IN THE FAMILY COURT AT MANCHESTER
[2023] EWFC 155 (B)

Date: 14 September 2023

Before:

DISTRICT JUDGE F. HAMMOND

- -

Between:

UNNAMED LOCAL AUTHORITY	**Applicant**
- and -	
(1) S (mother)	**Respondents**
(2) K (father)	
(3) R (a child through her Guardian, AR)	

- -

Hearing dates: 11 September 2023 – 14 September 2023

- -

JUDGMENT

This judgment was delivered on an extempore basis on day four of the final hearing.

The judge has given leave for this version of the judgment to be circulated to the parties, however these proceedings are private and there must be no publication of all or part of this judgment save for that approved by the judge. The anonymity of the child and members of her family and their privacy must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

A brief summary of the decision in plain language was given to the parents before the court gave the judgment published below.

DISTRICT JUDGE HAMMOND:

1. Unnamed Local Authority ('the Local Authority') applies for Care and Placement Orders in respect of R. R is two years five months old, having been born on 05 April 2021.

2. The Local Authority has been represented in this hearing by a barrister, Ms Harrison-Fisher.

3. R's mother is S. I will call her "the Mother" in this judgment. She has been represented by her barrister, Ms Birtles.

4. R's father is K. I will call him "the Father". He has represented himself. Although he has a good understanding of English his first language is Kurdish Sorani. He told me previously that his understanding of Sorani is better than his understanding of English although he has not been educated to a high standard as his family left home when he was young. A Sorani interpreter was present throughout the final hearing, and I ensured that everything that was said was simultaneously translated to him, in addition to the direct translation that was taking place when he was speaking or was being spoken to.

5. The Father does not have parental responsibility for R, having not been married to the Mother when R was born and having not been named on her birth certificate.

6. R has been represented by counsel, Ms Ismail, and has appeared through her Guardian, AR.

7. It is the Local Authority's plan that R must be permanently separated from her birth family and placed for adoption. That plan is opposed by the Mother and by the Father. The Guardian supports the Local Authority's plan.

8. The Mother and the Father do not present as a couple. The Mother would wish for R to be returned to her care. The Father wants R to be returned to the Mother's care, to his care or in the alternative he seeks that R be placed with connected carers, Mr F and Ms M who have been negatively assessed.

Background

9. The Local Authority's application for a care order was issued on 07 April 2021. The proceedings have therefore been on foot for an extraordinary period of time, two years and five months, which is substantially more than the six months prescribed for public law matters. At the start of proceedings R was at home with the Mother, but following an incident in July 2021 she has been in foster care. She has therefore spent over two years in foster care whilst these proceedings have remained outstanding.

10. The Local Authority's application for a placement order was issued on 17 December 2021.

11. The chronology explaining how this position was reached can be found at paragraph 5.3 of the Local Authority's case summary for this hearing. In short, the primary cause of delay, has been delay in the assessment of Mr F and Ms M which I will return to later. The delay has been harmful to R who has lacked permanence for most of her life to date, and especially harmful for the Mother who spoke about being left in limbo wanting to fight for her child, but with the prospect of adoption hanging over her and R.

12. Prior to R's birth the Local Authority had dealings with the Mother as they were involved in private law proceedings concerning her three older children. Those children are aged 6, 8 and 9 and they went to live with a maternal great aunt and uncle in August 2018. They continue to live with them under a special guardianship order. Those children have a different father to the father involved in this case. At that time the concerns regarding the Mother related to a deterioration in her mental health and domestic violence in her relationship with the father of those children.

13. During her pregnancy with R there were concerns that the Mother was not being open and honest about the identity of the father. Plans to carry out a pre-birth assessment of the Mother were overtaken by the Mother's ill-health during the pregnancy. A safety plan was put in place which saw R remaining with the Mother after she was born, however in July 2021 the Mother's car was the subject of an arson attack and R was removed from her care. The Father pleaded guilty to the arson attack as a result of which he was imprisoned. In the aftermath of the attack the Father indicated that he was likely to be R's father. This was confirmed by DNA testing and the Father subsequently said that he wished to be assessed to care for her.

The Law

14. The Local Authority brings an application for a care order pursuant to section 31 of the Children Act 1989 together with an application for a placement order under sections 21 and 46 of the Adoption and Children Act 2002.

15. The Local Authority provided me with a helpful summary of the law to be applied which was annexed to the case summary. I have read that summary carefully and have had the principles identified at the forefront of my mind, however I will only expressly refer to the key cases and principles in this judgment.

16. The Local Authority has to satisfy me on the balance of probabilities that it is entitled to the orders sought. Where I am to make findings of fact, those findings are to be made on the balance of probabilities, which really means that an event is more likely than not to have occurred in a certain way. The burden is on the Local Authority to prove any allegation made.

17. I remind myself that when assessing evidence and credibility, if someone lies about one matter it does not mean that they have lied about others. There can be compelling reasons why people lie about a particular matter and I must consider why they have lied. People can lie through shame or to improve their case. There is a detailed direction from the criminal case of Lucas concerning lies, which I re-read prior to hearing this case. There needs to be a refined analysis to consider whether dishonesty about aspects of a person's life is relevant to the evidence they give about the central facts in issue in a case.

18. Section 31 of the Children Act 1989 says that a court may make a care order if satisfied that the child is suffering or is likely to suffer significant harm attributable to the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them.

19. If threshold is crossed, I must then consider what, if any, order I should make. Here the interests of the child are paramount. I should not make any order unless making no order would be more harmful to the child than making an order.

20. This family have rights under Article 8 of the European Convention on Human Rights. Interference with those rights is permitted only if it is necessary to keep the child safe and the interference is proportionate to the identified risks.

21. The court cannot make a placement order unless either the parents have consented, or the welfare of the child "requires" their consent to be dispensed with.

22. In deciding whether or not to make the orders sought the paramount consideration of the court must be the child's welfare. The court must have regard to the 'welfare checklists' found at section 1(3) of the 1989 Act and section 1(4) of the 2002 Act which I have considered.

23. The main difference between the 2002 Act checklist and the checklist in the 1989 Act is that the paramount consideration must be the child's welfare throughout their life including consideration of their having ceased to be a member of the original family and become an adopted person. In addition sub-paragraph (f) requires me to consider "*the relationship which the child has with relatives, and with any other person in relation to whom the court … considers the relationship to be relevant, including – (i) the likelihood of any such relationship continuing and the value to the child of its doing so, (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs, (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child"*

24. I do not intend to read the checklists into this judgment, however I note that the main considerations invoked by them for me involve R's young age, the risk of harm to her, the capability of her parents in being able to meet her needs and the effect on her throughout her life of no longer being a member of her original family.

25. The Supreme Court has considered the approach to proportionality when all options, including an adoption or placement order, are being considered. The following principles from Re B (Care Proceedings: Appeal) [2013] UKSC 13 [2013] 2 FLR 1075 can be extracted:

    a. A care order should be a last resort, because the interests of the child will self evidently require their relationship with their natural parents to be maintained unless no other course was possible in their interests. That is reinforced by the requirement in section 1(3)(g) that the court must consider all options, which carries with it the clear indication that the most extreme option should only be adopted if others would not be in their interests;

b. Adoption of a child against the parents' wishes is a last resort when all else fails;

c. Although the child's interests in an adoption case are "paramount" the court must never lose sight of the fact that those interests include being brought up by her natural family, ideally her natural parents or at least one of them;

d. The test for severing the relationship between parent and children 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.

26. Re B-S [2013] EWCA Civ 1146 reminds me that everything must be done where possible to rebuild a family. The Court stressed that it is incumbent on (a) the local authority that applies for care and placement orders, (b) the children's guardian entrusted with representing the child in the proceedings, and (c) the court, to carry out a robust and rigorous analysis of the advantages and the disadvantages of all realistic options for the child and, in the case of the court, set out that analysis and its ultimate decisions in a reasoned judgment.

27. In summary, the Court is to apply a holistic, rather than a linear, approach to all of the available options. I need to look at things in the round.

The Evidence

28. I have been provided with a large bundle of 772 pages together with some additional documents provided at the start of, and during, the hearing by email. They include an omitted ISW assessment from June 2022, the ISW's answers to questions dated 23 October 2022 and an amended agreed threshold. I have considered all of that evidence together with the oral evidence and submissions I heard during the hearing. I heard oral evidence from the following people:
    i) Ms NM, Social Worker, who gave evidence remotely;
    ii) Ms CW, Independent Social Worker, who gave evidence remotely;
    iii) The Mother;
    iv) The Father; and
    v) The Guardian.

29. Following the evidence I heard submissions from each of the advocates and from the Father.

30. I do not intend to repeat the evidence or submissions that I have read and heard, however I will summarise what I consider to have been the most important features of the evidence now and any relevant assessments of the witnesses.

NM

31. NM gave evidence remotely on day one. She confirmed that she had considered the social work documents prepared by other social workers, SM and BM when preparing her final Social Work Evidence Template. She confirmed the truth of the evidence given and opinions expressed in her addendum parenting assessments of the parents and in the final SWET.

32. She demonstrated a detailed knowledge of the family and was a straightforward witness. She has been a social worker with this family since January 2022.

33. She said that the Mother's contact had remained set at three-weekly intervals for 60 minutes. Since December 2022 eleven sessions have been offered and only three attended. She said that in a recent session R seemed slightly unsure of the Mother. The Mother was still in a relationship with an unassessed individual which carries risks should a child be left unsupervised with that person.

34. She said that the concerns for R would relate to domestic abuse which were features of the Mother's previous relationships. There are concerns held about her lack of insight and a lack of openness and honesty. She said that it was not a feasible option for R to return to her care even under a care order. She said that without honest engagement R's care could be compromised.

35. The Father's contact has remained the same in frequency and duration. He has continued to attend, and his contact has been positive. She said that as far as she was aware he had still not engaged with anger management courses. He engaged with Talk Listen Change who carried out an initial screening and determined that he was not eligible for work with them as he did not accept that he was responsible for domestic abuse which is a pre-requisite for acceptance on their courses. The Father engaged with an assessment in respect of his mental health, however they were not able to identify any mental health complaint that needed treating.

36. NM explained that the Father's threatening behaviour and aggression is such that many professionals have found working with him difficult.

37. She accepted that the Mother had been dealing with her own issues including a bereavement and that it must have been difficult for her to engage after learning in November 2021 that the Local Authority's plan was likely to be adoption.

38. She did not accept that the Mother's current relationship was more stable and less problematic than her previous relationships as she pointed out that the Mother was not open about abuse in her previous relationships and the information had to come from third parties. She accepted that there was no evidence from third parties in respect of this relationship.

39. She accepted that the evidence suggests that there are no mental health conditions or alcohol or substance issues with the Mother which require treatment.

40. NM agreed that the Mother's older boys love seeing their little sister and that R loves seeing them. She was asked how she weighed that in the balance, and she explained that she had given it considerable weight. She accepted that the loss of those direct relationships would be a significant loss, although they would try to find a placement that permitted sibling contact. She was of the view that the likelihood that there would not be an ethnicity match in adoption could be made up by other means.

41. NM was asked why the Mother's suggestion that she would end her relationship to look after R on a care order was not reasonable. She said that there was a history of

dishonesty, this was a recent suggestion and there was plenty of opportunity for her to have ended the relationship when it became clear that the Local Authority were concerned that her partner was unassessed.

42. When asked by Ms Ismail about the Mother's partner, Mr A, who had been her partner since summer 2021, NM stated that Mr A had not engaged with attempts to make him part of the assessment of the Mother and, in fact, the Mother had become resistant to attempts to contact him. She denied that she had not adequately pursued him for assessment which is what the Mother told the Guardian at E91.

43. NM does not believe that the Father has carried out the work mandated by the probation service to help lower his high-risk status.

44. I found no reason to question the truth of the evidence that she gave me. It was not undermined by any of the answers that she gave or any other evidence provided.

CW

45. CW is an independent social worker who was instructed to carry out independent assessments of the Father's proposed connected carers Mr F and Ms M. She gave evidence remotely in the afternoon of day one. She confirmed the reports that she authored within the bundle. She too was straightforward and engaged with the questions even when, in the Father's case, they were difficult to follow and were critical of her professional integrity.

46. She said that the last time the proposed carers contacted her was in April or May. She said that she was unable to complete her assessment because they had not engaged adequately with her.

47. When questioned by K she did not recall offering them an appointment at 6.30pm nor offering one just before she went away. She referred to her messages and noted that she offered a 6.00 appointment and said she could re-arrange the appointment if there were difficulties, but no difficulties were raised with her.

48. She could recall one time in 2022 when Mr F contacted her around a Court hearing, when she could not assist as she had not been instructed to carry out a piece of work at that time. There were no other times where he contacted her directly that she could recall.

49. She said that she had given opportunities to Mr F for her to visit in April when she returned from holiday which he was unable to take up. She denied that she had only given him 30 minutes notice of one appointment. She said that she had not set out to frustrate the assessment and that Mr F had cancelled an extraordinary number of assessment sessions. Ordinarily, she would consider 3 missed appointments as non-engagement but there were 5 missed appointments which she tried to reschedule but to no avail. In response to K's questions, she denied collusion with the Local Authority, stating that she did not know the social worker working with the family and had only spoken to her on two occasions.

50. She would have expected the potential carers of a child involved in the assessment process to have ensured that they were available for the assessment sessions, and she

was satisfied that she had offered enough availability to account for reasonable inability by the carers to engage with her sessions.

51. Insofar as the Father sought to suggest that this social worker was not independent and that she was colluding in an attempt to adopt his daughter away from him, it is notable that her initial reports in respect of the connected carers were positive.

The Mother

52. In order to assess the Mother as a witness I need to remind myself that this process must have been extremely difficult and stressful for her. I cannot imagine how hard it must be to have to come to a courtroom filled with strangers to try to argue that your child should not be adopted. In addition, she has been exposed to significant and harmful delay through the extension of these proceedings. Further, she has experienced health difficulties and a significant bereavement during the last year which will have made her task even harder.

53. She was emotional yet strong despite the toll that the proceedings had placed on her and she spoke well about her love for R. She fought hard for R to be returned to her care. At times there was a spark of defiance and anger, particularly when she was asked about why her partner had not been assessed. She told me about how hard she found it to have the threat of adoption hanging over her whilst also having to deal with her ill-health and the ill-health and later loss of her own mother this year. She explained that was why she was not able to commit to more regular contact since December 2022. She had asked herself what the point was given the plan for adoption.

54. Notwithstanding the fight that she displayed for R, I did not get the impression that she was someone who truly took responsibility for her past mistakes and her answers did not suggest that she had developed insight into the harm that R had been exposed to or the effect that her dishonesty had on the Local Authority's ability to keep R safe. At the heart of her evidence was someone who still sought to blame other people and events for the problems that she faced.

55. She said in her evidence in chief that she had only recently learnt that the social worker wanted to assess her partner of two years Mr A. She said that both she and he were open to assessment. They have a wonderful positive relationship.

56. She said that her other children have a very strong bond with R and her adoption would be extremely harmful to them, following on from the loss of their grandmother. They see her once a month.

57. During cross-examination by the Local Authority she accepted that she had been unable to commit to contact even when the plan for R was not adoption. She managed only 12 of 36 contacts previously. She explained that she was under pressure at that time as she was struggling with the removal of R and she had a criminal trial in respect of the Father, where she would be giving evidence, to contend with.

58. The Mother accepted that R is slow to respond to her when she attends at contact and accepts that she has missed out on bonding time by not attending.

59. She said that she had improved her living situation, she now had a stable home and her mental health has improved.

60. She said that she had engaged with domestic violence work when a worker came to see her when R was born, and she impressed that worker with her knowledge of DV. She said that she did not need specific work and that Women's Aid agreed.

61. She did not agree that she was dishonest, but instead she said that she was scared about saying certain things. She accepted that she did not tell the truth about K potentially being R's father. When she was asked who it could be she did not volunteer his details. She accepted that the truth only came out when he was arrested. She had been seeing him after R was born and he had been seeing R. She admitted that he had asked her not to tell the Local Authority that he was the father and she accepted that he had been abusive to her.

62. When the Father was seeing R there was an interim care order in place and the Mother had signed up to a working agreement that can be found at C84. The agreement was discussed at Court, and she remembered the discussion. She admitted breaching that agreement by not informing the Local Authority of her relationship with Mr A and by allowing Mr A to be present at the time of the arson attack at her property.

63. There was a further breach of the working agreement when she permitted her former partner to have contact with R. She said that this was because she was upset after the arson attack.

64. She ultimately accepted that in exposing R to K she put her at risk of harm but she was slow to make that admission.

65. The contents of the parenting assessment at C261 were put to her. This assessment took place in March 2023. Notably this was some way into proceedings and not at their outset when the Mother accepts that she made poor choices in terms of her openness and honesty. Her responses during that assessment give the appearance that she was only prepared to disclose the violence the Father subjected her to in revenge for his revealing details that they had been together after R was born. They also suggest that she was continuing to be dishonest about where and when she had met the Father as there were several contradictory accounts recorded in the assessment. It seems clear that she was withholding his having been round to her house.

66. Ms Ismail questioned the Mother about the lack of assessment of Mr A. Dates of proposed assessments at C292 were put to her. The Mother mentioned her medical procedure in February 2023 and said that the fallout from that prevented an assessment at that time. Her explanation as to why she was upset that a letter had been sent to Mr A and why she had not responded to the social worker as recorded at paragraph 10.7 was difficult to follow. At this point she became angry at the focus on her conduct at a time when she was struggling medically and subsequently when her mother passed away.

67. When assessing the Mother the case of Lucas reminds me, the fact that she has not told the truth about certain matters in proceedings does not mean that she has lied automatically about other matters, however it suggests to me that she is prepared to

hide the truth when it comes to matters that could affect the prospects of having her child remaining in, or being returned to, her care.

68. I will now make findings in relation to the Mother by reference to the concerns identified by the Local Authority.

Domestic Abuse

69. The evidence of the Mother is that she was a victim of domestic abuse in her relationship with the father of her three older children, Mr R. Notwithstanding reports from the public of several incidents of violence towards her she sought to minimise his role in those incidents and even gave the impression that she was critical that he assaulted her in public as can be seen at C44. I am satisfied that she was the victim of violence during an abusive relationship with Mr R, and that she was unable to identify and act on the dangers to her and her children in being in an abusive relationship both during the relationship and when reflecting on it during her initial parenting assessment.

70. The Mother supported the prosecution of Mr R, yet immediately after the injunction that was put in place ended, she resumed the relationship. This was at a time when she had felt unable to look after those children.

71. She had maintained that there was no domestic abuse in her relationship with the Father, yet this year disclosed a serious violent incident in 2018 where the Father gave her a black eye. Worryingly, she had not mentioned this previously and apparently only mentioned it in revenge as I referred to previously.

72. The social work evidence at C288 records the Mother having been seen with black eyes on three different occasions whilst in a relationship with the Father, along with evidence that the Father was checking up on her through her phone, which included deleting messages or numbers on it. It is difficult to place weight on the Mother's account as to the frequency and extent of the abuse that she suffered from him given the manner and timing in which details have emerged from her. The third-party evidence is likely more reliable. The Father has provided no evidence in proceedings and offered a bare denial in his oral evidence that he was abusive to anybody.

73. I am satisfied that this was an abusive relationship and that the Father was physically and emotionally abusive to the Mother. I find that the Mother has not disclosed the full details of the abuse that she was being subjected to and only chose to reveal some of it in a tit for tat attack on the Father who had provided the social worker with a picture of himself in the Mother's bed with R. I note that the Guardian had tried to stress to the Mother that further input from Women's Aid was necessary as there has clearly been abuse following her previous work with them. The Mother takes the view that no further work is necessary and appeared to suggest that Women's Aid have agreed. I find it unlikely that the Mother has been frank to the Court and other professionals about the extent of the abuse that she has suffered in her relationships.

Openness and Honesty

74. There are clearly issues surrounding the openness and honesty of this mother. She accepts, and I find, that she has not been open and honest with the Local Authority. There were multiple breaches of the working agreement that she agreed to abide by

when these proceedings were commenced and when R was living with her. She permitted contact between R and at least two abusive men, Mr R and the Father, without informing the Local Authority, she failed to report the arson attack on her car and she failed to inform the Local Authority about the relationships that she was involved in.

75. Of itself a lack of openness and honesty is not a bar to bringing up children, however I am required to analyse the effect of it. The Mother seeks the return of R to her care. It would be inevitable that such a return would be alongside a care order, or at least substantial local authority involvement, given the history and the presence of unassessed risks in her life.

76. The Mother spoke well about understanding the importance of being open and honest and how a lack of honesty has affected her previously and has not worked for her, however there is no compelling evidence that she has truly understood the need to continue to be open and honest. It must have been obvious to her previously that the health and safety of her children was likely dependent on it, particularly after the arson attack in 2021.

77. The risks arising from the lack of openness and honesty are multiple. This is a mother who has been involved in repeated abusive relationships. The extent of the abuse is such that a lack of honesty would pose a considerable risk to R's safety. She has a history of concealing information about her partners when she perceives that disclosure of the information may be harmful to her prospects of retaining her children and that behaviour has put R in harm's way.

78. She would be required to work with the Local Authority, informing of them of relationships starting or ending, of incidents that occur both in and out of relationships and identifying potential perpetrators of harm before they are introduced to R, ensuring that any risks are properly assessed.

79. Her history suggests to me that she does not have the insight to identify risks and she is not able to prioritise her children over her own wishes and needs. That happened with her older children, and it happened with R when she was in utero and after she was born and was living with her. Her failure to be frank about the identity of this father placed both her and R at considerable risk from him.

Commitment to R

80. I am troubled by her commitment to R. She has only attended three of eleven potential contacts this year. Her scheduled contact is only for sixty minutes every three weeks. I understand entirely that she may have given up or felt that things were hopeless, given the early indication that the Local Authority were considering adoption and given the regrettable length of these proceedings, however she still seeks to argue that R be returned to her care.

81. That level of contact is extremely low for a parent of a young child, and she has not been able to maintain it. Her contact has decreased through proceedings as her commitment and attendance were not as would be expected. She describes health problems and bereavements, and whilst I am sympathetic to her around those factors, being the parent of a child does not stop whilst life's challenges occur. It is notable

that it appears that she was unable to manage her older children because she became overwhelmed. It would be harmful for R to be returned to a parent who was not sufficiently committed to her and who would be unlikely to maintain her parenting under the challenges that life presents.

82. The evidence is compelling that the Mother failed to prioritise the assessment of Mr A. The social worker's evidence is clear, and it I find that the Mother knew the importance of the assessment of Mr A. Both he and she were given multiple opportunities for him to present himself for assessment which they did not take up. She should have been moving mountains to make sure that everything was in order for R's return.

83. Her failure to ensure that Mr A has either been assessed, or in the absence of assessment has been eliminated from her life, demonstrates that she does not understand what she needs to do to have the best shot at having R returned to her, and even more importantly, she is not able to appreciate that demanding that her partner be assessed would be the safe way to proceed should R be returned to her care given the history.

84. The sad truth is that the Local Authority sought to promote a care plan that allowed R to return home to a Mother who had substantial risks associated with her, which included her ability to cope and her ability to protect her child from domestically abusive men. Instead of realising the value of the opportunity that she had been given, she failed to work openly with them, and in doing so she exposed both herself and R to significant risks. Even two years into these proceedings her lack of openness in the parenting assessment demonstrates that she has still not learnt that safeguarding children requires professionals to be made aware of all potential risks that they may be exposed to.

Capacity for Change

85. The Mother seeks further assessment. There is no solid evidence that she is committed to making changes, or that she would maintain any commitment given that she has not managed to sustain any real positive change throughout these proceedings which have been long and drawn out. She failed to take advantage of the delay caused by the adjournment of the final hearing in early 2022. I cannot accept that she is likely or able to improve her commitment and develop the required insight within R's timescales.

86. I cannot accept at face value the Mother's assertion that her life is now calm and she is more settled with Mr A. This is a mother who has consistently failed to inform the Local Authority about dangerous situations that have occurred. She is clearly motivated to hide the truth from them should the truth impact on her ability to have R in her care. There has been reference to a concerning incident in November 2021 as recorded at C292 where the police were contacted and the failure to have Mr A assessed and the apparent resistance to social work engagement with Mr A noted at paragraphs 10.6 and 10.7 on C292 are red flags.

The Father

87. The Father gave evidence through an interpreter. He had not filed a final statement as directed and had not responded to threshold. As a result, I had deemed his agreement to the pleaded threshold in a previous order.

88. Notwithstanding the lack of any filed evidence on his behalf I permitted him to give evidence. I directed his evidence in chief and he was then subjected to cross-examination from Miss Harrison-Fisher and Ms Ismail. Ms Birtles chose not to question him. The Father told me that his preference was for R to be returned to the Mother. If that was not possible, she should be placed in his care. If neither of those is possible then either the Mother's wider family or the connected carers he proposed would be preferable to adoption.

89. Under cross-examination he said that his contact with R was good and that she loves him. He accepted that he did not have leave to remain in the UK but denied that he would be deported. When the Home Office notice of deportation at C347 was put to him he said that there was no risk of deportation and that he will not be deported. He accepted that he was not allowed to work in the UK and had no recourse to public funds. He said that he would not ever claim benefits. When it was put to him that this would mean that he would have no money to look after R he explained that he had properties in Kurdistan which he could sell and that his family was very wealthy.

90. When it was put to him that he was domestically violent to the Mother he denied this. He said that they never had any problems. He said that they had arguments, but only arguments. He denied that he was responsible for setting fire to her car and other cars even though he pleaded guilty to it. He agreed that he told probation that he did this but said that he told them and the Court that he did it to receive a lesser sentence which is what his barrister told him to do.

91. It was put to him that he had said that he was living with the Mother until 10 days before the attack. He initially denied having told the social worker this, however it is recorded at paragraph 8.11 on C286. When the relevant page was put to him he admitted that he told the social worker this but that he was not telling the truth and that this was the only time that he lied to her.

92. He accepted that he was in a relationship with a new woman '*to some extent'* but he was of the view that who he sees is of no relevance to the social worker. When it was put to him that there had been no assessment of a partner, which would be relevant to R's safety if she was to be returned to him, he said that he did not have a partner but that there was someone being lined up for him to marry.

93. He admitted that he had a previous conviction for affray but denied that he had attacked a man with a hammer during that incident as had been recorded in a pre-sentence report in the bundle. He said that he had not done that and pointed out that a sentence for such an attack would be years in prison, which seemed to me to probably be correct.

94. He said that he thought that the social worker was lying and he denied being abusive towards her or about her. The probation report at C347 was put to him. The probation worker describes him referring to the social worker as 'the enemy' and 'that bitch'.

He accepted calling her the enemy but nothing else. He denied having problems with people in authority, provided that they acted legally.

95. Under cross-examination from Ms Ismail he again stated that he pleaded guilty because of advice from his barrister. He said the same of his account to the Probation Service recorded at C235. He denied that he needed the interventions referred to at C241 as they were based on an account that was not true. He said that notwithstanding the Probation reports in the bundle his previous probation officer had told him that he did not need to do any work as he was a calm person.

96. He denied what the Guardian reported at E90. She stated that the Father had told her that probation had told him that he needed to carry out domestic abuse, anger management and mental health work or he would go to prison.

97. He said that the probation officer's evidence in the bundle should be ignored because it is not true, he has been colluding with the social worker and this officer had told him not to give a full account of his position in court as it would not help him, which was an attempt to get him to harm his own case.

98. As far as the Father is concerned, I make the following findings:

99. I did not find the Father to be a reliable witness. On his own case he has lied to the criminal courts and probation in pleading guilty to the arson attack and he admitted lying to the social worker when describing when he lived with the Mother. He changed his evidence to me mid-answer from 'having a partner '*to some extent*' that did not need to be assessed as it was none of the social worker's business', to only 'having someone lined up to marry'. Essentially, his evidence to me appears to be that none of the accounts from him that are available to me are true.

100. He has been convicted of the arson attacks following a guilty plea and it would not be appropriate for me to go behind that conviction. I find that he is not telling me the truth when he says that he was not responsible for the attacks. He appreciates how difficult the fact of the attacks is for both his case that R should be placed with him and the Mother's case that she should be returned to her care. If he carried out those attacks, he put the Mother and R's safety at risk as R was in the house with the Mother when the cars were attacked, and the Mother failed to protect herself and R whilst a working agreement was in place.

101. I find that he was responsible for violence and abuse within the relationship. There are multiple reports from third parties in the papers of black eyes and bruises on the Mother when she was with the Father and I accept the Mother's evidence that he was abusive to her, although for the reasons I have already given I find that he was significantly more abusive than she has admitted.

102. There is no foundation or evidence to support his assertion that multiple professionals are colluding to sell his baby, and that seems to me to be extremely unlikely. I do not find it likely that his guilty pleas and the detailed description of his past difficulties, problems with anger and his mental health were fabricated by him or that he was advised to plead guilty by his barrister to an offence that he denied. It is much more likely that his guilty plea was an acknowledgment that he was responsible

and that he wanted to reduce the sentence to be applied and that his accounts to probation reflect his acknowledgement of the problems that he faced. It is only now that he realises how those problems will affect the outcome for R that he seeks to say that they were all fabricated before creating a conspiracy between professionals to remove and sell his child.

103. I accept the Probation Service analysis of the risk that he poses in the document at C344:

'The risk is that of serious physical harm or death as a result of a fire as evidenced by the index offence. It is noted that one of S's children were present in the house at the time of the offence and there was the potential for the fire to spread to the house. There is also the risk of psychological or emotional harm being caused should a child witness such an incident. Risk is assessed as HIGH'

104. In respect of addressing the risk the Probation Service stated at C347:

'K has been referred to several risk reduction programmes to address his offending behaviour while under licence and supervision. However due a combination of lack of resources, ineligibility for some of the programmes, as well as K's reluctance to engage in any risk reduction work he has not completed any of the core risk reduction work to date.'

105. He has still not undertaken any of the work that he has been directed to and it is therefore likely that his risk remains high.

106. In addition, his position in the UK is precarious. He has no right to remain and has no recourse to public funds. He is subject to a deportation order. Further, he has limited experience of caring for a child and the assessment of him identifies the need for a high level of support from professional services.

<u>The Guardian</u>

107. The Guardian was measured in her evidence. I found her to be another straightforward witness. She stated that, having heard the evidence, she felt even more strongly about the position that she had advanced.

108. She did not support further assessment of the Mother, such as the assessment in a mother and child placement that the mother had proposed. The proceedings have been ongoing for a significant period of time.

109. She said that it was difficult to identify problems in the Mother's current relationship as her partner had not been assessed.

110. She agreed that the loss of her relationship with her siblings would be a loss to R. She said that there may be cultural heritage issues for R should she be adopted given her mixed ethnicity but she did not see this as a bar to adoption.

111. She was of the view that the Mother's vulnerability within her relationships was one of the primary concerns and without assessment of her partner it was still a

significant concern. She accepted that the Mother's experiences this year have affected her ability to build a bond with R.

112. She agreed that the quality of the contact between the Mother and R was good contact. She agreed that adoption should be a last resort however she denied that the Mother's '*quiet and calm life'* as it was put to her was an alternative. She was of the opinion that the Mother had not demonstrated the necessary changes during these proceedings. She had not sufficiently addressed the vulnerabilities arising out of her abusive relationships and she had not reached a position where she had managed consistent frequent contact with R and had not taken advantage of the long delay in proceedings to mount a case for the resumption of their relationship. In those circumstances she could not support further delay for further assessment of the Mother that is unlikely to prove to be successful.

113. In response to a question from the Father she denied that she was colluding with the social worker and the independent social worker. She said that she had never spoken with CW and had formed an independent view from NM, although she had discussed the case with her.

114. She remained of the view that the only realistic option in this case was adoption.

Threshold

115. A final agreed threshold document became available at the start of day three of the final hearing.

116. The agreed threshold states as follows:

> *The Local Authority asserts that the threshold criteria at s.31 of the Children Act 1989 is satisfied as at the date of protective measures were taken on 7th April 2021 (when R became subject of proceedings under section 31 Children Act 1989). R had suffered or was likely to suffer significant harm, attributable to the care given to her, or likely to be given to her, not being what it would be reasonable to expect a parent to give to a child.*
>
> *The nature of the harm/likelihood of harm alleged is:-*
> *(i) Neglect;*
> *(ii) Impairment to the child's physical, intellectual, emotional, social and behavioural development;*
> *(iii) Impairment to the child's physical and mental health;*
> *(iv) Impairment suffered from seeing or hearing the ill-treatment of another.*
>
> *The harm/likelihood of harm is based on the following facts and matters:-*
>
> *1. Previous Proceedings*
> *a) Ms S has three elder children who are no longer in her care, who reside with their great uncle and aunt, pursuant to a Special Guardianship Order, made by this court on the 1st February by DJ A.*

b) Those children were exposed to domestic violence between their parents.
c) The child is at risk of significant harm as a result of the ongoing domestic abuse between the mother and the father of R's half siblings, AR.

2. Domestic Violence
a) The mother's romantic relationships have featured domestic abuse and violence which has placed the child at significant risk of emotional and physical harm and would continue to expose the child to an ongoing risk of significant harm.
b) The parents' relationship featured domestic abuse and violence which has placed the child at significant risk of emotional and physical harm.
c) The mother was attacked by her maternal aunt which exposed the child to significant risk of physical harm in utero.
d) Despite undertaking a significant amount of work with the Early Help Vulnerable Babies Team, an IDVA and Women's Aid, the mother continues to minimise the domestic violence in her relationships and has failed to demonstrate sufficient insight into the potential impact of this on the child continuing to place the child at risk of significant harm.

3. Insight
a) The parents have limited insight into the risks highlighted by the Local Authority which places the child at continued risk of emotional and physical harm.

4. Mental Health and Emotional Wellbeing
a) The mother has suffered with poor mental health and emotional wellbeing which has previously impacted upon her parenting ability and places the child at risk of suffering significant emotional harm and neglect should her mental health and/or emotional wellbeing deteriorate.

5. Dishonesty
a) Parents have been dishonest with professionals and have failed to work openly and honestly with professionals on a consistent basis. The parents inability to consistently work openly and honestly with professionals places the child at significant risk of physical and emotional harm.

6. Housing
a) The mother has failed to budget appropriately and has incurred housing debt placing the child at risk of homelessness and neglect. As a result of this the child is at risk of significant emotional harm and neglect.

117. Those facts were agreed by the Mother as being made out as at the agreed relevant date of 07 April 2021 when the Local Authority application was made to the Court. I had previously determined that the Father was taken to agree threshold given his failure to file a statement challenging it. The amended threshold is almost identical to the version that I deemed the Father had agreed. In any event, I am satisfied on the evidence that I heard that each of the agreed facts has been made out on the balance of probabilities.

118. As it is agreed that threshold is met in this case the only consideration for the Court is what the appropriate welfare decision should be.

Welfare decision discussion

119. The options presented to the Court for R are as follows:

i) Returning to the Mother or the Father, under a care order if necessary;
ii) Placement with the Father's preferred connected carers;
iii) Long-Term Foster Care;
iv) Placement for adoption.

120. As I indicated earlier, the decision-making process requires a holistic balancing exercise. I must consider all of the proposed options before determining the most appropriate way forward for R.

Rehabilitation to the Mother

121. The Mother seeks for R to be returned to her care. During the hearing it became clear that her position was that there needs to be further assessment and work carried out before a final decision is made. Her primary case is that the Local Authority's plan should not be approved and a mother and child placement should be explored under a continuing interim care order.

122. A return to the Mother, or an extension of proceedings, would avoid the stigma that foster care or adoption may cause and would allow her to form extended family relationships with her siblings. It would avoid the harm likely to be caused if the relationship were to be severed. R would have the opportunity to build relationships with her blood relatives. The Mother loves her and is desperate for her to return to her care. There are few reported incidents or difficulties in her current relationship. Her heritage would be maintained.

123. Those positives have to be balanced against the risks that a return to the Mother would entail. I have identified those risks in some detail already in my analysis of the Mother. I am not satisfied that the Mother has the level of insight required to keep R safe from perpetrators of domestic abuse. I am not satisfied that the Mother is physically or emotionally robust enough to manage the challenges of parenting R and I am not satisfied that she has demonstrated the level of commitment expected of a parent who is in a position to have a child returned to her care. I am not satisfied that she can be trusted to work openly and honestly with the Local Authority.

124. The idea that she needs additional time to make the changes necessary is difficult to understand or support given the extraordinary length of these proceedings to date.

Rehabilitation to the Father

125. As with the Mother, placement with the Father would see R remaining with her birth family. She would be able to maintain relationships with her siblings and both parents. The stigma of foster care or adoption would be avoided. She would avoid losing the positive relationship that she has developed during family time with the Father. She would maintain her cultural heritage which is likely to be important to her.

126. Those positives have to be balanced against the risks that a return to the Father would involve which I referred to earlier. The Father has a troubling history. I have found that he is a perpetrator of significant domestic abuse who has not addressed his abusive nature or his anger with the appropriate assessment and/or treatment. He carries with him a high risk of harm to R. He lacks experience in parenting and his status in the UK is liable to end at any time as a deportation order is in force.

Placement with Mr F and Ms M

127. There is no positive assessment of the connected carers. Although an initial assessment was positive the carers failed to demonstrate commitment to the process and the independent social worker could not support R's placement with them. Neither they nor the Father chose to challenge the assessment through the route that was specifically outlined to them through court hearings and in correspondence. Evidence undermining the negative assessment was not filed or served despite court orders directing how that evidence could be provided.

128. The carers were identified in February 2022. It appears to the Court that it would not be appropriate to infer that they were committed to the process. They have their own children and Mr F is busy with work. The Father is a dangerous individual, and the documents suggest that they were informed as to the risks that the Father or his associates may present to them and their family. There could be a number of reasons why they would not be committed to the process. I accept the evidence from CW that she made substantial efforts to complete the assessment process and I accept her opinion that the carers did not demonstrate the level of commitment expected to care for R by ensuring that the sessions were attended or appropriately rescheduled. There are no other positively assessed alternative carers.

Long-Term Foster Care

129. Placement in long term foster care is the Mother's secondary position. If I do not accept her argument that the proceedings should be further adjourned in order for her to demonstrate change, then the Mother contends that a long term foster placement would be preferable to adoption.

130. Placement in long-term foster care would carry with it the potential to retain her family connections and the cultural ties associated with her family, however the relationships would likely be limited as a result of the need for her to gain a sense of identity in her placement.

131. The benefits have to be weighed against the evidence that suggests that long term foster care is associated with poor outcomes for children who lived through that experience. There is a dearth of available foster places at present. Foster placements regularly end and can end at short notice. There are real concerns that foster care can result in a lack of permanence and can be significantly damaging to a child's identity and their ability to form attachments. The stigma of being a looked after child can weigh heavily on children and repeated exposure to parents who are dangerous or inconsistent, as I have found is the case here, could severely harm a child's development and sense of identity.

Placement for adoption.

132. The Local Authority contend for a placement order with a view to adoption. Placing R for adoption would be likely to keep her safe from physical and emotional harm and meet all of her basic physical needs. It would also be more likely to provide her with permanence and stability, giving her with a family to belong to throughout her life. She would likely not be subject to any subsequent placement moves and she would likely be free from Local Authority involvement.

133. However, adoption would separate her forever from her birth family and could expose her to uncertainty in her emotional security throughout her life and could result in a lack of understanding of her place in the community. She may well harbour feelings of rejection by her birth family which could affect her long-term self-esteem.

134. In this case separation from her birth family permanently is likely to cause her harm as she has a positive persisting relationship with her older siblings. She also has parents who love her, albeit the Mother's commitment to that relationship has been lacking.

135. There is a risk of placement breakdown following adoption however that risk is much lower than in cases involving long term foster care. It is undeniable that the delay in achieving her permanent placement is likely to be causing her harm.

136. R is having positive contact sessions with the Father. That would be an immediate and significant loss to her were the Court to approve a plan of adoption. The same is true of the relationship that she has with her older siblings who she sees every month, although the Local Authority have indicated a willingness to explore whether or not that relationship can be maintained through any adoptive placement. There is also potential for there to be harm due to a loss of her heritage if her mixed British and Kurdish ethnicity cannot be reflected in any adoptive placement.

137. A decision that permits adoption must only be a decision of last resort where no other placement is possible.

Welfare decision conclusions

138. I am required to look at all of the realistic options holistically to find the best solution for R's welfare. It cannot be understated how harmful this extended period of foster care will have likely been for her. The period between birth and two years old is the time when the majority of attachments are made by a child. She has been denied the opportunity to make attachments and form bonds with her permanent carers for an extraordinary period of time. Having considered all of the options in the round I am of the view that only adoption will do. R remains a young child and there will be optimism that she can be matched in fairly short order.

139. I do not find either parent's proposal to be a realistic option as there would be an unacceptable level of risk to the safety and welfare of R. Assessing risk where the subject child has not been with a parent for all or most of their life, and during proceedings, can be difficult. Each parent may argue that they have not been given the chance to prove that they can care for the child, but the main potential stressor has been absent whilst they look to make changes and yet positive change cannot be demonstrated. Even without R's presence the Mother has not managed to reach a position where a return to her is a viable prospect notwithstanding the length of

proceedings and I find that she is unlikely to be able to maintain changes within R's timescales, having regard to the test in Re S (A Child) [2014] EWCC B44 in respect of which I made findings earlier when I considered her evidence.

140. In my judgment there has been insufficient change demonstrated to satisfy me that a return of R to the care of either parent can be imminent. The Mother currently has limited insight into the risks that she has exposed her to. In my judgment there is no safety plan that could guard against those risks either now or in the short to medium term. There are issues as to the openness being displayed by both parents which would affect the Local Authority's ability to work safely with them and the harm that R would likely be exposed to would be significant.

141. These proceedings should have concluded a long time ago. The fact that they have been extended for the reasons I have explained does not justify R being further marooned in foster care whilst the Mother seeks to establish that she can make the necessary changes.

142. I have formed the view that the only realistic option for R is adoption. If placed for adoption R will grow up in the knowledge that her adoptive family are only a part of her history and that her understanding of the remainder of her history is limited, although she will have life story work to help bridge the gaps. That work can help bridge any cultural absences that may result from the separation with her mixed heritage parents, She is still young, and she remains at an age where she will have an opportunity to form settled and secure emotional attachments to her adoptive family. The clear harm caused by the likely loss of her sibling relationships is likely to be outweighed by the permanence to be provided to her by an adoption order and there is some, albeit limited, hope that the relationship could be maintained. I accept the professional evidence from NM and the Guardian in that respect.

143. I do not accept that exposing R to the inherent uncertainties and the lack of permanence that comes with long term foster care is a realistic option in her case. Maintaining a limited version of her sibling and familial relationships will not make up for the long-term harm that would likely follow. Outcomes for children who have been in foster care for the whole of their childhood are substantially below those who are given a fresh start and a chance for permanence through adoption.

144. In reaching the conclusion that nothing other than adoption will do for R I acknowledge that the parents oppose a Placement order. I am satisfied that the Local Authority assessment of them is appropriate.

145. I take the view that the physical, psychological and emotional needs of R throughout her life could only be properly met by a Placement Order as particularised in the Local Authority's care planning.

146. Accordingly, I have no alternative but to make the care and placement orders sought by the Local Authority and I approve the care plan. Whilst such orders are an obvious interference with the Article 8 rights of R and her parents, they are both necessary to keep her safe and are proportionate to the identified risks.

147. I will make the following orders:

i) R is placed in the care of Unnamed Local Authority;
ii) The Local Authority is authorised to place R for adoption. The consent of the parents to the making of placement orders is dispensed with on the ground that R's welfare requires that their consent be dispensed with.