

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue,
London
TW14 0LR

Date: 9 January 2025

Before :

HIS HONOUR JUDGE WILLANS

Between :

LONDON BOROUGH OF []

Applicant

- and -

(1) The Mother

Respondents

(2) The Father

(3-4) T & S (by their Children's Guardian)

(5) J

Jacqui Gilliat (instructed by **SLLP**) for the **Applicant Local Authority**
Jessica Redford (instructed by **Atkins Hope Solicitors**) for the **First Respondent Mother**
Philip Squire (instructed by **Thompson & Co Solicitors**) for the **Second Respondent Father**
Sylvester McIlwain (instructed by **Lovell Chohan**) for the **Third and Fourth Respondent Children**
Mark Rawcliffe (instructed by **Blaser Mills Law**) for the **Fifth Respondent Child**

Hearing dates: 4, 9-10 December 2024 and 9 January 2025

JUDGMENT

His Honour Judge Willans:

Introduction

1. This judgment follows a three-day final hearing and concerns (T) (aged [--]); (J) (--) and (S) (--). In reaching my conclusions I have regard to the documentary evidence contained within the core and supplementary hearing bundles; the written and oral opening and closing submissions made by counsel on behalf of each party; the live evidence of the witnesses who appeared before me. The hearing was a 'rolled-up' fact-finding / welfare hearing. A central issue concerned allegations of physical chastisement made by T, against her father, [] ("the father"). T gave evidence at the final hearing subject to agreed ground rules.

Order sought

2. The applicant supported by the Children's Guardian ("CG") sought final care orders for all three children with a care plan under which T and S remained together in long-term foster care with J remaining placed with his adult sister, [] ("the sister") under a Regulation 24 placement. The care plan included proposals for ongoing contact between J, S and their father and between their mother, [] ("the mother") and all three children. The mother supported this planning albeit making some observations as to the planned way forward as to contact. The father disputed the allegations and argued for J and S to return to his care, supported by a supervision order or otherwise. He also made observations on the proposed contact plan.
3. T agreed with the care planning for her. S expressed a strong wish to continue placement with her sister. J sought to return to the care of his father but accepted continued placement with his sister in the alternative. I did not hear from the sister but was informed she was happy to continue to care for J.

Legal Principles

4. This case did not fulfil the criteria so as to justify a discrete fact finding hearing. Both the social worker and the children's guardian expressed the opinion that they would be supporting the making of care orders whether or not the allegations made by T were established. Nonetheless, I am called upon to consider and make or reject the allegations made by T. Certainly, so far as the father was concerned this was the crux of the dispute and was the only identified impediment preventing the children returning to his care. He appeared to accept care orders would follow if the findings were made. So far as the fact finding process is concerned the principal points are as follows:
 - i) It is the responsibility of the applicant to prove the allegations.
 - ii) The father has no legal burden or duty to disprove the allegations.
 - iii) The applicant will prove an allegation if it establishes the event as being more likely than not to have occurred.

- iv) If the applicant crosses this threshold then the allegation will be a fact within the proceedings. If not the allegations will be wholly ignored.
 - v) I should have regard to all the available evidence including the wide canvas of information which might shed light on the allegations. I should pay particular regard to the evidence given by the central witnesses to the matters under dispute.
 - vi) If I find a witness has lied I should pause before going on to draw a conclusion as to generalised dishonesty. In doing so I should reflect on the principle found in the criminal case of *R v Lucas*.
 - vii) I am entitled to have regard to the demeanour of a witness and the manner in which they gave evidence in considering both their credibility and the veracity of their evidence. However, I should be mindful of the potential for demeanour to be a poor marker of veracity. The key purpose of witness testimony will be to assess consistency both internally and when compared and contrasted with other evidence.
5. Turning to the proceedings more generally I must consider the four questions at the heart of care proceedings. These are as follows: (i) Is the legal threshold set out in section 31 of the Children Act established? (ii) If so what are the permanence provisions of the care plan? (iii) What are the contact provisions? (iv) having regard to the welfare of the child as the paramount consideration of the Court, what final orders, if any, should be made?
6. The legal threshold requires the Court to find that the children have either suffered significant harm at a relevant date or were likely to suffer significant harm if an order is not made with such harm being attributable to the care given to them by their parent/carer and with such care falling below the care to be expected of a reasonable parent. The establishment of the threshold empowers the Court to make a public law order (care or supervision orders) but does not direct the Court to do so. Whether an order should be made will be assessed having regard to the welfare of the child, which is the Court's paramount consideration, and with regard to the intersection between the order sought and the Article 8 rights of the family members to respect for their private family life and the right not to have this infringed save where to do so is proportionate, necessary, reasonable and lawful.

Background

7. I take this abbreviated background largely from the applicant's position statement. It is sufficient to understand the circumstances underlying this case.
8. The children have been known to Children Services since 2013 at which time there was a domestic incident which led to the father being arrested and the mother and the children moving into a refuge. In the subsequent period concerns arose as to neglect of the children's care whilst with their mother and her excessive use of substances and alcohol. In 2014 care proceedings were initiated in a different part of the country. The home environment was in an unsuitable state; there was a lack of routines and boundaries; the children's needs including school attendance were not

being met and there were reports of the children being left unattended for substantial periods of time. The children were made subject to interim care orders and placed into foster care. The father sought for the children to be placed with him and his mother and at the conclusion of proceedings an order was made in his favour supported by a Supervision Order. The placement between the father and his mother later broke down and he and the children moved out.

9. In 2018 the childrens' school made a referral to the applicant around concerns as to the manner in which the father both spoke to, and around the children with a perceived lack of insight into the childrens' past experiences and needs. Recommendations were made for work to assist him with meeting their needs but he did not consent to any services and did not engage with the assessment process. A further referral arose during Covid in 2020 and there was an unfortunate scene when police attended the family home with inappropriate language in front of the children. There were further school referrals in 2023 following the father attending the school and using abusive language towards staff.
10. The precipitating event for these proceedings occurred on 15 November 2023 when T made allegations to her school and the police of her father subjecting her to serious physical abuse. She subsequently reported physical abuse of both J and S. T underwent an ABE interview process (24 September 2024). Neither J nor S wished to take part in any interview process. As a result of the allegations care proceedings commenced. Initially placed into police protection the children were then accommodated under section 20 with the father's consent. The girls were placed together separate from J. Shortly, after her removal S also alleged some physical abuse by her father.
11. The children were made subject to an ICO at the first hearing on 5 December 2023. At this time the father was in any event subject to bail conditions which restricted his time with the children. A case management hearing was held on 22 December 2023 and directions given towards an IRH on 6 June 2024. J's placement broke down following which he moved to live with his sister, on a Regulation 24 basis. The Court has the benefit of Hair Strand Test results with respect to both parents; a global psychological assessment (Dr Tammy Surgenor); parenting assessments of each party, and a connected party assessment of the sister.

Threshold Assessment

Has T / the children been physically abused by their father?

12. This question was by far the most significant issue considered within the live evidence. In determining this issue I have had particular regard to the reports made by T of alleged abuse including within her ABE interview and when questioned by counsel for the father. I also have paid close regard to the evidence given by the father and to a lesser degree the evidence of the mother. I have regard to the surrounding evidence and the degree to which it either supports or undermines the allegations.
13. The essence of T's evidence is that she and her siblings were subjected to physical abuse on a regular basis and to a significant degree. She characterised the physical

abuse of J as being greater and linked this to him being a boy and that of S being less so. Her account can be seen to have developed over the period with it initially being focused on abuse suffered by herself before later reporting both her siblings also being hit. She described the abuse as including being hit both with the hand and with objects. She referenced a baseball bat, a rolling pin and other implements within the assaults she experienced. As to the level of force used she described her father swinging the baseball bat and characterised his level of force as 7-8 out of 10 when being hit. She mentioned suffering injuries including bruising or swelling to her head and residual scarring on her body. She reported an assault on J leading to a period when he could not walk for a period of days.

14. The father challenged the entirety of this complaint save that he admitted a very limited number of occasions (3 in the case of T and 1 in the case of S) when he had slapped each child as a result of their behaviour. This included occasions when they had been caught stealing and an occasion when T was said to have acted sexually inappropriately towards her sister. He expressed regret and remorse with respect to each of these but was clear this was the extent of any physical chastisement of the children. It was not for the father to explain why the allegations had been made but when questioned on the topic he pointed to a growing attitude on the part of T around the appropriate boundaries he wished to set for her (including homework and return after school) and he questioned whether the allegations were made out of a sense of frustration with these rules and a wish to escape the confines of his rules. He also raised the likelihood that T had made these complaints in some way instigated by her mother who wished for the children to return to her care.
15. The father asked me to have regard to a series of points which he argued undermined the allegations. First, he pointed to the fact that whereas T expanded the abuse to include the other children this was not supported by the other children (J in particular). Second, he asked me to reflect on the description given by T of the manner of and the force used when acting out the abuse. He made the point that as described one would expect the child to have suffered real injuries whereas there was little if any real evidence of injuries as a result of what was said to have taken place. He argued some of the assaults were so extreme in their description that they would have caused the most significant injury to the child which would have been noted contemporaneously and yet was not (an example was being hit with a baseball bat). Third, he drew attention to the conflict between the suggested injury to J which was said to have prevented him walking but there being no supporting evidence of him being off school for a relevant period as a result.
16. An assessment of this type is challenging by its very nature. Invariably the events will arise in the private sphere without independent witnesses. Further, the events will often not arise contemporaneous with the date of reporting meaning that any real evidence will no longer be available. This feature impacts on both parties to the alleged event so far as concerns their ability to establish the truth of their account, and the Court is invariably left with little more than the evidence given by each witness when trying to assess where the truth lies.
17. A further complicating feature will arise where a witness to the event (as either alleged victim or perpetrator) has some vulnerability or characteristic that may

impact on their ability to provide a clear and faithful account of what did or what did not take place. Such vulnerabilities/characteristics can be linked to cognitive skill and the personality of the individual but can also reflect issues relating to the age of the witness or the role the witness took in the event. By way of example a witness involved in a frightening event may have a general sense of the incident but may mix up features or ordering of events and may overplay or appear to exaggerate the elements that closely involve themselves and to the detriment of significant parts of the event which were not so closely tied to them personally. The Court has the difficult task in such circumstances of assessing whether apparent conflicts or objectively unlikely descriptions are a function of dishonesty or the lost detail arising out of the above points. Such assessments are however part and parcel of the role of any Family Court Judge and as such the Judge will have significant experience of carrying out such analysis. Each case will have its own details and circumstances and the fact of this must not be lost. What is required is a sophisticated analysis and a weighing of factors to establish the truth of the case. Sometimes there will be a magnetic piece of evidence which provides the Court with clear insight as to the truth of the situation. In other cases the picture will be much cloudier and the Court will need to piece the available pieces together to see if they amount to evidence which is sufficient to show the allegation to be more likely than not. This remains the simple test that should be applied without any gloss. There will be many cases in which by either route the Court is left unpersuaded as to the likelihood of the allegation leading to it being dismissed.

18. I considered T's evidence with care. I do not lose sight of the impact the application of the ground rules might have had upon the weight that could be attached to her evidence. In this case the Ground Rules limited the extent of questioning with all questions being reviewed by me at the PTR stage and the process of questioning being limited to a single interrogator (counsel for the father). Breaks were made available to T (although she did not need the same) and there was a short period of reflection after her questioning to consider whether follow-up questions were deemed necessary (they were not). My sense of this process is that it may have the tendency to undermine the weight that can be attached to the evidence given. The rules set tend by their very nature to ease the questioning process to the point where there may be a danger the witness is not genuinely tested. In part this flows from counsels' own selection of questions in the context of planning towards examination of a vulnerable child. In part it may reflect the uneasy tension a parent feels about wanting their child to be questioned but not wanting the process to be harmful to them. To the extent this is a present factor it essentially mirrors the Court's own tension when carrying out the Re W decision making. The end result may be a process which does not have the sense of being one which is likely to extract anything other than either confirmatory evidence from the witness or an unhelpful lack of clarity. But that is not to say the process cannot be effective or that in the giving of answers, the witness may by way of demeanour or some other clue shed further light on the truth of the situation. Nonetheless it can be at times a less than illuminating process.
19. This concern can impact in either direction. There is a potential for a party subject to allegations to obtain only a most limited testing of the evidence and to be left with the sense that more might have been obtained if the witness had felt more pressed.

However, there is also the potential that a 'kid gloves' approach may lead to a witness not giving as good an account as they might otherwise be able to do. The Court will often experience witnesses who when robustly challenged, by their answers (and the manner of giving of the answers) give a much clearer impression of the truth of the account they have provided. It can be that when emotionally pressed that the truth does come to shine out through the witnesses responses. I bear these points in mind when turning to the evidence given by T.

20. T was consistent in the account she gave and was not shaken by her examination. It was put to her she was lying and she stood by her case. When apparent conflicts were put to her she gave a plausible explanation for this conflict. An example relates to her failure to include her siblings in the physical abuse on first report. When this was put to her she explained she had not wanted to have them involved when she initially spoke but later on there was no point in seeking to protect them given the proceedings had been instituted. T became more engaged as the questioning proceeded and particularly as it turned directly to challenging her about her own honesty. Whereas at first I found her somewhat quiet in her responses as she began to engage with the examination she became clearer and firmer as to her position. Certainly, by the end of her examination she was stating her case in a firm and clear manner. At no point in her evidence did a moment arise which stopped her in her tracks and which appeared to show her as being caught out in the process of a lie. Points made on behalf of the father as to the suggested force used and inconsistency with injury did not appear to trouble her. She maintained her account as true. She gave detail on occasion as to the respective placing of individuals. She addressed the conflict between what she was saying and what her sibling was not saying. The sense was that she was acting in part to protect her siblings and so far as her brother was concerned it was a matter for him as to which side he wished to choose.
21. Reflecting on the point relating to the account of the attacks given by T. For the father this is felt to be a significant signal of the falsehood of the account. It is said to be inherently implausible that T was struck as hard as she suggests with the implement described without suffering more meaningful injuries. There is force to this point. If T was hit with a swinging baseball bat at full force then she can be expected to have suffered a significant injury. Yet there is no report of such a significant injury be it bruising or otherwise. There is no admission to hospital with fractured or broken bones. Whilst I do take this point into account I nonetheless consider it might be significantly diluted by the points made in paragraph 17 above. On the allegations one has a child being attacked by the father with an instrument. If true this would have been a frightening episode in a confined space over a relatively short period of time. T would not be a simple spectator to the event but an active participant under threat. Any fair assessment of the evidence must not lose sight of these potential features. Further whilst T provides a marker of the calibration of the force used by her father (on a scale of 1-10 of what he could do) it is difficult to understand how she might accurately calculate this. In reality and in my assessment a high score is more a marker of her perception of the event and the feeling she was left with than an accurate calculation of the comparative force being used. I am also cautious when evaluating the description of the mechanism of the event. T spoke of the bat being swung and of her being hit but these two events need not be entirely correlated. It is entirely possible for someone to be swinging a bat in a provocative

and threatening manner without making contact on each and every occasion. Again I have to evaluate this from the perspective of a child (albeit an older one) with the potential for the event to be either consciously or sub-consciously exaggerated as a result of the surrounding fear in the moment. The danger is that I apply an unreasonable standard of recall when assessing such evidence and consequently proceed to disregard the evidence if for one or other reason there are aspects which appear less probable or unlikely. I bear in mind an inconsistent witness or a confused witness may be honest whereas an entirely consistent witness may not. In this case the account given has levels of improbability but in my judgment this does not cause the account to be unworthy of belief. In my assessment it is not inherently improbable as a claimed event.

22. I reflect on the fact the mother gave a degree of corroboration for one of the alleged assaults. T spoke of her mother visiting the home at a time when she was showing signs of swelling having been hit by her father. In her evidence the mother confirmed an occasion when she did visit and noticed swelling which she had put down to possible tooth related issues but which the father blamed on a sporting injury. This appeared to me a credible and honest account of an event which was not exaggerated by the mother for forensic effect. Whilst there is significant areas of dispute between the parents in this case and there are allegations made by the mother which are disputed by the father, I generally found the mother to be a plausible and genuine witness. She accepted without demur her own responsibility for the neglect previously suffered by the children and I sensed no exaggeration in her evidence. Further, and despite the disputes between the parents I did not have the sense of her being 'out to get' the father. I consider her corroborative account an important piece of the puzzle. It is also right to note that after being taken into police protection, T was seen by a doctor for the purposes of a Child Protection Medical. Whilst this medical did not determine the presence of injuries indicative of non-accidental injury in reviewing T's account the medic concluded the findings did not rule out non-accidental injury. On its own this is a limited point however it is a supportive factor.
23. In considering the truth of the allegations I have had regard to the details given. It is clear T is an intelligent child and I have little doubt she has the ability to reason through whether a constructed account would appear likely or implausible. This has some purchase when considering the account given which is said to be inherently implausible. A question arises as to why T would feel a need to embellish her account by references to being hit with various implements if she could alternatively have simply limited the account to being slapped or hit with hands. She has the intellect to ask herself whether by embellishing the account it is more likely to be disbelieved. Yet she has maintained the account without hesitation. I question what was the motivation to construct a more significant allegation when a simpler account would have likely crossed a threshold of concern? It is said by the applicant that this sheds some light on the truth of the account particularly when one is considering an intelligent teenage child who is said to have prepared a false account. I consider this a point which does weigh in favour of the allegation.
24. I have considered the related point made on behalf of the father, that there is a significant intelligence gap between himself and his children (this can be found in the

IQ testing for the psychological report) with the potential that T might be capable of manipulating a situation to her advantage. I am not sure this is a particularly helpful point for two reasons. First, because it in fact raises the very opposite possibility that this mismatch may have created the very tensions in the relationship which might then lead the father to fall back on the resource he has over T, namely his strength and authority. As such, if struggling to cope with her intellectual flexibility in a moment of heightened emotions his response may have been physical. Second, because this alone really does not explain why T would go on to make allegations. It simply provides her with the ability to construct and sustain an allegation but does not explain why she would do so. There is no reason to think that she would have recourse to such allegations just because she has some level of upset at home and is comparatively more intelligent than her father. What one additionally needs is a foundation for her to act in this manner, justified or otherwise. As noted it also calls into question the construction of a false and dramatic narrative which is open to challenge as being unlikely due to its internal characteristics.

25. I remind myself it is not for the father to explain why this has happened. The absence of a credible alternative explanation for these complaints does not mean they are true. Having said this one has to reflect on the existing state of affairs when considering the allegations. On my understanding of the father's evidence he had a good relationship with all his children with only the most modest previous physical chastisement. When asked as to the tensions in the relationship he noted some issues with not coming home straight from school but he then told me that he was very flexible about this and had not imposed strict guidelines. I was left struggling to identify how this likely created a conflict leading to the allegations. He also mentioned issues around homework but there was little detail to explain how this might have festered to the extent that it fed these allegations. I was left with no sense of conflict that might lead a child to then speak to both school and police about abuse. Finally, he referenced discovering T has been taking home deliveries from neighbouring houses. However, this couldn't have founded conflict between himself and T leading to the complaint because on his account it was discovered only after she made her report. Certainly, on the evidence I struggled to gain any sense of a home life (given by the father) that might have led one of his children to make such reports. This doesn't make the allegations true but it does pose a real issue in understanding the foundation for an untruthful account to be given. One is left with an allegation coming out of nowhere. Whether this is an inherently implausible state of affairs it is one which is surprising.
26. A separate suggestion was that the allegations were made at the instigation of the mother so that T could return to live with her. However, there is little in the evidence to support this proposition. First, there is no direct evidence to support this suggestion and the circumstances at the time in question appear to have been one in which the parents were working co-operatively together for the benefit of the children. Second, the father gives no positive case of the mother or T speaking or acting in a manner to suggest the mother was seeking this outcome. The suggestion appears to be wholly speculative. Third, T did not return to her mother at the time of the allegations and as such there appears to be little to support the suggestion that this was the motivation. Indeed, even today she is asking to remain with her sister in the current placement.

27. I reflect on evidence of the father demonstrating dysregulated behaviour as supportive but not conclusive evidence as to likely truth of these allegations. The mother alleges a generally domestically abusive relationship. There is some support for this with her having left with the children to move into a refuge and an agreed incident when she fell on the stairs. Against this I have to have regard to the issues surrounding the mother's own parenting of the children and the absence of any specific findings made against the father - I am not asked to make findings within these proceedings.
28. But, there is also evidence of inappropriate behaviour both to the members of staff at the school and to the police attending the property. On such occasions the father has shown himself unable to contain his behaviour and has been willing to act out in the presence of authority figures whilst the children are present and impacted by his behaviour. In 2023 during a somewhat mundane event at the school gate the father's response to J's not being buzzed out of the school gate was to first, swear at the receptionist on the intercom and then the school principal who attended he scene. On a separate occasion during Covid when police attended the family home the father's behaviour was inappropriate to the officers. This does provide support for an inability to control himself in the moment when he feels under challenge and without a legitimate mechanism of response. This is evidence which also supports, albeit to a limited extent the allegations. I am also asked to bear in mind the report from his mother (who had previously co-cared for the children with the father) of him shouting at the children. I bear in mind it is said his mother later retracted this allegation. I am asked to reflect on his account of limited chastisement as detailed earlier in this section. I am asked to consider the plausibility of the suggested tap on the child as a response to their alleged misbehaviour given the broader picture suggested by the evidence. Finally, I am asked to note the father expressing some unhelpful words towards the mother at the completion of her live evidence. I am asked to consider whether if he cannot contain himself in the Court room with everyone present how likely he is to be able to contain himself when in the privacy of his home?
29. It is also relevant to reflect on the response made by the father when the allegations were raised. Whilst one can understand his natural wish to defend himself against allegations he took a rather striking response when spoken to by the police. In the course of his response he described his daughter as a liar and a thief and as a paedophile whom the police should consider placing on the sex offender's register. I am in no doubt these observations are wholly unjustified and I am troubled as to what they suggest was in the mind of the father when first alerted to the allegations. The evidence underpinning the suggestion of sexual impropriety amounts to little more than historic childish behaviour arising in circumstances following the children experiencing poor parenting with lax boundaries including it seems around sexual material. I note it included both T and J. Second somewhat more recently (albeit not contemporaneous with the father's report) S spoke of her sister tickling her in the groin area with J agreeing it had happened.
30. In my assessment these events fall very far short of justifying the report made by the father. They were historic in character, limited in nature and explicable in the context of the children's lived experienced. Furthermore, a plan of action had been

utilised of having the children in separate rooms and this had worked such that the children returned to the same rooms. The father made no further reports and did not take up any work around the concern. On my assessment of the evidence this was a non-issue by November 2023. As such it plainly did not justify the label then applied let alone the suggestion T should be investigated by the police or placed on the sex offenders register. It is noteworthy this arose in circumstances where the allegation had been made against the father. He had then spoken to his solicitor and the police were called whereupon he made a 'third party' report against T relating to events when she was aged 12 and in which he was a third party as the witnesses were his other children (aged 10 and under). I was left with the strong and clear sense that this was the father deflecting attention on to his daughter. It might be thought this was without thought to the impact it would have on her but this would be wrong as it appears thought was given to the impact sought against his daughter. I consider the broader allegation of T being a 'liar and a thief' to be less instructive but I do find it is suggestive of deflection on his part. It is likely T has lied and does lie (to some extent most children do) but I did not pick up from the evidence a foundation for considering this was a particular issue for her. As to being a thief again this may be correct to some extent but it doesn't shed light on the issues under direct consideration.

31. I question why the father responded in such a vocal, significant and unjustified manner when these allegations were raised against him. I do appreciate he will have felt defensive and particularly so if the allegations were untrue. Yet I consider it troubling his response was not more measured and I am concerned by the nature and extent of his response. It does suggest his response was an instinctive wish to carry out a character assassination of his daughter. Notwithstanding the circumstances he faced this does not reflect on him well and causes me to question whether the nature of his response has some bearing on the truth of the allegations. In contrast I might have expected a more considered approach including a wish to understand the allegations and probe the detail providing an account of why the allegations were not or could not be true. Instead he simply hit out at T in a most concerning manner.
32. I considered the father's evidence with care. He was consistent in his denial and as noted gave various possible explanations for why the allegations had been made. Whilst he was not shaken in his denial I was left with concerns, as expressed above, as to the nature of aspects of his evidence.
33. I have reflected on the developing account given by T as to her siblings involvement in the abuse. I found her explanation for this both plausible and cogent. This does not mean it is true. Her account gains some support from S who also reported being hit after she was removed from the father's care. I have borne in mind the suggestion this might reflect contamination from living with her sister and I also have regard to the potential she is referencing the accepted chastisement. But I also bear in mind she continues to wish to see her father which somewhat undermines suggestion of a level of collusion or influence. I bear in mind J does not support the allegations. However, I also note both siblings have declined the chance to speak to the police and there was evidence from the father of problematic conversations with J during contact in which he appears to have been addressing the fact of the

allegations and telling J to tell the truth about the allegations and S not to be manipulated. On that basis it might be thought questionable as to how much might be gained from an interview process with either child.

34. Finally, I have considered the suggested inconsistency between the reported injury to J which left him unable to walk and the lack of evidence of non-attendance at school as a result. As with other points noted above I consider one has to take a realistic approach to both the manner and likely response of a child were this to have happened. One can readily contemplate a child speaking to a sibling along the lines of not being able to walk following being hit without this being literally true. There is room for a level of dramatic overlay that could well accompany such an event. I do though agree it is unlikely on the evidence that J suffered an assault that left him unable to walk. It is far more likely that he might have been hurt and complaining he could not walk. The question for me is as to whether this suggests he therefore did not suffer an assault at all or whether the description of an actual assault has been significantly overstated.
35. Having considered all of the above points and having balanced the various components I have reached the conclusion the allegations are essentially true and that T in particular (but extending to all of the children) have suffered inappropriate physical chastisement which has caused them both significant emotional and physical harm. In my assessment the emotional harm will extend to those occasions when they have not been personally the recipient of such abuse but have witnessed it occurring (whether in sight or hearing). I accept on occasions the assaults have included the use of implements but I accept the forces used were not at the levels suggested by T. I do though accept sufficient force was used to cause the child meaningful pain. I consider the use of the implement has an emotionally abusive component in elevating the level of fear and anxiety felt by the child. Indeed in my assessment this was the chief motive for using the implement.
36. My conclusions draw on the following particular points when viewed together. I found T's account cogent and credible. I struggled to find any context for it to arise out of a vacuum. I relied on the corroborative evidence given by the mother. I found the father's response one which shed light on the truth of the allegation and I further relied on sound evidence of his inability to regulate his behaviour in a public setting as evidence as to how he might act when in a private setting. I assessed likely grounds for dishonesty but found them unpersuasive and lacking in explanatory force. I did not find the counter points as to absence of injury particularly helpful when carrying out a sophisticated analysis of what likely took place. Whilst it is not for the Court to supply an account of the detail of what happened and whilst I essentially accept the narrative given by T, it might be helpful if I express the following points. In my assessment there was a likely growing challenge to the father's parenting as the children became older and more willing and wishing to act independently. This may well have been complicated by the previous neglectful care they have received. It is likely the father found this difficult to manage and the task has likely been made harder by the comparative intellect of his children which has left him to fall back on the authority that comes less from reasoning and more from force. It is likely a range of factors will on occasion have promoted disagreements. Whilst, I do not find this was related to inappropriate sexual conduct or the mother's

involvement, I accept on occasion this may have related to some of the points raised by the father (lying/not coming home on time/stealing). In these moments the father has lost control of the situation and resorted to force. As time has passed and conflict continued so the force has been ratcheted up to include hitting the children with implements. Escalation of this sort is perhaps unsurprising in the circumstances of an individual losing control having tried lesser forms of discipline. This does not make it acceptable. Indeed none of the sources of likely dispute justify the response.

Threshold generally

37. I do find the neglect and trauma suffered by the children has resulted from the care given by both parents. There is no utility in seeking to identify their proportionate responsibility [paragraph 2].
38. As to the effects of drug and alcohol abuse. I find this established to the extent agreed by the parents. I accept the point made by the mother as to residual drug presence but this has been overtaken by her frank acceptance of a return to usage in recent times. In my assessment such abuse was more an issue for the mother than the father, and she deserves credit for accepting this and now wishing to address the concern so as to benefit her future relationship with her children [paragraph 3].
39. I have made findings of physical abuse however I am not persuaded the evidence supports the conclusion the scarring was caused as suggested. This does not minimise the significance of the assaults and I do not rule out the existence of residual marks but I am not persuaded on the evidence of a direct correlation [paragraphs 4-8].
40. I make the findings of emotional harm. The children's presentation is a consequence of the neglectful care experienced in the care of both parents. It includes historic and significant neglect by the mother but also the abusive care experienced with their father [paragraph 9-12].
41. **For the avoidance of doubt the legal threshold is found to be crossed.**

Welfare Assessment

42. In considering this welfare assessment I keep in mind the professional evidence of the allocated social worker, parenting assessor, children's guardian and the global family assessment of the expert psychologist. I was impressed by the professionalism of the witnesses who appeared before me. The guardian provided a clear and lucid analysis and was impressive when addressing the points raised in examination. She showed a good understanding of the issues and I found her a helpful witness. The allocated social worker was not rigid in her thinking and it was clear to me she was and is willing to continue to work with the parents for the benefit of the children. She was not dogmatic or fixed in her opinion and was willing to address as they arose. This was not a case in which any of the witnesses were challenged as to their essential honesty or professionalism.

Wishes and feelings

43. T is firm in her opposition to seeing her father. In the context of my findings this is understandable. Her father took over primary care when her mother showed herself unable to provide other than neglectful care yet within a short time frame he has not been able to provide the care she needed. Her father is now seeking to pass blame onto her for his own failings. S wants a relationship with her parents but her driving wish is to remain with her sister. Again this is explicable given her life experiences. I am in little doubt she craves the sense of safety and stability she is currently finding with T and I suspect she would worry as to what life would hold for her if she were to return without T. In contact she will have picked up on the father's attitude to her sister and she is likely to have concerns as to how this will impact on her ongoing relationship with her sister were she to return. J's position is more nuanced. He wants to return to his father. I have regard to the guardian's evidence of this not being at the forefront of his expressed views on the last occasion she met with him but I accept her candid evidence that this may be him simply demonstrating a level of frustration in having made the point a number of times to date. His wishes and feelings need to be understood in the light of his age and understanding. Whilst he has separate representation which points to his competency the Court needs to act in the light of the findings made and the risks the same pose to J. I bear in mind there are elements of pressure put on J during contact.

Needs

44. The professional evidence points to a clear need for each of these children to now have a period of settled, stable and reparative parenting care. Over a sustained period they have experienced poor and inconsistent parenting. They have seen their home life change and their lived experience has been unsettled and anxiety inducing. They are all capable children and given the chance have the potential to make successes of their lives. Yet they will struggle to make such progress whilst their placement is one in which predictable care is unavailable. They have not been kept physically safe and the impact on their emotional wellbeing of the care they have received will have been deeply unsettling. The impact of this can be found in the conclusions drawn by the expert psychologist referenced in the threshold findings. There is a likelihood these experiences may have life long impact for the children. I am very concerned as to the role modelling likely learned out of the care they have received. It will have been very harmful for the children to have witnessed physical abuse as a form of control and additionally damaging for them to have experienced the scapegoating of their sister in the manner found. There is a danger of the children taking such patterns of behaviour into their adult lives whether by acting out the behaviour or accepting the same from life partners. It is important this cycle of behaviour is broken. In my assessment the children now need a high level of confidence in the care they will receive to take them through to adulthood.

Personal characteristics

45. I have had regard to the children's personal characteristics within this judgment. Their shared life experience is a common bond and they would benefit from the ability to retain a strong sibling relationship. It is important T is not wrongly viewed as to blame for them not being with either parent. It is important for the children to understand the fault lies entirely with their parents, and that the decision as to

where they live rests entirely on my shoulders. It would of course be very helpful for the children to understand their parents accept this reality and have the goal of making change to be better parents for all of them. I am in little doubt each of the children have residual love for their parents. I would not wish to paint either parent as a one-dimensional negative influence. There are positives in each parents relationship with the children. However, trust needs to be built again and this needs to proceed with a clear and correct understanding of where the problem resides. It needs to proceed with the sibling relationship as a bond to be nurtured not as a source for internal discord. J and T must not become surrogates for their parents.

Likely effect of a change of circumstance

46. In this context the consideration must be between the children staying where they respectively are and returning to the care of their father. Their mother accepts she is not currently placed to care for them and is focused on addressing her issues over the medium term.
47. I have addressed this issue elsewhere in this judgment. I have no basis for believing the risks present prior to December 2023 have now been addressed. With work there is no reason to believe the father could not make progress. However, at this time a return of the children would be a return to a continuing risky home environment. It plainly will not happen in the case of T. However, a return of S would not only be against her wishes but has to be understood as against wishes which have an evidential foundation. As such it is likely to be emotionally damaging. In the course of the hearing it appeared the father recognised such a return could not be justified if findings were made. A similar point arises in the case of J but there is an additional concern in my assessment as to the impact on the sibling relationships were J to return to the care of his father and into an environment in which his sister bore the entire blame for the break-up of the family group.

Risk of harm

48. This is sufficiently addressed in the threshold consideration and elsewhere within this judgment. The risks are continuing and are as yet unaddressed.

Capability of each parent

49. I have made the point that neither parent should be viewed as a one-dimensional negative factor. They love their children and want a relationship with them. There is evidence of the parents being able to work together co-operatively despite their differences and whilst this did not keep the children safe it is a positive element and suggests a level of capability on each of their parts. However, they have each when considered together and separately failed their children and caused them significant harm. The mother with the benefit of some time to reflect appears to both accept and understand this. This is to her credit and this is a necessary component of any positive change on her part. The father is not yet at that point. This is perhaps understandable given we have just concluded a fact finding process but I gauge he will need some time to reflect on these findings. I suspect he may not readily accept my conclusions and there is historic evidence of his unwillingness or inability to

engage with support. I hope he can begin to address his deficits in parenting as he does have much to offer his children. It will now be for him to reflect and engage.

Powers of the Court

50. The Court has to continue to bear in mind this discussion engages the right of each of the family members to respect for their private family life. The state has intervened in their family and the children have been removed in part to stranger care. Their relationship with their parents is now controlled on a restricted basis. I need to ask myself whether there are lesser forms of intervention (or no intervention) which would safeguard the children? I need to be clear as to the justification for any continuing state involvement. As noted earlier in this judgment any ongoing role must be one which is proportionate and reasonable and necessary in the circumstances of the case when reflecting on the welfare of the children as my paramount concern.

Conclusions

51. My threshold findings have obvious implications for the appropriate welfare determination in this case. In my assessment it would not be right for any of the children to return home whilst the risk of repeated neglect/physical harm was a live concern. I consider T and S should be subject to a final care order and I approve the planned continuation of their placement. It is providing them the stability they need and the opportunity to gain support from each other which I judge to be vital to each of them. It is a placement that can and does support contact with their brother and family members. In my assessment this is a proportionate and necessary order in the light of my findings and the assessment above. J should remain with his sister under a final care order. I accept this as the appropriate legal structure and acknowledge this is the form of support sought by the sister. I sense she welcomes the statutory support deriving from the plan as she navigates caring for her sibling and managing her father's expectations. J is doing well in the placement and it benefits from the family component. There is good evidence of his behaviour and engagement improving and I thank the sister for the support she has offered. I also give J credit for working with a plan which is not his first choice.
52. **I have concluded the correct permanency outcome for the children having regard to their welfare as my paramount consideration is for final care orders to be made in respect of each child. I approve the care plans in this regard.**

Contact

53. In considering contact I appreciate there are a number of tensions and countervailing factors that come into play. The applicant needs to have regard to the wish of the younger children to see both parents and there is evidence of them not wishing for contact to change. Whether this means no change whatsoever or in general terms is understandably unclear. However, there is no doubt there is a risk of harm to the children of loss of these important relationships. I also have to bear in mind the importance of the stability of the placement and the importance of the same to each of the children. Whilst the children need to maintain their family relationships there are also important considerations with regard to focus on their

education and to have the chance to build peer relationships and have their own personal time. I also have to bear in mind the evidence of the father speaking inappropriately to the children in contact. I note he gave this evidence voluntarily and appeared to have no sense of how it might be viewed. This has the potential to be damaging to the children and impacting on their sibling relationships. For my part I am less concerned as to the direct risk (of neglect or physical harm) arising during period of limited contact. Finally, I have to be mindful of the age of the children and the likelihood of contact happening in an uncontrolled fashion if it is not set at a suitable level.

54. In the course of the evidence it was clear to me the applicant is open to genuine review of the plans for contact and reference was made as to how this might develop to unsupervised contact. In my judgment the situation is one of some complexity and I am cautious about setting in place a rigid basis for contact. I consider the professionals should be given space to make judgments as the circumstances change and hopefully improve. A well understood review process exists to enable modifications to be made. In any event whatever is planned there will be some level of additional indirect contact. I agree at this time there is a need for supervised contact to ensure this is an entirely positive experience for the children. I can see the sense of the suggested change of location for the father and children but this must continue to be a matter of discussion. As to frequency I judge the contact should be no less than monthly and I assume this would be on the basis that the children see one or other parent each fortnight leaving them time for themselves in the interval weekend. I question whether the ultimate aim in this case should be fortnightly contact for each parent as this would amount to weekly contact for the children which will be limiting for the childrens other commitments. I would suggest the focus should be on expanding the time spent with each parent during contact session through consideration of unsupervised contact, day long contact and then overnight contact as progress is made. Over time there may be room for additional and flexible contact during the week.
- 55. In essence I approve the care plan as to contact as developed during the hearing.**
56. I have addressed each of the questions placed before the Court. This judgment will now be forwarded to counsel for their consideration. It can be shared with their lay and professional clients. I have already fixed a date for handing down in the first week of the New Year. I would welcome any corrections and requests for clarification by 12 noon on the day prior to handing down. I will forward an anonymised version in due course and will welcome any observations as to publication and further anonymisation.
57. This completes my judgment.

His Honour Judge Willans