



Neutral Citation Number: [2022] EWHC 2078 (Fam)

Case No: ME20C00205

IN THE
FAMILY COURT
Sitting at Royal Courts of Justice Strand, London, WC2A 2LL

Date: 27 May 2022

Before :

MR JUSTICE WILLIAMS

Between :

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|---|---|
| KCC | <u>Applicant</u> |
| - and - | |
| Mother | <u>1st Respondent</u> |
| -and- | |
| Father | <u>2nd Respondent</u> |
| -and- | |
| , D and C | <u>3rd – 4th</u> |
| (Though their Children’s Guardian) | <u>Respondents</u> |

Tina Cook QC and Katherine Archer (instructed by **Invicta Law**) for the Applicant Local Authority

Katie Phillips and Hannah Cox (instructed by **DSD Law**) for the **1st Respondent Mother**
Caroline Harris (instructed by **Fraser Hollands Solicitors**) for the **2nd Respondent Father**
Joanne Porter (instructed by **Singleton Solicitors**) for the **3rd – 4th Respondent Children** by
their Children’s Guardian

Hearing dates: 18-19 May 2022

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WILLIAMS J

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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

Williams J :

1. This is my judgment in respect of the local authority's applications for care and placement orders in respect of D (a boy born on 24.5.2020) and C (a girl born on 27.5.21). That application is opposed by the parents who seek either the return of the children to their care (which I have already ruled out) or the placement of the children with the mother's sister and her husband or an adjournment to enable a full kinship assessment by an independent social worker to be undertaken.
2. I gave my decision at the conclusion of the second day of the hearing, giving only my essential reasons given the time of day. I said I would supplement that with a fuller judgment if requested at a later date. This is that fuller judgment.
3. In reaching the decision I have of course have very much in mind the conclusions I reached about the family, in particular the father and the mother in my judgments of July 2021 and February 2022; in terms of their characters, the dynamic between them, their honesty and of course the risk each poses to the children both directly and indirectly.
4. This is a case which is a tragedy for this family. I think that probably everybody involved in this family, even the father, but more particularly the mother, A, B, D and C, are all victims in their own way. They are all victims of different issues but victims nonetheless, and that makes the decision much more poignant. Z is to some extent now the unseen victim as the focus has moved on in these proceedings from how she died to how her siblings might live. But she is the greatest victim, her life taken by the man she looked on as her father, robbed of her chance at living.
5. Although he is a man capable of fatal violence, he also it seems to me is a victim of his own upbringing and the life he has led. That has contributed to his propensity to violence which has expressed itself in the extreme; killing his adoptive daughter after at least two earlier appalling assaults on her and after several serious assaults on the mother. He is also a victim, in some ways, in that his life has shaped his thinking to such an extent that he is incapable of reflecting on his actions, incapable of admitting his responsibility, and incapable of putting anybody else's needs before his own needs, whether those of his wife or, most importantly, of his children. As I have already referred to in an earlier judgment, he sabotaged the chances of his wife being able to look after their four children by interfering with her attempt to separate from him because he couldn't tolerate the separation from her.
6. The mother also is a victim of her circumstances and of her husband. She had been steadfast in bringing up her children until she came to this country. She has suffered the tragedy of the loss of a child through illness, compounded by the murder of her adopted daughter by her husband. She has been put in fear of her own life to the extent that she felt it necessary to stab the father. She finds herself in a position now, and over the last few months, of being entirely unable to separate herself from the perpetrator of those dreadful assaults on Z and on herself, (although I had heard

evidence of some capacity to try to separate) because of the power of the connective forces between herself and him.

7. The children themselves are the most obvious victims as they bear the consequences of their father's violence and their mother's inability to separate from him, so not only have they experienced the death of Z, their exposure to the father's violence and their separation from their mother but they also are powerless to act in a way which is open to their adult parents. Decisions are made about them without them being able to influence them, unlike their parents. D lived with his family for only a matter of days and C has never lived with her mother, father and siblings (save D who she has been placed with). They have been in foster care almost the entirety of their joint lives and must see their foster carers as their de facto parents; their relationship with their siblings and parents having been established and maintained mainly through supervised contact.
8. Ultimately, the decision that has to be made now is what happens to the two youngest children. A and B will remain in long term foster care as a result of the final care order I made earlier this year. At that hearing there was no other option but foster care before the court if return to the mother or the mother and father was ruled out. It had been anticipated that final orders would have been made in respect of all the children when that January hearing was listed but for reasons connected with the processes in relation to the adoption decision-maker the placement application in respect of D and C had not been issued, and so was not considered although at that point; no alternative placement for D or C other than long term foster care or adoption had been identified. A date was set for 8 April for the consideration of the 'to be issued' placement order application. Following the January hearing which resulted in the mother and father being ruled out as potential carers for any of the children, the mother identified her sister and brother-in-law as potential carers for the children, notwithstanding that her evidence at the January hearing that she had only recently re-established contact with her and that she did not want her sister involved in the case. The local authority decided to carry out a viability assessment, which was negative but the 8 April 2022 hearing was ineffective as the application had only been issued on 7 April. At that hearing, the mother sought permission to instruct an independent social worker to carry out a full kinship assessment and for immigration advice in relation to the possibility of the aunt and uncle gaining entry to the UK to look after the children. I did not grant those applications, having identified that financial and immigration issues were rarely insuperable hurdles, but considered that the issues relating to the risks the father and mother presented to any kinship placement were likely to be of far more significance in particular given that the viability assessment identified the maternal aunt and uncle as appearing to believe that Z had died as a result of an accident. I made provision for them to be informed of the findings that I had made and for them to file further evidence, in particular as to their understanding of my findings and the consequences of them. I left the further assessment of the aunt and uncle open, as it seemed to me that this would only become necessary if the issues relating to the risks posed by the father and mother and the aunt and uncle's insight were satisfactorily addressed in the evidence. Other issues relating to the parenting capacity of the aunt and uncle I considered would likely be addressed by the Guardian.

9. The question now is should a care order and a placement order be granted which will, in the usual course of events, result in D and C being adopted by another family where the new family will replace the mother and father as their mother and father, and where their links to their birth family and culture may be maintained by some support in placement and some contact with A and B but to all intents and purposes they will be the children of their new parents. The court can only make that order when nothing else will do.
10. The alternative, on the facts of this case, is the possibility of a placement with the mother's younger sister and her husband. The state of the evidence is such that the court could not reach a final conclusion in favour of such a placement because the evidence about their parenting abilities is too limited in its nature. So, the question has become is there enough in the factual matrix surrounding that possibility, to lead the court to adjourn the final decision making, in order to carry out a fuller assessment of Ms M and Mr H. And so over the last two days we have been delving into the viability of them as potential carers and exploring the potential benefits they would bring and that of the risks, as against the risks and benefits arising from the making of a placement order.
11. In addressing those competing positions I have read statements and reports and heard evidence from:
 - a. The social worker;
 - b. The family finder;
 - c. The mother, assisted by her usual interpreter;
 - d. The father, assisted by his intermediary and interpreter;
 - e. The maternal aunt and uncle, assisted on day 1 by a separate interpreter and on day 2 by the father's interpreter; and
 - f. The guardian.
12. The parties have been represented by their long standing counsel and solicitors who as ever have presented their clients cases thoroughly both in written documents, in their questions and submissions. I shall consider the respective arguments presented by the parties and explore the evidence which I consider central to those arguments in my evaluation below. I do not propose to rehearse the written or oral evidence or the submissions separately, but I of course have them very much in mind in my overarching consideration of the evidence and my evaluation of the competing options.

The Legal Framework

13. In considering the Local Authority's application for a care order, I must have regard to s.1 of the Children Act and since the plan is for adoption, also to the welfare checklist in s.1(4) of the Adoption and Children Act 2002: see *Re C (A Child) (Placement for Adoption: Judicial Approach)* [2013] EWCA Civ. 1257 and *Re R* [2014] EWCA Civ. 1625. I note that in *Re W-C [2017] EWCA Civ 250* Lord Justice McFarlane said it was not necessary in a case such as this to consider the case through the prism of the s.1(3) welfare checklist but rather should focus on the ACA s.1(4) welfare checklist. Likewise, I must treat as my paramount consideration in accordance with s.1(2) of the 2002 Act, the childrens' welfare throughout their lives.

14. Section 1(4) of the Adoption and Children Act 2002 provides:

“The court or adoption agency must have regard to the following matters (among others)-

- (a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding),*
- (b) the child’s particular needs,*
- (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,*
- (d) the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant,*
- (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,*
- (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including*
 - (i) the likelihood of any such relationship continuing and the value to the child of its doing so*
 - (ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop and otherwise to meet the child’s needs,*
 - (iii) the wishes and feelings of any of the child’s relatives or of any such person regarding the child.*

15. In respect of placement, s.21 and s.52 of the Adoption and Children Act and s.52 apply to that application. Section 52(1)(b) provides:

“The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that-

- (b) the welfare of the child requires the consent to be dispensed with.”*

16. In *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625, the Court of Appeal held that the word “requires” has a connotation of the imperative i.e. what is demanded rather than what is merely optional or reasonable or desirable. What has to be shown is that the child’s welfare throughout her life requires adoption as opposed to something short of adoption. The child’s circumstances may require statutory intervention, perhaps may even require the indefinite or long term removal of the child from the family and his or her placement with strangers, but that is not to say that the same circumstances will necessary require that the child be adopted. The question at the end of the day is whether what is required is adoption.

17. It is for the Local Authority, since it is seeking to have D and C adopted, to establish that nothing else will do: see *Re B (A Child) (Care Proceedings: Threshold Criteria)*

[2013] UKSC 33, *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ. 1146 and *Re R*. As Baroness Hale of Richmond said in *Re B*:

“...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do.”

18. This echoes what the Strasberg Court said in *Y v. The United Kingdom* [2012] 2 FLR 332:

“...family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to ‘rebuild’ the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child’s health and development, a parent is not entitled under Article 8 to insist that such ties be maintained.”

19. The judicial task is always to evaluate all the options and undertake a holistic evaluation of the child’s need. In *Re B-S*, the Court of Appeal stressed the following three points:

- (1) “Although the child's interests are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.
- (2) the court ‘must’ consider all the options before coming to a decision.
- (3) the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer.”

20. In *Re B-S*, the court held that the following two elements are essential when the court is being asked to approve a care plan for adoption and make a non-consensual placement order or adoption order:

- (a) There must be proper evidence both from the local authority and from the guardian. The evidence must address *all* the options which are realistically possible and must contain an analysis of the arguments *for* and *against* each option; and
- (b) Certainly, there must be an adequately reasoned judgment by the Judge.

21. It is always important to bear in mind what Mr. Justice Hedley said in *Re L*, which was that:

“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in

atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

22. That approach has been endorsed by the Supreme Court in *Re B*, where both Lord Wilson and Baroness Hale emphasised the very diverse range of parents and the diverse standards of parentings that society must be willing to tolerate:

“the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs.”

23. Sir James Munby, in *Re G*, emphasised the task of the court in relation to carrying out the global holistic evaluation and the need to undertake a multi-faceted evaluation of the child’s welfare taking into account all the negatives and positives, all the pros and cons of each option. To quote Lord Justice McFarlane:

“What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives, and each option is then compared side by side against the competing option or options.”

24. I must take into account D and C’s welfare throughout their lives: their short, medium and long term welfare interests. I approach it on the basis that, if adopting a solution of permanent separation from their parents, it is on the basis that “nothing else will do”. Delay is likely to be prejudicial to their welfare, although planned and purposeful delay may be appropriate. In this case if a fuller assessment of the maternal aunt and uncle carried with it a real possibility of them being a realistic alternative to care and placement orders that would justify further delay.
25. I take account of the Article 6 and Article 8 rights of the children and the parents. I remind myself that, where there is a tension between the Art.8 rights of the parents on the one hand and the Art.8 rights of the child on the other, the rights of the child prevail: see *Yusuf v. The Netherlands*.
26. In determining what order to make, to the extent that it infringes the Art.8 rights of the mother and the father, the court must be satisfied that it is necessary and proportionate. Any conflict between the interests of the child and that of the parents should be resolved in favour of the solution which best promotes the child’s welfare. In determining the proportionality issue, I approach it on the basis that if, on welfare grounds, the option of placing the child with a parent is only marginally outweighed by placing them away from the parent, that may be disproportionate. Conversely, if the option away from the parent is clearly more likely to promote the child’s welfare that will be a proportionate interference.
27. In carrying out the assessment, plainly some factors will carry far more weight than others. The balance sheet approach advocated by Lord Justice Ryder, whilst helpful,

cannot convey the relative importance of any particular issue. The holistic evaluation is not a map without contours, but rather one in which there may be very significant features on the landscape which may ultimately come to dominate the outcome. The issue of the risk that the parents pose and which has ruled them out as potential carers is clearly a dominant feature on the landscape. In relation to risk I must consider the type of harm, the likelihood of it occurring, the consequences, how the risk could be reduced, as a part of the comparative evaluation and the proportionality assessment. Whilst risk issues do not alone determine the outcome, unless the risk can be addressed either by its removal or reduction in nature and likelihood to a very significant degree, in effect that risk would dominate the evaluation as none of the risks of adoption would come close to matching the risk the parents pose and none of the benefits of a family placement (individually or combined) could redress the balance of the risks that the parents pose.

28. There is much detail that I could rehearse of the evidence and arguments about each of the components which contribute to the potential advantages and disadvantages of each of the options. It is unfortunate that the Guardian did not carry out any independent enquiry into the parenting capacity of the aunt and uncle and Ms P and Ms H are right to criticise that, particularly when the impression was given on 8 April 2022 that the Guardian's assessment would give the court some further independent appraisal of their potential. The late filing of the statements of the aunt and uncle may have contributed to the Guardian's oversight and in the event the risk issue has decisive effect in this case so the absence of her views on them has had negligible effect save perhaps from the perspective of appearance. Undoubtedly for D and C, (and indeed A and B), a placement with loving family members who were committed to them, and committed to being their lifelong family, would meet so many of their needs and be of such an advantage to them. The aunt and uncle contemplate in their statements potentially caring for all four children albeit the primary the focus was on D and C. If they can't live with their mum and dad, which they can't, what better place would there be than an aunt and uncle who are prepared to take them on as their own with all of those advantages of family ties, of blood, culture and religion? Ms M and Mr H plainly have significant characteristics which have the potential to meet many of the children's needs. They are close (by degree) relatives albeit they have never met the children and know almost nothing about them. They appear to be educated with either the qualifications or potential to provide financially for themselves and the children; the uncle already speaks English (he appears to teach it) reasonably well, and the couple would no doubt be able to navigate the practical and financial challenges of establishing a new life in the UK. They would provide a cultural and linguistic bridge between the children and their parents and the wider family and cultural roots. They could maintain a more extensive relationship with A and B. In theory they could maintain some relationship between the children and the mother. Their apparent lack of knowledge of the children, their lack of any enquiry into how they might secure entry to the UK, their lack of investigation with the parents or the social worker about the children do not rule them out although it raised questions as to how committed they really might be and what their motivation was. They are both sufficiently articulate and assertive to make enquiries – as was evidenced in the aunt's exchanges with me when I wondered who was in the witness box and who was the judge. However, I do not consider this lack of knowledge or uncertain commitment or motivation would rule out further assessment if there were not more obvious obstacles.

29. Adoption for these children carries with it significant advantages, but not those of family which are significant. The possibility of growing up as part of a family to whom they are related with the links into extended family are usually considerable. They will cease to be members of their blood family if they are adopted and given the limited possibility of finding a family closely matching their ethnic, cultural and particular religious and linguistic roots they will grow into adults who are very different to their birth family. Of course, if A and B remain in foster carer D and C may grow in ways which are more aligned to them but they will all develop identities quite different to their parents and to those they might develop if brought up by their aunt and uncle.
30. Adoption also carries with it the usual risk of a placement not being actually achieved and of breakdown of the placement, both enhanced in this case by the potentially negative impact on prospective adopters of the risk the parents pose of seeking out an adoptive placement and if the parents located them the risk that it would be undermined by actions of the father and of the mother. At the ages of these children. I accept that they are likely to be highly adoptable, they appear to have secure attachments which would likely transfer to new parents and so those risks inherent in every adoption would appear to be at the lower end of the spectrum in this case. There is clearly some risk that some of the pool of prospective adopters would be deterred from putting themselves forward by the risk that the parents pose. However, the risk of the father and the mother locating adopters would be little different in this case than any other, where the adoption was in the face of parental opposition. True the magnitude of the risk from the adopters perspective would clearly be at the top end of the spectrum if located given the father's track record and perhaps the parents may feel impelled more to search them out than some might. True it is that modern technology may now already provide more opportunity for biological parents to locate their children and future advances may increase the capability although correspondingly steps to minimise that risk can also be taken. Thus, I think it is likely that some of the prospective pool would think discretion was the better part. However, given D and C are otherwise highly adoptable I accept that it is likely that they will be found adoptive parents. It seems likely that the pool of adopters is most unlikely to feature any that could be said to be culturally appropriate if by that one means of Afghan Hazari origin. The 'best' that might be achieved from a religious perspective would be Muslim adopters although I was not sure whether the parents would prefer another religious affiliation completely if a Shia Muslim adopter was not available. The pool of Muslim adopters was relatively small – although into double figures. The ethnic origin of Muslim adopters might well be Pakistani or Bangladeshi and the mother in particular was adamant any adopter should not be from such a background; the mother's objection seemingly rooted in a belief that Muslims from those countries did not adhere appropriately to Muslim practices such as prayer or wearing the hijab. Thus, adoption is unlikely to promote to any substantial extent the children's exact cultural, religious or linguistic roots. That is of course a loss to them.

31. The dominating feature of the case, albeit not the only significant matter, remains the risks presented by Father. There are also risks presented by Mother and the fact that she remains in a relationship with the father means that the risks she carries with her are compounded by the risks of Father. Those risks are hard to overstate. I have ruled out the mother and the father because the father poses a risk of fatal violence to any child and other individuals within his orbit. I don't mind saying that I fear for the mother if she remains with him.

32. The father is relentless in asserting his position; he does not give up whether it is in the face of the police or in his insistence on his full position being repetitively voiced personally and through counsel in these proceedings or in his pursuit of other more significant goals. The father is absolutely intent on implementing what he considers to be right and that in terms means having his needs met regardless of law or tradition. In Afghanistan he and the mother acted contrary to their cultural norms, marrying despite her family's opposition and eloping to Iran. The consequences for the mother was an almost complete estrangement from her family and a need to move to another country. On their return to Afghanistan when their second child was critically ill, they lived in fear of being located by the mother's family and when they were seen the father says he was brutally beaten by the mother's brothers such that he fled to seek asylum in the UK and the mother then lived effectively on the run until she could join him. The father ignores Family Law Act injunctions, preventing him entering the home or having contact with his wife. He fights with police officers when they intervene or he falls out with them. He tracks down the mother to her Refuge and puts her under pressure when she attempts to do the right thing for her children. He adamantly refuses to accept any of his flaws, still less his violence and the consequences of it. His rejection of the findings is said with such conviction, that there are times where one almost doubts the correctness of the conclusions I have reached but when one pauses for a moment, and refreshes one's memory I realise how right they were. If he can get inside the mind even of the court with his insistence on his innocence, what chance does the mother stand, what chance does anyone stand, who hasn't been steeped in the compelling evidence of his violence, of his potential for murderous rages. It is hardly surprising in some senses that the mother for all sorts of reasons has been unable to free herself from his power. It is hardly surprising that anybody who he speaks to would call into question whether he had been the victim of a miscarriage of justice or not.

33. That attitude, that is absolutely unaltered since July of last year, is part of the huge risk that he poses not only to the children directly in terms of the physical risk (because the absence of any acceptance or insight means there is no real prospect of him being motivated to or learning to moderate his behaviour) but the risk to anybody even to some extent an adoptive placement, as well as to the aunt and uncle, because I do not accept for a moment, that he will comply with what the court says and that he won't go near the aunt and uncle if the children are placed with them. He said spontaneously in his evidence *Why should I give up- what reasons? To the day I die, I will find my children and I will take them back. I adore my children; my daughter was an accident I will tell the public the injustice that has been done to me.* In his statement he said that if he accepted that A and B should remain in foster care and that D and C should be adopted he will throw himself from a building and kill himself.

34. True it is that he has not sought out the foster carers for either A or B or C and D; that including the period since I made care orders for A and B. However, we remain in court proceedings where the parents have a significant interest in the outcome; the father is (according to the social worker) aware of the likelihood of arrest if he attends the foster carers and he remains under investigation in relation to Z's death. Although the risk of arrest if the father seeks out the aunt and uncle (or adopters) remains, which would amount to a deterrent of some sort and would in theory reduce the risk, in practice once the parents have run out of options within the court process that risk of arrest seems to me to be of relatively little force compared to what I consider to be the very considerable strength of the forces impelling the father and mother to recover their children. The parents track-record of seeking to cover their tracks and to mislead the authorities points to the very high likelihood of them either seeking to manipulate the aunt and uncle in covert ways to secure the return of the children or to pursue a plan to recover the children without the aunt and uncles' knowledge. Although their ability to travel internationally poses an obstacle, the father and mother's track-records of moving internationally in breach of immigration laws, of avoiding detection in Afghanistan and in utilising the services of (in the father's case) paid agents to reach the UK demonstrates both their preparedness to act in breach of laws relating to international movement and a practical ability to do so and so I do not regard those as obstacles the parents would either regard as insuperable or ones they could not negotiate. So when the father says he will abide by what the court says, given his track-record of disregard for law, culture or the interests of others it is pure manipulation on his behalf and I have little doubt that if placed with the aunt and uncle anywhere within his reach, in this country or possibly elsewhere around the world, in due course and in a relatively short period of time, as in the relatively short period of time when the mother left him, he would seek them out. The father's leave to remain is valid until 2023 and absent his conviction for an offence it seems probable he and the mother will remain resident in the UK, so were the aunt and uncle to take on the care of the children here the father and mother would be a presence here with the risks which accompany that. Were the father convicted of a serious offence and imprisoned for a lengthy period of time the position might be different but at present – and we are now 2 years on from Z's killing – the position is that the father remains at liberty. What will happen in relation to the criminal investigation can only be speculation; the longer the police are unable to reach a decision the more it suggests the father and mother will remain at liberty in the short, medium and long term.
35. The mother herself also feels at times over-whelmed by the strength of her feelings, although hers manifests itself in distress. In court during this hearing (as in the last hearing) she made a moving plea to me for the return of the children to her care and the extent to which she is overwhelmed by the thought of not regaining their care is evidenced by her statement in her evidence that if the children were not returned to her care or not sent to live with her sister and she would have no choice but to take her own life. Immediately prior to the commencement of the hearing, the mother had told her solicitor that she would kill the foster carers if the children were not returned to her and this was repeated to Miss P, who quite properly notified the court with the

mother's consent that this had been said. She later, through counsel, said that she had not meant this, but it is compelling evidence of the risk of the mother behaving irrationally or uncontrollably when it comes to the placement of the children. When she said to me in evidence that if the children were adopted she would have no hope for life, that the pain was unbearable and that she had recently had a termination because she could not bear the removal of another child she was wholly genuine. But the power of her feelings for her children generates the risk of her seeking them out and recovering them to her care particularly as she also regards all my findings as a miscarriage of justice. It is true that she has not sought out the foster-carers and she allowed C to be removed from her care after her birth and she is entitled to say those actions support her argument that she will comply with any order or condition if the children are placed with her sister and brother in law. But on the other hand she has conspired with the father to mislead the authorities and the court over his presence in the home, in their reconciliation (including deleting material from her phone) in developing stories to protect him from the consequences of his violence, has engaged A in that story, has lied repeatedly about her actions and the violence of the father all in pursuit of the preservation or restoration of her relationship with the father and their family unit. The balance of the evidence compellingly points to the likelihood of the mother seeking to restore the children to her care if placed with the aunt in particular but also (albeit with radically reduced opportunity) if adopted.

36. The strength of the bond between her and the father is confirmed by her acceptance that she cannot handle living on her own and that she plans to live with the father. At present this is not converted into physical cohabitation as the mother remains in a refuge and the father appears now to be living in temporary arrangements, he having been unable to maintain the rental payments on the family home. And so the parents remain a unit where the aunt and uncle contemplate the mother and aunt having a relationship and the mother having some relationship with the children. That opens the door to all the serious risk that the father (primarily) but also the mother pose. I do not consider that the mother will ever be able to accept her sister caring for her children as their de facto mother and her remaining in the role of distant 'aunt'.
37. It is clear from the parents' positions throughout these proceedings that they have been strongly critical of the quality of the care provided to the children by the foster carers. This has ranged from the assertion that the foster carers do not keep the children safe. (the exquisite irony of this is lost on the father, in particular), that they aren't fed properly, that the language and culture are not maintained. Whilst they may have some point in relation to language and culture, the remainder of the criticisms have not been established. It is therefore hard to imagine a position where they would accept that the care provided by anybody but themselves was adequate. This applies as much to the aunt and uncle as anybody else in my view. It is inextricably linked to their view that as the children's parents only they are able to provide adequate care for them.
38. I therefore do not consider that either the mother or the father could reconcile themselves to the aunt and uncle caring for their children and that they would be impelled to seek their return, even from a family placement. I am afraid that I do not accept either the mothers or the fathers assertions in evidence that they would accept the placement of D and C with the aunt and uncle; the power of their feelings alone

would lead to this conclusion but their track record in terms of their dishonesty means I am able to place almost no weight on this sort of assertion and their behaviour in relation to their 'separation' illustrates both their inability to live up to this sort of commitment but also their propensity to dishonesty in covering their tracks.

39. So, in my view the parents pose a high risk of seeking to recover the children from the aunt and uncle either by persuasion or removal.
40. What of the aunt and uncles capacity to secure the children in their care in the medium to long term? The mother and father are the only links the aunt and uncle have in this country. The aunt was clear that she would expect to see her sister at her home; albeit she added she would abide by any rules the court set. The existence of that family connection and the difficulty the aunt and uncle have in accepting the truth about the father and mother together with the parents dedication to resuming care of their children is a potent mix. The aunt and uncle said they would inform the authorities if the father or mother approached them in breach of any orders or conditions imposed and whilst I am prepared to accept that what they said was sincerely said in that moment I don't think they have got close to understanding or accepting the reality of who the father and indeed the mother are or the pressures culturally, practically and emotionally they would come under; probably for the whole of the time they cared for the children. They have their own family aspirations, not immediately, but in the near future; they have career aspirations; they hoped to settle in Australia. Their situation makes them very vulnerable to pressure from the parents and to keeping any pressure hidden from the authorities. The father would tell them he is the children's father. He has done nothing wrong. The court was misled by the evidence, by social services, by the police and others, and that he will insist on his children being returned to his care and that of the mother. There are a variety of risks which arise from this. One is that the aunt and uncle will feel obliged, whether because they accept the mother and father's version of events, culture or fear that they will return the children to the parents care with the obvious risks which would accompany that. They might promote the mother and father, playing a role in the children's lives short of returning them to their care; again, with obvious risks. They might seek to maintain their commitment and keep the father away from the children; that bringing with it the risk that the father would become physically violent towards them. They might seek to promote the mother's involvement, to the exclusion of the father; in effect what Miss M proposed but as the mother and father have reconciled any involvement of the mother would inevitably lead to the involvement of the father.
41. Having seen Ms M and Mr H, it is clear that they were initially told that Z died in an accident. When they saw my judgment, whilst they were able to accept that a judge had said that Father had murdered Z, it was clear from their evidence that they regarded that as an opinion of somebody and no more, perhaps of some status, but not something which necessarily represented the truth. That is clear from both of their statements and from what they said in evidence. Each of them said in terms I accept the conclusions of the judgment but we have been told that Z fell down the stairs. Ms Ai in her evidence was clearly able to accept both that I had found Father killed Z and the parents account that Z died in an accident and that from her point of view both accounts were capable of co-existing with each other. Perhaps, intellectually for her they can. She seems to be an intelligent woman. Mr H can perhaps intellectually live with the idea that a judge has found Father could be a killer and a wife beater whilst

also being able to hold in his mind the mother's account that Z fell down the stairs and Father is a loving and kind man and father. Whilst both the mother and father relied on what Mr H in particular said at the conclusion of his evidence when I asked him questions, they were in answer in effect to leading questions I asked. When I initially asked him what he thought of Father he said he didn't know how he felt. It was only when I emphasised the nature of my findings and the implications and asked him whether he was scared of him that he said that he was and that Father must be a horrible man. It was clear that in the period since they saw the judgment neither had been able to accept in their own minds that Father was a violent husband and father who had killed his daughter but rather continued to hold an intellectually precarious position of accepting my findings whilst also contemplating the truth of the mother's account. But that creates in my mind an insuperable problem because to hold both of those possibilities in mind contemplates Father and Mother turning up on the doorstep and being met with something other than outright and genuine rejection, followed closely by a call to the police or social services. Rather it contemplates the possibility of welcome or tolerance, of listening to their point of view, of discussion and the possibility of agreement to the parents resuming care of the children in some shape or form.

42. Thus, what purpose would a more in-depth assessment of them serve. It would certainly furnish further information about their ability to meet the general physical, emotional and educational needs of the children. It would provide further information about their ability to provide financially for the children and perhaps would shed further light on their ability to secure entry to the jurisdiction. It also seems likely that an assessment would probe more deeply into their attitude to the mother and the father and the findings that I have made. In acceding to the adjournment to undertake a further assessment, I accept that the court will be better informed in relation to various aspects and that taken at its highest the concerns about housing, finances and immigration which formed a significant part of the basis of the negative viability assessment might be dispelled and positive results emerge.

43. But there is one critical aspect in this case which I do not think can be resolved in such an assessment and that is their ability to protect them from their parents. This has two components; firstly their attitude to the need to protect the children and secondly their ability to protect. In relation to the first the possibility of holding in mind the innocence of Father is that Father and Mother could safely look after the children which leads to the very real possibility, perhaps even probability, that they would have little difficulty in accepting the time has now come to return the children to the care of Father and Mother. Although I appreciate that the revelation that the father is a killer and violent to the mother as well is something which is inherently difficult to process Ms M and Mr H do not have any knowledge of the mother or father which could lead them to question the courts conclusions. In fact the contrary would be the case; their knowledge of the mother and father is that they defied convention, became outcasts of the family and have had nothing to do with their family for the last 14 odd years. Neither Mr H or Ms M have any relationship with the mother or the father and thus no established relationship to cause them to question the findings and yet their acceptance of the mothers account and their subsequent inability to accept as fact the

conclusions I reached is thus more concerning than less. It suggests a more fundamental issue than simple emotional loyalty. I accept that from one perspective the lack of emotional ties is a positive as Ms P and Ms H submitted; there is not the emotional loyalty that close siblings might have and which might create huge pressures to allow a mother back into the life of her children. That is absent here and so Mr H feels no personal emotional connection at all to Father or to the mother save that she is his wife's sister. Ms M has almost no connection with her sister and none with Father. This might help them in keeping their distance. But the other side of that coin is that it ought to be far easier for them to accept the fact that the father killed Z and has been violent to the mother and yet, even with preparation for this hearing, their statement that they accepted the findings of the court was quickly demonstrated to be little more than a recognition of a legal conclusion rather than a personal acceptance of the reality of their brother-in-law's nature. That it seems to me is likely to be difficult to develop from where they are now to where they would need to be in order to appropriately address the risk the parents pose. They are currently very far from that position; particular Ms M but also Mr H notwithstanding his late oral evidence about the father.

44. However, it seems to me even more problematic is that even if they were (contrary to my conclusions as to its likelihood) able to make substantial progress in accepting the reality of Father's nature and the risk he and the mother pose were they to care for their niece and nephew, that acceptance and measures to reduce risk would not adequately reduce it to a level where the placement was not placed at serious risk, ranging through covert approaches via the mother to her sister through to the parents arriving and seeking to remove the children and many other possibilities in between. .

45. So what can be done to reduce the risk? What protective provisions could be put in place; whether orders depriving Father of parental responsibility (although I am not sure one could in this case have an order depriving Father of parental responsibility), the most stringent injunctions preventing an approach, injunctions preventing Ms M and Mr H giving up the children to Father and Mother. Would they have bite? It seems to me they would be of negligible effect when put against the determination of Father and the emotional impetus propelling Mother and their track record of both fighting against all odds by fair means and foul. The pressures that would arise from that on Ms M and Mr H, together with the cultural pressures that exist would be immense. It was Father's earlier evidence given in January of this year that Mother was his wife and why shouldn't she live with him, as if it is his right. He said today that in terms of the children, they should be with their parents. I think that the cultural, religious or just the nature of this family, are such that huge pressure and indeed insistence would be deployed by Father to get his children back and even if Ms M and Mr H were able to say no, he would seek to take the children back on the basis that it was his right. Mother would be part of that partnership. She might initially say "no you can't do this, we must accept the children must remain with my sister, at least we can see them" but Father would not accept that, and ultimately Mother couldn't prevent him doing otherwise. Her track record shows she is, in effect, powerless to prevent Mother getting what he wants and what he sees as his right. Injunctions are ultimately only pieces of paper and set against the determination of Father who would

try, try and try again, I cannot conceive of any risk reduction framework that would address the risk they pose and which is likely to endure throughout the 17 odd years which comprise the minority of the children if they were cared for Ms M and Mr H. Even if they were prepared to forego any contact with the parents and to agree to their address and contact details being kept secret from the parents, I cannot see this enduring for more than months still less the years that would be required to protect the placement. The children would probably still be known by their birth names, the aunt and uncle remain who they are both in identity terms and in terms of family and community connections.

46. That insistence also presents a threat to any adoptive placement. I have little doubt that the internal pressures on Father and probably Mother would be greater if the children were adopted than if they were placed with the aunt and uncle as the children would probably be with a family whose culture and religion and parenting the parents would consider even more objectionable. It is a risk within adoption that Father will search them out and in reality the only thing that would prevent him searching for them is his incarceration. However, an adoptive placement is far less susceptible for detection than placement with the aunt and uncle and there is a much greater chance of the children's whereabouts and identity remaining confidential although the channel of communication with A and B in itself introduces some risk as and when D and C become verbal and capable of disclosing important information. The identity of the adoptive parents will not be known to the parents, the children may go by different names, there are unlikely to be community connections still less family which might create a pathway to them. As discussed above technology may create risks and protections but there is a huge difference between the risks of detection and placement disruption as between adoption and placement with Ms M and Mr H.
47. On a fairly clear balance I conclude that the risks of placement disruption over the lives of the children is very high indeed, not far from inevitable, if placed with Ms M and Mr H and the parents remain at liberty. That disruption might take different forms at different times but disruption there would be such that even if they emerged from one with the family intact but unsettled it would be a matter of time before another incident occurred. How long would the aunt and uncle and the children be able to contemplate that pattern of life for? If placed for adoption the risk of detection is far lower and the risk of placement disruption is far lower. Even if they were found it is likely adoptive parents would be far more resilient to holding their family together than the aunt and uncle could be given the bonds of family and culture.
48. Z was killed a little over 2 years ago. The police have not made a charging decision. I can't speculate on whether they are more likely to charge or not charge. Frankly, for the last 2 years they have not, so I work on the basis that until Father is charged and remanded in custody or convicted, he will remain at large as he has for the last 2 years, and it seems there is, at least a real likelihood, that he will continue to remain at large as well as the mother. Even if charged he may be bailed and a trial may be many months away. If charged he may be acquitted; the standard of proof applied by a jury is quite different to the process I undertook. As long as the father is at liberty or may be at liberty, the risk to the aunt and uncle is of very great magnitude, it is of the highest order or seriousness in terms of the consequences for the children if the aunt and uncle are pressurised into handing the children back. The risk reduction is

minimal. The difference with adoption is at least on the face of it an adoptive placement will be entirely confidential as to the identity of adopters and the location of where the adopters are. The risk will come through the determination of the parents to search them out or through sibling contact.

49. Clearly it is of the greatest importance to D and C to be able to remain in a relationship with their brothers, as it is for A and B. That relationship is of very considerable importance. It should not be under-estimated; although the guardian was criticised for the lack of weight given to this it is clear it featured in her reasoning but as with other aspects of her final analysis it was not expressed as clearly as it warranted. It is a strong relationship so far as A is concerned in relation to his brother and sister. Perhaps less so for B but that is nothing other than a product of B's age. Sibling relationships are likely to be longest relationships of their lives and they are so important particularly where their connection with their extended family, culture, religion and language may be otherwise non-existent. That gap would be plugged with the aunt and uncle but compared to the risks the benefits are wholly outweighed. Thus, maintaining some sibling relationship is of considerable value and weight. But it does not come without risk so far as a D and C are concerned. A relationship with their brothers provides a route by which important information about their whereabouts and identify may become available to the parents. That is a risk to the adoptive placement, whether it is so great that it rules out contact or significantly undermines the advantages of an adoptive placement falls to be considered.
50. Ultimately the decision for me is not a difficult one in this case, despite the best efforts of Ms P and Ms H who have throughout presented the parents' cases with skill and determination. The overwhelming feature in this landscape is the risk that the father, together with the mother, poses to these children and any placement that can be achieved. Were the parents not at liberty, Ms P and Ms H might have persuaded me that Ms M and Mr H presented a potentially realistic alternative to adoption and there should be a much fuller assessment and directions made to the Home Office to support them to be assessed. Even if Mr H and Ms M were assessed and presented the most positive picture, even in respect of their attitude to risk, the reality is the risk presented by Father and Mother would almost certainly outweigh any advantages to the children living with them, because the reality is any placement with Ms M and Mr H would be, from shortly into it, a period of months, would be at the most high risk of disruption, interference, breakdown and abduction of the children from their care by Father and Mother and so that is huge negative in relation to the possibility of a family placement.
51. That is profoundly sad for these children. If Father had been able, as some men do who have killed children, to put their remaining children's interests first, he might have acted in a way last year which allowed them a chance to live with their mother. Whether she could have maintained separation had she not come under pressure from the father we will never know. Or the father might by accepting his guilt and the profound risk he poses have genuinely created a real chance for them to live with their aunt and uncle, and have all those benefits of a kinship placement which are potentially even more profound for children with their distinct cultural background than for others. But that is not the case here.
52. The attitude of Father in particular of the care of the foster carers illustrates he cannot tolerate the care given to his children by others. He may have done nothing to abduct

or undermine the placement so far, but I would work on the basis we are in proceedings and he would not want to face arrest if he interfered with them. That is the sad reality for these children, that they cannot be placed safely with family members whilst the parents remain at liberty. The type of harm we are contemplating ranges from instability and uncertainty through to the risk of fatal violence. The likelihood of that risk crystallising is high; near inevitable over a period of up to 17 years. The potential consequences are both of serious physical harm to the children, the aunt and uncle or indeed the mother but also that the placement is unlikely to provide a secure 'forever' home for the children. Risk reduction can be of minimal or limited impact on the facts of this case. Yes there are significant potential benefits but the risks are huge.

53. Whilst an adoptive placement is not without risks both inherent in any adoption and peculiar to the facts of this case they are in my view far lower in terms of likelihood of crystallising and in their consequence if the placement is detected. The risk can be far better managed in adoptive placement including in relation to sibling contact.
54. Bearing in mind all of the considerations which are brought into account by application of the s.1(4) checklist which weigh in favour of or against a possible placement and thus adjournment to further explore the aunt and uncle and those which weigh in favour of and against adoption I am driven to conclude that the holistic balance demonstrates there are very clear overall advantages to adoption for these children rather than family placement taking account of all the potential benefits of family placement and the losses which will be sustained by adoption as against the very significant risks of family placement and the security that adoption will bring which ultimately clearly establish that the children's welfare throughout their lives is best met from their adoption. This is not ultimately a finely balanced decision although not all the material points in one direction. There is a balance but the scales are decisively in favour of adoption and thus making care and placement orders become both necessary and proportionate.
55. In those circumstances It is necessary to dispense with the parents' consent and I do so.
56. I refuse the application for an adjournment to undertake further assessment and I make placement orders in respect of D and C.
57. Absent any significant change in the parents' positions in relation to the criminal charges and any result in loss of liberty consequent upon a conviction for serious criminal offences associated with a lengthy sentence of imprisonment that balance will remain valid and in place. I am satisfied the children will be found an adoptive placement in a relatively short period of time. These children are of ages where they should be readily adoptable and the adoptive placement should ideally be one where they are able to maintain a relationship with their siblings. The risk it seems to me is manageable, certainly at present although it is clearly something that would have to be kept under review as time passes as they become older.

58. That will be the outcome of these proceedings for these two little children. For them the inestimable benefit of a forever family whilst maintaining some link to their cultural and religious background by their siblings and via support within their adopted family is in their best interests. That seems to be the clear consequence of the evidence put before me in this case.
59. That is my judgment.