

Neutral Citation Number: [2024] EWFC 103 (B)

Case No: ZE23P00309

**IN THE FAMILY COURT AT EAST LONDON**  
**Re T (Local Authority Response to Findings of Abuse)**

11, Westferry Circus,  
LONDON,  
E14 4HD

Date: 15 May 2024

**Before :**

**HHJ Reardon**

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**Between :**

**SR**  
**- and -**  
**RT**

**Applicant**  
**Respondent**

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Mr Gordon (instructed by Dowse & Co) for the Applicant  
Ms Ampaadu-Sackey (instructed by ITN Solicitors) for the Respondent

Mr Pye (22 April 2024) and Ms Bovington (15 May 2024) for LB Tower Hamlets

Hearing dates: 22 and 23 April 2024, 1 May 2024, 15 May 2024  
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**Judgment**

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

## Introduction

1. This case involves cross-applications for child arrangements orders for three children: A, a boy aged 13, B, a boy aged 11, and C, a girl aged 5. The parties to the proceedings are their parents, SR (“the mother”) and RT (“the father”).
2. On 17 November 2023 I gave judgment following a fact-finding hearing. I found that the father had perpetrated very serious domestic abuse against the mother. That abuse had included coercive and controlling patterns of behaviour, rape, and non-fatal strangulation. The father had also manipulated the two older children to copy his behaviour towards the mother, and had seriously undermined her relationship with them.
3. At the time of the fact-finding hearing the children were living with their father and had not seen their mother in person for several months. For obvious reasons, the situation urgently required the intervention and assistance of LB Tower Hamlets, which had been working with the family for some time.
4. It is very unfortunate that this assistance has not been forthcoming. The local authority’s response to my findings has been to reject them, in substance if not explicitly. Since the fact-finding hearing it has continued to work with the family on the basis that this is a case involving cross-allegations by both parents in a high-conflict scenario, and that the children are safe in the care of their father.
5. The local authority’s approach has been misguided, wrong in law, and dangerous.

## Background

6. The background to this case is set out in full in the judgment I delivered at the conclusion of the fact-finding hearing. The following is a brief summary.
7. The parents were married for about 15 years. The marriage broke down in 2022 after the mother reported that the father had raped her. The father left the home but moved back in late 2022, and the final separation took place in February 2023. The children made allegations at school that the mother had been physically and emotionally abusive towards them and the local authority and police became involved. The mother left the family home and the father remained living there with the children.
8. Contact between the mother and the children took place intermittently for a few months, supported by family members, but stopped in mid-2023. By the time of the fact-finding hearing in November 2023 the children were seeing their mother over a videocall once per week.
9. After the mother left the family home the local authority worked with the family under child protection plans and then child in need plans. A, who had been expressing suicidal thoughts, was referred to CAMHS. The father was closely involved in the CAMHS work, which proceeded, as far as I can tell, on the basis that it was only the mother and not the father who had behaved abusively towards the children.
10. At the fact-finding hearing in November 2023 I found that (as set out in the order made at the conclusion of the hearing):
  - a. During the marriage the mother suffered significant physical and emotional abuse perpetrated by the father.
  - b. The relationship involved a high degree of coercive control. The father belittled the mother, taught her to believe she was worthless and played on her vulnerabilities.
  - c. The effect on the mother was profound and is continuing.

- d. During the parties' relationship the father behaved in an emotionally abusive manner towards the children. They were emotionally harmed by witnessing the abuse of their mother. The father also encouraged the boys to lack respect for the mother and to copy his behaviour towards her.
  - e. The father raped the mother on two occasions, in August 2022 and October 2022.
  - f. In November 2022 the father put his hands around the mother's throat and choked her with sufficient force that she believed she was going to die.
  - g. The father was physically abusive towards the children. He pushed B against a sofa in August 2022 when the family was on holiday. He also pinched C's chest as a form of discipline.
  - h. Towards the end of 2022 the mother's relationship with the children deteriorated to the point where at times she was physically aggressive, emotionally abusive and threatening towards them.
  - i. The mother's behaviour towards the children was the response of a victim of domestic abuse. It was triggered by the trauma she had previously experienced as a result of the father's behaviour towards her.
11. At the conclusion of my judgment I said this:

"There must be an urgent reassessment by the local authority of this case in the light of my findings. There is a situation before the court where the children are living in the primary care of a parent who has caused very significant harm to their other parent and to the children themselves, and they are at risk of losing their relationship with their mother."
  12. A direction was made, following delivery of my judgment, for the local authority to prepare a report under CA 1989, s37, and the matter was listed for a directions hearing.
  13. The next hearing took place on 18 January 2024. The local authority's s37 report was not available and an extension of time was requested. I made orders for direct contact to resume between the mother and children, to be supported by the maternal grandmother for the first three sessions but thereafter to be unsupervised. Time for the s37 report was extended.
  14. The s37 report was received on 5 February 2024. The local authority said that it did not intend to issue public law proceedings, but it would escalate the case to child protection and enter the Public Law Outline ("PLO") process.
  15. A hearing took place on 13 February 2024. After hearing submissions from the parties, and from counsel who attended on behalf of the local authority, I determined that the issue of the child arrangements could not await the completion of the assessments the local authority proposed should take place within the PLO process. The case was listed for final hearing on 22 and 23 April 2024 and the local authority was directed to prepare a s7 report setting out its recommendations in respect of the living arrangements for the children.
  16. At the hearing on 13 February 2024 I extended the time the children were to spend with the mother. There were some practical issues around how this would work, due to the fact that the mother did not have accommodation in the area of the children's schools, and there was some uncertainty as to whether the maternal grandmother, who lives nearer to the schools, could assist. Following the hearing, when these issues had been clarified, the parties agreed that the children would spend time with the mother at the grandmother's home on the following schedule:
    - a. Week one: from Thursday after school until Monday morning;
    - b. Week two: from Wednesday after school until Saturday afternoon.
  17. B and C have spent time with the mother in accordance with the order. A has not, although he has seen his mother from time to time. According to the local authority and the father, he remains strongly resistant to living with the mother on a full or part-time basis. The mother says that A's loyalties are divided and he is confused, but that the time he spends with her is positive.

18. The local authority's s7 report was filed on 10 April 2024. The recommendation was that the current arrangements should continue while the PLO process is completed.

### The positions of the parties

19. The mother seeks the return of all three children to her full-time care. She says that their current living arrangements put them at risk of harm. She proposes that she should return to the family home to care for the children, and the father should move out. She says that he should have contact with the children three times each week, but that this contact should take place in a public place (for example at the boys' football training), and that the longer contact which she proposes should take place at the weekend should be supervised.
20. The father's position is that the current arrangements for the children should continue. He relies, unsurprisingly, on the local authority's conclusion as expressed in its s7 report that "the children are not considered to be at risk of imminent or significant harm in my care".
21. The witness statement filed by the father after the fact-finding hearing does not refer to my findings at all. However in a position statement filed on his behalf for the hearing on 13 February 2024 it was stated that he did not accept my findings. The father confirmed that position in his oral evidence.
22. The mother's latest witness statement, prepared after the s7 report had been filed, made her position very clear. However, at the outset of this hearing both counsel informed me that they did not consider the court could yet make final decisions about the children's living arrangements because the local authority had not yet completed (in fact, had not yet started) various assessments it planned to undertake as part of the PLO process. It was suggested that the hearing should be adjourned for an unspecified period of time, likely to be for several months, and that the current arrangements should continue in the meantime.
23. I declined to adjourn the hearing. Indeed, when the mother's position was further explored it became apparent that even if a final decision were adjourned she would want the court to consider the interim arrangements, on the basis that she believed the risks to be too high for the current arrangements to continue. I took the view that in order to consider the arrangements for the children, on either an interim or final basis, I would need to hear evidence. I said I would defer the issue of whether any change should be interim or final until the conclusion of the hearing.

### The law

#### *Domestic abuse*

24. The approach the court will take to issues concerning child arrangements where there are allegations or findings of domestic abuse is set out in FPR 2010, Practice Direction 12J.
25. The relevant parts of PD12J, under the heading, "Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred", reads as follows:
  - "35. When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36.

(1) In the light of-

- (a) any findings of fact,
- (b) admissions; or
- (c) domestic abuse having otherwise been established,

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm-

- (a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and
- (b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The court should make an order for contact only if it is satisfied-

- (a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and
- (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.”

26. It will be apparent from those paragraphs that the assumption underlying PD12J, for obvious reasons, is that the children are not living with the abusive parent.

27. In my November 2023 judgment I referred to *Re: H-N and Others (Children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448 in the context of the fact-finding process. In *Re H-N* the Court of Appeal also highlighted the harm caused to children by domestic abuse, particularly abuse involving an element of coercive control:

“31. The circumstances encompassed by the definition of ‘domestic abuse’ in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse. In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular

factual incident that might be written down and included in a schedule in court proceedings (see 'Scott Schedules' at paragraph 42 -50). It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

- i) Is directed against, or witnessed by, the child;
- ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;
- iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;
- iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.

#### *The relationship between the local authority and the court*

28. It is well established that a local authority is not entitled to reject the factual findings made by the court and must adopt those findings as the factual basis for its assessment.

29. In *W (A Child) v Neath Port Talbot County Borough Council & Others* [2013 EWCA Civ 1227 Ryder LJ said:

“In that regard, one starts with the court’s findings of fact and moves on to the value judgments that are the welfare evaluation. That evaluation is the court’s not the local authority’s, the guardian’s or indeed any other party’s. It is the function of the court to come to that value judgment. It is simply not open to a local authority within proceedings to decline to accept the court’s evaluation of risk, no matter how much it may disagree with the same.”

30. The approach is no different in private law proceedings. The local authority (and any other agency assisting the court to determine welfare issues in Children Act proceedings) must carry out its work on the basis that the history has been established by the findings of the court: see *Re N (Sexual Abuse Allegations: Professionals not Abiding by Findings of Fact)* [2005] 2 FLR 340. In that case HHJ Rumbelow QC observed that because the experts instructed by the court had rejected the court’s finding that the mother’s allegations of sexual abuse were false:

“the children’s false belief system was not appropriately challenged and the mother was provided with a shield of professional backing with which to ward off any allegation that she was an unreasonable parent.”

#### *The Family Law Act 1996*

31. The mother seeks an occupation order, which will enable her to return to the family home and exclude the father from living there. The family home is subject to a joint tenancy and so both parents are entitled to occupy. In those circumstances the court’s power to regulate the occupation of the home is derived from FLA 1996, s33. The approach is as follows:

“(6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the housing needs and housing resources of each of the parties and of any relevant child;

- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
- (d) the conduct of the parties in relation to each other and otherwise.

(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—

- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
- (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

32. In *Chalmers v Johns* [1999] 1 FLR 392 the Court of Appeal held that the court should consider first whether the mandatory provisions in ss(7) applied; only if they did not would it be necessary to enter the discretionary regime set out in ss(6) and to exercise a broad discretion with regard to all the circumstances of the case.
33. An application for an occupation order may be made in any family proceedings: FLA 1996, s39(2). Where the order is made under s33 it may be made for a specified period or until further order: s33(10).

#### The evidence of the local authority

34. I observed in my judgment following the fact-finding hearing (at paragraph 33) that during their involvement with the family, both the police and the local authority had struggled to form a clear view about a situation where serious allegations had been made on both sides. I said that I did not criticise either agency for that and observed that sometimes it is “only through the forensic process of fact-finding undertaken by a Court” that the truth emerges.
35. That observation should have given a clear steer to the local authority that whilst it was acceptable for professionals to have kept an open mind about allegations made in the early stages of their involvement, once findings were made by the court these should form the factual basis for its future work with the family.
36. Unfortunately, the local authority’s approach has been very different.
37. The local authority’s first report, prepared under s37, demonstrates a startling lack of engagement with the findings of the court. They are referenced (very) occasionally, but far greater reference is made to the parents’ “allegations” against each other, and the impression given overall is that the allegations remain undetermined.
38. The finding of non-fatal strangulation, which is now well recognised as a very high-risk behaviour, is not mentioned at all.
39. The social worker who prepared the s37 report attended the directions hearing on 13 February 2024, and the local authority took the decision to instruct counsel also to attend on that occasion. The problems with the local authority’s approach were clearly highlighted in a position statement filed on behalf of the mother in advance of that hearing. I held back from expressing

my own views at that stage, for obvious reasons, but the local authority can have been in no doubt that one of the parties at least was alleging that its approach was seriously flawed.

40. The local authority therefore had an opportunity after that hearing to review its approach, and to consider whether, in the s7 report which had now been directed, it should reflect on the court's findings of abuse and the consequences of those findings in terms of harm, risk, and the overall welfare of the children. It did not take that opportunity. The s7 report prepared in April discloses no discernible difference in the local authority's approach. Much of the report is cut and pasted from the earlier s37 report. If anything, the court's findings are less prominent in the second report than they were in the first.
41. A strong theme in both reports is that despite the findings of the court, the local authority does not believe the father to have perpetrated abuse. Instead it persists in categorising this case as one of harmful parental conflict, with the majority of the blame lying at the mother's door. The following examples illustrate this.
42. A section of the s7 report deals with the "capability of the parents to meet the needs of the children". Under the subheading, "ensuring safety", the mother's allegations against the father, and his against her, are recorded, with no reference to the findings made by the court. This section concludes, "Ms R does not deem the children safe in the care of their father, however professionals and health have reported otherwise."
43. Under a subheading, "guidance and boundaries", the report records that the parents "have used the children to build allegations of abuse against each other." This is a gross distortion and misrepresentation of my finding on this issue. I made no finding of this nature against the mother. I found that the father had encouraged the children, especially the boys, to belittle and challenge the mother and as a result had seriously undermined their relationship with her. I made no equivalent finding against the mother.
44. Under the heading, "Harm that the child has suffered or is likely to suffer" the following passage appears:

"Mr T has denied all abuse and there are (sic) still an ongoing police investigation for the last incident, but the second allegation of rape was NFA'd by the police. Mr T reported he has recognised the abuse that Ms R alleges and dismisses them all. Mr T will need to reflect on his behaviours in the relationship and during the court proceedings he will need to respond to all of these allegations accordingly. In addition, Mr T has not been reported to exhibit negative behaviours during his engagement or communication with professionals. Mr T was accused of physical chastisement last year but the children have rescinded this. This could be that these allegations did not occur, or the children felt like they cannot speak about these further."
45. I had, of course, made findings that the father had raped the mother on two occasions, and that he had perpetrated physical abuse against the children.
46. At the end of the s7 report, finally, there is a reference to the findings made against the father, including the findings of rape and coercive control (but not the finding of strangulation). After summarising those findings the report concludes, "it is therefore noteworthy to consider whether a Supervision Order will suffice in this regard." The suggestion here is that the local authority takes the findings seriously and is considering whether the children should be removed from the father's care. However in the next paragraph it is said that the local authority's view is that initiating an application for a care or supervision order would be a "disproportionate" intervention. The reasoning is difficult to understand.
47. I view both of these reports as a completely inadequate response to findings made by the court of serious physical, sexual and emotional domestic abuse perpetrated by the father against the mother, and physical and emotional abuse by the father of the children.



48. As to the living arrangements for the children, the local authority's recommendation in its s7 report is brief:
- "Having assessed the situation and the children's welfare, [the local authority] took the decision that it is in the best interest of the children for them to remain in their father's care, with ongoing contact to their mother which appears to be working well, whilst further assessments will be completed under the proposed PLO process."
49. The author of both reports, Ms E, gave oral evidence at this hearing. She did not dispute the suggestion put to her that the court's findings had played a relatively limited role in the local authority's thinking. Her explanation was as follows:
- a. The local authority's approach had been driven by the welfare of the children, and not the behaviour of the parents;
  - b. The local authority would therefore look at the case differently from how a court would look at it;
  - c. The local authority would take note of any findings made by the court, but would not "dwell on the report (sic) of the court to make its decision, because we are dwelling on the circumstances of the children and whether they are at significant risk of harm or not";
  - d. From the local authority's experience, there was "not much evidence" of harm to the children;
  - e. The assessments which the local authority intended to commission under the PLO process would help to answer the court's "query" about risks of harm to the children.
50. Ms E had not herself, she said, considered what the local authority's approach should be to findings made by the court and was not aware of PD12J, although she told me she thought that this would have been considered by the local authority's legal department during the legal planning meeting. She made it clear during the course of her evidence that the local authority's decision to initiate the PLO process was driven solely by the clear message sent by the court that its work with the family should be escalated. The local authority's own view as to the level of concern, she told me, had not changed as a result of the findings made.
51. In the second, s7 report it is recorded that:
- "Mr T's willingness to put his hands up and accept interventions to improve his position as a father to his three children is an indication of his acceptance of the court's fact-finding report and his determination to make amends towards achieving a better outcome for his children."
52. In fact, it transpired during Ms E's oral evidence that she had had no discussion at all with the father about the findings made against him. Asked, she said that she had been asked by the proposed provider of domestic abuse work to confirm that the father was willing to engage; she had asked him that question, and he had said he would. The most superficial enquiry of the father would have elicited the fact that he rejects my findings in their entirety.
53. The local authority's approach in this case amounts, in my judgment, to a serious failure in its child protection responsibilities. The local authority had a responsibility, after findings were made, to work with the family on the basis that the court's factual findings formed the basis for its assessment of risk. Instead, with its strong support for the father as carer of the children, and its failure to hold him to account for behaviours that the court has found proved, the local authority has been facilitating and reinforcing patterns of significant domestic abuse.
54. I rely on the local authority's evidence of the children's wishes and feelings, as they have been expressed to the social worker during her direct work with the children. Otherwise, it seems to me that I have no option other than to reject the local authority's analysis of risk, and that I can put no weight on its recommendations.

### The evidence of the parents

55. At this hearing the father gave evidence first. He was open about the fact that he did not accept a single one of the findings made against him by the court. He seemed completely untroubled by this, and I realised that in all of his interactions with professionals since the fact-finding hearing there has been no challenge at all to his rejection of the findings. It is perhaps hardly surprising, when the local authority has given the father the message that the findings of the court are simply an expression of opinion with which all participants in these proceedings are free to disagree, that he thinks that too.
56. When he was asked in oral evidence about his current beliefs and attitudes towards the mother the father repeated the account, which I have firmly rejected, that his marriage was a perfectly happy one until the holiday to Spain when the mother began to “behave strangely”. He repeated a concern for the children’s safety in the mother’s care, based on an allegation that she was mentally unwell, which he had raised during the fact-finding hearing and which I had rejected. This was clearly an ongoing attempt by the father to “gaslight” the mother by presenting her (true) reports of abuse as delusions caused by a deterioration in her mental health.
57. While the father gave evidence the mother was listening in court, but behind a screen. I had the opportunity to observe her reactions. When the father spoke about his rejection of the court’s findings, and drew on the local authority’s reports in support of his case, the mother’s devastation and fear were written on her face. I have already observed in these proceedings that I do not think this mother is capable of dissembling. I was watching a victim of abuse being forced to hear her significant trauma being denied in court by a perpetrator whose denials have been supported and condoned by professionals.
58. Since the fact-finding hearing the mother has undergone a Communicourt assessment, and she had the support of an intermediary at this hearing. During her evidence the mother asked for and was given help from time to time when a question needed to be re-phrased or a written document needed to be considered. She was clear, concrete and straightforward in her answers, as she had been when giving evidence before.
59. There was a discernible change in the mother’s presentation at this hearing. Where at the fact-finding hearing she had seemed exhausted and a little flat, she was now both more confident in herself and more accepting of her own past behaviour. The mother has set out in her written evidence the work she has undertaken over the course of the past year, both through the local authority and of her own motion, and explained in her oral evidence how this has benefited her. She has accessed counselling, which she said was “the start of getting better”, and has undertaken both the Freedom Programme and the “You and Me” programme, a specialist programme to help with her understanding of how to deal with the impact of domestic abuse on children.
60. Perhaps the most significant change in the mother’s circumstances since the fact-finding hearing has been that she is now spending time regularly with B and C, and less frequently with A. She has clearly made the most of the swift build-up in her contact with them and the relationships are recovering. She spoke with warmth and delight about the time they had spent together, and told me that alongside this she had also been getting used to becoming more independent herself, travelling around London and getting out and about with the children.
61. The mother was cross-examined quite intensively about the harm she herself has caused to the children. In contrast with the father, she demonstrated a full acceptance of the findings against her, including the finding that she had minimised her behaviour and its impact on the children. She told me how hard it had been for her to face up to what she had done. She said she had

used the break in contact to work on herself and to get herself in a position where she could once more be a good parent to the children.

62. The mother told me that she hoped in time that the children would forgive her for what she had done to them. She said that she would not forgive herself, but she would learn to live with what she had done.

### Welfare evaluation

#### *Wishes and feelings*

63. The children's current expressed views are summarised in the local authority's s7 report.
64. A has said that he does not want to spend time with his mother because he has not forgiven her for what she did to him. He has said that he loves both parents, but prefers his father because of the way he cares for him and takes him to his football activities. When asked directly about his living arrangements, A said that he was not sure if he wanted to see his mother regularly. He then said that he would harm himself if he were asked to go and live with her.
65. The local authority has taken A's views at face value. Given the findings about the father's influence over both boys, there is a need for caution. The mother said that when she has spent time with A he has not seemed afraid. She thought that A would find it very hard to say that he did not want to live with his father.
66. The mother has exhibited to her latest statement some Whatsapp messages passing between her and A. A's messages are brief but friendly. In October 2023 he said, "I just wanted to say that I miss you I want to call or speak to you".
67. A was working with a CAMHS therapist until September 2023. From what I can gather from the local authority records, the work with CAMHS appears to have been undertaken solely on the premise that A had experienced physical abuse from his mother, with little or no information being provided to CAMHS about the more nuanced and complex aspects of the situation. It is also clear that the father was closely involved in the CAMHS work and in regular contact with the therapist. A recommendation from CAMHS during the work was that the mother should apologise to A. I have real concerns that this work unintentionally perpetuated the father's false narrative, and that it has contributed to A's perception of his mother as the harmful parent and his father as the person who has his best interests at heart.
68. B's most frequently expressed view is that he would like his mother to return to the family home and his parents to live together as a family. When asked he said that if he had to choose between his parents he would choose to live with his father, but then said that he did not really want to have to choose but would prefer his family all to live together.
69. C has told the social worker "unequivocally" and on different occasions that she wants to live with her mother. When the social worker observed contact she was reluctant to leave her mother at the end, kept asking to stay and was extremely clingy to her mother.

#### *Physical, emotional and educational needs*

70. All three children have suffered harm through exposure to serious domestic abuse perpetrated by their father towards their mother and directly towards them. The boys have also been

harmed by their mother's behaviour towards them. As a result they are all vulnerable and have enhanced emotional and psychological needs.

71. The reports from the children's schools are recorded in the s7 report. The boys have from time to time exhibited some low-level disruptive behaviours. They appear to be more settled now, but are clearly still vulnerable. There are no concerns about C's presentation or behaviour.
72. B has an EHCP plan; he needs some additional support to manage his emotions and is currently being assessed for autism spectrum disorder. He is also a talented footballer who plays three times a week and has recently been on a football trip to Barcelona. Football is an important part of both boys' lives and they very much identify their father as the parent who supports them in this.
73. There are signs in the evidence of the consequences of the father's manipulation of the boys. When the social worker observed contact between B, C and the mother in January, B threatened his mother that he would not come for future contacts unless she gave back a phone she had taken from him.
74. The local authority intends to commission a global psychological assessment of the family as part of the PLO process, although this work has not yet started. This report is likely to provide further information about the children's emotional needs.

#### *The effect of change*

75. The children have, on the whole, experienced the period since February 2023 when they have been in their father's sole care as a period of relative stability after the events of late 2022. A in particular has clearly welcomed this.
76. If the children's living arrangements are changed as the mother proposes, it is likely that A will react badly, at least at first. He will find a move to his mother's care disruptive and may well feel very anxious about how she is likely to treat him. It is not surprising, given A's experiences, that he is fearful about the prospects of such a change.
77. B in my view would be able to adjust without difficulty to spending more time with his mother than he does at present. He clearly loves both his parents and values the role that each plays in his life. Although that is not his expressed preference his mother was his main carer for the first eight years of his life and, until 2022, his experiences of her were positive. The time he has spent with her recently has gone well.
78. C, in my view, would experience a move to her mother's full time care as a welcome and positive change and would embrace it.

#### *The children's age, sex, background and other relevant characteristics*

79. These are children of different ages and sexes. To an extent that has influenced their views. The boys plainly feel a need to have their father closely involved in their lives and I am sure he is an important role-model for them. However the father's influence over the boys also gives rise to risk, because I have found that he has encouraged them to adopt his own abusive and belittling attitudes towards their mother.
80. C is much younger than her brothers and has different interests. Her relationships with them, and theirs with her, are important, and she also loves her father, but it is her relationship with her mother which is central to her stability and wellbeing.

## *Harm*

81. I do not think it can realistically be disputed, given the findings I have made, that these children have suffered harm. The risk of that harm continuing, being reinforced or being repeated depends on my assessment of each parent's capacity to provide them with appropriate and safe care.

## *Parenting capacity*

82. The local authority is in the process of instructing the Eva Armsby Centre to carry out a full parenting assessment of both parents. I accept that those assessments will provide a fuller picture of the parents' strengths and weaknesses than is currently available. There is, however, other information about the capacity of each parent upon which the court can rely.
83. First and significantly, there is the fact that until 2022 there were no concerns raised about the mother's care of the children. As the non-working parent, she was their primary carer for 13 years. The local authority's initial assessment, carried out in August 2022 after the mother's first allegation of rape, identified no concerns about the mother's basic parenting skills. The children's health needs were appropriately met, the mother was well engaged with the school, and the assessment recorded warm and loving interactions between the mother and the children.
84. The mother's parenting deteriorated sharply and suddenly in late 2022. This was as a result of the years of abuse she had suffered, which finally took their toll.
85. In my fact-finding judgment I said that I thought any risk posed by the mother towards the children had diminished since the end of the relationship and that it was highly unlikely she would act in that way again. That view has been reinforced at this hearing as a result of the mother's evidence. She has demonstrated insight into the harm caused to the children and has done work to understand the dynamics of abusive relationships, such as the one in which she and the children were living, and the impact of abuse on children.
86. With those risks reduced, the mother in my view is an impressive parent who has the capacity to provide her children with confident, warm and good quality care.
87. The father has in many ways done a good job of adjusting to the role of primary carer since the mother left the home in February 2023. He has provided the children with stability and has ensured that their basic needs are met. They have always presented as content and happy since they have been in his care.
88. The father's involvement in the boys' lives has been especially welcomed by them. I note that in 2022 the mother told the local authority that the father had always been the breadwinner and had only had limited involvement in the children's day to day care. That has obviously changed and the boys now strongly value his commitment to their activities and their football in particular.
89. The father's capacity as a parent is, however, significantly compromised by my findings that he has perpetrated very serious domestic abuse against both the mother and the children themselves.
90. The risks the father poses to the children are both short and long term. It seems likely that the father's physically abusive behaviour towards the children has stopped or at least reduced since they have been in his full-time care: there have been no allegations made, and the children have

not been observed to be fearful of him. On a day to day basis, for the time being, they are probably physically safe.

91. However the father has behaved abusively in an intimate relationship over a long period of time and shows no insight into or acceptance of his behaviour. That means that he is likely to behave in the same way again, perhaps as the children get older and start to challenge him. Even if he does not behave in a directly abusive manner towards them, the longer-term impacts of the father's past abuse will inevitably cause the children to suffer harm.
92. The father has physically and sexually abused, humiliated and goaded the mother in the family home. Some of this abuse took place in the children's presence and it is not possible that they could have been unaffected by it. It will have left them deeply confused and frightened.
93. The father's behaviour in encouraging the boys to copy his abusive behaviours towards the mother creates a particular risk to them. The local authority has ignored this finding but I consider it to be significant. The longer the boys are exposed to their father's attitudes, the more likely it is that their relationship with their mother will be damaged beyond repair. In the longer term I consider it likely that the father's influence over the boys will impact negatively on their own future relationships.

#### *The range of powers available to the court*

94. The court has power to make any order regulating the arrangements for the children and is not limited to the proposals put forward by the parties.
95. The power of the court includes the power to adjourn the proceedings for further evidence to be put before the court.
96. These proceedings are family proceedings, so the court has power to make orders under the Family Law Act regulating each party's occupation of the family home.

#### Decision: child arrangements

97. The first issue I am required to decide is whether the evidence which is currently before the court is sufficient for the court to make any substantive decision about the children's living arrangements.
98. Ms E pointed out in her evidence that the PLO process would provide an opportunity for the children and parents to be assessed more thoroughly than has been possible thus far. That work is intended to include parenting assessments of each parent, a global psychological assessment of the family, and specialist domestic abuse work with the father.
99. The work proposed by the local authority for the most part has not begun, or is in its very early stages. There is currently no end date for the parenting assessments or the global psychological assessment. I would imagine that all those carrying out the assessments are likely to ask for a specialist report on the risk posed by the father. Although the referral for domestic abuse perpetrator work is in the process of being completed, it seems to me that the prospects of the father being accepted by the provider are slim. All in all, it is likely to be a number of months before the local authority gathers all of the evidence.
100. The local authority's view is that the children are currently well cared-for by the father and there is no reason to disturb their living arrangements for the time being.
101. I disagree with that view. The risks posed by the father to the children are significant. If they remain in his primary care the abusive dynamics in this family will be entrenched and the harm

they have already suffered will be perpetuated. It is now over a year since the mother left the home because the police and local authority viewed her solely as a perpetrator of harm and not as a victim. It is five months since the fact-finding hearing concluded.

102. The welfare evaluation I have conducted indicates that I have sufficient information on which to base a decision. That analysis leads inevitably to the conclusion that the mother is in a position to provide safe care to the children and that they are at risk of harm in the father's care. There are therefore compelling arguments in favour of a shift in the balance of care so that the mother resumes her role, as soon as possible, as the primary carer for all three children.
103. I must consider each child separately and their welfare needs overall. I am in no doubt that this will be the best outcome for C and B. It is what C very much wants to happen. B is more ambivalent, and on balance would prefer to live with his father, but would manage a transition back to his mother's primary care and the benefits of this for him, in my view, would far outweigh the disadvantages.
104. A's situation is complex. He is 13 and has expressed strongly negative views about the prospect of a move to his mother's care. These views have some foundation, although A does not have a full understanding of why his mother behaved as she did. There is a risk of harm to him if an order is made which forces him to accept that outcome without sufficient preparation and support.
105. If A does not move to live with his mother and B and C do, the children will be separated and their relationships as siblings will be affected. B is likely to find this particularly difficult. He looks up to A and would struggle with a living arrangement in which they are not placed together.
106. There is no easy solution in this case, but I am clear that the current arrangements are not sustainable and that change is necessary to reduce the risks of harm to the children.
107. In my judgment, the least harmful outcome for all three children is that B and C should move to the mother's primary care now. A, I accept, should not do so immediately but there should be a clear plan for him to join his siblings as soon as that can safely be achieved. In the meantime, the mother suggests that the maternal grandmother should support her with the care of A. She lives near to the family home and the mother and children have been spending substantial time there since February. She is willing to have A stay with her. I am hopeful that she will be able to assist with a transition plan, so that A's return to his mother's care takes place at a pace that he is able to manage.
108. The mother's proposals for the children's time with the father, in my judgement, strike the right balance between maintaining their relationship with him and ensuring that their primary home base is with their mother. She suggests that they should see him three times each week, twice after school and for six hours each Saturday, but not stay overnight. That arrangement will enable the father to continue his involvement in the boys' football training and also to spend time with C.
109. I do not think it is realistic in this case for the father's time with the children to be supervised, although in other circumstances findings of this level of seriousness might well require supervision. All three children would find it hard, after such a long period when they have lived with their father, to understand why their time with him needs to be supervised, and the boys I think would not accept it. I recognise the risks, but they can be managed if the contact takes place at the times specified: it is then likely to be mostly activity-based, and it will not take place overnight. It goes without saying that if there is evidence of the father seeking to influence the children's views against their mother, or otherwise to undermine her parenting, the issue of supervision will need to be revisited.
110. The family will need the local authority's support with this transition in the children's living arrangements. This judgment will, of course, be provided to the local authority and I will direct it

to respond swiftly with information about how it intends to support the children's rehabilitation to their mother's care.

#### Occupation Order

111. At present the mother's accommodation is a long way from the children's schools and she has to use the maternal grandmother's property when she is spending time with the children. This arrangement is not ideal, as the father himself pointed out during the hearing, because there are other family members who either stay or visit frequently and while there is room for the children to stay, this is not a suitable long-term home for them.
112. The balance of harm test is not straightforward in this case. The mother has suffered as a result of her exclusion from the family home: she was homeless for a period of time, and her housing now is a long way away from the children's schools. She is reliant on her mother to provide her with accommodation when the children are with her. This is only a short-term solution.
113. The father said in his evidence that he has nowhere he himself can live other than the family home. When he left the property in August 2022 after the mother's allegations were first made he stayed with friends until he was permitted to return.
114. Because the mother currently has alternative housing, albeit unsatisfactory, and the father does not, I do not think this is a case where the mandatory provisions under FLA 1996, s33(7) arise.
115. I am therefore required under s33(6) to consider all the circumstances, including the factors specifically identified in that subsection.
116. In my judgment the relevant factors are as follows:
  - a. Both parties have housing needs, but the mother's are greater than the father's because she will have two, and in due course three, of the children living with her.
  - b. The father has worked in the past; he is not currently working, I assume because the children have been living with him, but he has an earning capacity and I am not aware of anything which would prevent him from working sufficient hours to enable him to rent somewhere to live.
  - c. If the father remains in the home, the mother will be reliant on her own mother for what will need to be full-time accommodation. That is possible in the short term, but the longer that arrangement continues the more likely it is that the family relationships will come under strain. The relationships between the mother and the children are still in the process of being rebuilt; it will be more difficult for the mother to maintain that progress, and the risks of disruption are greater, if their living arrangements feel temporary, over-crowded or insecure.
  - d. If the mother returns to the family home and the father leaves, the children (or at least B and C) will be able to remain in their familiar home environment. This is likely to make the transition to their mother's care much easier for them.
  - e. A is much more likely to want to remain with his father if the father is permitted to remain in the family home. If the father is excluded and the mother returns, there is a possibility in my view that A may be supported to remain.
  - f. If A cannot or will not stay in the family home in his mother's care, a temporary home with his grandmother offers an acceptable stepping-stone for him. I recognise that this would not be his first preference but it would be better for him, in my judgment, than the current arrangement where he is living full time with his father. I have explained why



this causes A ongoing harm and creates a risk of permanent damage to his relationship with his mother and his own long-term psychological wellbeing.

- g. Finally, but of at least equal significance to the other factors, the father's conduct towards the mother has been profoundly harmful and abusive. She needs to recover from the trauma which he has caused. When the mother moved out of the family home in February 2023 it was on the basis of an assessment of risk by the police and local authority which has subsequently been found to be wrong, or at the very least incomplete. Unfortunately, that decision reinforced the harm already caused to the mother who for a long time was treated as a perpetrator rather than a victim. It is necessary now to provide the mother with stability and a safe space so that she can begin to recover and heal.
- h. The impact of these events has been felt not just by the mother but also by the children. In due course they will need an age-appropriate explanation of what has happened in their family and how their parents have behaved. When that time comes, they may well ask why it was that for so long their father was permitted to remain in the family home and their mother was excluded.

117. For those reasons I conclude that the circumstances of this case demand an order that permits the mother to return to live in the family home and requires the father to leave. I will make an occupation order in the first instance for a period of 12 months, on the basis that that should allow sufficient time for the mother to make an application for a transfer of tenancy.

118. Once again, the local authority's support with the transition to the changes in the family's living arrangements will be necessary.

#### Next steps

119. I intend to direct the local authority to produce, as soon as possible, a plan to assist the family to implement the orders which I have determined are necessary in this case. Now that the decision has been made the changes need to be made swiftly. I have in mind a transition period of no more than a few weeks.

120. I was told during the course of the hearing that although A is not currently working with CAMHS there is a plan for that work to resume. If and when it does I consider it essential that a copy of this judgment and of my fact-finding judgment are disclosed to CAMHS.

121. The local authority will continue to work with the family under the PLO. It is of course not for me to tell the local authority what assessments it should be commissioning or to express any view about the outcome of the PLO process. I have made decisions about the children's living arrangements based on my assessment of their welfare; any future decisions taken by the local authority within the scope of its statutory powers and obligations will be a matter for the local authority alone. However it is necessary, in my view, to make it clear that any assessments conducted within the PLO process or otherwise must be done on the basis of an accurate and secure understanding of the factual findings made by the court and the court's evaluation of risk. That may mean that some further disclosure of the judgments in these proceedings is necessary, and I would invite the parties and the local authority to consider this.

HHJ Reardon

1 May 2024

## Postscript

### *Implementation*

122. A further hearing took place on 15 May 2024.
123. On 10 May 2024 the local authority produced, in accordance with my direction, a transition plan setting out its proposed arrangements for the younger two children to move to the mother's care. It was agreed by the parties that the occupation order would take effect this Friday, 17 May 2024, when the mother would return to the family home and the father would move out. The local authority agreed to assist the father in his attempts to secure temporary accommodation.
124. A has remained resistant to the prospect of living with his mother and has told the local authority recently that if he is required to do so, he will kill himself. When the alternative plan of a temporary move to the maternal grandmother's home was discussed with him, he gave a similar response. The local authority recognises that A may be in need of urgent therapeutic support and has put in place arrangements to commence therapeutic work with the family from next week.
125. At the hearing this morning I was asked by the father to suspend my order in so far as it relates to A, on the basis that the only realistic living arrangement for A for the foreseeable future was to remain with the father. It was suggested that the father would then present to the housing authorities as a parent with care of a child, and would be likely as a result to secure suitable accommodation more swiftly.
126. I determined that although my order would take effect from Friday in respect of all three children, I would also make a direction that the order should not be enforced in respect of A for such period as the local authority is working with the family to support a planned transition for him to the mother's care. I determined that the order should also record that the maternal grandmother has offered to provide a home for A during the transition period, and that the local authority has committed to supporting A to live with his mother, if necessary after a period of time with his grandmother, as soon as reasonably possible.
127. My decision took into account and sought to balance:
- a. The extreme distress shown by A and the strength of his expressed views, which need to be acknowledged by the court;
  - b. My previous finding that the father has manipulated and influenced the boys, and that this has impacted on their relationship with their mother;
  - c. The harm A would be likely to suffer if "compelled" to live with his mother before he is ready to do so, balanced against the ongoing harm arising out of his placement with a father who has perpetrated serious domestic abuse, particularly if that placement were permitted to become the status quo.
128. I was particularly anxious to ensure that if A refuses to leave his father, the father should not be in a position to present this situation to the housing authority as an arrangement that has been endorsed by the court.
129. As I have already explained, there are signs in the evidence that A may in fact be more open to resuming a relationship with his mother than his expressed views would suggest. I remain hopeful that once the dust has settled, the mother is back in the family home caring for the younger children, and A has had time to adjust to the decision that the court has made, A will see his way to a return to her care.

130. I have considered whether these proceedings should remain live for the court to monitor the children's transition to their mother's care. However the welfare decision has been taken and subject to implementation the way forward is clear; and the family is in the PLO process, meaning that the local authority is very closely involved and both parents have ongoing access to legal support and advice. In those circumstances it seems to me that the court's role is finished.

#### *Publication*

131. During the course of the hearing in April I informed the social worker and counsel who attended on behalf of the local authority that I would consider whether this judgment should be published. The judgment above was handed down on 1 May 2024; at that hearing I invited the parties and the local authority to make representations on that issue, and (if publication were to take place) to make proposals in respect of anonymisation.

132. The mother's position is that the judgment should be published in full. She feels that the local authority has failed her family and wants the detail of what has happened in this case to be made public.

133. The father is neutral on the issue of publication provided that the family is anonymised.

134. The local authority asks me to anonymise both the name of the individual social worker and the name of the local authority.

135. I have regard to the "four propositions" set out by Lord Steyn at paragraph 17 in *Re S* [2004] UKHL 47 in respect of the Article 8/ Article 10 balancing exercise:

"First, neither article has *as such* precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

136. In my judgement the appropriate balance as between rights under Articles 8 and 10 leads to a decision that in the published version of this judgment the names of family members and the name of the individual social worker should be anonymised, but the local authority should be identified. I reach that decision for the following reasons:

- a. I recognise that the mother has a legitimate wish, and a desire, to speak publicly about the fact that she has been a victim of domestic abuse who has been failed by the local authority. I have had regard to the approach taken by the Court of Appeal in *Griffiths v Tickle* [2021] EWCA Civ 1882. However the circumstances of this case are different, in that there has so far been no publicity about any member of the family. A and B are considerably older than the child in *Griffiths v Tickle* and A is particularly vulnerable; the risks of publicity affecting them adversely are therefore higher. In my view the mother's Article 10 right to "tell her story" is outweighed in this case by the children's rights to privacy.
- b. There is no real risk that naming the local authority will lead to identification of the family. Tower Hamlets is a large urban area. The judgment can be redacted in such a way that the identities of the children are protected, without the need for the borough in which they live to be redacted. On the other side of the scale there is a strong public interest in a public body being held accountable for failings of this nature, so that they are not repeated in future.

- c. The issue of whether the individual social worker should be named is finely balanced. I do not consider that naming her would add to the risk of the family being identified, so the argument for anonymisation can be based only on her own Article 8 rights. In *Tickle v Herefordshire CC* [2022] EWHC 1017 Lieven J accepted a local authority's generalised arguments based on the potential impact of naming social workers on morale and recruitment, but nevertheless refused to anonymise a social worker in the absence of evidence of likely vilification and harassment. When Lieven J gave her judgment the decision of the President in *Abbasi v Newcastle Upon Tyne Hospitals NHS Trust* [2022] 2 WLR 465 to anonymise a class of professionals on a similar basis had not yet been overturned by the Court of Appeal. *Abbasi* has now reached the Supreme Court and a decision is awaited. As the law currently stands, the starting point must be that professionals will not usually be anonymised in published judgments, in the absence of evidence that there is a real likelihood of interference with Article 8 rights.
- d. However, in this case the fault did not, in my judgment, lie with the individual social worker but with those in positions of greater authority, particularly those with legal qualifications who should have been expected to understand the local authority's obligation to accept the findings of a court. Essentially the social worker misunderstood the legal position in circumstances where she was not properly advised. In my view it would be unfair to expose her to public criticism for that, when the real failing was on the part of others in the local authority who could and should have steered this case in a very different direction.

15 May 2024