at [2] that how any future case involving a delayed post mortem report is dealt with will be a matter for the judge in that case. In offering his own views however, as to possible approaches to this issue, the President observed as follows, having made reference to the two principle questions for the family court (namely whether the threshold criteria pursuant to s.31(2) of the 1989 Act are satisfied and what order should be made having regard to the welfare of the subject child as the court's paramount consideration), his seminal decision in the *Oxfordshire* case and the decision of the Court of Appeal in *Re H-D-H and C (Children: Fact-Finding)*:

“Whilst neither *H-D-H* nor *Lincolnshire CC v CB* dealt with the situation facing the court as a result of delays in the provision of post-mortem reports, evaluation of the case management options available to the court in such cases through the lens described in *Oxfordshire CC v DP* and *H-D-H* is likely to be appropriate. In cases where the death of a child is sudden, with little or no evidence of pre-death injury or symptoms, for example where the cause of death is suspected to be suffocation, there may be no alternative but to await receipt of the full post-mortem report. But in other cases, for example the present one, where there is apparently a range of evidence prior to death which, if established, would be sufficient for the court to determine both the s 31 threshold and the ultimate welfare decision, it may not be ‘necessary’ to await the full post-mortem report where the impact on the child’s welfare in postponing the process until that report is received may be disproportionate and unacceptable.”

DISCUSSION

27. I am not satisfied, on the particular facts of this case, that it is necessary for the court to have the post mortem report on C available to it before it determines whether a fact finding hearing on the cause of C’s death is necessary. In the circumstances, I am not satisfied that it is appropriate to adjourn this hearing. I am further satisfied that, having balanced the factors in *Oxfordshire*, on the facts of this particular case a fact finding hearing on the cause of C’s death is not necessary for the ultimate welfare decision that the Court has to make in this case in respect of Z. My reasons for so deciding are as follows.
28. Having regard to the authorities set out above, the question of whether it is necessary to await the post mortem report before deciding whether it is necessary to hold a fact finding hearing with respect to the cause of C’s death, and the determination of that latter question, require consideration of the same factors. Namely, those set out in

Oxfordshire, as reiterated in *H-D-H and C (Children: Fact-Finding)*. It is however, on the particular facts of this case, convenient to deal with each question in turn.

Adjournment to await post mortem report

29. Various optimistic assertions were made in the Skeleton Arguments provided by those parties seeking an adjournment with respect to the timescale for the receipt of the post mortem report. In this context, all parties seeking an adjournment made submissions effect that delay would be “minimal” or “of relatively short duration” and prayed in aid that Z “will remain in the same placement he has been in throughout proceedings”. However, there is no *evidence* before the court to confirm when the post mortem report in respect of C might be available. Rather, as Ms Bowcock rightly conceded, the reality is that there is still no date for the receipt of the report and, accordingly, any adjournment would be for an indeterminate period and to an unknown date.
30. In these circumstances, to adjourn these proceedings to await the post mortem report, and thereafter to await the local authority’s decision on whether to plead C’s death as an element of its threshold, would result in Z having to wait for a further unknown period of time before the local authority is even in a position to formulate its final threshold document. I accept the submission of Mr Jones and Ms Moody that if one factors in the likelihood of the police wishing to undertake further interviews before disclosure of the report should the post mortem implicate the adults in C’s death and thereafter time for the local authority to decide whether to seek findings and formulate a threshold, the court is looking at a delay of *at least* a number of months. As set out above, the court is required by law to have regard to the principle that delay is inimical to Z’s welfare and, pursuant to s.32(3) of the Children Act 1989, to have particular regard to the impact the timetable for the proceedings will have on the welfare of the child to whom the application relates and on the conduct of the proceedings. Approving a timetable that waited for the post mortem report before determining the question of whether a fact finding hearing on the causation of C’s death is necessary would, I am satisfied, expose Z to further and indeterminate delay, which would be plainly inimical to his welfare.
31. In this case, there is a wide range of evidence beyond the issue of C’s death which, on a neutral and objective evaluation, is clearly capable of crossing the threshold criteria pursuant to s.31(2) of the Children Act 1989. Neither parent sought seriously to dispute that proposition. In particular, the evidence currently before the court suggests that Z was exposed over many years to chronic neglect and drug use. Professor Billington is clear that Z has suffered multiple adverse childhood experiences during his early years and has, in consequence, suffered nightmares, sleep difficulties, social communication difficulties, severe toileting difficulties and dental and ophthalmological issues, the evidence being that Z’s functioning and the trauma that he has experienced relates primarily to his experiential and environmental circumstances.
32. As suggested by the President in *Re G* (which, in contradistinction to this case, concerned injuries sustained by the subject child’s sibling), where the court is faced with a significant delay in the provision of the post mortem report but there is a range of evidence prior to death which, if established, would be sufficient for the court to determine both the s 31 threshold and the ultimate welfare decision, it may not be

necessary to await the full post-mortem report where the impact on the child's welfare in postponing the process until that report is received may be disproportionate and unacceptable.

33. In the circumstances I have set out above, I am satisfied that that is the position in this case. Given what I am satisfied would be the adverse impact of Z to further adjourn these proceedings for a wholly indeterminate period to an unknown date, and having regard to range of evidence of neglect prior to C's death which, if established would be sufficient for the court to determine both the s 31 threshold criteria and, for the reasons I will come to below, the ultimate welfare decision for Z, postponing this process until the post mortem report is received would be disproportionate and unacceptable.
34. This conclusion of course, by definition, requires the court to determine the question of whether it is necessary to conduct a fact finding hearing without the contents of the post mortem report. I am however, satisfied that that does not present an insurmountable difficulty in this case.
35. I accept the submission that the contents of the post mortem report can be said to be relevant to the determination of the question of whether it is necessary to conduct a fact finding hearing with respect to C's death as part of the examination of the question of evidential outcome. However, given the way post mortems are reported, the *range* of possible outcomes for the post mortem in respect of C is limited and can be anticipated. As Mr Jones and Ms Moody submit, the post mortem will either be unable to identify a cause of death, will identify a cause of death that does not implicate the mother or the intervener, or will identify a cause of death that does, or is capable of, implicating the mother and/or the intervener. In the first and third of those situations, the local authority may decide to seek findings in respect of C's death. Within this context, I am satisfied that the court can factor the absent post mortem report into its analysis of the question of whether a finding of fact hearing is necessary by assuming for the present purposes that the post mortem report on C *will* allow the local authority to pursue threshold findings in respect of his death. Within this context, the question I now turn to is whether, assuming that the evidence does allow the local authority to pursue findings in respect of C's death and balancing the factors set out in *Oxfordshire*, it is necessary to hold a fact finding hearing on that issue.

The interests of Z

36. In the current context, the interests Z are relevant but not paramount. Within this context, one of the main arguments advanced by those parties seeking a finding of fact hearing is that such hearing is necessary to ensure that Z knows "the truth". It is submitted that findings by the court as to the cause of C's death are necessary to meet Z's welfare need to have an accurate account of how C died and to inform life story work and tailor therapeutic intervention and bereavement counselling to enable Z to deal with the future and help him make sense of his placement outside the family if that is the outcome.
37. I accept that, as a *general* proposition, it is in a child's best interests to have an accurate understanding of the circumstances by which he or she came to be the subject of proceedings and by which, if that is the outcome, came to be living away from his or her family. I further accept that, in broad terms, being provided with an

accurate narrative of the circumstances of C's death would be in Z's welfare interests. However, that is not the end of the matter in circumstances where each case must be considered on its own facts.

38. The submissions made on this issue operate on the assumption that Z needs to know *from the court* what happened to C. There is no evidence before the court however, to indicate that the need for Z to understand his current circumstances, and the justification for the care plan advanced in respect of him, can be met only by his being provided with a factual determination from the court as to how C died. Indeed, the evidence of Professor Billington is that bereavement and trauma related therapeutic work would have to be delivered at a level appropriate to a child of his developmental age (which for Z is currently in the range of 6 to 8 years), that its form remains to be determined once he is secure in placement and that, given his loyalty to his birth family, a non-verbal therapy could be considered including art or play-based work. Within this context, it is not clear that Z's welfare needs require an account to be provided by *the court* by way of a finding of fact hearing into the circumstances of C's death (any findings made by the court would, of course, not constitute objective truth, but rather the court's view as to the most likely cause of C's death).
39. As the evidence of Professor Billington makes clear, there are many different ways of ensuring that a vulnerable child is able to understand and address past trauma, some of those methods operating without the need for a narrative account produced following a fact finding hearing. Whilst life-story work is also recommended, as enabling Z to contextualise the events and begin to understand the chronology of his experiences, once again this can be assembled from other sources. If the post-mortem provides further information as the cause of C's death, its conclusions (and the outcome of any subsequent criminal trial) can be communicated to Z at an appropriate time and in an age appropriate manner, in order to further aid his understanding of events. I am reinforced in each of these conclusions in circumstances where no party seeks to suggest that findings should be made in respect of E's death. In such circumstances, it must necessarily be accepted that the equally important narrative in respect of the death of his first nephew will be provided, and is capable of being provided, to Z without the benefit of findings by the court as to the cause of E's death.
40. Further, and importantly, whilst Z has a clear welfare need for life story work and therapeutic intervention and bereavement counselling, such advantages as there may be in that work being informed by findings made by the court are heavily outweighed by the delay that would be caused to the commencement of that work by an attempt to reach that goal. The court is required pursuant to s.32(3) of the Children Act 1989 to have particular regard to the impact the timetable will have on the welfare of the child to whom the application relates and on the conduct of the proceedings. The evidence of Professor Billington establishes that therapeutic intervention and bereavement counselling is required by Z and cannot commence until Z is secure in his permanent placement. I accept the submission of the Children's Guardian that having regard to the nature and complexity of Z's needs any recommended therapeutic or other intervention should begin without delay.
41. Directing a fact finding hearing with respect to the cause of C's death would mean the court postponing for an indeterminate period the decision with respect to Z's placement and the provision of vital therapeutic and bereavement work for an indeterminate period to an unknown date. In these circumstances, and in the context

of his high level of individual needs, I am satisfied that Z's urgent welfare need to finalise his permanence plan and long-term placement (whether in his family or in foster care) outweighs his welfare need for that work to be informed by finding of fact exercise conducted by the court into the cause of C's death.

Time the investigation will take

42. Once again, by reason of the fact that there is still no date for the receipt of the report and, accordingly, any adjournment would be for an indeterminate period and to an unknown date, the only thing that can be said with certainty is that it is likely that any investigation by the court into the cause of C's death culminating in a finding of fact hearing will take *at least* a number of months.
43. In particular, in the experience of the court, the completion of the post mortem report is only the first of a series of steps that will need to be completed before the local authority is in a position to decide whether to seek findings in respect of C's death and, of so, to settle its schedule of findings. Once the post mortem is ready the police may, depending on the outcome of the report, wish to conduct re-interviews before acceding to the disclosure of that report into these proceedings. Upon having sight of the report, the local authority may wish to seek further disclosure before determining whether to settle a schedule of findings that includes C's cause of death. Thereafter, if findings with respect to the cause of C are sought, it is likely that the court will be asked to give permission to the parties to jointly instruct a number of medical experts, which will inevitably introduce further delay. Following that, the parents and intervener will need time to consider the schedule of findings and the expert reports. The current crowded nature of the Family Court list is likely to lead to further delay before the matter can come on for hearing given the likely length of a hearing in which the court is being asked to make findings in respect of C's death. The hearing itself is likely to take somewhat longer than would ordinarily be the case given the need for an intermediary for the intervener and the accommodation of the needs of the individual parties in light of the cognitive assessments completed within these proceedings.

The likely cost to public funds

44. Whilst it is not possible to arrive at a precise cost to public funds were the court to hold a finding of fact hearing in respect of the cause of C's death, no party sought to dispute the proposition that this would result in the *much* greater expenditure of public funds than if the court were to proceed on the basis of the allegations of chronic neglect detailed above. If permitted, the exercise of pursuing findings in relation to C's death would result in considerable public expenditure, to the Legal Aid Agency, the local authority, the police and the court. Permitting the issue of the cause of C's death to be litigated in these proceedings would likely involve the joint instruction of more than one medical expert, the increased likelihood that leading counsel would be briefed, a much heavier burden on the resources of the local authority social work and legal services departments, a much heavier burden on police disclosure resources and a much greater utilisation of the resources of the court by way of a longer hearing.
45. It was submitted on behalf of the father that, in circumstances where the court is mandated by the overriding objective to deal with cases in ways which are proportionate to the nature, importance and complexity of the issues, the serious

nature of the issues raised by C's death justifies greater expenditure. To this end, Mr Spencer and Ms Chinnock contended that the issue of the causation of C's death falls to be case managed as a case of the utmost gravity, importance and complexity and justifies allotting to it a proportionately greater share of the court's resources. I accept that were the court to conclude that a finding of fact hearing into the cause of C's death is necessary, then the nature, importance and complexity of that issue may well justify the types of expenditure summarised in the previous paragraph. But the bare fact that the issue of the causation of C's death is grave or seriousness does not by itself justify expenditure of greater resources. In the present context, the antecedent question remains whether such an investigation is necessary having regard to the totality of the factors set out in *Oxfordshire*.

The evidential result

46. For the reasons set out above, I am satisfied that the court is in a position to consider the question of evidential result in this case, notwithstanding that the post mortem report is awaited (the question of evidential result will, in any event, always contain elements of speculation in circumstances where the question of the necessity of a finding of fact hearing on a given issue must, by definition, occur before such a hearing is undertaken).
47. As I have set out above, the post mortem will come to one of a narrow range of conclusions. It will either be unable to identify a cause of death, will identify a cause of death that does not implicate the mother or the intervener, or will identify a cause of death that does, or is capable of, implicating the mother and/or the intervener. In the first and third of those situations, the local authority may decide, having regard to the totality of the evidence before the court, to seek findings in respect of C's death. Assuming it does so the evidential result of a finding of fact hearing on that issue will be that the local authority fails to prove that C's death was non-accidental, or that the local authority proves on the balance of probabilities that the cause of C's death was non-accidental and proves on the balance of probabilities the identity of the perpetrator, or that the local authority proves that the death was non-accidental but is able to demonstrate only that certain persons are in the pool of possible perpetrators. In the circumstances, I accept that the outcome of the post-mortem report could, depending on its assessment of the totality of the evidence, lead to the court being satisfied that the cause of C's death was non-accidental and that one or other of the mother or the intervener was the perpetrator.
48. The Court must consider the implications of these possible evidential results when determining whether a fact finding hearing on the cause of C's death is necessary. In my judgment, in this case this exercise is best undertaken by reference to the remaining factors set out in *Oxfordshire* in circumstances where, as recognised in *Re H-D-H and C*, many of the factors identified in *Oxfordshire* overlap with each other. In light of Peter Jackson LJ's comments at paragraphs [21] and [22] of *Re H-D-H and C*, the Court should not approach the consequences of the evidential result too narrowly and must take account of all relevant matters. Within this context, in examining the implications of the possible evidential results in this case, the court can in an appropriate case consider both the potential impact on future cases in which a

finding one way or the other is likely to be of importance for the welfare of other children, and the wider public interest in identifying the perpetrators of child abuse.

The necessity or otherwise of the investigation

49. Pursuant to s.31 of the Children Act 1989, the task of the court in care proceedings under Part IV of the 1989 Act is strictly circumscribed. The court is required to determine whether the threshold are met for making a care or supervision order, pursuant to s.31(2) of the Act, to consider the permanency provisions of the care plan, pursuant s.31A of the Act, to consider whether to make an order having regard to the matters set out in s.1 of the Act and, if making a care order, to consider the question of contact pursuant to s.34(11) of the Act. The necessity of otherwise of a finding of fact hearing on the issue of the causation of C's death falls to be considered in this context.
50. With respect to threshold, as I have noted above, this is not a single issue case. Whilst a finding that the cause of C's death was non-accidental and that the mother or the intervenor was responsible would amply cross the s.31(2) threshold, that evidential result is not necessary in this case before the court is in a position to determine whether the threshold criteria pursuant to s.31(2) of the 1989 Act are crossed. Once again, no party sought seriously to dispute that, on a neutral and objective evaluation of the evidence currently available to the court, this matter is one in which the threshold criteria is capable of being established from multiple and possibly uncontroversial facts concerning the chronic neglect of Z, independent of the question of the cause of C's death. In the circumstances, an investigation into the cause of C's death is not necessary in order for the court to determine the issue of threshold in this case.
51. On the face of it, there might be a stronger argument that it is necessary to investigate the cause of C's death within these proceedings in order to consider the permanency provisions of the care plan, pursuant s.31A of the Act, in circumstances where the parents seek the return of Z to their care and to determine what order to make under Part IV of the Act. However, ultimately, I am not persuaded by that submission.
52. On behalf of the mother, Ms Irving and Ms Wall, sensibly and appropriately, conceded that it would not be sustainable to argue in this case that the court cannot determine both the issue of threshold and the question of whether the parents are capable of providing Z with good enough care on the basis of the evidence currently before the court. Ms Irving made clear that the mother recognises that she has "a mountain to climb" given the evidence of chronic neglect and the results of drug testing on Z in this case. That this concession was both realistic and proper is demonstrated by the fact that Professor Billington was able to complete a full and comprehensive assessment of Z's welfare needs without the benefit of a finding in respect of C's death, and the ISW was able to undertake a comprehensive and detailed assessment of the parents capacity to meet those needs, the completion of which was likewise not prevented or hampered by the absence of a finding as to C's cause of death. Within this context, the care plan of the local authority, and the parents opposition to it, is unlikely to be significantly different were the court to hold a finding of fact hearing with respect to the cause of C's death and find that the local authority had failed to prove the findings it sought on that issue.

53. As I have set out above, Ms Irving and Ms Wall accordingly, and sensibly, concentrated their submissions on the contended for relevance of the cause of C's death to the question of assessing the risk of future contact between the mother and Z and the mother and her grandchildren. I will deal with this below when considering the relevance of the potential result of any fact finding hearing to future care plans.
54. With respect to the submission that a finding of fact hearing is necessary because of the relevance of the potential evidential result of that hearing to future children that the mother and/or the intervener may go on to have, I do not consider that to be a weighty factor in the balance in this case. The court was told that the intervener has taken the difficult decision, in light of what has happened to her two previous children, to undergo a sterilisation. In such circumstances, it is unlikely that any finding made by the court that the cause of C's death was non-accidental would be relevant in future proceedings concerning children of the intervener. As conceded by Ms Irving and Ms Wall, the mother is less likely to have further children. There is no evidence that she intends this course.
55. Within this context, the submissions that a finding of fact hearing is necessary because the evidential outcome will be relevant to future hearings is, in respect of the intervener, undermined by her stated intention to undergo a sterilisation and, in respect of the mother, involves a high degree of speculation such that it cannot be a weighty factor in the balance. In any event, were the post mortem ultimately conclude that the cause of C's death implicates a third party, a criminal prosecution would be likely. Any criminal conviction relating to the intervener or the mother could be relied upon within any proceedings concerning future children for the purposes of establishing threshold.
56. I likewise do not consider the submission that a finding of fact hearing is necessary to meet the public interest in identifying the perpetrators of abuse is a persuasive one in the particular circumstances of this case. This is not a case in which the subject child has been the victim of the alleged abuse that it is said necessitates a finding of fact hearing. In respect of Z, the court will in this case meet the public interest in identifying those who subjected him to abuse by considering the findings sought by the local authority of chronic neglect and exposure to drug use and by making such of those findings as are justified. With respect to the public interest as it relates to C, in the event that the post-mortem concludes that the cause of C's death implicates a third party, then the police will likely proceed with a full criminal investigation in line with the public interest. Any subsequent prosecution leading to a conviction would meet the public interest in identifying the perpetrator of the abuse that resulted in the death of C.

The relevance of the potential result to future care plans

57. In the circumstances set out above, the strongest argument in this case in support of the court directing a finding of fact hearing on the issue of the causation of C's death is the potential relevance of the evidential result to the question of care planning for future contact. I accept that in some cases, the need to assess whether contact can take place safely in the future will be a cogent factor in determining whether a particular fact finding exercise is necessary. As originally noted in by McFarlane J (as he then was) in *Oxfordshire*, an intention by a parent to seek unsupervised contact in the future can be a factor pointing towards the need for a finding of fact hearing.

However, and at risk of be-labouring the point, each case turns on its own specific facts.

58. I accept that it is necessary to properly evaluate risk and ensure robust care planning in terms of contact in the light of the s. 31(3B) obligation on the court to consider the impact of harm on the child and the way in which his or her resulting needs are to be met. However, I am satisfied on the facts of this case that it is not necessary for that process to include a finding of fact hearing in respect of the cause of C's death.
59. At the time of his tragic death, C was under four months old (whilst, for reasons that are not entirely clear, no party seeks to suggest that findings should be made in respect of E's death in order to properly assess the safety of future contact for Z, I note that at the time of his death E was 9 months old). As such, at the time of his death, C was a new-born infant, entirely dependent on adult care and incapable of reporting to others issues of concern or taking action to protect himself. Z, by contrast, is now 11 years old. Further, and unlike the child in *Oxfordshire*, Z was not the subject of the alleged abuse in respect of which it is now contended there needs to be a finding of fact hearing. Whilst the evidence strongly suggests he has been the subject of chronic neglect, there is no suggestion in this case that his mother or father, or indeed the intervener, have ever acted towards Z in a manner that could have exposed him to a risk of serious physical injury or death.
60. In the foregoing context, I am not satisfied that a finding of fact hearing on the question of the cause of C's death, with the manifest delay and expense that would involve, is a *necessary* exercise to inform care planning for safe contact between Z and his mother and father or the intervener, particularly where no such exercise is sought by any party in respect of the death of E. I acknowledge that the mother's argument with respect to contact goes further, and that she posits a situation where, in the future, she also wishes to have contact with one or more of her grandchildren with their parents' agreement and to assist with providing care to them. However, and setting aside for the moment that, on the evidence before the court, at present the family dynamics are strained and that the mother has only limited contact with her other children, I am satisfied that it would not be proportionate to embark on a finding of fact hearing with respect to the cause of C's death, with all that that would involve, in order to inform the plans for contact between the mother and her non-subject grandchildren.
61. I accept that it is possible to see disadvantages in this approach for the social workers who may be engaged in considering and planning contact, both between the mother and father and Z and between the mother and her grandchildren. In particular, the social workers would not have the advantage of a legally definitive set of facts with respect to C's death on which to draw when undertaking a risk assessment in respect of contact. However, as recognised by Peter Jackson LJ in *H-D-H and C (Children: Fact-Finding)*, most decisions will have some downsides. With respect to care planning for contact, for the reasons set out in the foregoing paragraphs, I am satisfied that those downsides are not sufficient to render necessary a finding of fact hearing with respect to the cause of C's death to inform contact planning in this case.

Impact of any fact finding process on the other parties

62. The impact of a fact-finding hearing in respect of the cause of C's death on the other parties in this case would extend beyond the significant impact of delay as formulated above.
63. A fact finding hearing is inevitably stressful for lay parties, with the process of adversarial cross examination often proving challenging. In this case, the intervener would require an intermediary and, in light of her level of cognitive functioning, is likely to find the process of giving evidence in a fact hearing examining the death of her children particularly difficult. She is within the borderline to average range cognitively. She has difficulty with verbal comprehension and some difficulty with her working memory. In evaluating the necessity and proportionality of the course of action proposed in this case by the parties seeking a finding of fact hearing in the context of impact on the parties, there will also be impact on the local authority. As recognised by Peter Jackson LJ in *H-D-H and C (Children: Fact-Finding)*, a finding of fact hearing may result in an opportunity cost for a local authority, i.e. if resources are expended on a fact finding hearing in one case then those resources are not available for other matters. That would be the position for the local authority in this case.
64. Against these factors, I recognise it is also possible to identify some positive aspects of the impact of a fact finding hearing on the parties. Any fact finding hearing would adjudicate upon the question of the cause of C's death. In this context, it is possible that a finding of fact hearing would provide the adult parties with greater clarity on the circumstances of C's death. Whilst the intervener has already determined that she wishes to undergo a sterilisation procedure, further information as to the cause of C's death (and, possibly, the death of E) might further inform that decision.

Prospects of a fair trial on the issue

65. With respect to the prospects of a fair trial on the issue of the cause of C's death, I acknowledge that, in the context of the requirements underpinning a fair trial, there are advantages of a trial now over a trial at a possibly distant and unpredictable future date. Against this, in light of the fact that the intervener has taken the difficult decision to undergo a sterilisation and, as conceded by Ms Irving and Ms Wall, the mother is less likely to have further children and no evidence that she intends this course, I am not satisfied that there are likely to be future public law proceedings in which the question of the cause of C's death falls for determination. In any event, the fairness of any later trial of the issue of C's death can be safeguarded by the court taking proper account at that stage of the extent to which the passage of time has reduced the reliability of the evidence.

The justice of the case

66. Pursuant to the overriding objective in FPR 2010 r.1, the court's broad obligation is to deal with the case justly, having regard to the welfare issues involved. As articulated by Peter Jackson LJ in *H-D-H and C (Children: Fact-Finding)*, addressing the question of the justice of the case gives the court the opportunity to stand back and ensure that all matters relevant to the overriding objective have been taken into account. The court must ask itself whether its process will do justice to the reality of the case.

67. I accept that this case a fact finding hearing as to the cause of C's death would involve the determination of very serious matters. I further accept that absent such a fact finding process there is the potential for there to be a gulf between the factual basis for the court's decision were the court to proceed on the basis of the current allegations of chronic neglect, and the factual basis for the court's decision following a finding of fact hearing into the cause of C's death were that hearing to result in a finding that C's death was caused non-accidentally by the mother or the intervener. The court must however, be concerned not only with whether there is a gulf, but also with whether, on the facts of this case, that gulf has a *consequence* adverse to the justice of the case. The reality on the facts of this case is that whilst I accept that there would be, as a matter of fact, a gulf between a decision of the court based on the currently evidenced issues of chronic neglect and a decision of the court based on a potential finding that C's death was caused non-accidentally by the mother or the intervener, on the particular facts of this case that gulf has limited consequences.
68. For the reasons already set out, a finding of fact hearing with respect to C's death is not necessary in this case in order for the court to be in a position to determine threshold where this is not a single issue case, but one in which the threshold criteria are likely capable of being established from other multiple and possibly uncontroversial facts. In light of the evidence currently before the court, a finding of fact is not likely to result in a material alteration the care plan in this case or the parents case against it. A finding of fact that C's death was non-accidental and caused by the mother or the intervener would reinforce evidence towards the making of a care order and the continued placement of Z in foster care. However, given the weight of that evidence as acknowledged on the part of the mother, a failure to prove those findings would not significantly change the local authority's care plan nor the parents arguments against it. A finding as to C's cause of death is not necessary to ensure robust care planning with respect to issues of contact for the reasons I have given.
69. Contrary to the submission of Mr Spencer and Ms Chinnock, this is not to ignore or set aside the gulf, but rather to acknowledge that the existence of the gulf does not, on the facts of this case, prevent the court doing justice in these proceedings. Moreover, leaving open that gulf, in circumstances where it is not necessary to close it in order to do justice to the case, promotes Z's welfare by avoiding delay and ensuring that his future is settled in a timescale commensurate with his needs in circumstances where these proceedings were issued nearly a year ago and a finding of fact hearing would result in further and presently unquantifiable delay.
70. In considering the justice of the case, I also bear in mind that in the event that there is evidence that a third party was responsible for or involved in C's death, then the criminal investigative process, and any subsequent criminal prosecution, serves to ensure that justice will be done and, as I have noted above, serves the purpose of upholding the public interest in fully investigating and holding to account those responsible for acts of child abuse.
71. I do not find the other submissions on the question of the justice of the case persuasive. In particular, Mr Spencer and Ms Chinnock contended that there is a benefit in the cause of C's death being examined for the additional purpose of enabling the court, potentially, to investigate whether there were any deficiencies in practice or procedure on the part of the local authority such as to render it culpable of

a failure to protect Z, P, and C. However, there is no suggestion on the evidence that there were manifest deficiencies in practice or procedure on the part of the local authority. It may be necessary in certain cases, where there is clear evidence of deficiencies in practice or procedure on the part of the local authority, for the court to consider that conduct where it is clearly relevant to the circumscribed task of determining whether the threshold are met for making a care or supervision order, considering the permanency provisions of the care plan, considering whether to make an order and considering the question of contact. However, beyond that, proceedings under Part IV of the Children Act 1989 are not a forum for a general enquiry into the conduct of a local authority.

CONCLUSION

72. Balancing each of the factors set out in *Oxfordshire* as considered above, and stepping back to consider the justice of the case overall, I am satisfied that it is not necessary in this case to undertake a fact finding hearing in respect of the cause of C's death in order to determine the proceedings in respect of Z. I emphasise again that the case management decision made by this court is a decision on the facts of this case. Case management decisions of this nature will always be fact specific and, as repeatedly emphasised by the Court of Appeal, fall to be made by reference to the factors set out in *Oxfordshire* and further illuminated in *H-D-H and C (Children: Fact-Finding)*.
73. In light of the decision set out above the parties will now need to draw up an order timetabling the matter for an IRH/Early Final Hearing on the basis of the current threshold document as it relates to the allegations of neglect. With respect to the question of allocation, I intend to re-allocate this matter to the Designated Family Judge. I note that, had the finding of fact exercise with respect to C's death been directed, it was submitted that a case of this nature would almost certainly be allocated to a full Judge of the Family Division. Whilst that may have been true at one time, I take the view that, subject always to the facts of the individual case and absent issues of significantly divergent medical opinion or medical controversy, such cases are ordinarily suitable to be dealt with by the relevant Designated Family Judge or, alternatively, a judge sitting as a judge of the High Court pursuant to s.9(1) of s.9(4) of the Senior Courts Act 1981.
74. That is my judgment.