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IN THE FAMILY COURT AT OXFORD

CASE NO: ZE17P00711

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A and B

Date: 6th March 2020

Before: HHJ Vincent

Between:

F

Applicant Father

and

A AND B

(through their rule 16.4 children's guardian Ruth Palayiwa)

First and Second Respondent children

and

CD AND DD

Third and Fourth Respondents

(current carers)

and

PA AND PU

Fifth and Sixth Respondents

(paternal uncle and aunt)

and

MA AND MU

Seventh and Eighth Respondents

(maternal uncle and aunt)

Stephen Bartlett-Jones instructed by Gill & Co. solicitors for the applicant father

Emma Griffiths instructed by BH&O LLP for the children

The Third and Fourth Respondents represented themselves in the proceedings

Julia Gasparro for the Fifth and Sixth Respondents instructed by direct access

James Vatcher instructed by Freeman Johnson, solicitors for the Seventh and Eighth Respondents

Caroline Biggins instructed by X County Council (invited to attend but not a party to proceedings)

Hearing dates: 2nd, 3rd, 4th and 6th March 2020

JUDGMENT

Introduction

1. These long-running proceedings concern two children, A who will be nine next month and his sister B who is five.
2. The children lived with their parents in [redacted] until November 2016 when the parents separated. They have not seen their father since then. The mother went first to members of her family, and then to another brother, and then to her friends CD and DD who offered her and her children a home.
3. The father made an application in April 2017 for child arrangements orders but the proceedings were not served on the mother until later in that year.
4. At a fact-finding hearing in February 2018, Deputy Circuit Judge Corrie made findings of serious domestic abuse, summarised as follows:
 - the father frequently drank alcohol to excess causing him to be aggressive;
 - on 26th December 2013 the father raped the mother;
 - the mother and two children shared a bedroom. On numerous occasions and in front of the children, the father forcibly dragged the mother out of the room, hurting her in the process and leaving the children behind, with ‘at least A crying’;
 - the father had adult conversations with A telling him about the mother’s past, and her previous marriage;
 - when A wet the bed the Applicant would become impatient, drag him out of bed and put him roughly on the floor, pulling the duvet off, and shouting and screaming at A and the Respondent;
 - on 22nd November in the presence and hearing of the children he shouted at the Applicant, punched her in the chest, slapped her in the face and threw her against the bannister as she was packing hers and the children’s belongings because he had ‘yet again told her to leave’;
 - The father had put CCTV in the house. He recorded everything and would not allow the mother or the children to use the bathroom without leaving the door open. He threatened the mother in a text message (May 2017) telling her that the cameras in the house rotated to film the inside of the bedroom and that he could produce copies of awkward moments;
 - The father was very controlling of the Respondent. Following separation and by telephone late at night, he told her to go and check the car as it was unlocked. He at some stage between July and September 2017 had planted a tracking device onto

her car which he used to track her every movement. He also created a Facebook page in which he detailed the full address of where she was staying.

- After separation the father continued to date to make silent and verbal telephone calls, sometimes of [redacted] songs, to the mother, and to CD and DD, in whose house she lives.
 - The mother had taken to keeping the children in A's bedroom in order to avoid the father's behaviour. Before the disintegration of the parents' relationship the children and the father's older son T had got on well. The father then told the children that T was nothing to do with them;
 - T identified with his father and was often rude and disrespectful to the mother, sometimes using bad language. As a consequence the mother discouraged her children from interacting with T;
 - On one occasion in frustration at his behaviour, the mother slapped T in the face;
 - The mother had hit the father a few times during this period and would sometimes be abusive, in response to the father's controlling behaviour and excessive alcohol consumption;
 - During the father's telephone conversation with A on 15 February 2017 an unknown voice in the room at the house where the mother and the children were then living, said "Your daddy has thrown you out of the house".
5. There was a significant delay between fact finding hearing and welfare hearing. I was the judge that dealt with the welfare hearing on 3rd and 4th January 2019. In my judgment I set out the chronology of the proceedings and the reasons that it took such a long time for the welfare hearing to be listed.
 6. I reserved judgment but had other cases to deal with over the next two weeks. I had prepared the judgment by 17th January 2019 and at the parties' request sent out the draft by email. The parties requested that I list a hearing for the judgment to be formally handed down in February.
 7. For reasons set out in the judgment I refused the father's application for a child arrangements order, and decided he should be prohibited from direct or indirect contact with his children. I did not accede to the guardian's request for a section 91(14) order, thus leaving open the possibility that the father may renew his application to the Court.
 8. On 29th January 2019 the mother attempted to take her own life. She was admitted to intensive care but never recovered, and died on 6th February 2019.
 9. This was shocking, desperately sad and remains profoundly distressing. Evidently her difficulties had built up over many years and there were a number of factors at play. However, it is a matter of huge regret to me that the family Court proceedings had taken so long and had evidently been so difficult for the mother to cope with. I have worried

that rather than bringing about some resolution and peace for the parties my judgment or the way in which it was sent out might have been a source of greater anxiety. I extend my deepest sympathy to the mother's children, extended family and friends for their loss, which I know is still keenly felt by all.

10. On 30th January 2019 on the children's guardian's without notice application I made an order providing that the children should remain living with CD and DD, and a prohibited steps order.
11. On 1st February 2019 I handed down the judgment. I made final orders, dismissing the father's applications, but kept the proceedings open by directing X County Council to prepare a section 37 report. I directed that the children should continue living with CD and DD in the meantime and that the prohibited steps orders should remain in place.
12. On 21st February 2019 the father renewed his application for a child arrangements order that the children should live with him.
13. At a hearing on 8th April 2019 CD and DD were joined as parties to the proceedings, they said they were considering applying for special guardianship orders. Three siblings of the father the mother's birth sister had indicated to the local authority that they wished to be assessed as carers for the children. The father indicated his intention to make an application in relation to attendance on a Domestic Abuse Perpetrators Programme (DAPP). The local authority informed the Court it did not intend to apply for public law orders because the children were being cared for to a high standard by CD and DD, and could not be said to be at risk of significant harm. The local authority agreed to fund some legal advice for CD and DD, to carry out a full kinship assessment of them and to carry out viability assessments of the family members.
14. On 7th May 2019 I directed that the guardian should make a referral to a DAPP for the father. The local authority was to complete full kinship assessments by 19th August 2019 and any applications for special guardianship orders were to be made by 2nd September. I invited X County Council to file a report setting out its recommendations by 19th September 2019.
15. I listed an additional hearing on 4th July 2019 to hear applications made by two sets of paternal relatives who had been negatively assessed at viability stage and wished to challenge the local authority's decision not to proceed to full assessment. The local authority then agreed to convene a family group conference to identify which set of paternal relatives should put themselves forward for assessment and to carry out a full assessment of that couple. In time that couple was identified as PA and PU. The time for the local authority to file its various assessments and recommendations was extended by a few weeks.
16. The children had been visited by MA and MU in April and they had taken them to a family wedding in [redacted] for the day. The children then went to stay with them for a week in August. On his return A told his social worker that he was not happy at the

home he had with CD and DD. He said that he had been slapped by his carers and that they made him do hard work in their shop, loading drinks into the fridge or sorting parcels and if he did not do this well he would have magazines thrown at him. He said that he would prefer to live with his aunt and uncle in [redacted] because his aunt had been kind to him, taking him to the cinema, he said that the schools in [redacted] were good, the toyshops were better, and that the family dog could keep him safe at night. He had been promised a trip to see his team [redacted] FC play at [redacted] but had to return home before he could go.

17. The local authority requested a short further extension of time to investigate these allegations and to complete its assessments. The local authority found nothing of any concern in respect of CD's and DD's care of the children. They said they did sometimes let A help out in the shop doing little tasks to give him a sense of responsibility, but this was not work in any sense. There was no evidence to suggest that they had ever used any sort of inappropriate form of discipline. It appeared that the maternal family had spoken to A in a way that was unhelpful in that it seemed that they were seeking to influence him to think that he would be better off living in [redacted] with them, and that he should not regard his current carers as his real family.
18. On 8th October 2019 the local authority had completed its special guardianship report into CD and DD, but the assessments of the paternal uncle and aunt, and of maternal aunt and uncle, had not yet been completed because DBS checks were outstanding. I joined PA and PU as parties to the proceedings. I granted a further extension to the local authority, provided for all parties to file evidence and listed a final hearing. Unfortunately by that stage my diary was fully booked with care trials for the next four months, and the first available date for final hearing was 2nd March 2020.
19. On 11th November 2019 MA and MU applied to be joined as parties to the proceedings. I approved a consent order dealing with this on 28th November 2019.
20. On 31st January 2020 the father made an application to the Court for the Court to appoint a psychological expert from the Family Separation Clinic to assess both him and the children to carry out a risk assessment, and 'to explore the children's aversion to seeing him.'
21. At a hearing before HHJ Owens on 3rd February 2020 the parties agreed that Professor Perkins, who had previously assessed the father, should be instructed to provide an updated risk assessment. It was recorded that the father had earlier been assessed as not suitable for the DAPP, although the father did not accept the reasons for this.
22. At the final hearing, I heard evidence and submissions over three days. Even though there were eight parties plus the local authority, I am grateful to counsel and all parties for managing the witness evidence and the trial timetable time effectively so that I was able to prepare this judgment and hand it down on the Friday of the same week.

23. Although X County Council has not seen the need to issue care proceedings, it has attended all hearings at my invitation, shared its assessments of prospective carers and filed evidence explaining the social worker's recommendations for the children. Their input is greatly appreciated by the Court and by the parties. In this way the proceedings have remained within the private law sphere but have had a hybrid-feel. The local authority was represented at the final hearing by Miss Biggins, but she did not seek to cross-examine any of the witnesses.

Parties and positions at final hearing

24. In a position statement filed the day before the hearing, and having received Professor Perkins' addendum report on that day, the father confirmed that he is not seeking a child arrangements order that the children live with him. He does however ask that the Court makes provision for him to have indirect contact with his children immediately, that he be referred once again to a DAPP, and for the local authority to come to a view as to whether direct contact should start after a certain period of time has passed – he suggests the half-way point of the DAPP course, or else a period of time to be determined. If the local authority considers that direct contact should take place, he suggests this could be facilitated by the local authority, together with the children's carers, whoever they may be. He accepts that in the first instance that contact would take place in a contact centre.
25. The father supports his brother and sister-in-law's application for special guardianship orders. He is prepared to offer undertakings that he would comply with any contact orders, that he would remain away from family events to avoid accidental contact, and that he would follow professional advice in respect of what to say to the children.
26. PA and PU seek special guardianship orders but recognise that as they are in the early stages of re-establishing their relationship with the children, there would need to be a transition phase before those orders could be made.
27. CD and DD, the children's current carers, apply for special guardianship orders.
28. MA and MU also put themselves forward as the children's future carers. They suggest that the children could move to live with them immediately (subject to a transition plan) under special guardianship orders. However, they would accept an extension of that transition phase under a different order, and an extension of the proceedings if thought necessary. They are supported by X County Council who previously supported a special guardianship order to CD and DD but more recently have changed their recommendation in favour of the maternal aunt and uncle.
29. The children's guardian supports the making of special guardianship orders to the children's current carers. She acknowledges the strengths of all potential carers but is very concerned about the impact of moving these children to new homes now given the experiences they have had in their lives so far, their strong attachment to the current carers. She questions the need for them to be moved at all.

The law

30. In reaching my decision about where and with whom the children should live, I must have regard to all the circumstances but in particular those factors set out in the welfare checklist at Section 1(3) of the Children Act 1989.
31. The children's welfare is my paramount consideration (section 1(1)).
32. The court should not make any orders at all, unless the court is satisfied that it is necessary to secure the children's welfare. Any orders made should be proportionate; the Court must be satisfied that the children's welfare could not be secured in a less interventionist way.
33. Section 1(2A) of the Act provides that the Court shall presume that involvement of a parent in a child's life will further that child's welfare.
34. I must also have regard to the general principle that any delay in determining a question in relation to a child's upbringing is likely to prejudice that child's welfare (section 1(2)).

Special guardianship orders

35. Miss Griffiths has referred me to a number of relevant cases, and reminds me of the following matters.
36. Before making a special guardianship order, the court must consider whether a child arrangements order containing contact provisions should be made with respect to the children and whether the section 8 orders currently in force should be varied or discharged (section 14B(1)(a) Children Act 1989).
37. There is no legal presumption in favour of a biological connection; to approach the case on that basis would be to derogate from the paramountcy principle: Re E-R (Child Arrangements Order) [2015] EWCA Civ 405.
38. It is well-established in both domestic and European Law that the concept of 'parenthood' and 'family' is not defined by biology. Per Lady Hale, In re G (Children) (Residence: Same-sex Partner) [2006] 1 WLR 230 at [35].

*"The third is social and psychological parenthood: the relationship which develops through the child demanding and the parent providing for the child's needs, initially at the most basic level of feeding, nurturing, comforting and loving, and later at the more sophisticated level of guiding, socialising, educating and protecting. The phrase "psychological parent" gained most currency from the influential work of Goldstein, Freud & Solnit, *Beyond the Best Interests of the Child* (1973), who defined it thus:*

“A psychological parent is one who, on a continuous, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfils the child's psychological needs for a parent, as well as the child's physical needs. The psychological parent may be a biological, adoptive, foster or common law parent.”

39. In circumstances where proposed Special Guardians with whom the child has never previously lived and whose relationship with the child may be tenuous, the court should consider a period of testing/further assessment before making a final order: Re P-S (Children) [2018] EWCA Civ 1407 [60] and [68].

Contact

40. Mr Bartlet-Jones has referred me to Re M (Children) [2017] EWCA civ 2164, in which the Court stresses the lengths the Court must go to before it comes to the conclusion that there should be no contact between a child and their parent. The passage to which he referred me cites Re C (Direct Contact: Suspension) [2011] EWCA Civ 521, para 47, which I referred to in my previous judgment but repeat here:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'

41. Mr Bartlet-Jones relies upon the case of Re S (a child) [2015] EWCA Civ 689, particularly paragraphs 20 to 25, as authority for the proposition that the lack of a

pathway out of supervised contact is no bar to ordering that direct, supervised contact should take place.

42. Finally he referred me to Re G (adoption: contact) [2002] EWCA Civ 761, a case in which the benefit to a child of knowing their natural parents was emphasised. *'It is to remove the sense of ogre, as they reach adolescence and begin to search for their own identity, with the double crisis not only of adolescence itself but of coming to grips with the fact that they are adopted. That is why current research is in favour of some contact in adoption.'* I agree with Mr Bartlet-Jones that this would apply equally to children placed under special guardianship orders.
43. In my judgment dated 1st February 2019 I set out paragraphs 35 to 37 of Practice Direction 12J of the Family Procedure Rules 2010. These paragraphs describe the particular factors the Court should take into account, where, as in this case, findings of domestic abuse have been made.

Evidence

44. I have read the contents of two lever arch files, which include special guardianship assessments, statements from all parties and the local authority, Professor Perkins' two reports, previous judgments from Deputy Circuit Judge Corrie, Hayden J (who heard father's appeal against the fact-find) and the guardian's various reports. I have heard oral evidence from MA, the father, PU, CN the children's social worker, and the children's guardian Ruth Palayiwa.

Maternal Aunt

45. MA is the mother's biological sister. She lives in [redacted]. She did not grow up in the same household as the mother, because the mother was adopted by her paternal aunt and uncle. MA and her husband had met and spent time with the children before the parents' separation, when they were very small, but had not been in touch with the mother or seen the children for some years.
46. When the mother first fled with the children in November 2016 she went first to her adoptive mother in [redacted] and then to her adoptive brother in [redacted]. In my previous judgment I referred to evidence that the father had made contact with members of both her adoptive family and birth family, and a finding was made about him having installed a tracking device on her car. The mother is reported to have felt unwelcome, did not feel secure, and this eventually led to her seeking refuge with her friend DD and his wife CD. MA told me that around the time of the separation she had some text message conversations with the mother but respected that she wanted to keep herself and her children safe and therefore did not want to have too much communication with anybody.
47. When the mother was in hospital CD contacted the mother's adoptive mother, and MA travelled down to visit her, together with other members of the maternal family. MA is currently estranged from her aunt, who is the mother's adoptive mother, due to events that arose at the time of the funeral, no doubt an exceptionally difficult time for all concerned. MA told me that she was confident that for the sake of the children she

would be able to repair these relationships. Members of the mother's adoptive family have made contact with CD and DD and have visited the children.

48. MA met the children again at the funeral, came down around Easter to take them to the wedding in [redacted] and then had them to stay in August. When questioned about what she had said to A she accepted she had talked to him about the proceedings in that he had said he liked staying with them, and she said we would love you to stay, you are our family, and that's why we have applied for you to live with us.
49. After August and the allegations that A had made, the relationship between MA and CD and DD became strained. MA and MU did not see the children again until October. MA feels that on this occasion CD could have given much more reassurance to A than she did, when he was resistant to going with them. CD was disappointed that she invited the maternal aunt and uncle to a birthday party for B in September and had no response to her invitation. Happily, the relationship has more recently improved and the children have been having regular facetime contact.
50. MA's sister lives in America. She has applied for MA and family, and for her brother and his family to move to America. In her evidence MA said these applications could take many years to process, and that if they had A and B living with them they would not pursue them in any event, but she did say *'we would only look into it once they came of age ... once they were eighteen.'*
51. The children evidently had a lovely time staying with the maternal aunt and uncle. They live in a lovely house, and live a busy and happy life centred around their family. They have two sons aged fifteen and sixteen, who are kind, respectful and family orientated and of whom they are very proud. They have a family dog. MA's brother and family live half an hour away, they have a sixteen year old and a nineteen year old. The families meet up at least once a month, usually more, and celebrate special occasions together. MA is close to her sister in America; she has three daughters between seventeen and twenty two. They are planning to visit in the summer as one of the daughters is getting married.
52. MA is willing to give up work so as to be the primary carer for the children. She is highly valued by her employers who have said they will keep her job open for as long as she needs, even if she is off for many years.
53. She acknowledged that A may have some difficulties in making the transition she was confident that she would be able to support him. She suggested that B had immediately formed a firm attachment to her at the funeral and did not anticipate any difficulties apart from memories associated with what had happened to her mum. She was reluctant to accept that leaving their current carers would represent a big loss for them, she said, *'possibly, they have lived with them for so long, but if we can still maintain that relationship they might not see it as such a big loss.'*

Paternal Uncle

54. The paternal uncle and his wife live in [redacted] and work full time in banking. They and their eight year old son S live with paternal grandparents, who care for S while they are at work. S is a happy, kind little boy who is a credit to his parents.

55. PU described a busy and fulfilling home life, centred around family. Because he lives in his parents' home, it is the hub for their other children and grandchildren to visit. PU described the cousins from aged four up to their early twenties who visit very regularly, together with their parents. PU described times when his brother the Applicant in this case, the mother and the children were a part of this environment, during happier times in the marriage.
56. Although they have not seen the children for many years, PA and PU have recently had some facetime contact with them. PU was able to describe how they managed to build a connection, having fun non-pressured conversations, focusing on the children in the present, so that there is confidence that they could now progress to meeting up and spend some time together. This is a positive development because in October 2019 when A was shown some photographs of himself with his father and other members of the paternal family he was strongly resistant, and not willing to engage in the exercise, expressing very negative views about the paternal side of his family.
57. PU accepted that he had not made any attempts to contact the mother or children following her separation from the father. He said that he was respecting her need for space.
58. In his oral evidence PU conveyed a strong commitment to family and emphasised that he and his wife and siblings would be there for these children throughout their lives, he stressed the value to them of re-establishing their relationship with their grandparents. He stressed that he and his family would be there for these children throughout their lives, not just through childhood but forever, to support them to go to university, to get married, to buy a home.
59. Professionals who have assessed PA and PU feel that they have developed a good understanding of the findings that were made against the father, and the reasons that the Court reached a conclusion in January 2019 that he should not be having contact with his children. The professionals conclude that they would be able to act protectively by preventing the children from coming into contact with their father.
60. However, when talking about T, the father's oldest son, PU did not appear to identify any potential issues there, saying that T had grown up in their home as well and that he and the children got on like a house on fire and that T was only positive about the children coming to live with PA and PU. I am concerned this ignores some potential difficulties given the findings that were made by Judge Corrie in respect of T's relationship to the mother and to the children, and T's closeness to his father. It is certainly not impossible to navigate but I would have thought that re-establishing this relationship would need some careful management.
61. PU in my judgment underestimated the likely difficulties the children would experience to be separated from their current carers and moved to a new setting in a family where they do not have established relationships. The father said he did not think it would be traumatic, that children of this age adapt quickly to new things and they would have fun making new friends, and would be supported by them to think of memories of good times they had had at that home before the parents separated. He said the change would be positive because the children would be with their family. When I asked him what

he would tell the children about why they could not see their dad he said that he would reassure him that he and his wife were there to look after them but any other conversation about the situation would be 'way down the line' when they were grown up and willing to talk.

CD

62. While the good intentions and commitment of both maternal and paternal family to caring for the children is not in doubt, the evidence of CD was of a different kind. Unlike them, she and her husband have lived with these children for the past three years. The love she and her husband have for these children shines through their statement, the professional assessments and CD's oral evidence. She described the children's personalities, their interests, the way they processed and understood things, things they say and do, their feelings. She described the pride and joy and security that B derives from having a bedroom of her own that is decorated in pink with her name on the door. She referred to sensitive, child-focused conversations with both the children about their understanding of their situation. What she described is consistent with the assessment of professionals that noticed on the one hand the attentiveness and care with which she and her husband look after the children and on the other hand, the way the children respond to them, look to them for assurance, for guidance, for affection, and receive it. They have created a home for the children where they know they are loved and treasured, and where they have a strong sense of belonging. When asked about the impact of the children having to leave their home, the very thought of it was almost intolerable for CD to hold in her mind. What she conveyed in words and gestures was not just her own pain and sorrow at the thought of these children leaving her family, but a fundamental understanding of what it would mean for them, to be separated from her and her husband, their schools, their friends, their home, their security, their stability, the place they had lived with their mother. She knows them and feels for them as a parent.
63. CD described how the mother and the children had arrived at their home and said that *'she had tried everyone in the family and no one would come forward for her, we were the last ones to come to'*. She told me that they said the mother and children were welcome to make their home with them for as long as they needed. The mother had known DD for eighteen years. Before the mother died, CD and DD had already demonstrated their commitment to the mother and the children, building an extension to their home so that they could fit in more bedrooms. CD described how when her own son was born, the mother had supported her with his care, and that they had helped one another to raise their children together, becoming very close in the process. She told me that the mother had been a wonderful person in their lives. CD feels very strongly that the mother entrusted these children to hers and her husband's care, and that this is something the children understand. She told me they talk about having a mummy who is in heaven and that CD is their other mummy, and that B says *'mummy has left me you to look after me and A'*. Similarly, they know that DD is not their biological father but call him daddy, and he fills that role in their life.

CN

64. CN has done a huge amount of work, travelling around the country to meet with the prospective carers and preparing comprehensive assessments. There is no challenge to

those assessments which are all essentially very positive and acknowledge the very many things that each of these prospective carers would be able to offer to the children.

65. In October his recommendation was for a special guardianship order to CD and DD. That recommendation has changed more recently.
66. In his most recent statement he explained that his change of opinion was based on the premise that children should be placed with their biological family when possible. This statement would apply if the children were in the care of the local authority and the local authority were trying to identify potential placements for them, but as the case law confirms, there is no legal presumption in favour of a biological connection. The welfare of the children is the Court's paramount concern.
67. Other than CN having reviewed the case with his managers between October and the end of the year, there was no significant event underpinning CN's change of view.
68. In my judgment CN in his written and oral evidence has underestimated the impact upon these children of moving from the care of their current carers and to the home of the maternal aunt and uncle. When questioned about this he suggested that because the children had spent a week with the family last summer, and that A had thereafter expressed the view that he wanted to live there, this was evidence that A was mentally prepared for a permanent move. I cannot agree, particularly in circumstances where CN had previously concluded that the views A expressed at the time were not necessarily his genuine feelings, but seemed to have been influenced by the maternal family. CN's analysis in my judgment does not take into account what it would be like for these particular children who have already suffered from exposure to domestic abuse, from a number of house moves before settling with CD and DD and then from the loss of their mother in horrific circumstances. In that context, a further move now would on any view be traumatic, however lovely and welcoming the household was to which they moved.
69. CN's special guardianship support plan provides for a very extensive level of contact for the children and all other family members. In my judgment wherever the children are living this level of contact would be completely unworkable and would risk destabilising any placement. The schedule appears to have been drawn up much more with a view to appeasing wider family members and ensuring fairness, than thinking about the children's day to day lives and their need for stability and security.

Ruth Palayiwa

70. So far as the applications for special guardianship orders were concerned, the guardian's oral evidence was consistent with her written reports, which contain a thorough review of the evidence and fair and balanced analysis. Miss Palayiwa has been the children's guardian for over two years. She has a very good understanding of the children, their needs, their history and the family dynamics. She sets out clearly her conclusions and the reasons for them.
71. Her view in respect of the contact arrangements in the special guardianship support plan was broadly accepted by all other parties, in that (save for the father who is contending for a different order) none of them is seeking for a contact order or even a contact

schedule to be drawn up. She said that she regarded the plan as unworkable and likely to be overwhelming for the children. She suggested that there would be more success if the plan could develop naturally at the children's pace. She is in favour of a family assistance order to support all family members with this.

72. With respect to father's contact, she was skilfully led in cross-examination to look at extracts from Professor Perkins' updated report and then to agree in principle to a number of propositions about contact. This led Mr Bartlet-Jones to draft a recital which set out a process by which the father would be able to start supervised contact with the children once he had started on a DAPP course. I take this evidence into account, but must come to my conclusions having considered the evidence as a whole. Taken in the context of his whole report, the paragraphs of Professor Perkins's evidence about the father's journey to understanding and reform relied upon are not in my judgment quite as straightforward as presented. In any event this evidence is just one part of the overall picture.

Welfare checklist

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);

73. A has some awareness that decisions are currently being made about him and the time he and B spend with family members. He has recently been resistant to talking to professionals about this and told the guardian that the social worker had been '*showing me pictures of people I don't know*'. His loyalty to his mother is strong and he told the guardian the pictures were of people related to his father, who was not a nice person and '*every day he was being horrible to my mum who's dead. The people who are related to him are not nice either.*' When pressed about why he thought his father's family were not nice, he said he didn't know and couldn't remember.
74. A was negative about the maternal aunt and uncle when he met the guardian most recently, saying that they were also '*not nice*' and had not looked after his mum. He said that his mum who lived in this house had told him this. He said that he had not in fact enjoyed his time in [redacted], and although he had said at the time he enjoyed it, he said his aunt had '*told me to say it, but I didn't have a good time, she told me to say that mum and dad weren't nice*' and this had upset him. He was unsure about visiting them again. B was a bit more positive about the holiday saying when she first saw the dog she was scared but then she wasn't, the holiday was fun. She was asked if she would like to visit again and said, '*I just want to be at home with mummy and daddy.*'
75. Both A and B clearly identify themselves as part of their current family unit, with CD and DD as their parent figures who they call mum and dad, even though they know they are not their biological parents. B said she has '*two mums, one has died and one has not died. ... she lives in the sky now, I love my mummy in the sky, I remember her, she has a nice face. I love both of my mums.*' They are close to DD's and CD's son and regard him as their little brother. They speak positively about their schools, their activities outside school and their friends.
76. CD told me that she had been upset when A had come back from the holiday saying what he said and that she had told him that MA was naughty to say what she did. She

was cross about this but says she has not stopped the maternal family from being in touch with the children – she says after August the maternal aunt and uncle did not try to contact her, she then sent an invitation to B’s party in September but had no response, then there was the contact in October at which point A was very reluctant to go, she found it hard to deal with and felt he should have a choice about going.

77. Having regard to all the evidence I am satisfied that the children are not being influenced about what to say and that the views they have expressed are their own, arising from their strong attachment to their current carers.
78. CD told me that A knew his mother had been adopted by her paternal uncle and aunt and that he had some worries around this and whether this might be planned for him and B. If this is the case it is understandable that he might feel this, and that such worries would not have arisen from anything his relatives had said or done.
79. It is positive that despite A having expressed some negativity towards relatives, facetime contact is now going well and all parties have shown a good ability to be child-focused, forming a good basis for the children to build positive relationships with wider family members based on positive and direct experiences rather than what they have picked up or been told directly about them.

(b) their physical, emotional and educational needs;

80. The children need to be supported in all aspects of their daily lives, to be kept safe, and to be encouraged in their physical, educational, religious and emotional development. Above all, given their early life experiences and the death of their mother, they need stability, a sense of permanence and of security in their lives. As they are not living with their biological parents, they have a need to understand their family history and identity as members of their extended families. They will need help to understand their life story, in particular the reasons that they are not living with their father. They may in time need more support to cope with the loss of their mother and around the circumstances of her death.

(c) the likely effect on them of any change in their circumstances;

81. I accept the evidence of the guardian and of CD that the effect upon these children of a separation from their current carers would be traumatic and would have a significant impact upon them not just in the short term but throughout their lives.
82. In my judgment CN and the potential kinship carers have all underestimated the loss and trauma that would inevitably come with a move to new carers, and I consider they are all over optimistic about how easy it might be to sustain and support the children as they experience and process the grief of losing their family unit.

(d) Their age, sex, background any characteristics the court considers relevant;

83. The children are of [redacted] heritage and have been brought up to follow the teachings and traditions of the [redacted] faith. The children attend lessons and

regularly attend their local [*place of worship*]. I note that all the prospective special guardians are well positioned to continue to support the children in this way.

84. The children have suffered significant change and loss in their lives, starting with their parents' separation when A was five and B was two, a period of moving between relatives for six months or so before they moved to live with CD and DD, and then the death of their mother two years later.

(e) any harm which they have suffered or are at risk of suffering;

85. Whether the children move to MA and MU, or to PA and PU, the children would in my judgment suffer significant trauma and distress from being separated from their carers and their son, their home, their schools, friends, [*place of worship*], and place of memories of their mother. They would be surrounded by cousins, aunts, uncles who care for them and who would no doubt be able to build healthy supportive relationships with them, but they would be with someone else's mum and dad. They would be niece and nephew.

86. Both the maternal aunt and uncle and the paternal aunt and uncle would be able to make changes in due course to adapt their properties or living arrangements so as to accommodate the children but in the first instance the children would move from having rooms of their own in a home where they feel they belong, to sharing arrangements in new houses with new family members, that would inevitably feel makeshift in the first instance. PA and PU have some opportunity to take annual leave or a few weeks' parental leave but they both work full time and substantial amounts of care for the children would come from paternal grandmother. MA is able to take an extended leave of absence from work to settle in the children, but her two children are nearly grown, so there would be some period of adjustment for her to return to life at the primary school gates.

87. Wherever the children live there is in my judgment a continuing risk of harm to them from their father, because although he says he would give undertakings, I consider that he is still set on pursuing his wish to have contact with them, and to re-establish his relationship with them, and on present evidence, I find that he still poses a risk of physical and emotional harm to them.

88. In February 2019 the father remained adamant that he was a victim of a miscarriage of justice, and that all the allegations found proved against him had been made maliciously by the mother in an attempt to alienate him from his children.

89. In July 2019 the report of the DAPP worker suggests that the father strongly maintained that the allegation of rape was untrue, that the mother had admitted to him as much. He is reported to have suggested that the cause of the relationship breakdown was the mother's erratic behaviour, that she was physically aggressive to him, and that she had made up the allegations against him in order to obtain legal aid. Within the report he repeatedly suggested that she had been unfaithful within the marriage. I understand that the father does not accept this report and I have not been asked to come to a view. Even if there are some discrepancies, it is clear that at this time the father was still not saying anything at all to indicate he might be close to accepting the findings that had been made by the Court eighteen months earlier. The reporter concluded that he

'showed no insight or accountability in relation to any of his own behaviour being abusive' in his past relationships.

90. The father's witness statement is dated 28th January 2020. He disputes the conclusions of the DAPP report writer, not on the basis that she has misrepresented his words, but on the basis that they had a difference of opinion about his behaviour. At paragraph 23 he says, *'I did not see my behaviour as controlling. She suggested it was controlling, especially the actions I had taken to locate [the mother] and the children. I said that I had called various schools in the areas where I thought she may be, from our previous conversations. This was simply because I did not know where our children were.'* Later he says again, *'I did not feel I was controlling, but simply keeping an eye on [the mother] and our children because I had concerns about her mental state.'*
91. He says that he continues to deny that he ever raped his wife and says *'our sex was always consensual. In my discussions with [DAPP worker], I could not accept something that was not true.'*
92. The father has persistently alleged that the mother and DD were more than friends. He has continued to allege that they had a sexual relationship and that DD is the children's father. This is not true. The father asked for social services to investigate this, he raised it in hearings before me and again in his appeal before Mr Justice Hayden. CD said to CN that the persistence of these allegations had at times put a strain on hers and her husband's relationship. I dealt with this in my previous judgment, noting effectively that every time the father issue raised the issue, his concerns were allayed, and yet he has continued to make this allegation which is hurtful and disruptive.
93. In his witness statement dated 28th January 2020 the father suggests that the mother had become friends with DD when she met him at the *[place of worship]* and she had told the father she thought he 'fancied her'. He suggests that after they were married the mother went to *[place of worship]* increasingly often and he sometimes saw DD there. He continues to raise questions about this relationship throughout the statement.
94. Judge Corrie found that the father had tracked the mother and that he had made calls to CD and DD in the early hours of the morning, without speaking but sometimes with *[redacted]* music in the background. CD and DD continued to report receiving calls of a similar nature up until May 2019 when CD changed her phone number.
95. The father met with Professor Perkins on 27th February 2020. Professor Perkins' first report was dated 1st October 2018. In his updated report Professor Perkins had the impression that the father was less pressured than when they had first met. For the first time the father made what Professor Perkins has described as 'some concessions' to Judge Corrie's findings as follows:
- He now accepts that he had been violent to the mother although said this involved him defending himself, he was much larger than her and that pushing her away from him would be a form of violence. He said that impaired sensitivity in his hands could mean he would not realise the force he was using;
 - he was not deliberately violent towards A. He described this as just one incident when A had woken in the night, his mother had not gone to him, and so the father

had had to go. He said he tried to lift A from his bed, but his left arm was weak and they both slipped to the floor;

- he accepted sending nuisance text messages although said this was because of his frustration and annoyance with the mother at the time;
- he denied that he was controlling of her or that he had set up a fake Facebook account;
- after a long discussion he appeared to accept that he had installed CCTV inside the house and told the mother that the camera could rotate as a way of deterring her from making false allegations of him being violent towards her outside the house;
- he acknowledged that the mother may have felt she was forced to have sex and there were probably reasons for her to feel this way. *'His main comment on this issue was that he was disconcerted that the allegation had only been made well after the event, when the question of contact with the children was at issue.'*;
- he acknowledged just one occasion of drinking excess alcohol but did not state this had resulted in any aggressive behaviour from him, although he acknowledged that alcohol can make people angry or more extreme in their responses.

96. In my judgment these are rightly described as 'some concessions', but they fall a good way short of being an acknowledgment that he holds any responsibility for his part in a relationship that he himself described as toxic.

97. In relation to the children's negative comments about him and his family the father maintained his position that this is due to inappropriate things the children have been told about him and his family by their current carers. He did acknowledge his gratitude to them for the care they have given to the children.

98. The father told Professor Perkins that he was in fortnightly contact with A's school and had recently arranged the same with B's school. At a case management hearing we had discussed the prospect of him being sent school reports at the end of the year, this is significantly more than I would consider appropriate in the circumstances. Professor Perkins asked him of his impressions of how the children were getting on and he said, the schools said, *'they are doing ok. I don't indulge in it too much ... I really don't know ... I have to pick it out of the teachers.'*

99. Professor Perkins identified a narrative running through the conversation *'that the father had not been provided with enough help, that his own needs have not been sufficiently well recognised or understood, and that his rights as a parent have not been enabled.'*

100. In his conclusions Professor Perkins noted the father's strong views that the children should live within their paternal family, which he identified as being safer and more beneficial for their educational, social and spiritual development, and better for him to have any agreed contact with them. Professor Perkins said the father found it difficult to consider any other options, becoming distressed at the thought of how far

he would have to travel to see his children, and how he might even then find them unwilling to see him.

101. Professor Perkins writes:

'in my opinion, based on current interview and information on file, the father has made some progress towards accepting the need for professional therapeutic help as a means of understanding his personality and behaviours and their effect on others'. However, he goes on, 'There is no compelling independent evidence at this stage that this work has addressed the risks identified above. ...

The father's high expressed emotion associated with not having contact with his children creates a mental state in which his ability to consider issues and problem solve is limited by his own single-mindedness and distress. His accounts, driven by the need to achieve his goals, can be subject to distortions in the direction of representing his wishes, characteristics and progress in the most favourable light. This would need to be addressed in therapy and managed in any child contact arrangements.

My opinion is that, for the reasons set out in 2018, the risk to the children of direct contact continues to be high unless, at least initially, this were strictly monitored, supervised and managed, and that indirect contact would be a safer initial option, also monitored and reviewed. Progress towards ameliorating these risks has been made by the father's partial acceptance of some of HHJ Corrie's findings and his stated commitment to receiving psychodynamic therapy over the next year.

The father's untreated personality problems – including 'impression management and high expressed emotion – can get in the way of reflecting on himself and potentially pose risks to the children. Although he used the word reflection many times, there was limited (but some) evidence of this in the assessment. However, he has committed himself to 12 months dynamic psychotherapy through ELFT which, if it goes ahead, and if he engages with it, could be very helpful in these regards.'

102. On the basis of this report the guardian recommends a re-referral to DAPP. It is of course promising that the father has accepted to a limited extent some responsibility for the events that led to the breakdown of the marriage. However, on any view he remains extremely blaming of the mother, continues to make allegations which have no basis in fact about her relationship with DD, continues to minimise to a significant degree the nature of the findings made, providing substantially alternative versions of events, and maintains outright denial in respect of others.

103. It may be that he is on the start of a journey towards greater insight and understanding but I do not read Professor Perkins' report in that way. I do not consider that it can be taken as read that having made some small concessions, the father is now set fair on a path that will inevitably lead him to positive change. I come to this conclusion from considering Professor Perkins' report in its entirety, but also the context provided by the father's witness statement filed only weeks ago which is consistent with the position he has maintained for well over three years.

104. On the father's behalf Mr Bartlet-Jones said that the risk profile has changed because the mother has died. I accept that the position has changed but I do not accept

that the risks have reduced to the extent suggested. Having regard to all the evidence, in my judgment the risks to the children of contact with their father remain high and the measures proposed to monitor and manage are not identified or so far as they are identified, would not in my judgment be workable.

(f) How capable each of their parents, or any other person in relation to whom the court considers the question to be relevant, is of meeting their needs

105. The dedication and devotion of the paternal and maternal families respectively during these proceedings is not in question. They have given up their time to attend Court hearings, spent large sums of money on obtaining legal advice and representation, submitted themselves to the intrusion and scrutiny of social work assessments, and endured the stress of preparing witness statements and giving evidence, and having to study and absorb a huge amount of documentation.

106. The assessments are comprehensive and both families come across as warm, caring, family-focused, hard-working, kind and generous. I have no doubt of their sincere desire to offer a home to A and B and that if placed in their care they would respectively do all they could to ensure they were loved, kept safe, and valued as a part of the family for all their lives.

107. However, for reasons given above CD and DD are in a different position because the children have been living happily with them for the past three years. They love them as their mum and dad and are in return loved, and treasured as an essential part of the family unit. They have been observed by all professionals to provide the very highest standard of loving, attuned and attentive care for the children, passionately concerned to ensure their welfare needs are met, that they do well at school, play sports and take part in other activities in the community outside of school, are being brought up in the [redacted] faith, learning [redacted], attending [place of worship] and growing up as a part of that community.

108. For reasons given above, I do not consider that the evidence of father's conversation with Professor Perkins alone is sufficient to enable me to come to a view that my assessment of the father's capacity to meet the children's needs should be substantially different from that set out in my judgment dated 1st February 2019.

g) the range of powers available to the court under this Act in the proceedings in question.

109. I do not find the decision about where to place the children to be finely balanced. Having regard to all the evidence that I have heard and read and taking into account all the factors on the welfare checklist, I am satisfied that the orders which I should make in order to secure their welfare is to make CD and DD the children's special guardians with immediate effect.

110. To place the children with either of the other relatives would be in my view to elevate a perceived need to place them with persons connected to them by biology over and above their other needs for security, stability and permanence. They are already living within a loving, happy family unit. There is no need, and it would be vastly

detrimental to their welfare to rip them away from this family. Having regular contact with CD and DD would in no way compensate for this loss, particularly in circumstances where they have already suffered significant losses in their lives.

111. A move to either of the other family members would necessarily entail further delay where the children desperately need their futures to be settled. I would not be inclined to make special guardianship orders to either family in circumstances where the children have no established relationships with family members on either side.
112. If choosing between MA and MU and PA and PU, I would have greater concerns about placement with PA and PU because of the pressure that the father may seek to put on them to be involved in the children's lives, and the children's likely resistance and anxiety about being placed in a family that they associate negatively with their father. I acknowledge that they have accepted the findings but I think that protecting the children requires more than simply barring them from contact with the father. There would need to be extensive life story work to prepare the children for this move and to reassure them that they were safe. This would build in further delay which is not in the children's welfare.
113. With due respect to the good intentions of CN, in my view the special guardianship support plan is misconceived and pays too much attention to a perceived need for the children to spend significant periods of time with extended family members in order to have an understanding of their identity and heritage.
114. In my judgment the prevailing need for the children is to be afforded the opportunity to settle, to know and understand that where they are living now is their permanent home, and that CD and DD will be their parents throughout their childhoods. CD and DD have made it clear that they love these children as they do their own son, and their commitment to them will continue throughout their lives.
115. The children have got a very large number of relatives who are concerned to get to know them and to play a part in their lives. This is entirely understandable, but at the same time, I would caution against any perception being created that these children should grow up with a sense of obligation that they need to be measuring out their time between all the members of their extended families. There does need to be an acceptance from birth family members that the children regard CD and DD and their son as their essential family unit.
116. At present, the children do not have established relationships with any of these relatives and so from their perspective at this time they are not missing out on not spending very regular time with them. Although the children had some contact with them up to the ages of two and five, none of these relatives was in their lives after that point, they have not been in the habit of receiving birthday cards or Christmas or other gifts from them nor have they had any awareness of what was going on in other family members' lives.
117. CD told me that A was aware of his mother's history of being adopted into the family of her uncle and aunt and this not being a positive experience for her. CD said in evidence that A had expressed some fear and worry that he too might be sent away to live with relatives. Plainly he needs to be reassured that knowing these relatives will

be a positive in his life and that he has no reason to fear, but equally, I would suggest that this reassurance will be provided over time as he both gets to know members of his wider family and understands that his forever home is in his current family unit.

118. So far as the paternal family is concerned, the situation is potentially more complicated because of the associations the children make between their father and the paternal family. Happily, the relationship with PA and PU is developing gradually and the parties are confident that they will be able to continue to build this, as they are building relationships on the maternal side.
119. For all these reasons I agree with the guardian that there should not be any orders made in respect of contact to extended family members. My view of the table set out in the special guardianship support plan is that it is unrealistic, overwhelming and unnecessary. I do not envisage that these children need to have weekly contact with any of these relatives in order to build up over time a bond with them.
120. In my view contact should be a matter for the special guardians to decide upon in the light of their knowledge of the children, their need to settle, the need for everyone to understand that the special guardians have enhanced parental responsibility and will be making all significant decisions for the children going forward.
121. I would expect indirect contact to happen every now and again; birthday cards and Christmas presents, and the odd call to share important news, or to prepare children for visits, but I cannot see the benefit to the children of weekly facetime contact and consider there is a danger that it may be counter-productive because it could present as an overwhelming obligation to them, and potentially to undermine their sense of security in their placement with their special guardians.
122. I would not be expecting these children to be having direct contact with members of the maternal or paternal family more than once or twice a year and I would not expect that contact necessarily to be staying contact from the outset, unless this was something that their guardians felt was appropriate. The opportunity to go to America on a holiday is obviously exciting but could also be pretty overwhelming. The special guardians themselves have wanted to take a holiday abroad with the children for some years but have been prevented by the father's inability to provide them with the children's passports or copies thereof despite repeated Court orders, and by the continuation of these proceedings. I would not expect the demands of birth family relatives to take precedence over holiday arrangements made by the special guardians.
123. These comments are not made to criticise any relatives, nor to underestimate the strength of their feelings for the children, but to approach matters from the perspective of children who have been through a great deal and in my judgment need time and space to adjust to their new situation. I wish also to emphasise the Court's confidence in the special guardians who stand in the place of their parents to make decisions about all aspects of their daily life.
124. On this basis I do not consider that a Family Assistance Order is necessary for the purposes of marshalling contact between family members. The children will continue to be subject to local authority involvement by virtue of being registered as children in need, and the Special Guardians are already experienced carers of the

children. It may be that a further family group conference is set up in a few months' time to see how matters are progressing but I do not consider a family assistance order is required just for that purpose.

Father's application for contact order

125. I refer to the analysis set out in my previous judgment, paying particular regard to Practice Direction 12J, and in which I concluded:

'I am not satisfied that the father understands the impact of his behaviours upon the children and their mother. I consider there to be a real risk that the abusive, manipulative, controlling behaviours previously exhibited towards the mother in the relationship and following it, would continue, should an order for the children to spend time with their father be made.

I do not underestimate that an order that in effect prevents very young children from having a relationship with their father is draconian, but in all the circumstances of this case, having regard to the children's welfare as my paramount consideration, the welfare checklist and practice direction 12J, I am not persuaded that their welfare requires the making of an order that they either spend time with him, let alone move to live with him.

To make such an order would in my judgment expose the children to an unacceptable and unmanageable risk of harm, which outweighs any risk to them of being deprived of a relationship with their father.

On the evidence before the Court, I am not satisfied that the children's and their mother's physical and emotional safety can be secured before, during and after contact. I consider that both the children and their mother remain at risk of further domestic abuse by the father, even were contact to be supervised.'

126. Although the mother's death has of course changed the picture, having regard to all the evidence I have read and heard at this hearing, in my judgment the children remain at risk from the father. In particular, the risk is that he may seek to undermine and destabilise their placement with the special guardians, and that if he has contact with the children he will find it challenging to manage his feelings and emotions about his situation, is intent on developing his relationship with them and, having had no treatment to address this, is likely to be unable to control what he says to them, so as to protect them from emotional harm. My reasons for reaching this conclusion are as follows:

- (a) Professor Perkins' updated assessment indicates a limited shift in acknowledgment but still raises significant questions about the extent to which the father has made progress or developed a genuine ability to reflect on his own actions;
- (b) A recommendation for direct contact only on the basis that it is closely monitored and supervised assumes that arrangements for supervision and monitoring are straightforward. Putting a recital in that the local authority will facilitate contact is not sufficient. The local authority does not have responsibility for the children and I have no power to direct (even if I made a Family Assistance Order) that at some

point in the future they carry out a risk assessment, put in place measures to facilitate, monitor and supervise contact;

- (c) There is no proposal in respect of findings around father's alcohol misuse, no proposal as to how the father's interactions with the children could safely be monitored so that they were not exposed to his currently false, but evidently deeply felt concerns about their parentage, that their mother and current carers have influenced the children against him, and that he is blameless for the breakdown of the marriage;
- (d) the proposal gives no thought to how the children would be prepared for contact and who would carry out the analysis of the benefits to them of having contact at such time as it was deemed that the father was now ready. A has consistently expressed concern about seeing his father and was regarded by professionals as holding memories of the times when the father did hit him and shout at him, and was not kind to his mother. In the circumstances it would not be appropriate to make an order for contact to take place at some point in the future when it cannot be known what either of the children's wishes and feelings about this might be;
- (e) the proposal for contact envisages a linear progression – father expresses some limited acceptance of responsibility for the findings, is allowed onto a DAPP, is therefore permitted to have supervised contact with the children which will progress to unsupervised and an eventual restoration of their relationship. But progression should not be made as the father follows stages, but only on the basis of evidence of a fundamental change in his thinking and his approach. I am not persuaded that the evidence is sufficient of a change in the father either now or in prospect, that invalidates the assessment I made in February 2019;
- (f) it was suggested that a smoother path to contact would be by permitting contact with B first. This is not straightforward, particularly in circumstances where mother alleged that B was conceived as a result of rape. I am not satisfied that there are any good reasons to make a contact order in respect of B first then A. Again this speaks to the father's view that things should happen in a linear way, but this is not consistent with Practice Direction 12J;
- (g) the change to the risk profile that Mr Bartlet-Jones relies upon exists because the mother has died, not because the father has been able to demonstrate the fundamental change in his thinking and approach that would be required for me to come to a different view;
- (h) part of the risk to the mother and the children that existed before was a risk that their settled home with CD and DD would be destabilised and undermined by the father's actions. The father has persisted in his allegations against DD and the mother, and has persisted in his allegations that CD and DD have influenced the children against him. He has in the past installed a tracker on the mother's car. He does now admit sending harassing text messages and having installed CCTV surveillance, but continues to deny any controlling behaviour. Findings were made about him making anonymous calls to CD and DD. Those calls continued until May 2019. The father contacted social services and made allegations about mother's care of the children while in the home of CD and DD. The father's

character is that he pushes and persists. He knows where the children go to school and has persuaded A's school to respond to his requests for information every fortnight. He said that he has made the same arrangement with B's school. In my judgment, if contact were allowed to progress without evidence of an acknowledgment from the father of these behaviours and a fundamental change, then the risk squarely remains that he may take steps to try and influence the children to see things from his perspective, or otherwise take steps that would have the result of interfering with, undermining or destabilising their placement with their special guardians;

- (i) the children do need to understand their life story and heritage but there are ways of achieving this, in particular by establishing networks to members of their extended family as is happening, without the need to set up sessions of direct contact. The children's overwhelming need at the moment is for stability and to be settled. There is no benefit to them of contact with their father at the moment, compared to the significant risks to their welfare of it taking place.

127. I have had regard to the authorities and accept that orders prohibiting contact should be regarded as a last resort. However, for the reasons given within this judgment and my previous judgment, I am satisfied that in all the circumstances of this case, the orders I make are required to ensure the welfare of the children continues to be safeguarded.

128. The risk of the children growing up with the idea of their father as some kind of monster does not affect my assessment at this time. Firstly, because unless and until the father has undergone the work required so as to demonstrate a fundamental change, there is as much a danger that direct contact with the father would only reinforce any negative views the children had, because he poses a direct risk of harm to them. Secondly, because the children are building a relationship with the extended family, who have a good understanding of the issues from having been involved in these proceedings, there is a better prospect of them being able to help the children in this.

129. I would accept that in present circumstances the father should be permitted to send to the children a birthday card and a Christmas card. I do not consider at this stage the children's welfare would be met by any further contact from the father.

130. In my judgment the father is making an unreasonable demand on the children's schools to expect to be given fortnightly updates on their progress. I propose to order that the prohibited steps orders remain in place, and that the school is required only to send to him copies of end of term or end of year reports that are prepared in any event. I would not expect a school teacher to be required to report specifically to the father. He must accept that the children will be parented throughout their minority by their special guardians and take a step back.

131. I would have no objection to the guardian making a referral to a DAPP programme for the father but I am in no doubt that it is in the children's interests that the order I make should be a final order in the applications. There is no good reason to prolong the proceedings any further.

Joanna Vincent

HHJ Vincent
6th March 2020