

IN THE FAMILY COURT AT BLACKBURN

Case No: PR17C00661

Courtroom No. 2

64 Victoria St  
Blackburn  
BB1 6DJ

Monday, 18<sup>th</sup> February 2019

Before:

HIS HONOUR JUDGE BOOTH  
Sitting as a Judge of the High Court

**RE E, F AND G (Children; Care Proceedings)**

**Miss Kate Akerman** appeared for the Local Authority  
**Mr Paul Hart** appeared for the Mother  
**Dr Alex Khan** appeared for the Father  
**Mr Jonathan Buchan** appeared for the children through their Guardian

APPROVED JUDGMENT

*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.*

## HHJ BOOTH:

1. This is my judgment following the final hearing of care proceedings issued by the local authority on 8 December 2017. It concerns three children; E who is six years of age and a girl; F, who is five years of age who is also a girl; and G, a boy who is three years of age. Their mother is a national of an east European country; their father is originally from Pakistan. E has from birth treated as a child of these parents. Her biological father is believed to be a fellow national of Mother's country. Mother has two older children who live with her brother in the country of Mother's birth.
2. The case requires me to address several different matters. Firstly, I need to deal with an application by the country of Mother's birth that the proceedings be transferred to that country under Article 15 of Brussels II a. That application has been made in writing on the basis that the three children are nationals of that country and, if the plan for them in England is for them to be adopted, that the children should be sent to the country of their mother's birth where they would be provided with institutional care. For reasons I will explain in due course, I will not be acceding to that request.
3. Next, I am required to make findings of fact. The local authority have prepared an amended final threshold which is dated 15 November 2018. It sets out the factual background that led to the children being voluntarily accommodated in foster care on 25 October 2017.
4. If I find that the threshold for the making of a public law order is crossed, I then must decide what should happen to the children.

### **The case of each of the parties**

5. The case, when it was opened to me, was put based on a care plan of adoption, severing the ties between the parents and their children and providing the children with a new forever family. However, it became clear at the very start of the proceedings that the local authority was having a change of mind and, to that end, on the morning of the second day of the hearing, I required the social worker and the children's guardian and the solicitor representing the children to meet with the children's foster carers. The foster carers had indicated a commitment to the children, and they wished to be considered as long-term carers. Following that meeting the local authority changed its care plan. The care plan now is for long-term foster care with the current foster carers.
6. The parents' position is this; Mother accepts that the threshold is crossed and accepts most,

if not all, of the facts relied upon by the local authority. She supports the children remaining with their foster carers and she dearly wishes to remain part of the children's lives through seeing them in contact. Father's position is that he denies that the threshold facts are made out. He asserts that the children should be immediately returned to his care so that he can resume his care of them, albeit without the presence of the children's mother in his home.

### **Background**

7. Father's background is relatively straight forward. He has described a normal family childhood in Pakistan, where many of his family remain. He came to England in 2006, initially acquiring a short-term visa that allowed him to work. By 2008 that visa had expired, and he was pursuing the opportunity to remain in this country on the basis, he told me, of his human rights. In September 2011 he was employed as a chef at a restaurant in Manchester.
8. The mother's background could not be more different. She was one of six siblings; two of whom have sadly taken their own lives, a sister committing suicide aged 13. At the age of five, she witnessed her father murdering her mother and the siblings then went into institutional care. She was brought up in a children's home, in circumstances that would be very different from those that might have prevailed in this country. She had a limited education and left institutional care aged 18 when pregnant to a fellow resident. She went on to have a further child and those first two children were the subject of litigation in her home country, resulting in them being placed in the long-term care of her brother and his wife. She had a relationship with an older man who is said to be the father of E. Attempts by the authorities in Mother's home country to trace that man have failed.
9. In the summer of 2011 Mother was pregnant with E. She was fearful about what would happen to her baby when it was born and she tells me that she had discussions with a relative who told her that if she came to the UK there was the prospect that she could be introduced to a Pakistani man, that Pakistani men were hard working, good providers and that she would meet a man who would have a job, a home, a car and would be able to look after her and her child for the foreseeable future. That met every expectation she had for her future.
10. To that end she was driven across Europe, through France, across the channel on a ferry and up to Scotland, where she was introduced to a Pakistani man who was interested in her but decided not to take her on when discovering she was pregnant. She was then shown a

photograph of the father. Arrangements were made for her to meet him and she did. The account of their meeting however is different; Father says Mother took up a job at his place of employment as a cleaner and in September 2011 they met and, during two or three weeks of meeting, they had decided they wished to marry. He explained that the fact that he spoke Urdu and very little English and Mother spoke two Eastern European languages, but no English and no Urdu, was not a barrier to their flourishing romance.

11. Mother described a formal meeting at the home of a third party where she was introduced to Father and where a sum of money, she believes £6,500, was exchanged to allow her to proceed with her relationship with Father. She was happy with this transaction; she thought the man she had met was good looking and he met the criteria she desired of having a job, a home and a car. For reasons I will explain in due course, I found Mother the far more reliable of the two and, where their evidence is in conflict, I preferred Mother's account.
12. The couple set up home at Father's house and, in due course, Mother's baby was born in the February of 2012. Father was present at the birth. His name was put on the birth certificate and the child was to be brought up as a Muslim child. When they had first set up home together that had only happened after the couple had been through a Muslim ceremony of marriage, consistent with Father's beliefs. Mother agreed that she would become a Muslim and looked after the father and, subsequently the children, in a Muslim way, using halal food and meeting Father's cultural wishes. In due course the couple went through a civil marriage ceremony.
13. By March 2016, at a time when the family now consisted of Mother, Father and three children the marriage was clearly in some difficulty. Mother made allegations of physical, emotional and sexually abusive behaviour towards her by the Father. There were concerns that the children had been subject to physical abuse heavy-handed smacking and slapping. Having separated from the father with support from Social Services, Mother was unable to maintain her separation and, in early 2017, the family were reunited. In June 2017, E alleged that her father had hit her mother and had hit G. The matter was reported to the local authority and Mother voluntarily moved to a refuge with the children. Despite agreeing not to have contact with the father, or to allow the children to have contact with the father, she continued a relationship with him through social media.
14. On 25 October 2017 G attended nursery with bruising to his face. He underwent a child protection medical and the conclusion of that was that one of the bruises to his face was likely to have been sustained non-accidentally. That led to the children being voluntarily

accommodated with their current foster carers; they have remained in their placement throughout and they are thriving.

### **Fact finding**

#### **The Law**

15. I next move to that part of the case where I need to make threshold findings. Before I do so it would be sensible if I reminded myself of the law for the purposes of a fact-finding exercise. The following points are of relevance in this case:

- A) The burden of proof lies, at all time, with the local authority;
- B) The standard of proof is the balance of probabilities;
- C) The finding of fact must be based on evidence including inferences that can properly be drawn from the evidence, but not on suspicion or speculation;
- D) When considering cases of suspected child abuse, the Court must consider all the evidence and consider each piece of evidence in the context of all the other evidence. The Court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.
- E) The evidence of the parents and any other carers is of the utmost importance. It is essential that the Court forms a clear assessment of their credibility and reliability;
- F) It is common for witnesses in these cases to tell lies during the investigation and the hearing. The Court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, distress and maybe out of fear that the truth will not speak loud enough. The fact that a witness has lied about some matters does not mean that he or she has lied about everything;
- G) The legal concept of proof on a balance of probabilities must be applied with common sense;
- H) The Court should have regard to the inherent probabilities that this does not affect the legal standard of proof. This proposition was enunciated by Lord Hoffman in *Re B(Children)(Care proceedings:standard of proof)(Cafcass intervening)*[2008] UKHL 35 where, at paragraph 15, he said this,

‘There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that, in deciding this question, regard should be had to whatever extent appropriate to inherent probabilities. If a child alleges

sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest the tribunal must, in all cases, assume that serious conduct is unlikely to have occurred. In many cases the other evidence will show that it was all too likely’;

- D) The fact that the parents failed to prove on a balance of probabilities an affirmative case that they have chosen to set up by way of defence, does not, of itself, establish the local authority’s case;
  - J) Parents may, in some respects, be good parents. That does not necessarily mean that they are willing and able to protect their children in the way that might otherwise be expected;
  - K) Where repeated accounts are given of events, the Court should think carefully about the significance or otherwise of reported discrepancies. They may arise for many different reasons such as lies, faulty recollection or contamination from other sources. They may simply be the effect of the human reaction of unconsciously filling in the gaps;
  - L) It is in the public interest that those who cause non-accidental injuries to children should be identified. The Court should not ‘strain’ the evidence to identify on a simple balance of probabilities the individual who inflicted the injuries. If it is clear that identification of the perpetrator is not possible the Court should reach that conclusion, *Re K (Non accidental injuries:perpetrator:new evidence)*[2005] 1 FLR 285 Court of Appeal;
  - M) The Court’s function is to make the findings of fact that it is able on the evidence and then analyse those findings against the statutory formulation. The gloss imported by the use of unexplained legal, clinical or colloquial terms is not helpful to that exercise. The threshold is concerned with whether the objective standard of care which it would be reasonable to expect for the child in question has not been provided, so that the harm suffered is attributable to the care actually provided, Ryder, LJ in *Re S (A Child)* [2014] EWCA Civ 25.
16. Some of the propositions require a little further detailed consideration. As I will be finding, Father has lied about important matters concerning him and the children. As emphasised by Macfarlane, LJ in *H-C(Children)* [2016] EWCA Civ 136, a central point in *R v Lucas* was that the lie is never taken, as of itself, as direct proof of guilt. The lie is capable of amounting to a corroboration.
17. In *Lancashire County Council v C, M and F (Children; fact-finding)* [2014] EWFC 3, Peter

Jackson, J set out some helpful observations on the way in which lies and discrepancies can pollute the evidence of the case in ways that may not be sinister.

18. Where a local authority relies on hearsay evidence which is put in issue by a parent, the Court must be rigorous in its analysis of such evidence, which, whilst of course is admissible in Children Act proceedings, must be considered in the context of the inability of the parent to challenge such evidence directly, *Re A* [2015] EWFC 11.
19. Where a local authority asserts a case against a parent, the person accused must have the opportunity to answer the allegation and for the Court to hear that answer so that it can make a determination. The Court's assessment of the parents is at the heart of the process, particularly where, as here, they were the ones caring for the children at the material time.

### **The children**

20. The information gathering process in this case has been wide ranging and extensive. The children have been fortunate in that they have had stability. They have remained in one foster placement that has allowed them, as I have already said, to thrive. It has also given them security; it has given them the confidence and the space to talk about their life at home with their parents and, throughout their time in foster care, each of the three children have described smacking and what amounts to assaults by their parents. They have described shouting. They have described their father hitting their mother and their mother crying. E has described comforting her mother. Their father denies all the things described by the children about him, but their mother does not; she accepts the accuracy of what the children have said. I appreciate that Father has no real opportunity to challenge what the children have said and there has been no suggestion from anybody that the children should have given evidence.
21. I have read a lot about these children. They are a close sibling group but they are very different characters. E, the eldest of the children, is a quiet, reflective child. She appears to have taken on responsibilities that should not have fallen to her, adopting a quasi-caring role for her mother and for her younger siblings. The children's social worker described her as 'locking on' to adult conversations when they take place in her presence. F is a lively little girl; active and inquisitive. G is a boisterous little boy; advanced for his age with, dare I say it, a typical boyish interest in such things as toy motor vehicles. He is often content to play on his own. I have had the benefit of photographs of the children in contact with each of their parents. It is agreed that both parents love their children and that the three children love both their parents.

22. As well as having the same foster carer throughout, the children have had the same social worker throughout. I was very impressed with the evidence the social worker gave me. She has worked hard to forge a close relationship with the children and with both parents. She has achieved a trusting relationship with Mother; she has been blocked in her efforts to form a relationship with Father by his consistent failure, both with her and with other professionals, to engage with them in any meaningful way. Somewhat unusually, but very much to her credit, when describing the children to me the social worker's face lit up. She clearly has confidence that what the children have said in describing what happened in their home was accurate and reliable and, in due course, when I consider what the children have said, I find myself driven to believe the accuracy of what they have described.

### **The parents**

23. But what did I make of the parents? Both parents were the subject, not only of social work assessments by a very competent social worker, but by independent social work assessments by a very experienced, independent social worker who gave evidence to me. They have also been subject to enquiries by an experienced and careful guardian. All professionals reported the same about Father.
24. In describing his home life Father said this to me, "It was a good life together. We were happy. It was calm in the house. Mother was happy. She said I was a good father and husband and I had changed her life. We had a good sex life and she enjoyed it." Both the independent social worker and the children's social worker told me of the way in which Father dealt with being challenged as to his idyllic account of life in his household. He would, to use the jargon, avoid and deflect. He would avoid by referring those challenging his account to the written evidence in the case without being prepared to give his own detailed descriptions. He would deflect by blaming everything that might have gone wrong, whilst at the same time admitting nothing had, by saying it was all due to Mother's mental health.
25. When he gave his evidence, he dealt with things in the same way. His evidence about life in the household lacked detail, for example, he was asked about the children's routines and what he had done to care for the children himself. He gave me no detail, no colour, in the same way he had given similar responses to professionals. He stuck to his description of how he had met the mother. He was questioned about his application to ensure his ability to remain in the UK, he was challenged about the significance of marrying someone who was an EU national. He expressed complete ignorance until years after the marriage that it was

of any benefit to him to be married to an EU national. It was pointed out to him the potential significance of his name appearing on E's birth certificate as E's father when he knew, at her birth, that he wasn't her father. He professed ignorance of that. I regret to say I found him a wholly unreliable witness, upon whose evidence I can place no reliance whatsoever unless it is supported by other evidence in the case.

26. Mother has been the subject of considerable investigation. She was, initially, the subject of an assessment as to her cognitive functioning. She presents, in some respects, as rather childlike and it became apparent to those professionals dealing with her that she had difficulties with some tasks that most people take for granted. It became apparent, for example, that she couldn't tell the time, resulting in her being often late for appointments. Other conclusions of the cognitive functioning borne out, in due course, by a full psychological assessment of the mother was that, while she has some deficits in her cognitive attainment, those are probably due to a combination of factors - the trauma of her childhood, her upbringing in institutional care and the limited education that she got whilst in that institutional care. What she has demonstrated is a facility for languages; she speaks two European languages and has a more than serviceable command of English that she has acquired while she has been in the country. She is described by all the professionals who have had dealings with her as a very vulnerable individual. She has struggled to make sound and sensible choices for her and her children. No doubt as a product of her background, she displays many features of someone who become, at least partly, institutionalised. She has looked to others to provide for her, most obviously she has looked for a man to provide a home for her, to put food on the table and a roof over her and her children's heads. She has not, in the past, recognised the need for emotional support for herself and has struggled to separate from Father, upon whom she was so dependent, despite being in a relationship that has been regularly described by professionals as a toxic, damaging relationship. She has, however, and this is of the greatest credit to her, shown insight and an ability to reflect on what is best for her children. When the case started, she faced a case brought by the local authority seeking to have her children adopted. That stance changed through a process that went on during the first few days of the case, so that, by the time Mother gave her evidence, she knew that the local authority plan was for the children to remain in their foster placement long-term.
27. During her evidence, it was necessary to adjourn the case overnight. When she came to court the following day, and when she was being asked questions on behalf of the children,

she told me that she had thought long and hard overnight about what was best for her children and that she had reached the conclusion that, much as she wanted to have the children with her and in her care, she realised that they would be better and happier in the care of the foster family and able to have a relationship with her and her with them through contact. She told me that, having reached the decision, she had the best night's sleep she had for months. The children's guardian told me that she thought that that piece of evidence spoke volumes.

28. It is right to record that Mother has not always been consistent in everything that she has said. It is right to record that she has had spells when her mental health has not been good. It seems she was unwell immediately following the birth of each of the children and her separation from the children led to her being admitted to a psychiatric hospital for 48 hours and, more recently, she has self-harmed. However, I am satisfied that I can rely on the story that she has told me. She has provided appropriate detail. She has struggled at times when I would have expected her to struggle to give evidence to me. She has, at times, been reluctant to criticise the children's father. That contrasts starkly with his evidence, where he simply says that everything can be explained away by Mother's mental ill-health.

#### **Threshold findings**

29. The local authority seeks findings in, effectively, four categories. Firstly, in relation to the relationship between the parents. Secondly, as to the control and behaviour exhibited by the father against the mother. Thirdly, on Father's physical assaults of the children and fourthly, on Mother's physical assaults of the children. The threshold document correctly describes the parents' relationship as volatile, dysfunctional and enmeshed, leading to separations and reconciliations, several house moves for the children and periods of instability.
30. The first separation occurred in March 2016, when Mother alleged domestic violence and physical abuse of F. She moved out and went to stay with a friend. The circumstances of their separation resulted in Father being on bail. The parents were in contact with one another in March 2016 in breach of those bail conditions. In April, having reconciled, Mother left again, and alleged abuse, shortly thereafter returning, retracting her allegations. In May 2016 Mother alleged that the father had raped her. Let me pause at that point.
31. The threshold document contains words which denote a criminal act, rape being one of them. Another was to refer to Mother having been trafficked for the purpose of her marriage to Father. As I went through my statement of the law, I referred to the words of

Ryder, LJ from 2014, where he deprecated the use of words with a technical meaning. That position has been recently reiterated by Macfarlane, LJ. It is a matter I have encouraged in my Court for many years, for matters to be set out in narrative form, avoiding the use of criminal, and it is usually criminal, terminology, which often only serves, as here, to raise the temperature and can often fail to carry the nuances of what was actually happening.

32. The allegation of rape was made in the notes by a doctor to whom Mother complained. In fact, it appears that the doctor misinterpreted what Mother was complaining of by assuming that Mother was complaining of vaginal rape when that was not Mother's complaint at all. What Mother was complaining about came out a week later when she was seen by another professional at the doctor's surgery, where Mother made plain that what she was objecting to was Father's practice of anal intercourse. It turned out that Mother had haemorrhoids for which she was prescribed a cream.
33. The background to these allegations is that, Mother says, and I accept her account, that in the latter stages of their relationship Father developed an interest in pornography and would watch pornography in what had, effectively, become his bedroom, where he was sleeping separate from Mother who was in turn sleeping with G in her bedroom. When he wished to have intercourse with Mother he would come to her door, invite her to agree to sex, saying it would only take five minutes and she would reluctantly acquiesce. Mother says he watched anal intercourse in the pornography and wanted her to engage. She said that she did not say no but did not want it to happen. She said she found it painful and told him so. Her medical condition would explain why that might be. Whilst the use of the word rape might be a convenient short form, it was not accurate.
34. Having made her complaint of Father's approach to sex, and other complaints, Mother moved out of the family home into temporary accommodation, but then, very shortly thereafter, moved back. Father was required to live elsewhere subject to bail conditions. At six months later, Mother invited the father back to the family home as she wanted to reconcile with him, putting Father in breach of his bail conditions. He moved back and, in June 2017, she and the children moved out after an allegation that Father has assaulted G. Having moved out, she allowed the children to have contact with their father via telephone, video call, what's app and so on, despite living in a refuge with strict rules about no contact to the person whose presence she was there to avoid.
35. During the involvement of the local authority, the parents have made it clear that they wish to have contact with each other and, referring to the time when they were together, the

- children have referred to witnessing arguments between their parents and hearing shouting. All those facts supporting a volatile, dysfunctional and enmeshed relationship are made out.
36. Next, I must consider the question of control and physical and emotional abuse of Mother. There are occasions, going back to 2012, when Mother has said she was assaulted by the father. She describes being kicked to the face, she describes being slapped across the face in 2015. I have already set out the sexual demands made of her by the father. In March 2017 there was an incident where Father kicked the mother in the face when she failed to respond to a sexual demand.
37. Next, I must go on to consider Father's assaults of the children. Again, the local authority rely on a combination of what Mother has said and what the children have said. Father assaulted E in April 2012, he struck F in mid-2013. In 2015 he smacked E on the back of the head, second occasion in 2015, smacked E on the cheek leaving reddening. In the early part of 2017, he slapped F across the face leaving reddening. In June 2017 he slapped G across the face in an incident where G was trying to feed himself and cope with his drink and was making a mess; that led to the incident where Mother left the home with the children.
38. Finally, I must look at Mother's physical assaults on the children. In January 2017 she smacked E on the leg, in June 2017 she smacked E on the bottom, in February 2017 she struck E's fingers and pulled her hair. She accepted what she had done saying that it was done in the context of her chastising the children. She said that, up until the help she got when she went to the refuge and the courses she has subsequently been on, she thought that the only way of chastising the children was to hit them; it is what she had seen their father do and, of course, it reflects her own childhood. On 25 October 2017, the incident that led to the children being admitted voluntarily into care, she accepts that she caused what the medical examination described as a non-accidental bruise to G's cheek when G had a fall and hurt his head and she took hold of his face, gripping it between her finger and thumb and squeezing, she accepts now, in a way that was too hard while she looked to see if he had otherwise hurt his head. She accepts she caused a bruise. I am satisfied that the local authority threshold is made out.

#### **The children's welfare**

39. Care proceedings go in two parts; I must be satisfied that each of the children is suffering, or is likely to suffer, significant harm and that that harm is attributable to the care that was given, or likely to be given to him, by a parent not being what it is reasonable to expect a

parent to give. I am satisfied that that legal test is met.

40. The crossing of the threshold opens the door to the making of public law orders. The way I must approach this task is straight forward. I must, always, have each of the children's welfare as my paramount consideration and, in making any decision with respect to the upbringing of each of the children, I must have regard to the Welfare Checklist in Section 1(3) of the Children Act 1989. I do not propose to set out that well known list, but I have taken it fully into account in respect of each of the children. I must only make an order where it is necessary to do so; I must start from the premise, if I can, of making no order and, if it is necessary to make an order, I must make the order that is least intrusive into the children's lives. In considering the ultimate outcome for these children I must satisfy myself that it is a proportionate response to the difficulties that the children have faced and will continue to face in the future. I must have regard to their rights to family life, their parents' right to family life, the children's right, each of them, to a meaningful relationship with their birth parents, and their parents' right to a relationship with their children.
41. As I have said, as far as Mother is concerned, she has recognised that she cannot meet the needs of her children and that their needs can be best met in a foster placement, subject to a care order, with their current carers. I need to say a little bit more about that placement. The foster carers are vastly experienced foster carers. They have two adult daughters, who themselves are local authority foster carers, and who assist their parents from time to time with the care of the three children with whom I am concerned. The foster carers are professional foster carers employed by an agency. They rely on the income provided to them by the local authority in their capacity as foster carers to meet their bills and pay their way. The male foster carer has employment outside the home.
42. Because of the conversation the foster carers had with the social worker and the guardian and the children's solicitor, they have agreed to be the subject of a special guardianship assessment with a view to the children achieving a far greater permanence with them than would be the case under a care order and a foster placement. The assessment will take 12 weeks. There will need to be a financial assessment. The local authority has agreed to provide the foster carers with legal advice. That process is not without its difficulties given that there are limitations on the financial support that local authorities will provide to special guardians, which may be less than the financial support provided through the agency to these foster carers. I cannot be confident, at this stage, that the ultimate destination for these children is a special guardianship order and placement with this couple. I must work

on the assumption that these children will be in the care of the local authority and will be in foster care. The ambition of the children's social worker is that they will remain where they are, but I cannot rule out the possibility that the policy, for example, of the local authority towards agency foster carers may change in the future, rendering their current placement non-viable. That would be a disaster for these children.

43. I want a copy of this judgment to go to the decision makers within the local authority, not just the children's independent reviewing officer, as I cannot underline enough the importance for these children of maintaining their placement with these foster parents.
44. Therefore, I must weigh up the potential outcomes of this case. Father's position, as I indicated right at the beginning, is that the children should be returned to his care. Is that realistic? The answer is an emphatic no. He refuses to accept that there are any faults in his parenting. He appears to think that the children could simply move back into his care and all would be well. He appears to have no idea of the harm that has been done to his children by being exposed to the difficult relationship between him and the children's mother. He did not, in any way, acknowledge, for example, E's wariness and her care for her mother as entirely inappropriate things for a six-year-old to be thinking about. Those professionals who have seen him with the children, and the independent social worker was emphatic about this, are clear that this is a man who, whilst he can enjoy the company of his children during contact, has no idea about boundary setting, has no idea about leading play with his children and could demonstrate no working knowledge of what their domestic routines might have been or what they might need to be in the future. To return these children to his care would be utterly damaging to the children. His long-term role in their life is through contact. He is E's psychological father, he is F and G's biological father. He has a loving, established relationship with them that should be preserved.
45. The children have had some part of a Muslim upbringing; the interim care plan provided for that to continue in foster care and the foster carer has continued to provide some support for the children as practising Muslims such as, for example, providing them with halal food. If the children are to maintain a link with their Muslim start in life that will be through their father; it is for him to help with their Muslim education and give them encouragement to pursue an interest in his faith. The children are also the product of an Eastern European Catholic mother. They have the opportunity, through their mother, to learn something about her country and she will receive support in giving them that education from the children's foster carers.

46. Would anything less than a care order meet the needs of the children? There is no family placement available for them. To place them with their father would be positively damaging. A care order does not provide permanence and they will carry the stigma of being looked after children. They need to maintain their relationship with their parents. They need to be kept together as a sibling group - it is all they have known and they are close to one another.

### **Conclusion**

47. I am satisfied that the right outcome in this case, and I recognise immediately it is not without its potential difficulties in the future, is for me to make a care order and to approve a care plan of foster care, the plan being for them to remain with their current foster carers. The care plan sets, as a minimum, contact with their father six times a year and contact with their mother of 12 times a year. I am told, and accept, that the foster carers are very alive to the needs of the children to maintain their relationships with their parents. The hope is that contact will move away from a community centre where it has taken place hitherto, which is acknowledged by all as being less than satisfactory and insufficient to maintain the interests of the children, and for contact to move to activity-based contact in the community involving the foster carers so that it can be at weekends when the children are less tired than when they are at school and at nursery. I have confidence, from everything I have read and been told about the foster carers, that they will do their level best to ensure that the children not only have appropriate time with their parents, but that that time is spent in the best way to enhance the relationship that the children have with each of their parents. The question of the children's contact will need to be kept under constant review. I hope that, over time, the changes in contact can be dealt with sensitively and the foster carers are supported in that process.
48. As I have said, the children have been very fortunate in this case; they have expert and vastly experienced foster carers who are able to provide for their needs to a very high standard. They have had the benefit of a committed and thoughtful social worker. It is unfortunate that she will cease to be the children's social worker in the very near future, but I hope her replacement can measure up to the high standards that she has set. The children have been assisted, again, by having an experienced guardian and I was impressed with the independent social worker's input into the case. If it be the case that the foster carers decide they wish to be special guardians it is unfortunate that the parents will appear before me, I anticipate, unrepresented, because their public funding certificate will not cover that. I will

take care to ensure that the guardian is reinstated to represent the children if possible and I await the outcome of that assessment and the foster carers' deliberations with interest.

### **Transfer application**

49. As I indicated earlier on in the judgment, Mother's country of birth and, of course, the country of which the three children are nationals by virtue of being the children of a national of that country, has made an application pursuant to Article 15 of Brussels II a, for the proceedings to be transferred to that country. They sought the transfer of the whole of the proceedings. The law on this can be set out simply:
- i) Transfer out of the jurisdiction is the exception, not the rule;
  - ii) Only where all three conditions in Article 15 are satisfied may the Court exercise its discretion to transfer;
  - iii) Where all three conditions are satisfied, it is difficult to envisage a scenario where a Court will not exercise its discretion to transfer;
  - iv) The three conditions are:
    - a. does the child have, within the meaning of Article 15(3) 'a particular connection' with another member state;
    - b. would the Court of that other member state 'be better placed to hear the case or a specific part thereof';
    - c. will a transfer to the other Court be 'in the best interests of the child';
  - v) The language of Article 15 is clear and simple and requires no gloss. Preconceptions and assumptions from domestic law should not be imported;
  - vi) The determination of an Article 15 application should involve a relatively simple, straight forward and summary process. A profound investigation of the child's situation and upbringing is not required;
  - vii) As to the first and second conditions an enquiry as to the pros and cons of transfer is a helpful approach.
50. I indicated at the beginning of the case that I would not be transferring the case. Dealing with the pros and cons:
- a. each of the children has a particular connection with the member state, namely they are nationals of that member state. In every other respect they are British children; born in Britain, brought up in Britain, educated in Britain, speaking the native language of Britain.
  - b. As to which Court would be better placed to hear the case, all the facts and matters

in contention between the local authority and the parents occurred within the UK. A Court of another member state would be entirely reliant upon material provided by the authorities in this country and would have little or no prospect of receiving live evidence. I have had the benefit, as I anticipated, of hearing live evidence which has allowed me to resolve all those factual disputes.

- c. In any event, what prompted the application by the other member state was the prospect that these children might be adopted. That is no longer the local authority's case, but, the alternative put forward by the member state, namely that these three children, who speak nothing but English, would be housed in a children's institution where they could not communicate and, where I have a detailed description of Mother's upbringing in such an institution, would have made it very difficult for me to accede to that request.

**End of Judgment**

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