

Case No: ZE16C00844

Neutral Citation Number: [2019] EWFC B55 (Fam)

IN THE EAST LONDON FAMILY COURT

11, Westferry Circus,  
LONDON,  
E14 4HD

Date: 2<sup>nd</sup> May 2018

**Before :**

**HER HONOUR JUDGE CAROL ATKINSON**  
**(sitting as a Deputy High Court Judge)**

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**Between :**

**LONDON BOROUGH OF B**

**Applicant**

**- and -**

**Maternal Grandfather**

**Respondents**

**Maternal Aunt**

**Paternal Aunt**

**NAA (a child) through her Guardian**

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**Mr Mark Twomey QC and Ms Anna Walsh for the London Borough of B**

**Mr Archer for the child NAA (through her Guardian)**

**Maternal Grandfather, Maternal Aunt and Paternal Aunt in person**

**In attendance a representative of the Uzbek Embassy**

Hearing: 12<sup>th</sup> -16<sup>th</sup> March, 26<sup>th</sup> March 2018

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**JUDGMENT**

**HER HONOUR JUDGE CAROL ATKINSON:**

1. NAA is a little girl of Uzbek heritage, now aged almost 3 years. She was orphaned on 29<sup>th</sup> December 2016, when her father died in prison whilst on remand charged with the murder of her mother. In October 2017, after considering extensive evidence, I gave a Judgment confirming that NAA's father was responsible for killing her mother and that he had hanged himself in prison. I was satisfied that during their relationship there had been domestic violence perpetrated by the father against the mother. The issue for determination at this final stage in the proceedings is where and with whom NAA should live.
2. Since December 2016, NAA has been cared for by Mr and Mrs W, local authority foster carers. They have done an excellent job. She has been with them now for 16 months and has settled well. However, NAA has an extensive extended maternal and paternal family and two older full siblings all living in Uzbekistan. The maternal family has been assessed as more than capable of meeting NAA's needs but for reasons that I shall explain the local authority considers that a return to Uzbekistan with the maternal family will put NAA at risk of insecurity and further trauma. Accordingly, the local authority invites me to make a care order and placement order, arguing that only adoption will guarantee permanence for this little girl. Mr and Mrs W put themselves forward to adopt NAA. I am told that they do so recognising the importance of her links to her birth family and that they only wish to be considered if the court considers that NAA cannot return to Uzbekistan. If she does not, and remains in their care, they are prepared to support ongoing direct contact. The Guardian reluctantly agrees that this is the safest outcome for NAA.
3. The extended paternal and maternal families each put themselves forward in opposition to the local authority plan and to each other. The paternal aunt challenges the negative assessment of her and argues that she is the carer for NAA's older siblings and so NAA should be given into her care. The maternal family rely upon the positive assessment made of them by the local authority assessor. Their argument is that they are this child's natural family. This is where her mother wished her to reside. Were they represented the argument would undoubtedly be that in circumstances in which there is a viable alternative from within the natural family it would be wrong to make a placement order contemplating the severing of all links.
4. No matter the form of the order, the alternatives for this little girl are stark. Having lost her parents in such tragic circumstances, do I send her back to Uzbekistan with her extended maternal family who love her desperately and are entirely capable of meeting her needs but where there is a risk that she may become embroiled in a further dispute as to where she should live? Or do I sever her legal links with her birth family and leave her safe in the placement that she has been in since her parents died at the expense of her heritage, religion, language and culture and any meaningful relationship with her extended family.

## **Decision**

5. I am quite satisfied that NAA's welfare throughout her life demands that she be placed in the care of her maternal family and returned to Uzbekistan with them as soon as possible. I consider that she should be placed with her maternal aunt and I intend to do so pursuant to a Special Guardianship Order (SGO). Whilst accepting that there is a risk that the paternal aunt will seek to challenge my order placing this child with her maternal family, I am confident that they will be able to protect her from the impact of any ongoing dispute and that the paternal aunt will have little hope of overturning the decision in the Uzbek courts where I fully anticipate the decision that I have made will be carefully considered and respected. These litigation risks, such as they are, are far outweighed by the benefits of being brought up by the loving and sensitive maternal family who have fought so hard for her return to Uzbekistan.
6. That decision was announced at the end of the hearing on 16<sup>TH</sup> March. A decision was needed before the extended families returned to Uzbekistan. I handed down a summary of my reasons which I append to this full judgment. Let me explain more fully why I have so firmly rejected the course proposed by both the local authority and the Guardian.

## **The law**

7. At this stage of the proceedings NAA's welfare is my paramount consideration. The order that I make must be the one most likely to promote her best interests. I am guided in that decision by the welfare checklist set out in s.1(3) Children Act 1989 to which I must have regard. In addition, as there is an application for a placement order made by the local authority, I must also have an eye to a second welfare checklist set out in s.1(4) Adoption and Children Act 2004.
8. I must bear in mind the Art 8 rights that this child and her extended family has for the right to respect for family life. Any interference with those rights must be necessary and proportionate. I can do no better than set out the propositions on proportionality set out in the document prepared on behalf of the local authority which I adopt:
  - a. Adoption is an option of last resort requiring a high degree of justification to be made only in exceptional circumstances where nothing else will do.
  - b. The Judge cannot properly decide that NAA should be adopted unless it is necessary and proportionate, bearing in mind the requirements of NAA's right to a family life.
  - c. The court must undertake a global, holistic evaluation and analysis of NAA's welfare needs. The court must then conduct a balancing exercise in which each of the realistically available options for meeting NAA's identified welfare needs is evaluated to include all of the positives and negatives of each option. Only when that is done can the court reach a decision as to which of

the realistically available options is the most proportionate means of meeting NAA's needs;

- d. Full weight must be given to the importance of a family placement unless it has been established that it would be so contrary to NAA's welfare that adoption is necessary;
  - e. However, there is no presumption that NAA will be brought up by her natural family. If adoption is shown to be in her best interests, her welfare is not to be compromised by keeping her within her family at all costs; and
  - f. The court can take in to consideration maintaining the status quo - for NAA to remain where she is - if her relationship with her current carer is considered to be a significant one.
9. I need to make some findings of fact. Where facts are in dispute I bear in mind that the burden of proving facts is firmly on whoever asserts those facts. The standard of proof is the simple balance of probabilities.

## **Evidence**

10. The essential background facts are already set out in my previous Judgment and I do not intend to repeat them here. I will set out the key welfare evidence in summary. I do not intend to repeat it all and will limit myself to rehearsing the parts which best enable me to explain my decision.
11. In setting out this evidence I have in mind the factors set out under the two welfare checklists which guide my deliberations. Whilst not slavishly reciting that checklist in the body of this Judgment it will be apparent from the summary which follows that I have considered each element under those checklists.

## **NAA**

12. NAA is almost 3 years of age and has now spent 16 months in the care of her foster carers. Ms S, the social worker, described NAA as a lovely little girl – full of character. She enjoys dancing and singing. She can be quite anxious, but she has become noticeably less anxious of late. Ms S noted that at the LAC review she was going around counting the different people in the room; something she was unable to do previously. As NAA's grandfather put it '*when NAA smiles everything is forgiven*'.
13. Dr Butler, a child and adolescent psychiatrist of considerable experience, gave evidence in the case. In her written report she opines that there is evidence that NAA has suffered trauma and insecurity because of her life experiences. Dr Butler considers that it is impossible to know whether NAA witnessed her mother's death. The trauma that she has suffered could be because of that or because of witnessing

domestic violence between her parents. Her insecurity has been compounded by her frequent moves and her experience that people can disappear and when they do, as in the case of her mother and father, they can be gone forever.

14. As Dr Butler explained, NAA's experiences have been accumulated whilst pre-verbal. As a result, there has been no way to explain to her what has happened. Going forward, her reaction to her life experiences is more likely to be seen in her behaviours and responses to situations rather than verbally. Some of these behaviours are already evident such as her anxiety around strangers and her self-soothing behaviours at bedtime. She will require a carer who is sensitive to these behaviours and attuned to her responses and to that extent an enhanced level of care.
15. NAA's language is delayed but it is not possible to know at this stage whether her language delay is related to trauma or a developmental issue. We are reminded by the maternal family that the language used most often in the first 18 months of her life was Uzbek.
16. NAA's relationship with her foster carer is a significant one. Whilst acknowledging that a move from the current foster carers will be distressing for her, Dr Butler confirmed that a move to family members would be easier than to strangers. She told me that NAA probably has sensory memories – sights, sounds, smells, tastes – that she will associate with her parents and her maternal family, who she knows. This will make them familiar to her. We have already seen evidence of this, I would suggest, in the way in which she has settled into contact with the maternal grandfather and maternal aunt, recognising them from early on in the proceedings and engaging with them throughout the contact that they have taken up regularly. The feedback from these sessions – face to face but largely by Skype - has been very positive.
17. Nevertheless, Dr Butler warns that if she moves back to family this will be stressful. They should not assume that she will be fine. If she is placed with adults who are not picking up on her anxieties she is likely to just shut down, but the anxiety is still there. NAA will continue to feel sad. She will miss her foster carer and continue to miss her parents. When asked about psychotherapy Dr Butler said that it was not absolutely indicated pointing out that families can do a lot to move children on and it is only when this fails that they should look for help elsewhere.
18. In her oral evidence Dr Butler emphasised the importance of NAA being able to settle in one place:

*“The 2 ½ year old with stable history brings with her that stability. This child has always had to transition. For her, loss is a real experience. People can disappear, and they may never come back so she probably has less resilience. If she goes to maternal family then goes to paternal family, this would confirm to her that people disappear and that would be potentially traumatic and very frightening. It would be a*

*further confirmation that people disappear and the chances of her emotionally connecting to others will be reduced”*

19. Dr Butler was also asked about the importance of a true and consistent narrative to NAA.

*“It is very important that she has age appropriate and truthful explanation about what happened to her parents. If conflicting accounts are given it can cause significant trauma to the person and damage the relationships she has with others. The fact that her father killed himself adds a further complexity. In the case of a suicide there are often concerns as to whether it increases the risk of mental health to themselves. I understand that the paternal family hold views about how the mother behaved as a way of explaining events. The loss of their son is serious, but these views require the denigration of the mother. It is frightening for a child to be told her mother was dangerous. It is almost like she had to be killed.”*

### **Impact upon NAA of ceasing to be a member of her birth family**

20. For me the most powerful part of Dr Butler’s oral evidence was the strong emphasis she placed upon the importance to this little girl of her extended family. What she told me was this. For a child who has lost her parents in circumstances such as these the links to her birth family are crucial. She was at pains to emphasise that NAA’s mother was cruelly taken from her and as distinct from the usual situation encountered in these courts, her mother had done nothing in terms of parenting for which she could be criticized. She told me that NAA needs to maintain a real connection with her birth family and that is and will continue to be very important to her.

21. I started this hearing thinking that for a child who has lost her parents there were some obvious benefits in adoption. The benefit of adoption, Dr Butler told me, would be being outside of the care system. In this case, more than any other, the benefits of adoption are for the adults, not the child:

*“Currently, the main issue is who will pick her up when falls etc – what she calls that person does not matter...As she gets older the differences can be explained ...”*

22. It was put to Dr Butler that NAA has no parent, so surely there are welfare advantages in having a ‘parent’ as opposed to a special guardian. Dr Butler simply said:

*“.. she has parents. They are dead’*

23. Indeed, because she has lost her parents, in Dr Butler’s view, what is key for NAA is the benefits she will take from an ongoing and meaningful connection with family. It will be increasingly important that she has some way of connecting and staying

connected – so that when she gets older she will be able to understand what they were like.

24. From the maternal family, there came several insightful questions which I think it will be useful to set out in full. The answers were, in my view, significant. The maternal aunt asked Dr Butler *“we know that she has suffered trauma but ...if NAA was placed with us and supported by family members and provided with psychological support and if we can protect her from the negatives (from the paternal family) about her mother, will she then be able to surpass those things?”* Dr Butler’s answer was *“yes, if she can be cared for by family safely then that is the best for her.”*

25. Dr Butler was asked what the impact on NAA would be if she stayed in the UK and in future she discovers the truth about how she has been separated from family? Would she feel abandoned? Dr Butler acknowledged that this was a very important point. She said:

*“ – the risk to N of remaining in England is related to the loss of her family and there will need to be very clear reasons given to her to help her understand why that decision was taken. Even so there is still that huge loss and knowing that her family have fought so hard to have her. The risk is that she will become angry with the adults even though it is not their fault”*

Dr Butler went on to confirm that if she remained in London the loss of her roots, religion and language would also be *“a huge loss and one that has been forced on her. The loss of her very rich culture and family is not something that her mum and dad chose to happen. Family is even more significant for child who has lost parents and to lose the context of the family is very difficult.”*

26. It seemed to me that what Dr Butler was emphasising was that the circumstances in which NAA has come into care place a premium on supporting a strong connection to her family. How else will she be able to know what her parents were like? Not through her adoptive parents who will have none of the answers that she needs, not from my Judgment which focuses on determining how they died. Who will answer those essential questions – what was my mum like as a little girl? What did she sing to me when I went to bed? Why did she call me NAA?

### **Social work evidence**

27. Ms S has been the allocated social worker in this case since Jan 2017 which is effectively throughout the life of the case. Through her the local authority acknowledges the positive assessments of the maternal family. Ms S carried out the original viability assessment of the maternal grandfather and described how well he handled contact with NAA in what must have been difficult circumstances.

28. It was clear to the local authority from early on that NAA knew her maternal family. More recently Ms S described to me how the maternal family had seen NAA during this hearing at the foster carers home. NAA was shy and anxious initially and buried



her head in sofa blanket but after 10/15 mins warmed up, enjoying playing with maternal Grandfather and maternal aunt. Ms S acknowledges the obvious love and commitment of the maternal family. However, for reasons that are entirely beyond their control, she cannot support NAA's return with them to Uzbekistan.

29. Ms S agreed that if NAA remains in London then the relationship that the maternal family has with her should, if possible, be maintained. In keeping with that there is the offer of face to face contact once a year and additional Skype contact. Ms S confirmed that the local authority would continue to provide supporting letters to assist the family in securing a visa and would fund two return flights per year – one each to the paternal (subject to risk assessment) and maternal family. Ms S had to accept, however, that contact would become increasingly difficult as NAA's knowledge of the Uzbek language diminishes in favour of English. She suggested that the foster family could continue to use visits from an Uzbek friend of the mother to ensure that NAA retained her Uzbek but realistically I consider this is unlikely to do anything more than give her a smattering of key conversational words.
30. Ms S confirmed in her evidence that the local authority acknowledges that NAA's heritage and culture will be impacted by her remaining in London but suggested that arrangements were in place to reduce the impact of these losses – for example the mother's Uzbek friend, life story work. She told me that the foster carer is following wishes of father and allowing NAA no pork. I was told that the foster carers 'have no religion' and are committed to NAA being Muslim 'until she can make her own decision'.
31. I question the extent to which the local authority really recognises the importance of this birth link. I also question the local authority's understanding of the significance to NAA as she grows up of the loss of her cultural and religious identity. The measures proposed to promote this were very obviously lacking. An example of this is to be found in the commitment to NAA being a Muslim 'until she can make her own decision' which in my view betrays a lack of understanding of the nature of her Muslim identity. She is culturally a Muslim as well as religiously. That is very significant. If she loses that essential part of her identity, like losing her ability to speak Uzbek, so the chasm that divides her from her family will widen.
32. I do not want to seem critical of Ms S who has undoubtedly worked tirelessly in NAA's interests. I observed in Ms S a real emotional investment in NAA. Ms S is quite clearly worried for her. Who can blame her? It is entirely understandable given the facts of this case. What Ms S sees when she visits NAA, I am sure, is a little girl who has progressed and is now more settled than she has ever been. It must be very difficult to contemplate yet another move for her to what seems, I suspect to the social worker, a strange and distant country – even to blood relatives.
33. It is for this reason, I suspect, that although the local authority case at trial focused on just one barrier to placement with the maternal family, in her written evidence other criticisms are weighed in the balance against placement. I intend to deal with those

matters but first let me turn to the extended family in Uzbekistan and give some proper sense of how extensive this family is and how rich the heritage.

### **The extended family in Uzbekistan**

34. Uzbekistan is a place with a rich and ancient culture and history. From post-Soviet cities such as the capital, Tashkent, to Bukhara, often considered to be Central Asia's holiest city, to Samarkand which was historically, literally and metaphorically the centre of the world during the time that nomads, traders, soldiers and scholars passed through this crossroads city on their way along the Silk Road. This is where NAA's parents grew up and met. NAA has an extensive family in Uzbekistan.
35. It is of significance to me, and in my view, it will become significant to NAA, that before she died NAA's mother left a note in her locker at work indicating that should anything happen to her she would wish all her children to be cared for by her parents. When the social worker visited the father in prison before he took his own life he indicated that he wished the children to be cared for by the maternal or paternal grandparents.
36. NAA has two older sisters – Z & S – aged 9 and 7 respectively. There is a photograph of the two girls – provided by the maternal family – in the placement application. NAA was never lived with them. Originally, it appears they were to remain in Uzbekistan and her in the UK. Latterly, we know that her mother wanted the older girls to come to London and live with them as a family. This never happened.
37. Most of the maternal and paternal extended family live just outside a village called Jaraik in Guzar district. The father was one of 8 children – 4 sisters and 4 brothers. The paternal grandfather is still alive. The paternal grandmother died in 2013. Two of the four sisters are married with children. NAA's father had 3 brothers – one is deceased but has 3 children and his other two brothers have another 5 children between them.
38. The maternal grandfather is the eldest of 10. His mother is still alive. The maternal grandmother is one of 4. NAA's mother was the eldest of six children. The second eldest is the aunt who applies for a special Guardianship order and has attended court with the maternal grandfather. NAA's mother has two other sisters – one aged 25, living near the grandparents and married with a son and another aged 20 who is single and a professional musician studying in Tashkent. NAA's mother has two brothers – one 23, single and in higher education in Tashkent and the other is 15 and living at home with the maternal grandparents.
39. Both the maternal and paternal families were thoroughly assessed by local agencies and by an independent social worker (ISW), Mr Wynne, who travelled out to Uzbekistan securing the support and assistance of local agencies in his assessments. Nothing repays a full reading of his detailed and insightful reports.

## **The ISW assessment of the paternal family**

40. The ISW was unable to recommend that NAA be placed with the paternal family. The paternal family is not without positives. The paternal aunt is a highly educated woman. She is a chemistry teacher. She is divorced but she lives with her father in what is his house but is held in her name. She told the ISW that she has devoted her life to the care of NAA's older sisters. Indeed, she has, and there can be no doubt that they are seemingly happy, settled and progressing well at school. The maternal grandfather confirmed this to be the case in his evidence before me.
41. The ISW was confident that in the care of the paternal aunt NAA would experience warmth and affection throughout her childhood. His concerns related to the likelihood that NAA's experiences in London would be ignored or minimised and by that means her emotional needs unmet.
42. It is from the ISW that the suggestion first comes that the paternal family had woven a false narrative around these tragic circumstances. At that first meeting Mr Wynne describes how the paternal aunt seemed to him to be completely overwhelmed by the circumstances of her brother's death. It was for this reason that he returned to Uzbekistan a second time to re-visit these issues with the families. He found the paternal family were unmoved and still stuck in their false narrative.
43. Towards the end of the hearing before me the paternal aunt denied that this was their position. She told me that the ISW had misunderstood what they were saying. She blamed poor interpretation. That was not put to Mr Wynne. I should briefly explain that the paternal aunt and uncle arrived in the country on day 2 of the hearing. I delayed the start of the evidence to day 3. This was not the first hearing at which their attendance was expected but they failed to attend and so they were warned that the case would go ahead in their absence. On day 3 they failed to appear. They sent a message to say that they were busy with other matters asking that I should defer the evidence further. They were informed that this was not possible. On the morning of Day 3, I pressed on with the oral evidence of Dr Butler, but the warning was repeated that the evidence of the ISW, which was crucial to their case, would proceed that afternoon. They nevertheless chose not to attend to challenge that evidence. I have had no real explanation as to what was so pressing as to prevent their attendance at any time on Day 3.
44. The ISW was asked whether he was satisfied that when he returned to the paternal family to explain to them the importance of their acceptance of the true narrative concerning the deaths of NAA's parents, they understood. He confirmed that in his view they understood him perfectly well and it "made no difference". In support of this he described how even at that meeting there continued to be disparaging remarks made about NAA's mother in the hearing of the older girls.
45. In the view of Mr Wynne, the animosity, tension and conflict between the families was unresolved and he considered that the reason for that was a significant blockage on the part of the paternal family.

## **The paternal Aunt**

46. The paternal Aunt presented during the hearing as someone who was using all her strength to contain her emotions behind a stony veneer. She sat listening to direct criticisms of her capabilities as a carer for not just NAA but also for the older girls and barely registered a response. During the last few days of the hearing I saw cracks appear in that veneer. She sat silently crying on occasions but still registering no emotion behind the tears. I consider that she is still emotionally overwhelmed by these circumstances, but her focus is not, in my view, NAA.
47. I accept that the paternal aunt has suffered her own grief through the loss of her brother. I am sure that the death of her brother has devastated her, but it has also struck at the heart of everything that she holds dear – her right to continue to be the sole carer for NAA’s older sisters. It is Z & S who are her focus. She is obviously terrified that she might lose them.
48. The whole purpose of her evidence was to persuade me of her significance in the lives of Z & S and that the only proper place for NAA is to be with Z & S. Her focus on this was such that she was oblivious to the insensitivity of some of her comments made in front of the maternal family – for example, that the mother had chosen her to care for Z & S knowing that she (the aunt) could do it better (contrary to my findings in the first Judgment); that she had adopted the girls and she was their ‘mother’ now. There was nothing about her connection with NAA. Nothing about what she could offer. Simply that these sisters should be together.
49. I listened to what she had to say about Mr Wynne’s report and how he had misunderstood her. I do not accept that. At the end of her evidence I was not convinced that she was accepting of the facts as I have found them to be and not convinced that she has told the older girls the truth. I consider that she will tell the girls whatever she needs to keep them with her. There is evidence of this to be found in their current refusal to see their maternal grandfather. She was at a loss to explain why it was that the girls would suddenly be so adversely disposed to their maternal grandparents. I also consider it likely that she will pursue placement of NAA in her care for as long as she believes she needs to so as to secure the continued placement of her older siblings with her.
50. The paternal aunt is an intelligent woman. It is not, in my view, that she lacks insight into the impact of her choices on NAA. I consider that she was well aware of how her avowed commitment to pursuing NAA in Uzbekistan might impact upon my decision whether to return her to the care of her maternal family. I asked her several times which she would prefer – adoption of NAA in the UK or placement with the maternal family – making it clear that her intention to pursue NAA might put the placement in Uzbekistan in jeopardy. She did not really answer. I consider that she would rather NAA stayed here in the UK than be placed with the maternal family because by that means NAA could never be a factor in the decision making about the older girls.

51. I am satisfied that the paternal aunt cannot provide for the emotional needs of NAA and indeed NAA would be at risk of emotional harm in her care.

### **The ISW assessment of the maternal family**

52. In complete contrast, the ISW assessment of the maternal family is positive. Indeed, despite the conflictual situation and provided that the risks posed by the paternal family can be managed, Mr Wynne continues to recommend that N should be placed with her maternal grandfather or aunt.
53. Let me summarise the entirely positive comments that he makes about them. The maternal grandfather is described in superlative terms by Mr Wynne who was clearly impressed by his warmth, generosity of spirit, calm, and his positive and peace-loving approach to life. There was an extensive assessment of the relationship between the maternal grandparents which ISW describes as committed and mutually respectful. He records that each spoke of the other with warmth and affection and that in their relationship although culturally it is for the husband to take charge, the maternal grandfather is a man who seeks out and respects the advice and views of his wife and by this means they have negotiated to a consensus on most issues in their lives together. They have raised and educated 6 children who are testament to their success as parents.
54. The maternal aunt lives in Tashkent with her husband. Tashkent, is over 250 miles from the village where the maternal and paternal grandparents live. They both speak some English – she rather more than him as she teaches English. She is described by the ISW assessment as warm, calm and articulate, a self-possessed and confident speaker who has planned carefully for NAA’s return. Her husband, Mr N was once a teacher too – of history. He is now the Fund Custodian of Archaeology, Ethnography and Literature at the State museum of Uzbekistan History. Again, despite the traditional roles that they adopt, the ISW considered the maternal uncle to be a man who *“values and respects women and girls and acknowledges that his wife and other women in his life deserve and require safety, autonomy and agency over their own lives...”*. They have two boys aged 6 and 4 and were assessed by the ISW as completely committed to integrating NAA into their family. That is entirely in keeping with my assessment of the aunt who I have seen at these hearings and who is prepared to live in the UK, apart from her husband and children for 12 months if that is the only way that she can secure NAA in her care.
55. Turning to their relationship with the paternal family, Mr Wynne confirmed that there had been no disparaging remarks made by maternal family about the paternal family. That has been my experience of the maternal family. They are reluctant to criticise the paternal family. It has been implied that this is because they cannot stand up to them. I disagree. They chose not to fight and instead turn the other cheek. That is a positive, not a negative.

56. Mr Wynne concluded his evidence by confirming that local officials confirmed to him that the maternal family was highly respected in the locality:

*“My experience is that they are warm and caring and in this tragic situation they are holding themselves with dignity. I had no hesitation in recommending N should return to their care – GPs or aunt and uncle.”*

57. This is but a summary of the positive comments made about this intelligent, educated, committed and caring family. Nothing can replace a full reading of the ISW reports and the thoughtful exchanges that take place between the ISW and the maternal family. It is unfortunate indeed that the power of these positives is barely represented in the final social work statement and the placement application where greater emphasis is laid on supposed negatives which have, rightly, not been pursued and to which I shall now turn.

### **Factors said by the local authority to weigh against the maternal family**

58. It is suggested in the final social work statement and the placement application that NAA's mother had reported that there was domestic violence in the relationship between her mother and father. No findings were pursued in relation to this. I asked whether this allegation was pursued. I was told that it was not, but it sits prominently in the papers. The maternal family came prepared to answer the allegation believing that it was pursued. Let me deal with it.

59. There is a single reference in the police report that the mother ‘said that her dad had beaten her mum and that it was just what went on...’. For the avoidance of doubt, other than that hearsay note there is no other evidence to support that assertion. Importantly, there was nothing discovered by the ISW about this family which might have caused him to be concerned that there had been violence or abuse in the family in the past. Indeed, it is completely contrary to the assessment made by the ISW of the grandfather as a man, and of the way the maternal grandfather negotiates his relationship with his wife. In their written evidence the maternal grandfather and aunt have denied the suggestion that there was violence in the maternal family. I accept that and consider that there is no evidential basis upon which I could possibly conclude otherwise.

60. Next, in the placement application there is a suggestion that the maternal family are ‘unlikely to give a neutral and unbiased narrative of NAA's life story’. I have no idea where this suggestion comes from. There is certainly no evidential basis for it. Quite the contrary. The evidence in the ISW's report is that the maternal aunt has given careful thought to how she can best manage her own feelings of loss and anger to promote a positive perception of N's paternal heritage. There was no reason for the ISW to suppose that she would not be capable of that. I have searched carefully through the evidence and have found no basis for this suggestion. It is, in my view, an assumption made about this family which was without evidential basis and I have assumed that this was why it is no longer relied upon by the local authority. Having

seen both the maternal aunt and maternal grandfather give evidence, I have no hesitation in finding that they are very capable of delivering a positive picture of NAA's paternal family to NAA.

61. Finally, it is suggested that the maternal family has not provided the local authority with information on the availability of speech and language therapy or therapeutic support for the trauma she has suffered. This is said to be evidence that they will 'neglect' NAA if she is placed in their care. Unsurprisingly, this argument was not pressed at the hearing. I note that the ISW sets out that the maternal Aunt has "identified medical and psychological experts in Tashkent to whom the family can go for advice." Also, as I have already set out, Dr Butler is not yet clear as to whether NAA will need speech and language therapy or any form of therapy. So, in so far as it is suggested that there are no such services in Uzbekistan or that the maternal family have failed to locate them that is not so. I am quite satisfied that this family will source and call upon whatever services they need to help support NAA. It is clear to me that they accept the likelihood that she has suffered trauma and are well capable of dealing with that.

### **The maternal family**

62. I accept the evidence of the ISW about the maternal family. It entirely accords with what I have seen of them. They have held themselves throughout this process with dignity and calm. They have had no representation and no support outside of the court room to help them negotiate the process. The gentleman from the embassy has been a support to them but as I explained in a previous Judgment, what they needed was a lawyer. It must be mystifying to them that there should be the slightest concern about them as a family and that even now, with a positive assessment, they have still faced opposition to their proposals. They have borne this without complaint and with great fortitude. Their commitment is clearly demonstrated in their involvement in these proceedings and the frequency with which they have maintained contact long distance to NAA. They have only ever conducted themselves in my court room with clear respect for the process, however aching slow it has been.
63. I have no hesitation in concluding that either the maternal Grandfather or the maternal aunt would be well capable of caring for NAA. I choose the aunt for no other reason than I consider that placement of NAA with her in Tashkent will provide an additional line of defence against any interference from the paternal family. I turn now to an analysis of how the paternal family might interfere with my welfare decision.

### **Risks to NAA from the paternal family**

64. In the first place, it was suggested during the hearing that there was a risk that the paternal family would simply take NAA from the maternal family. The suggestion

has its roots in the history relating to the older girls. In November 2016 the girls had been placed with the maternal family by their mother. This was around the time that their father had divorced her. As set out in my previous Judgment, he subsequently relented and they were reconciled. Prior to that reconciliation the paternal aunt and another member of the paternal family attended at the home of the maternal grandfather and 'forcibly removed' the girls taking them back to the paternal family home. The grandfather put up no 'fight'. He explained to me that it would not have been good for the girls to see such a thing. However, when his daughter heard she insisted that her father seek return of the girls to his care and this he did. They were indeed returned by officials. The paternal family did nothing to prevent that. The girls were again placed back with the paternal family when their parents were reconciled at the request of their mother and father.

65. The forcible removal came during the breakdown of their parents' relationship and in circumstances in which the paternal family could reasonably argue that the girls' 'home' was and always had been with them. This is no excuse but having seen the paternal aunt it seems likely to me that this was an emotional response by her to the loss of the girls from her care. The paternal aunt does not have the same emotional investment in or connection with NAA. I do not think that there is a real risk that NAA will be forcibly be removed from the maternal family. What is more, I consider the emotional investment that the maternal grandfather and aunt have in NAA is such that they would act to prevent her removal.
66. Will the paternal family continue to apply for NAA to be placed with them in Uzbekistan? The aunt said that she would. As I have already said, for so long as she believes it will influence her chances of keeping the older girls, I do think she will seek to apply for the placement of NAA with her. It is significant, in my view, that her motivation is the retention of the older girls.
67. Whilst there is little evidence of it at present, it is not impossible that these families will sort out their differences in time. If they broker some agreement with respect to the older children (as was being discussed) I think it quite possible that the paternal aunt will not pursue NAA. I also consider that there is a possibility that if NAA is placed with the maternal aunt rather than the maternal grandfather she may feel less threatened. I add to that the clear evidence of the legal expert, which I accept, that contrary to the aunt's current strongly held belief, the 'presumption' that siblings should be brought up together is not without exception. Indeed, this is precisely the sort of situation in which the 'presumption' would not trump best interests. Each one of these factors would reduce the chances of ongoing litigation in my view and I consider that with the passage of time the risk will reduce. Having said that, I must accept that the evidence before me was that at this moment in time there is a real risk of further litigation over NAA in Uzbekistan and it is a risk that cannot be ignored.
68. Endless legal challenges over her placement will mean, I accept, that NAA may be exposed to instability if her carers become stressed by the litigation. However, I



consider that the maternal family will do all that they can to protect her from the impact of that litigation uncertainty and that the effect on NAA is not likely to be significant.

69. Only if the paternal aunt is successful in her application will NAA be exposed to harm. That harm, I accept, would be significant. However, the magnitude of the risk can only be assessed in the light of the expert legal evidence.

### **The legal expert**

70. Mr K is a qualified lawyer based in Uzbekistan. He confirmed that he had the requisite expertise to advise the court on family law. Whilst he accepted that he was not in practice he is a lawyer who has for the last 6 years given expert evidence about law and procedures in Uzbekistan. It was suggested that he lacks the experience of a practising lawyer and so is perhaps not well versed in the ‘realities’ of the legal system. Other than that, there is no real challenge to his expertise in this field and there was no suggestion made that I should seek further advice from anywhere else.
71. I mention the ‘realities’ of the Uzbek legal system because it is suggested that I should be cautious about his evidence about Uzbek law. The local authority and Guardian argue that the proceedings between the paternal and maternal families in respect of Z and S demonstrate a failure in the Uzbek system to follow the rules that this expert tells us apply. The witness was taken through several factors which he agreed, and I can see, should have weighed in the balance against the paternal aunt. For example, the mother’s wishes concerning the care of the girls, that the assessment of local agencies was that the home of the paternal aunt was not a ‘healthy environment’ for children to be placed in, the denial of contact to their maternal family. It was suggested that the failure to find in favour of the maternal family demonstrated that one ‘simply cannot predict what the Uzbek courts will order’. The legal expert disagreed highlighting the one very powerful and overwhelming factor in the paternal aunt’s favour. The status quo. Z & S had been brought up by her from an early age; they called her ‘mother’.
72. It is not for me to second guess the decision of the Uzbek courts in relation to Z & S. Apart from the obvious point that I have not seen the documents in the case or heard the arguments, it seems to me that this is getting perilously close to the rather paternalistic approach frowned upon in our dealings with other jurisdictions. Having said that, I do feel able to add this. The paternal aunt has in her favour in relation to these two, now orphaned, girls, a powerful status quo argument. Whatever the criticisms of her, the children have been and continue to do well in her care – something conceded by the maternal grandfather. They have lived with her for most of their lives. Who is to say that in the absence of evidence of actual harm, that would not weigh as heavily in the balance in an English court? I do not accept that the Uzbek judicial system is not to be trusted. Turning then to the evidence about Uzbek law as it applied to NAA.

73. When it was further suggested to the expert that we cannot know what the Uzbek court will order for NAA he also disagreed. The legal expert told me that if there is an order made by the British courts providing for the care of this child who is a British citizen, then this order will be respected. Mr K explained that NAA has two passports, a British and Uzbek. However dual citizenship is not allowed in Uzbek and therefore she is considered in Uzbek to be a British Citizen. This was of significance for him. The point was made that the other two girls also have British passports and were born in England but indisputably they have lived in Uzbek for the entirety of their lives and the Uzbek courts have been seized of welfare decisions about them already.
74. There was, he accepted, a difference between the approach taken to an order made in the British courts for SGO and an order made for adoption. An adoption order would be more secure than special guardianship. The distinction seems to be in the extent to which the orders are capable of successful challenge.
75. If NAA is placed with the maternal family on the basis of an adoption order then this UK adoption order, I was told, would be executed in Uzbek without any objection because NAA has British Citizenship.

*“The adoption of a child who is a foreign citizen...residing in the territory of another state...by a citizen of Uzbek is carried out in accordance with the legislation of the state in which the child resides”.*

Thus, the court decision on adoption of NAA is also legal according to the legislation of U. If an adoption order was made, it is only subject to challenge in limited and proscribed circumstances.

76. If a special guardianship order was made the expert conceded that *‘cancellation will be easier because a guardian’s rights are less and more restricted’*. If the maternal family are made special guardians, Mr K told me that then the court decision is capable of being reconsidered by the Uzbek Guardianship and trusteeship bodies but the fact that the aunt applies does not mean that she will succeed. On the likelihood of success, he was clear that she would not.
77. The theme that we cannot be certain of the outcome of any decision in the Uzbek courts was taken up again at this suggestion. It was put to the witness that there was no way of knowing. Of course, we all know that nothing is guaranteed in litigation just as nothing is guaranteed in life. However, it was at this point that the witness decided to illustrate the difference between the two orders in percentage terms. He felt that if there was an order for adoption it would be 100% secure; if it was a SGO it would be ‘95% in favour of MGP’.
78. On keeping siblings together, the expert explained that the law in Uzbek favours keeping siblings together but ‘this is not a rule that cannot be overruled if it is in the child’s interest’. He went on to say that the court decision re the siblings was made purely on the status quo and in his opinion this decision has no direct legal effect on

the decision about NAA. He advised that an exception can be made for cases when adoption corresponds to the interests of the children for instance when siblings have been apart a long time or have been educated in different institutions or in different places. That is exactly this case.

79. Mr K set out the process by which any UK decision will be executed in Uzbek as follows:[ 5 points]

*“UK court decision will be executed as follows in Uzbekistan: (a) UK court will send a letter to the Supreme Court of the Republic of Uzbekistan via the Ministry of Foreign Affairs of the Republic of Uzbekistan. The UK decision attached; (b) Supreme Court of ...Uzbekistan will send the UK court decision to the district court of an adopter citizen; (c) appropriate civil court of that district will issue writ of execution on implementation of UK court decision; (d) the civil district court will send writ of execution to the bureau of obligative execution under the Head Prosecutor’s office of the Republic of Uzbekistan; (e) on the basis of this writ of execution, UK court decision will be executed in the territory of Uzbekistan without any objection, because according to the clause #7 of the law #258-II dated August 29, 2001, writ of execution issued by the courts of the Republic ...on the basis of court decisions of foreign courts and arbitrators, are executed mandatory”*

Mr K confirmed that this process applies equally to SGO and adoption and further that NAA can remain in Britain up until the final steps are taken.

### **The prospect of securing an English adoption order in favour of the maternal family**

80. It was in response to the evidence from Mr K that an order for adoption would be ‘100% secure’ that I acceded to an invitation from the local authority that there should be evidence sought from an immigration expert as to the possibility that the aunt could become habitually resident in this jurisdiction. It is important to record that the local authority position was that a placement with the family *‘could only be countenanced if this were to be pursuant to an adoption order made by this court’*. To qualify as a potential applicant for an adoption order before an English court, the maternal aunt would have to establish habitual residence in Britain for at least a year together with her husband.

81. The case was briefly adjourned and the local authority instructed specialist immigration counsel to provide advice on the options open to the maternal aunt and her husband to secure their status in the UK. In summary that advice was that:

- a. It is open to the maternal aunt and her husband to apply for *“leave to enter or remain outside the immigration rules, relying upon exceptional circumstances not falling within any provision of the rules.”* [para.22]
- b. Counsel explained that *“this is a discretionary power to grant leave outside the rules, and as such, how it will be exercised is difficult to predict. Similarly,*

*the time that consideration of such an application would take is difficult to predict. A timescale for a decision of six months would not be unusual, but an expedited decision could be requested because of the facts of this case.”*

[para.23]

82. As Mr Twomey QC for the local authority points out the immigration advice highlights the potential problems created by the tension between the position that the aunt has hitherto presented in order to satisfy the Home Office of the temporary nature of her visit when seeking a visitor’s visa and the factual circumstances required to satisfy the test of habitual residence. I have indicated to the parties that I do not necessarily accept that the apparent obstacles set out in that advice to acquiring habitual residence in this jurisdiction so as to permit an application to adopt are as described, but that does not much matter because I do agree with the local authority that on reflection this proposal does not appear to be a feasible one. It is uncertain, but more importantly for me it will give rise to an unacceptable and in my view unnecessary delay. This child needs a final welfare decision urgently.

### **The Guardian**

83. The Guardian in this case Ms M commands a great deal of respect in this court and from me. She brings to this case her enormous experience and sensitivity. However, I find myself unable to agree with her reluctant conclusions.

84. Put shortly, the Guardian, acknowledged the advantages of a placement with the maternal family but expresses concern as to whether such a placement could be made sufficiently stable. She was concerned at what appeared to her to be the resolve of the paternal aunt to maintain a relentless pursuit of NAA in Uzbekistan. The Guardian’s conclusions about the paternal family have been strengthened by seeing the aunt give evidence. She found much of this evidence worrying.

85. The Guardian was impressed by the maternal family. She remains of the view, that *if we could be confident in the stability of the placement*, NAA should be placed with the maternal family. However, she also remains of the view, that a placement of NAA with her maternal family in Uzbekistan would not be stable. This concern derives from the legal advice that she has heard thus far and the evident tenacity and disregard for the views of others which she saw in the paternal aunt.

86. On the issue of what sort of order was necessary to secure NAA’s placement should she remain in London, I was disappointed that she was unable to consider anything other than an adoption order. She said in her evidence that ‘N has no parents – in that way adoption is better because it is a life-long thing – it cements her legal status’.

87. Finally, she was of the view that contact to the maternal family should be more frequent than once per annum and that there needed to be greater clarity as to how the local authority will promote NAA’s Uzbek heritage and language.

88. I do not agree with the position adopted by the Guardian. The Guardian was looking for a 100% guarantee that the placement in Uzbek would be secure. It is natural to want to secure the placement for a child who has come through such a tragedy. Indeed, it is in NAA's interests that it should be as secure as we can make it. However, I am concerned that in this way she has looked at only one side of the balance. There are no absolutes in life and it is only by looking at the other losses that this child will suffer that a proper assessment of where the balance should fall can be carried out.

89. I am afraid to say that I consider the Guardian, like the local authority, has not properly considered the impact throughout her life upon this little girl of being separated from her birth family and her Uzbek Muslim culture and heritage. This is perhaps best demonstrated in the continued preference for an adoption order over a SGO to the foster carers. The insistence that her legal status must be cemented flies in the face of the evidence of Dr Butler. In the light of the evidence from Dr Butler and given the willingness of the foster carers to consider an SGO, it is difficult to see how, if NAA was to remain here, it can be said that nothing less will do.

### **The foster carers**

90. The foster carers have made it clear through the local authority that:

- a. They had always hoped that NAA could return to the care of her maternal family in U, if it was safe to do so (see final social work evidence);
- b. They do not put themselves forward in opposition to the extended family;
- c. Only if a return to Uzbekistan was not possible would they like to be considered;
- d. If they are to be considered, they have a clear preference for an adoption order though I am told that they might be prepared to consider alternatives to that.

91. The maternal family are grateful for the position that they have taken and for everything that they have done for NAA. There was no suggestion during the hearing that the relationship that NAA has with her foster carers was so significant that she should not be moved. That was not the evidence of Dr Butler. Nevertheless, for the sake of completeness, I have considered in my analysis the distress that will be caused to NAA in separating from them. I am satisfied that this will be significant for her but short term. It does not weigh so heavily as to cause me to consider that she cannot be moved.

### **Discussion**

92. The realistic options for NAA are returning to Uzbekistan with her maternal family or remaining here, most likely in the permanent care of her current foster carers.

93. For the ample reasons set out above a placement with the paternal family in Uzbekistan would in my view be contrary to NAA's welfare and is not a realistic option. I accept the one positive factor that such a placement would bring is unification with her siblings and the possibility of being brought up in the same home as her sisters. That is important and were circumstances otherwise it might well weigh heavily in the balance. Not here, however, and it is important that I should set out why.
94. NAA has never lived with her sisters and importantly her sisters were never brought up by their parents. Her sisters call their aunt 'mother'. They do not have the shared history that most siblings have. This is not limited to their history so far as their parents are concerned. It extends to the maternal family in respect of whom her sisters appear to have developed an anxiety – something that NAA does not share. Tragically, the older girls have lived steeped in the paternal family narrative regarding their parents. There is no way of knowing what they think has happened to their parents, but it is unlikely to be accurate in my assessment. On the evidence currently available to me it is not in NAA's interests to be placed with her siblings whilst Z and S are in the care of the paternal family.
95. The maternal family – whether the MGF or aunt – are capable of meeting all of NAA's needs including her enhanced needs for sensitive and highly attuned parenting to deal with the hidden effects of the trauma that she has suffered. They have a relationship with NAA and their undoubted capabilities as care givers will be enhanced from NAA's perspective by their ability to answer this child's likely endless questions about her parents and about who she is. I have every confidence that they have the capacity to answer in the same warm and sensitive way when the questions relate to her father. They will provide an exceptional example to this child of how to negotiate even the most painful life events with dignity, quiet calm and resilience. I am satisfied that provided it is safe to do so they will give her the best chance that she will have of a relationship with her sisters.
96. Moving from her placement with the foster carers would undoubtedly cause her some initial distress. There will be the loss of her most consistent carers to date, after her mother, which will no doubt be compounded by the need to learn to communicate in a different language. That initial distress is capable of being reduced with sensitive handling. She is already well bonded with her maternal family and comfortable in their presence. A careful transition plan to build on those positives should assist in minimising the loss and disorientation that she will feel. The use of English to bridge the communication gap is possible because of her aunt's proficiency in the language. These relatively short-term difficulties are in my view far outweighed by the longer-term benefits of being with her birth family in the place of her heritage.
97. The risks in a placement with the maternal are entirely from the paternal family. As I have already set out the most significant risk is the possibility that the aunt will manage to secure a placement of NAA with her. It was perhaps unhelpful for the

legal expert to have put a percentage on the risk. The local authority and the Guardian both assert that had he been 100% sure then that would have been acceptable to them. Yet nothing in life is 100% guaranteed. Would 99% have been acceptable? Or 98%? Or would only 100% do? The figures are, it seems to me, meaningless. His percentages reflect that the less safe order is special guardianship because it is capable of challenge but I accept his evidence that it is not likely to be successfully challenged.

98. The only other alternative for NAA will be to remain with her foster carers in this country. The W's are willing to become NAA's 'parents' and by that means provide her with the necessary security and permanence, removing her from the care system and claiming her as their own. The W's are not yet approved as adopters, but I am prepared to proceed on the basis that they will be. NAA would not have to move. They are people, I am told, who recognise the importance of the extended family as demonstrated by their reluctance to put themselves forward as carers unless a family placement is not possible and by their willingness to continue with face to face contact.
99. Both the local authority and the Guardian supports the making of an adoption order considering that this is the best way to secure the placement. Whatever the order used to secure a placement in this country, it will not avoid the feeling of loss to NAA of her family (according to Dr Butler) and her identity. The disadvantages of growing up in London, permanently separated from her birth family are in my view considerable.
100. NAA has already begun to lose her connection with her Uzbek heritage. That began the day that her parents disappeared from her life. If she remains in this country that will never be recovered. She will be denied her parent's language (no doubt the language that she most regularly heard in the first 18 months of her life), and all the sights, smells and sounds associated with a time when her mother was alive. She will be denied the opportunity to properly resume her cultural and religious identity as a Muslim child of Muslim parents. However well-intentioned her foster carers are, they are simply unable to replicate any of this for her and as a result will be unable to help her reconstruct any sense of her parents. Indeed, it is the local authority position that the foster carers would not be able to risk even taking her to Uzbekistan. The local authority plans are poor compensation for any of this and when she is old enough to discover and understand the truth of her identity, this will have a powerful impact upon her.
101. A great deal of time has been spent focusing on the false narrative created by the paternal family about NAA's history in London but there is a real danger that by denying her the opportunity to grow up in her birth family we are creating another fiction. That is the fiction of a child whose parents died leaving her without a loving, caring and committed family able to care for her in the home of her parent's birth.

102. I acknowledge the point made by the local authority that although the risk that the paternal family will be able to overturn my decision is very small the consequences flowing from that risk are very serious indeed. Whilst that means that this small risk will weigh more heavily in the balance, I reject the submission that it weighs so heavily that it cannot be outweighed by the disadvantages to this child of being permanently removed from her birth family. Fundamentally, the risks to NAA in Uzbekistan are outweighed, in my view, by the seriously detrimental impact upon NAA throughout her life of being separated from her family and denied her true religious and cultural identity following the death of her parents.
103. I intend to make a SGO in this case in favour of the maternal aunt. I am aware that before NAA can return to Uzbekistan with her maternal family there needs to be a plan for transition into her aunt's care, documentation to ensure that she can travel and steps need to be taken to begin the process set out by the legal expert and repeated at paragraph [79] above. I will hear submissions in due course as to whether NAA should await the completion of the steps set out in paragraph [79] before her return. That will depend to a large degree on timescales. To that end, I have invited the local authority to assist the maternal family in understanding what information is needed from their Uzbek lawyer about the steps to registration.

#### **POST SCRIPT**

104. With the knowledge of the parties I opened up communication with the IFJ Office in order to begin the process set out by the legal expert and repeated at paragraph [79] above. Within a matter of days, I had confirmation from the IFJ Office that the Foreign and Commonwealth Office had made contact with the British Embassy in Tashkent and were able to assist.