



IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Neutral Citation: [2019] EWHC 1782 (Fam)

Case No: ZE18C00312

Courtroom No. 46

Royal Courts of Justice
Strand
London
WC2A 2LL

12TH APRIL 2019

Before:
THE HONOURABLE MRS JUSTICE LIEVEN

B E T W E E N:

A LOCAL AUTHORITY

and

C

MS J PEPPER appeared on behalf of the Applicant
MS G KELLY appeared on behalf of the First Respondent
MS J CONNELL appeared on behalf of the Third & Fourth Respondents

Hearing Dates: 8th April 2019- 12th April 2019
APPROVED JUDGMENT

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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.

Mrs Justice Lieven:

1. This is an application under Section 31 of the Children Act 1989 for care orders in respect of two children: a boy, A, aged seven, who I am going to call A through this judgment; and a girl, B, aged five.
2. The circumstances in which this application is made are particularly tragic. The children's father, 'the father', has been convicted of murdering the children's mother, 'the mother', and has been given a life sentence with a minimum term of 16 years. The murder took place in 2018.
3. It follows, from these facts, that the children cannot now be looked after by either of their parents. They have been in the care of the Local Authority since just after the murder, pursuant to an interim care order, and have been living with foster carers. The Local Authority now seek a care order under Section 31, with a care plan that the children live with their maternal grandmother, 'MGM', and an order under Section 34(4) that they – the Local Authority - can prevent the father from having contact with the children.
4. The paternal aunt, 'PA', seeks a special guardianship order to allow the children to live with her. I am giving this as an *ex tempore* judgment not least because arrangements have been made to tell the children on Monday about the outcome of this case, so that some work can be done with them over the Easter holidays. When I perfect the judgment, I may add in some additional references and comments, but my conclusions and analysis will not change.
5. The issues that I have to decide are:
 - 1) Whether a care order should be made or the special guardianship order that is sought;
 - 2) If so, who the children should live with. As I have said, the two-family members who are putting themselves forward are MGM and PA;
 - 3) Thirdly, what contact the father should have with the children;
 - 4) In broad terms, although I will not make orders on this, what the children should be told in terms of the narrative; or what the findings of fact are, to put it another way.
6. I heard evidence from the father; from a psychologist and a psychotherapist at Great Ormond Street Hospital; from the Social Worker, Ms A; from the special guardianship assessor, Ms O; from the maternal grandmother, MGM; from the paternal aunt, PA; and from the guardian, Ms C.
7. I would like to say two things at the outset before I get into the substance of the judgment. Firstly, I would like to record that the Local Authority in this case have, in my view, acted in an exemplary manner. In *Re A and B (One Parent Killed by the Other)* [2010] EWHC 3824, Hogg J set out what process a Local Authority should follow when one parent kills another. The Local Authority has followed this advice; has

put in place appropriate resources; and has supported the children, in my view, very well in the most difficult of circumstances. Ms A the allocated Social Worker, has not just been an excellent witness, with very clear written and oral evidence, but has also clearly been an enormous help to the children. Her commitment to the children has been truly admirable and I am going to send these introductory comments to the relevant judges in [geographic area redacted] as I think it is important that when a court thinks that local authorities and individual social workers have done a very good job, this is drawn attention to within the family justice system, and not just when the court criticises local authorities and social workers, as sadly it sometimes has to do.

8. Secondly, I want to say at the outset – and I want to say specifically to both MGM and PA – that they have both greatly impressed me through this hearing, by their conduct throughout must have been an incredibly difficult process for them. Litigation has an inevitable tendency to make those involved more adversarial, but I am happy to say that in this case, MGM and PA have used the hearings to speak to each other, spend time together and talk about how in the future they can support contact with each other. It has been completely obvious to me that both of them only want what is best for the children and will do their utmost to work together in the future for the children. The children are lucky – at least in this respect – that they have two adults who both want to love them and look after them and who I know will help them in the future.
9. I have to make a very difficult decision, which inevitably involves favouring one adult over the other. I am going to say now, so that the parties – but in particular MGM and PA – do not suffer any more anxiety through sitting through what will be a long and probably tedious judgment, that I am going to decide that the children should live with MGM. However, I want to emphasise now, right at the start, that that does not mean at all that I am criticising PA, or that I do not think she would make an excellent carer for the children. I will explain my reasons obviously in much more detail later, but I very much hope that she will have a close and involved relationship with the children throughout both their childhood and when they grow up. It is very clear to me that the children love her as they do MGM. I do have to say something in the judgment below about the tensions that have existed in the past between some members of the two families, but having heard the oral evidence, I am confident that these are problems in the past and I am going to say as little as I safely can do on the subject, as I have no wish to reignite past tensions or past issues.
10. The threshold in the case, for the purposes of the Children Act, is accepted by the father. However, the Local Authority ask me to make a series of findings which themselves go to threshold. Although there is no possibility of the children living with the father, given that he has a sentence of imprisonment with a minimum term of 16 years, the nature of his relationship with the mother and the circumstances of her death are relevant both to who the children live with, but also to the narrative they are given now and in the future about what happened to their mother. I will therefore set out a broad outline of the facts of the case; then consider the various evidence of the witnesses; and then reach my conclusions.

The Law

11. It is apparent from the father's evidence that he does not accept the outcome of the criminal trial. He says that he is seeking to appeal his conviction, although no appeal has yet been lodged. He is now outside the time limit for an appeal and I was told by Ms Kelly, who acts on his behalf, that there is a six-month bar on his new criminal solicitors doing any work on an appeal from the date of legal advice that his criminal solicitors at the trial have given. Therefore, at the present time, there is no appeal, and if there is one, it will not be for some time. However, he did express an unequivocal wish to appeal. The father repeatedly said in evidence that he did not intend to kill the mother and that it was an accident. It is therefore necessary for me to consider how, as a matter of law, I should approach: firstly, the conviction; secondly, the constituent factual elements of the conviction; and thirdly, other factual matters which the prosecution – and now the Local Authority – seek to rely on.

12. The fact of a criminal conviction in the context of civil proceedings is covered by Section 11 of the Civil Evidence Act 1968:

“Convictions as evidence in civil proceedings. (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or [of a service offence (anywhere)] shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or [of a service offence]—

(a) he shall be taken to have committed that offence unless the contrary is proved; and

(b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of Section 13 of this Act or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact....”

13. The key test is that the conviction is to be accepted, ‘unless the contrary is proved’. The defendant bears the burden of proof to establish that the conviction was erroneous. In

the case of *McCauley v Hope* [1999] 1 WLR 1977, the Court of Appeal made clear that a criminal conviction is not absolutely determinative that the offence took place and it is open to the defendant to argue in a civil case that the conviction was wrong. In the context of family cases, this was considered by Baker J, as he then was, in *Z (A Child)* [2014] EWHC 2355;

“The father's convictions for three offences against the mother are, of course, evidence in these proceedings. Where a person has been convicted of criminal offences arising from facts which are subsequently in issue in a children's case, the doctrine of res judicata applies so that the conviction is accepted as evidence of the underlying facts. In practice, save in exceptional circumstances, a court in family proceedings will proceed on the basis that a criminal conviction is correct.

In this case, the convictions occurred after a contested trial at which the mother, X and the father gave evidence. Although the father has said that he intends to appeal, no notice of appeal has apparently yet been filed. In the circumstances, a reopening of the allegations which resulted in the convictions would be wholly inappropriate and unnecessary. Accordingly, I proceed on the basis that, first, he was properly convicted and, secondly, that in his persistent denial of the allegations he has lied about those matters to professionals and to this court. The convictions, and the father's persistent untrue denials about the facts underlying the convictions, are evidence which this court must take into account when considering the other allegations made by the mother, X and Y and when deciding what orders to make in the light of the findings made in respect of those allegations.”

14. Given that the father has indicated a wish to appeal and has disputed in his oral evidence elements of the offence – in particular, any intention to kill or cause serious harm – I discussed with counsel how to approach Section 11 in this case. The position agreed is that I should record the father's position, but also to note that he had not called evidence before this court to challenge the forensic evidence which was presented in the Crown Court. He therefore did not accept his conviction, but he was not positively seeking to argue before me that the contrary was proved within Section 11(2). In my view, there is no reason here for me not to accept the criminal conviction and the contrary is certainly not proven. The father was convicted after a seventeen-day trial. There was very clear forensic evidence that strongly indicated that the father's version of events could not be true and he has produced no further or new evidence before me to challenge the evidence at the criminal trial. His position before me – that the death was an accident and he never intended to kill the mother – is essentially the same as the defence he ran in the criminal trial and that the jury therefore did not accept. It is also necessarily the case that he was convicted on a higher standard of proof than I should apply. I therefore accept the conviction.
15. In terms of issue estoppel, there are again two issues: firstly, whether issue estoppel has any place in Children Act proceedings; and secondly, to the degree to which it has, what matters are covered by the principle of issue estoppel here. It is important to start by

being clear that issue estoppel is a rule founded on public policy which if applied means that a party cannot prove certain facts or matters; in other words, this court is bound by the earlier ruling. This was explained by Diplock LJ in *Thoday v Thoday* [1964] 2 WLR 371 in 1964;

"Estoppel" merely means that, under the rules of the adversary system of procedure upon which the common law of England is based, a party is not allowed, in certain circumstances, to prove in litigation particular facts or matters which, if proved, would assist him to succeed as plaintiff or defendant in an action. If the court is required to exercise an inquisitorial function and may inquire into facts which the parties do not choose to prove, or would under the rules of the adversary system be prevented from proving, this is a function to which the common law concept of estoppel is alien. It may well be a rational rule to apply in the exercise of such an inquisitorial function to say that if a court having jurisdiction to do so has once inquired into the truth of a particular allegation of fact and reached a decision thereon, another court of co-ordinate jurisdiction in the exercise of its own discretion should not re-embark upon the same inquiry, but should accept the decision of the first court. But this is a different concept from estoppel as hitherto known in English law.

16. One of the principles of issue estoppel is that the parties to the relevant actions need to be the same, *Re S, S & A (Care Proceedings: Issue Estoppel)* [1995] 2 FLR 244, Wilson J, as he then was, considered this specific issue and broadened the principle of issue estoppel, saying, at page 248:

"It suffices to say that, where the case against a father or stepfather is that he has perpetrated acts of abuse on children of a former family, and where the issue as to his perpetration of those acts has been directly relevant in earlier proceedings relating to that family to which he was a party, has been fully investigated and has been the subject of an express finding, in accordance with the appropriate standard of proof, that he did so perpetrate them, I would hold that he could not challenge the finding in the later proceedings. It seems overwhelmingly convenient that the issue should be taken to have been adjudicated nearer the relevant time, i.e. in the earlier proceedings, in proceedings in which the children themselves and their mother were almost certainly active participants and in which the central focus was upon those children.

To that limited extent I would import the doctrine of issue estoppel into children cases. Indeed, emboldened by the words of Butler-Sloss LJ which I have already quoted, and the observation of Balcombe LJ in the Ealing case (above) at p 793H to the effect that: 'this is not ordinary civil litigation: it concerns children', I would thereby necessarily be extending the doctrine of issue estoppel in its application that the parties in both proceedings should be the same."

17. In *Re B (Minors) (Care Proceedings: Issue Estoppel)* [1997] 3 WLR 1, Hale J, as she then was, considered the case law on whether or not the rule of issue estoppel applied in Children Act proceedings. That case concerned care proceedings in relation to two children, where there had been earlier care proceedings relating to different children in

which the Judge had made specific findings that the same father had abused those other children. The Local Authority in that case argued that the father could not challenge the findings. The Guardian's counsel argued that the principle of issue estoppel did not arise in cases concerning children. The father's case was much more case-specific. Hale J reviewed the case law on issue estoppel both generally and specifically in family law cases, and she reached the following conclusion:

“It seems to me that the weight of Court of Appeal authority is against the existence of any strict rule of issue estoppel which is binding upon any of the parties in children's cases. At the same time, the court undoubtedly has a discretion as to how the inquiry before it is to be conducted. This means that it may on occasions decline to allow a full hearing of the evidence on certain matters even if the strict rules of issue estoppel would not cover them. Although some might consider this approach to be a typical example of the lack of rigour which some critics discern in the family jurisdiction, it seems to me to encompass both the flexibility which is essential in children's cases and the increased control exercised by the court rather than the parties which is already a feature of the court's more inquisitorial role in children's cases (and beginning to gain ground in other litigation as shown in the Woolf Report on Access to Justice)”

18. The case law on issue estoppel distinguishes between where the factual issue upon which the estoppel is relied was actually decided and the issues were identical from those where the findings were not critical to the conclusion, see *Spencer Bower on Res Judicata*, who describes this as the determination having to be fundamental and not collateral. At paragraph 8.08 in *Spencer Bower*, the authors say:

“The judgement of Coleridge J in R v Hartington Middle Quarter Inhabitants contains the classic statement of principle. ‘The judgement’ relied upon a res judicata ‘concludes, not merely as to the point actually decided, but as to a matter which it was necessary to decide, and which was actually decided, as the groundwork of the decision itself, though not then directly the point in issue.’ It is ‘conclusive evidence, not merely of the fact directly decided, but of those facts also which are... necessary steps to the decision, ... [and] so cardinal to it that without them it cannot stand. Unless they are necessary steps, the rule fails and they are collateral facts only. He rejected the proposition that ‘the judgement can only be evidence of the very fact actually decided. Where the decision necessarily involves a judicial determination of some issue of law or fact, because it could not have been legitimately or rationally pronounced without determining or assuming a particular answer, that determination, though not expressed, is an integral part of the decision. There is otherwise no such thing as an issue estoppel by implication.”

19. The problem in this regard with a criminal verdict is that there are no findings of fact and it is not known what matters asserted by the prosecution were accepted by the jury. The other complicating factor in a criminal verdict is the approach I should take to the Judge's sentencing remarks given that the Judge is not the decision maker, and his/her remarks are certainly not findings of fact by the jury. My analysis of this case law in the context of this case is as follows: firstly, having accepted the criminal conviction pursuant to Section 11 of the Civil Evidence Act, it seems to me that I am bound by the principle of issue estoppel to find that the father intended to kill or cause serious harm to the mother. Although Hale J (as she then was) doubted the application of the principle of issue estoppel in a Children Act case, that was in the context of previous findings in civil litigation. In my view, issue estoppel must apply to the fundamental elements of the criminal conviction, once I have decided to accept the conviction. Although a normal requirement of issue estoppel is that the parties must be the same - and they are not the same in a criminal case, where of course the State prosecutes - and a civil Children Act case, given the particular nature of the criminal prosecution, I do not consider that that distinction applies. In order for the jury to have decided that the father was guilty of murder they had to find he intended to kill or cause very serious harm to the mother. Therefore, once I have accepted - as I do - that the father murdered the mother, it follows that I also find that he intended to kill her or cause her very serious harm on the night of [date redacted]. I therefore reject any suggestion that the father did not intend to harm her.
20. Secondly, once I have accepted the father had the requisite intention, then as a matter of judgment on the facts of the particular case, it seems to me that the jury must have rejected the father's account of what happened after the children went to sleep. I will refer to this in more detail below. However, I reach this conclusion as a matter of judgment, rather than on the basis of the legal principle of issue estoppel: The Local Authority rely on the Judge's sentencing remarks, which I will set out below. Those remarks do not, in my view, give rise to an issue estoppel; in other words, they do not bind me because they are not findings by the jury, and they, the jury, did not necessarily - although they very well may have in practice - formed part of the verdict. However, they are something I give a very great deal of weight to. The Judge heard days of evidence, including forensic evidence, and of other witnesses, none of which I have heard. He is a highly experienced criminal judge who reached a view on the evidence, to which it is appropriate I should give very great weight.
21. Thirdly, however, to the degree the Local Authority rely on evidence that was presented to the jury by the prosecution about the father's controlling and jealous behaviour to the mother before [date redacted], I take a different approach. Plainly no issue estoppel arises in relation to this evidence, but also, I simply cannot tell what role, if any, it took in the conviction. At the most it was relevant background material to the father's conduct when he killed the mother. The jury may or may not have accepted it or given it any weight and I therefore take the view that I should approach that part of the findings sought based on the evidence before me, rather than on any principle that it was previously accepted.

Background

22. I turn to the background. The Local Authority have produced a threshold document which covers the history of the parents' relationship, its breakdown and the events of the mother's death. I will produce an amended version of that document to this judgment. To the degree that there are contentious issues of fact, I will explain my views below.

23. I will try to set out the background in a chronological order, although that will involve moving between different documents. The parents commenced their relationship in 2008 and they were married in 2011. A was born in 2012, B was born in 2014. The parents separated in December 2016. There is considerable factual dispute over the nature and stability of the relationship before December 2016 and the father's behaviour between the relationship breakdown and the mother's death. The father says that it was a normal, happy relationship up until December 2016, albeit the parents did sometimes argue. Of course, very sadly, it is not possible for the mother to give evidence about her view of the relationship or to counter any of the things the father now says about her. To the degree I need to make findings about the relationship, I will have to do my best, piecing together the evidence I do have.

24. The principle dispute was around the degree to which the father had exercised controlling and abusive behaviour; and I will make some findings on this issue. However, I should record here that in view of the father's failure to accept any real responsibility for the mother's death, and in view of his consistent portrayal of himself as the victim in the relationship, I do think this is a case where it is necessary for me to make detailed findings of fact about events earlier in the relationship. I fully appreciate what Sir James Munby, the then President, said in *Re A (A Child)* [2015] EWFC 11 about findings of fact needing to be clear and based on evidence. However, in respect of some of the events referred to in the threshold document, there were only ever two witnesses – the mother and the father – and to put it somewhat brutally, the father has killed the mother. MGM's written evidence was that the father had sought to control the mother throughout the relationship and had actively tried to cause problems between the mother and MGM, her mother. One of the witnesses at the criminal trial, Ms L, who was a friend of the mother's, gave evidence that the mother had told her that the father had been controlling and aggressive to her both before and after the break-up. I have not heard this witness and the father's evidence was that whatever physical violence occurred between the parents, it was the mother who was the instigator.

25. As I will set out in more detail below, the father showed an extreme lack of insight in his oral evidence and, in my view, lied to the court and to the criminal trial as to what happened on the night of the mother's death. I therefore have little reason to accept his evidence about earlier events. In the light of all the evidence, I take the view, on the balance of probabilities, that he was controlling and abusive during the relationship, even before December 2016, but I do not make findings that he was physically violent to the mother at these earlier stages.

26. The breakdown in the relationship occurred at [date redacted] 2016. The father says that he discovered that the mother had been communicating with other men via internet dating sites and that he was very angry about this. They had a major argument on [date redacted] December and the father punched a hole in a wardrobe door, and then there were further arguments on the following days. The police report of what the mother said to the police on [date redacted] 2017 was that on [date redacted], the father had come back into the house looking for his phone and keys – I am not going to go through every detail of what happened, but the mother said that he pushed her onto the bed whilst holding her down; that there had been a further fight downstairs. The father accepted at that time – and indeed in oral evidence before me – that he had been angry, but made clear that in his view, in all the physical altercations the mother was the aggressor. He pointed to photos in the bundle that did show scratches and cuts on his head. The police report of this incident was that the mother’s evidence was not very clear and that she kept changing parts of her story. Because the police decided to take no further action, there is no statement from the mother, but I do have the Local Authority account of the police report. This records the mother as having said that the father had been aggressive to her and in front of the children. The father, in his interview with the police, accepted that he had got jealous and been possessive at that time.
27. On [date redacted] 2017 the children were referred to X Social Services by the police, who attended the home following the call from the mother. The Local Authority then decided to take no further action.
28. On [date redacted] 2017 the Father rang the police alleging that seven or eight cars were following him and that it was his partner’s ex-partner and his friends following him to intimidate him. The police reports record that police officers arrived and found him in a confused state and, in the opinion of the police officers, he was under the influence of drugs. Ms Kelly accepts that this probably amounts to erratic behaviour, but does not accept that it is any evidence of controlling behaviour. The father’s case was, before me, that the mother had asked friends to follow him in order to intimidate him. There is absolutely no supporting evidence for the father’s story and Ms Kelly has not pointed me to anything in relation to the criminal trial that would support the father’s story. In my view, this was certainly erratic behaviour and it was probably controlling, although it is not possible to reach a decisive conclusion on that.
29. The next event in the chronology is that on [date redacted] 2017 the mother filled out a divorce petition. The father says that he was unaware of this until after her death, when it was found by the police. In that petition, the mother filled out the box that said the respondent had behaved in such a way that the petitioner cannot be expected to live with him and she referred in the form to the father being controlling and jealous. Of course, that document is not evidence of the truth of what is contained within it; it is, however, a clear statement of the mother’s view of the situation at the time.
30. On [date redacted] 2017 the father sent 13 voicemails or voice clips to a gentleman called AP who was the partner of the mother’s sister, trying to find out where the mother

was. In one he was crying and upset, in another he said he had had enough and he did not know how much more he could take. The father was holding a knife in his hand facing towards his throat with what – according to AP – looked like red along his neck and he fell to the floor. AP called the police and he said he believed that the father had tried to kill himself. The father does not – and could not in the circumstances – dispute the fact of those voicemails and clips having been sent. The father’s position on that incident was that he was very upset by the mother’s behaviour and I think it would be fair to say perhaps accepts behaving somewhat irrationally. In my view, this is evidence of controlling behaviour and an attempt to manipulate and control the mother.

31. The next event was later in 2017, where there was an incident at a barbecue party with the father’s family. At this event there was an altercation between the mother and the paternal grandmother. On [date redacted] the mother applied for a non-molestation order against the paternal grandmother because of the incident. The mother’s statement in support of that application said that there had been two occasions when the paternal grandmother had been aggressive to her. The second one was at the barbecue when there was an argument and a physical fight. The mother then went to the police. The paternal grandmother denied these allegations and, in the end, mutual undertakings were given with neither party admitting any fault.
32. It was the father’s evidence that from around [dated reacted] 2017 he and the mother started getting on better and co-parenting more successfully. He said that there were a number of joint outings with the children and in [date redacted] 2018 the parents booked a holiday with the children that would have taken place in 2018.
33. In relation to the events leading up to the mother’s death, the father accepts the factual account set out in the threshold document;

“c. In [date redacted] 2018 ‘the Father’ told ‘the Mother’ a lie that he had robbed a jewellers in Surrey and was likely to receive a prison sentence. He told her he wanted to see her and the children as much as possible before he went to prison and that she owed him one more family day. As a result of what he said, the Mother arranged for them to go to a Wildlife Park in [redacted to maintain confidentiality] on [date redacted] 2018

d. On [date redacted] 2018 the Father sent the Mother a text [details redacted to maintain confidentiality]

e. On [dated redacted] 2018 the Father sent text messages to the Mother including accusing her of being on-line, talking to a man. She texted him and told him to stop checking up on her. By the end of the evening he sent her a message at 22:53 which said, ‘online on hear and messenger pure lies CUNT pinocchio’

“18. The children and the Mother stayed the night at the Father’s flat the night of [date redacted] 2018. The Mother was killed by the Father during the night at the flat of the Father. The cause of the Mother’s death was compression of the neck, most likely exacerbated by cocaine use.

19. The children were present in the flat on that night along with the Mother and therefore they were present in the flat when she was killed. The Father left them alone in the flat with the dead body of their mother for a short period of time whilst he went to go out and buy cocaine and they could have found her body (sentencing remarks). He contacted a contact EG at 01:34 hours to ask him ‘can you drop 2?’. This was referring to the purchase of cocaine. EG attended the Father’s flat and drove him to a cash-point. The Father used the Mother’s debit card for a cash withdrawal at 2.19am on [date redacted] 2018 of £250

20. The Father woke the children after they had gone to bed in the bedroom during the night and moved a mattress from the bedroom to the living room and the children then slept in the living room.

21. At approximately 8.10am the Father left A and B at his mother’s house, asking her to watch them for a couple of hours as he needed ‘to go to the police station’. Later that day, A was expecting to go and see The Lion King with his mother. During the day the Father did not answer or return calls made to his mobile phone.

22. At approximately 17:45 hrs on [date redacted] 2018, the Mother’s body was found at the Father’s flat. Her naked body was lying on a double mattress on the floor in the bedroom with the quilt completely covering her. There was a single mattress in the living room that the children had slept on, and normally the single mattress would be next to the double mattress in the bedroom and the children’s parents and children would sleep there together. There were bent scissors and pieces of a smashed Samsung phone which had belonged to the Mother inside a bin in the kitchen. No substances used to induce sleep or packaging for such substances were found by paramedics or police anywhere in the flat.

23. On top of the fridge there was a black board on which there were two razor blades and a box containing 162 milligrams of white powder. The white powder contained creatine monohydrate, a substance often mixed with cocaine when supplied and cocaine. On top of the cupboard, there was a box containing scales, a light, a knife and a car lighter.

24. Cocaine was found in the Mother’s blood, suggesting recent or relatively recent use of cocaine. No trace of common sleeping tablets nor less common hypnotic medications were detected

[redacted for confidentiality]

34. The Judge at the criminal trial made the following remarks when sentencing the father;

“You could not let go of the Mother emotionally, you kept a close eye on other relationships which might be forming, on occasions interfering in order to frustrate her. What evidence showed clearly was that in the week before you killed her you became desperate to have her and, as it turned out, to ensure that no-one else could. [redacted for confidentiality] On [date redacted], as I find from the evidence of TL when you spent that evening with her, you told the Mother that you had been involved in a robbery and you would be going to prison for about two years, and asked that you be allowed to see as much of her and the children as possible before you did.

That was a complete fabrication on your part. There had not been a robbery and there was no risk of your going to prison, but it achieved its purpose in that the Mother agreed to go with you and the children to a wildlife park for a family day out on that [date redacted], then join you and some friends at a local pub for a drink that evening, and finally to return with you and the children to your flat at about 8.00pm. Whether she had agreed to stay overnight is unclear, but she had brought with her a bag of personal items, such as make-up and the like. You both put the children to bed in a mattress in your bedroom and it was at some time between then and midnight that you strangled her to death with your hand or hands. You say she attacked you when you told her that you had lied about committing a robbery and going to prison and that you only put your hand around her neck to fend her off. You say that the scratch marks to your face which you undoubtedly sustained of course when she clawed at you with her fingernails, the pathologist said that they could either have been caused offensively in that way, but that such injuries are commonly the result of the victim trying to pull her assailant off. Once she was dead, you broke up her phone, moved the children into the sitting room and, at some point you undressed her and put the duvet over her, most likely to give the appearance that she may have died in her sleep. It is said that you took steps to prevent the children finding her body, but at around 2.15am you left them alone in the flat where her dead body lay while you went out to get some cash and buy some more cocaine.”

35. It is not clear how much the children, particularly A, saw or was aware of on the night of the murder. The father says that A woke up when he (the father) was giving the mother CPR and he then moved the children to sleep in the living room. However, A’s school reported an episode shortly after the death, when A told another child that his mother was not stabbed, she was strangled and she died. Great effort has been made in this case to ensure that neither professionals, other adults, nor other children, give A information about the manner of his mother’s death. It is, I am afraid, therefore very possible that A saw or heard something of what happened on the night of her death.
36. The father left the flat after the murder to buy and then take more drugs. He says, and we only have his evidence for this, that when he returned, A was awake. However, he said in his oral evidence that he did not believe that A had seen anything. I note here that he had left both A and his younger sister in a flat alone with their dead mother.
37. The next day the father left the children with his mother, (PGM) and the father then went missing for three days. The children were placed in foster care when the

Social Worker, TA, collected them from PGM's house and the children have been living with the same foster carer since.

38. On [date redacted] the father handed himself in to the police. The children had ABE interviews on [date redacted], after which they were informed of their mother's death. TA had sought advice from Great Ormond Street Hospital before telling them of the death, to help her decide what narrative the children should be told.
39. In terms of contact, the children have been having weekly supervised contact with their grandmother, MGM, since [date redacted] 2018. On some occasions their aunt has joined these sessions. The police did not support contact between the children and their paternal grandmother, before the trial as she was a prosecution witness. The children started having contact with their aunt, PA, at a contact centre in [date redacted] 2018 and have had supervised contact with PGM since, I believe, the end of the criminal trial. The children have had no direct or indirect contact with the father since their mother was murdered.
40. The Local Authority have conducted four viability assessments in respect of possible placement for the children on MGM, PA, PGM and the maternal aunt. The assessments were carried out by TA. In respect of MGM and PA, the assessments recommended that further assessment was carried out and then two further assessments – the special guardianship assessments – were carried out by WO. WO's assessment in respect of MGM was positive; in respect of PA negative. MGM was then put forward as a kinship carer under the care plan and went before the fostering panel of the Local Authority as a carer for these two children specifically and she was approved by the panel.
41. Finally, in terms of background facts, briefly, in relation to the children's school, I am deliberately going to anonymise where the children live, so I will keep this general, but the children currently go to school near where the mother lived. The maternal grandmother, lives about 45 minutes' drive away; PA somewhat closer. If the children live with MGM then the plan is that they will remain in their present school until the summer and then move to the school where MGM works; although it is possible they could remain in their present school and MGM shorten her working hours. If the children lived with PA then they might remain in their present school, but there could be advantages in their moving to a school closer to PA.

The Evidence

The Father

42. The father gave evidence on day one covering factual or threshold issues. The intention was that he would then give further evidence after the Great Ormond Street witnesses as to the children's welfare. However, he was unwell on day two and did not return to court after lunch. He did not attend the following days of the hearing but is on the video link from prison listening to this judgment. He indicated through counsel that he accepted that the hearing should continue when he was not here.

43. His evidence on the nature of the relationship with the mother was that up to [date redacted] 2016 it was largely happy and he and the mother only argued what might be described as a normal amount. He denied being controlling or in any way abusive before [date redacted] 2016. He said, as I have already noted, that whenever there was physical violence or altercations in the relationship, he was on the receiving end. His version of the incident at and around [date redacted] 2016 was that he was angry and upset when he discovered that the mother had been on internet dating sites aimed at married couples. He accepted that he took the mother's phone and broke it, however he said that he actually paid for the phone so it was his and he seemed particularly angry that the mother had been using a phone that he had paid for to communicate with other men. The father said on more than one occasion in oral evidence words to the effect that he was angry, 'As any man would've been'. It is simply not possible to make findings of fact as to precisely what happened in the various altercations over [date redacted] 2016, particularly given that the mother cannot give evidence. It is also, in my view, unnecessary to do so for the purposes of the matter I need to decide. I do, however, accept that the father was aggressive and violent in front of the children. I cannot know the degree to which the mother was also aggressive.
44. As I have already said on the incident in 2017, when the father rang the police and alleged that cars were following him, he still says that the mother's friends were trying to intimidate him. On the incident when he rang AP and held a knife to his own throat in an attempt to find out where the mother was, he claims this was not an attempt to manipulate or control the mother, but simply says that he was very upset.
45. In relation to the events leading up to the mother's death, the father said that he and the mother had been getting on well for the previous few months. There had been a number of outings with the children. The father says that the mother had told him that she was going to have to leave the flat because she was in rent arrears and that he would need to look after the children for a period. The father said he did not believe her and so in order to test her out he made up a story that he had been convicted of a robbery and was going to prison. The prosecution case at the trial was that he made up this story in order to persuade her to spend time with him. [redacted for confidentiality] The father said that this was a stupid alcohol induced text. Part of his evidence was that the mother had been stripping over the internet for money and that is why he offered her money. Also on [date redacted], as the sentencing Judge records, he sent the mother many abusive texts. As is clear from the sentencing remarks the trial Judge did not accept his story and believed that he had manipulated the mother because he was jealous and possessive.
46. In terms of the night of the mother's death, the father says that he and the mother put the children to bed. Both parents then took cocaine. He says they then had an argument and the mother attacked him. He said that he was trying to restrain her with his hand and then, as I understand it, he says she then retreated. He heard her fall over but get up and he believes she was alive for at least another 45 minutes after that altercation. He says that he found her later in the bed and that she was dead. He then says he went into the kitchen, took more cocaine, wrote the message [redacted] and then went out to buy more drugs. As I have indicated earlier, I do not accept the father's account of what

happened that night and it is that account that leads me to the finding that he lied to this court. I do not think that that account can possibly be true in the light of the forensic evidence.

Great Ormond Street Hospital

47. The next set of witnesses were the Great Ormond Street Hospital witnesses. Dr Hewson and Ms Neil gave evidence together. Dr Hewson is a consultant clinical psychologist and Ms Neil is a principal child and adolescent psychotherapist, both employed at Great Ormond Street Hospital (GOSH). They both have extensive experience of working with traumatised children and they told the court that they had experience of working with children where one parent had killed the other. I will treat their evidence as being in common and refer to them as the GOSH witnesses. They had met the children together and separately; i.e. the children together and separately. They had also met the father, MGM, PA and her husband. It is important to be clear that they were instructed to undertake a psychological assessment of the children: on the level of support the children would need; on the issues of contact with father and the two sides of the family; and how placement would impact on the children. They were not instructed to carry out a comprehensive parenting assessment and they record this in their report at paragraph 7.74. In weighing their evidence, I take into account the fact that they do have a particular expertise in dealing with children where one parent has killed the other, but I also take into account the fact that they have met the children and MGM much less frequently than the allocated social worker and they have met PA less frequently than had the Special Guardianship assessor.
48. It was their opinion that although the parents undoubtedly loved their children, some aspect of the care provided to them was emotionally harmful. They referred to long-standing instability in the relationship between the parents and their assessment of the children was very similar to that of the other professionals. I have had a very mutually consistent report of the characteristics and behaviour of these two children. One feature which the GOSH witnesses particularly highlight is that A's attachment assessment suggests an insecure pattern of attachment. They record A being somewhat fearful of loud noises, he shows some anxiety around adults and interpersonal conflict, and he rarely expresses distress or vulnerability. He avoids talking about what has happened in his family. I think all of that accords with TA's view.
49. They describe B as being lively, assertive and vibrant and she is estimated by them to be of high average intelligence. They say that her behaviour since her mother's death has become more problematic, with some emotional volatility. The witnesses gave evidence about the need for a narrative based therapeutic intervention for the children and for the adults who have significance for them. As I understand it, it is intended to draw up a narrative as to the parents' relationship and the events that led to the mother's death that can then be given to the children. The GOSH witnesses describe this as being in a storybook. The intention is that the adults involved – which include both MGM and PA, but also other family members who have contact with them - will buy into this narrative so that the children are given a consistent and sustainable report and I will refer to this

below.

50. They have advised against the father having direct or indirect contact with the children at this time. They remain of the view that there should be no direct contact and that there is some distance to go before indirect contact; which in their view would initially be what is known as letterbox contact. Critical to the development of any contact, they say, is the father's ability to take responsibility for his actions and recognition of the impact of those actions on the children. They record that when they met the father, which was before the criminal trial, he is said to have accepted responsibility for the crime committed and he expressed remorse. It should be noted that for reasons of availability, the GOSH witnesses were not in court when the father gave evidence. A written summary of his evidence was prepared and agreed for them to read. As I have recorded above, the father was adamant in his oral evidence that he had not murdered the mother and the death was an accident. In the light of this evidence, the GOSH witnesses expressed greater concern about the speed by which indirect contact could be achieved and the problems around drawing up any kind of narrative that the father would agree to.
51. On extended family members, the witnesses were clear that the children should have contact with both sides of their family and it was important that both sides could promote such contact; in other words, promote contact with each other. The ability to achieve this is one of the major issues in the case. The witnesses said they had been impressed by the paternal grandmother's (PGM) warm descriptions of the mother and her empathy to the children's loss. They thought that both PGM and PA and her husband should have contact with the children and both would make every effort to promote the children's contact with the maternal family.
52. In respect of MGM, they thought it might be more difficult for her to support the children's relationship with the paternal family. It should be noted, however, that they had met MGM before the criminal trial and they accepted in cross-examination that her grieving process may have moved on somewhat since then.
53. On placement, they said that as the children grow older, they need adults looking after them to reinforce a realistic and balanced account of the context in which their father took their mother's life, without justifying his actions. Their report includes the following;

“7.69 It will be important that the account given to the children by the various significant adults on both sides is both consistent and concordant with the findings made by the court. Adults providing care will need to contain their own feelings in order to avoid over-burdening the children or constraining the children's emotional communications.

7.70 Both children will, in time, seek a more sophisticated explanation for what might have led their father to murder their mother and why, if he loved them, he could have caused them such pain. They need the adults looking after them to

reinforce a realistic and balanced account of the context in which their father took their mother's life without justifying his actions, attributing blame to their mother or vilifying him, whilst acknowledging that his action was very wrong, necessitating a lengthy custodial sentence."

54. They were concerned that MGM might not be able to sustain her ability to feel the children's sense of loss about their father as she processes her own grief. Again, I note that when the GOSH witnesses met MGM it was before the criminal trial, some almost six months ago, and MGM in her oral evidence said that at that time she was, 'All over the place'.
55. In respect of PA and her husband, the GOSH witnesses said that they were impressed by both of them as thoughtful and experienced parents and they said both in their written report, but also emphasised very much in oral evidence, that PA had been clear that she would seek professional help as and when needed. In their written report, GOSH did not express any clear preference in terms of placement, although the comments I have set out above suggest an implied preference for PA. However, in the professional meeting, Dr Hewson did say – and it is recorded in the minutes:

"It's Emma here. I think it's really important to say that we were really impressed with MGM and similarly felt that she was able to work with professionals, that she was open to advice, that she was open and honest. It's none of those reasons why we're preferencing the placement with PA and her husband over with her. There are other reasons that we've not spoken about yet, I suppose, and I think we're not in dispute or anything. I think MGM has so many strengths. She's got a lot to offer the children. She's very thoughtful. She presented as open and honest in many ways. So, I don't think we're in dispute about any of those things at all."

56. This is the only place where a preference is clearly recorded. I have to say at this point that I find this rather unsatisfactory. I appreciate that GOSH were not instructed to carry out a parenting assessment, but given that placement was – to use the phraseology of the administrative court – a principal important controversial issue before me, and was always going to be such, if GOSH was going to express a preference, they should, in my view, have done so clearly in a written report, even an addendum, with properly set out reasons. Expressing a preference only in a meeting in an oral statement is not helpful to this court. If the GOSH witnesses did not want to express a preference, then they should not have done so at all.
57. They did say in their report, and in oral evidence, that PA might find it difficult to accept the children saying negative things about the father. However, they said in oral evidence that they had been impressed by her position; that she would take professional advice. Although when told about the Father's oral evidence and his complete lack of acceptance of the criminal conviction which appeared to be in contrast to what he had said to them about remorse and responsibility, they did express concerns but they did not seek to change their position.

TA (the children's Social Worker)

58. TA has been the children's Social Worker since immediately after their mother's death. She has filed seven witness statements in these proceedings. She has seen the children at least once a month, but often more than once a week, since the death. She told the children of the mother's death. She supported them through their ABE interviews and, together with MGM, she spoke to them after the criminal trial and the father's conviction.
59. In terms of the children's current wishes and feelings and emotional and psychological state, I give her evidence the greatest weight. She has also met the father and all the relevant family members. She was an exemplary witness, but I would also like to record again her obvious commitment to the children and their interests.
60. Apart from the time that TA has spent with the children, she has also spent a good deal of time with MGM. She has met the paternal grandmother on a number of occasions and PA and her family. There was at least implicit criticism by Ms Kelly that TA had spent so much more time with MGM than PA and was in a less good position to make judgments about PA. It is a matter of fact that TA has indeed spent more time with MGM, however that is a function of the situation that she and the children have found themselves in. MGM has wholly appropriately been closely involved with the children since the mother's death and it is entirely right that TA has been working closely with her.
61. I will not try to summarise all TA's written and oral evidence, but group it into two parts: her evidence about the children; and her evidence in relation to placement. TA describes A as being a child who tries to suppress his emotional responses and concentrates on maintaining his composure. She describes him as being extremely compliant, he tries to please those around him and he is watchful of adult responses to his actions or comments. B, as the GOSH witnesses referenced, is much more extroverted than her brother and more outgoing about her emotions. She shows much less inhibition than A about talking about her family and TA records that this can upset A. TA's third statement, dated August 2018, records that the children had spoken on a number of occasions about the paternal grandmother assaulting their mother and that A had said his father was, 'A horrible man'. It is clear from TA's evidence that there had been considerable tension before the murder between the two sides of the family. MGM had told TA that the father had orchestrated conflict between the mother and her and A told TA several times that the paternal grandmother had given the mother a black eye.
62. TA supports the children living with MGM. She has met MGM on many occasions and she says that MGM has managed to maintain neutrality about the father and has been clear to her that she does not want to taint the children's positive memories of their father. MGM had acknowledged to her at one point, that she would find it difficult to facilitate contact and would want professional assistance. I note here that that comment was made before the criminal trial and conviction. TA says that during contact sessions,

MGM has welcomed conversations with the children about both parents. She also notes in her evidence that MGM has a very strong support network of family members, including her brother and sister-in-law, and very good friends who live nearby. She is also close to her other daughter, who has two children aged 10 and six, who are themselves close to the children here, A and B.

63. TA's evidence was also very positive in many ways about PA. TA absolutely agrees that PA is an excellent mother and has a genuine investment in A and B's lives. The issue for TA, as it is for WO, is not about PA's abilities as a parent, or indeed about her intentions towards the children, and I will try to briefly summarise TA's evidence in this regard. PA has two children, C, aged 19, and D, aged 13. Both these children are close to their uncle; the father. PA lives close to the paternal grandmother, and there is a close extended family with very frequent interactions, whether by dropping in, speaking on the phone or family events. In TA's estimation – and I have no reason to doubt this – PA has a major role in that extended family and it was TA's view that it would very difficult for her to shield the children from the paternal family environment of support, to whatever degree, for the father. All the father's family members are having to come to terms with what he has done. I am going to paraphrase my understanding of TA's position. For anyone to process the fact that their son, brother or uncle has murdered his wife is a tremendously difficult thing to do. Many of the background facts only came out at the criminal trial and even now are not necessarily fully appreciated by the father's family. TA records that C – and this is merely one example – at the time she met him held a strong view that the father had been wrongly punished and was devastated by the loss of his uncle. TA also recorded that PA was very close to her brother and that she said that PA and her husband had a tendency to attribute responsibility to the mother by highlighting negative aspects of her character. I want to emphasise here that some of these comments relate back to meetings that TA had with PA before this hearing and I will come in a moment to the degree to which views, understandings and feelings change and fluctuate. It was TA's view that PA and her family would not be able to help the children work through their harmful experiences, given the family's closeness to the father, but also the very nature and dynamic of the paternal family. It is TA's opinion that the children should have regular contact with PA and that she could be a very positive family figure for the children.
64. In terms of the children's wishes and feelings, TA saw the children three weeks ago and talked to them about this hearing and explained to them that three adults wanted to look after them. B, during this discussion, was subdued and said she did not have anything to say to the Judge about these options. When TA had the same conversation with A, her evidence was as follows;

“22. I explained who wanted to look after them I said “MGM ”, and A bounced up and grinned saying forcefully “I knew it!” I paused and repeated “you knew it?” A said “yes, I just knew. I worked it out for myself”. I went on to say that the two other relatives were PA and Paternal Grandmother. A did not give any reaction and nodded. I observed that from this point onwards A began exhibiting facial twitches (his eyebrows were raising and he was closing his eyes tightly) and it was my impression that he was

perhaps thinking something he did not or could not verbalise. The head teacher also raised this with me afterwards. A said that he did not have anything to say to the Judge about this.”

I will come to an assessment of TA’s evidence below.

WO

65. The next witness is WO. WO carried out the special guardianship assessments on MGM and PA. The assessment of MGM was positive. The assessment report does refer to issues that arose when the mother herself was an adolescent, and MGM’s acknowledgment that there had been problems. It also records issues that MGM had had with the paternal family before the mother’s murder. She records in the report that MGM has shown insight into the fact that the children may well show challenging behaviour and that she may need professional support. She also records that MGM has given a lot of thought about what caring for the children would be like and her ability to separate the children’s needs from her own.
66. In relation to PA, the assessment was negative. WO was concerned about the effect of the children on being placed with the paternal family where a positive view of the father was held and where, in her view, there was a considerable degree of minimisation of the offence and a tendency to focus on the mother’s behaviour.

“However, in discussion with family regarding their views in relation to the outcome of the criminal case, where the father was found guilty of the murder of the Mother. The family’s response has raised some concerns regarding how they as a unit will be able to safeguard and address A and B’s emotional and psychological needs on a long-term basis

My first concern is that the paternal uncle, C and D each described that ‘the Father’s actions being responsible for the Mother’s death’. This statement in my opinion is minimising what happened and lends itself to an open-ended narrative. As I found in my discussion with D. D suggested it was not intentional, whilst PA commented that the Father admitted restraining the Mother from the start.

I do question whether PA herself has come to terms with the gravity of the Father’s actions and adopted the term about the Father’s actions being responsible for the Mother’s death’ to make it more palatable for herself or whether PA does not accept that the Father is guilty of murdering his wife. Whilst I appreciate that it is difficult for most people to comprehend that a loved one is capable of murder, it is important that A and B should be told the truth and not perceptions or versions of”

WO felt that it would be extremely difficult, if not impossible, for the children to be in this family environment and to get a neutral level of care in terms of perspectives of their parents.

67. Ms Kelly had considerable criticisms of WO’s report. It is always the case, doubtless in

this Division as in any litigation, that a report could be fuller, more detailed and may contain some inaccuracies. I could see nothing in WO's report that undermined her conclusions, or that suggested she had reached a predetermined view. She fully acknowledged PA's admirable qualities, commitment to the children and desire to do the best by them. She does say in the report that PA and her family had sought to minimise the offence and that may well be, to some degree, true at that time. As I record below, my strong sense is that PA is coming to terms with the offence and this is not a linear process and, in any event, people can have conflicting views at the same time. I do not think – contrary to Ms Kelly's submission – that WO was criticising D. However, I can see that PA might well feel it was a criticism and quite appropriately might feel defensive of her son. As I have already said, none of this is at all easy - in fact that is a massive understatement – for the father's family. D may well feel loyal to his uncle, which in many contexts would be a wholly admirable emotion, but in the context of a decision as to where these children live, it is indeed a negative factor. Ms Kelly suggested that these flaws, as she sees them, in the report mean that the special guardianship assessment should have been positive, and then the Social Worker would have had to consider the matter further. However, in my view, the flaws are minor and the assessment is both clear and robust. WO did not think that PA was the right person to have a special guardianship for these children in these circumstances and I have to say I agree with her, as I will explain below. It is unfortunate that WO did not send the special guardianship assessment to PA promptly and I understand that that may have created an element of distrust, or a fear of predetermination. However, the evidence did not suggest to me that this was anything other than a mistake by somebody who is probably overworked and possibly under resourced.

MGM

68. I turn next to MGM's evidence. MGM has suffered a terrible loss in appalling circumstances. I thought she was a straightforward, honest witness who was doing her best to deal with a terrible situation and to give her honest views to the court. She gave evidence about how close she is to the children and how much she wants to look after them. She spoke insightfully about their needs and about how she interacted with them now and how that may change over time. She also spoke about her support network, both emotional and psychological support, but also practical support. Her brother and sister-in-law and two close friends live close by. Her daughter, and her children live somewhat further away but within relatively easy car journey reach. All those people attended the maternal family conference and I got the strong sense in evidence of a close-knit group who would genuinely help out in the care of the children. She also spoke about having been supported in her grieving process by both a Victim Support person and by counselling. MGM was very honest about the fact that she would need help and that she would look to family and friends, but also to professional help. She spoke about meeting the children's needs both now but also in future years, when their reaction to their mother's death may well have evolved, and their behaviour may become more difficult to manage. It is not possible to predict how the children will react in the future and what specific issues will arise, but I was impressed by the fact that MGM had obviously thought both carefully and realistically about this. She had thought about who would help her and mentioned specifically her sister-in-law, who is an experienced teacher, as well as looking to professional help.

69. I also note that she has worked closely with TA over the last nine months and was very accepting of the children having been placed in foster care after their mother's death. I take this as a good sign of involvement with professional help because some grandparents in that situation might have resented, or at least not understood, that decision, but MGM both accepted it and seems to have throughout put the children's interests first. She was also very clear, both to TA in previous discussions and in oral evidence, that the Father had been a good father to the children and that she would not speak badly about him to the children as a father; and this entirely accords with TA's evidence as to how MGM has been dealing with the children so far. She said that when the children do raise their father with her, she does not say bad things about him, and I noted a quotation, 'That's not what being a grandmother is about'.

PA

70. PA, as I have said, wants to look after the children under a special guardianship order. She has known the children all their lives and saw a great deal of them before their mother died. There is not the slightest doubt in my mind that she loves and cares for the children and that she wants the absolute best for them. In her statement she expressed concerns about the special guardianship assessment process that WO had undertaken; the fact that WO had failed to send her the outcome of the assessment promptly; and that some of the points made in it were not entirely accurate. She did not emphasise these issues in oral evidence, but rather focused on what she could do for the children and how much she and the rest of her family wanted to help them.

71. One aspect of the assessment that PA was critical of was that it was not properly acknowledged her close relationship with the mother. She and the mother had been very close for many years when the parents were together. She had been a bridesmaid at their wedding and had spent lots of time with the mother. I have no doubt, from having heard her, that PA had a real and very genuine affection for the mother. PA was very honest in evidence about the fact that she had not seen the problems in the parents' marriage before the break-up and I think it is probably worth noting just for the record that she was not there at the time of the altercation between the mother and paternal grandmother at the barbecue in 2017, I think she had left by that time. PA described her own family, with her husband and two boys, and how they were a very close and loving family. C is 12 and is very close to and fond of his cousins - the children - and PA told me how the children have particularly enjoyed seeing C again at the contact sessions.

72. PA was straightforward and honest about the fact that she had been very close to her brother - the father - and that it was extremely difficult for her and her sons to process what the father had done. She spoke very movingly about how difficult it was to take in the fact that her brother, who she loved and had viewed as being kind and protective, had murdered his wife. There was a good deal of mention in court of the fact that PA - and she agreed with this - lived her life in something of "a bubble": in that she wants, and wanted, her family to be happy, and that sometimes did mean keeping out difficult or unpleasant aspects of life. This may well have made coming to terms with the father's crime more difficult, but it may also have made coming to terms with other parts of his behaviour, such as the drug taking and the abusive behaviour, also very difficult.

73. PA was clear that she thought, and completely accepted, that the children needed a narrative about what had happened to their mother and that it was critical that everyone stuck to that narrative. I absolutely believe that PA does accept that and would do her utmost to stick to that narrative. She talked about that particularly in the context of her boys and she said she had spoken to C about the conviction and that he was subdued and upset. At the present time she speaks to the father on the phone I think maybe about once a week, perhaps sometimes twice, sometimes less, and I think she has visited him perhaps once since the conviction. She obviously wants to go on communicating with him, but again she was very clear that if the professionals thought it was in the children's interests for her not to have any contact with the father, then she would abide by that. Again, I completely accept what she says there.

The Guardian

74. The Guardian, AC, was a clear, measured, careful and obviously experienced witness and I am very grateful for her assistance. Her assessment of the children was very consistent with that of TA; although it is interesting to note that she said that when she saw the children recently, A was chattier and B more reserved. Although A is only seven, it seems, from the Guardian's evidence and that of TA, that he does have some understanding of the role of the family Judge, as well as touching faith in that Judge being wise. When she saw the children in March, B told her to tell the Judge that 'We are kind, nice and happy and we have a farm at school'. Just before she left, B also said to her that, 'We want to live with [MGM]'. AC agrees with TA and WO's conclusion that the children should live with MGM, essentially for the same reasons. She agrees with them that PA and her husband would offer a warm and loving home with a high level of care and attention, but the concern remains that of the views of the family of the father and the difficulty of dealing with the emotional impact on the children. She is supportive of placement with MGM and feels that she will be able to support the children. I note that in her written evidence she said that it was a finely balanced decision.

Conclusions

75. It is accepted by the father that threshold is met here. Further, the father accepts the factual matters that I have set out above. The father's oral evidence on the first day of the hearing was noteworthy for his lack of acceptance of the findings of the criminal court, which itself is perhaps unsurprising, given his intention to appeal; but also notable for his complete self-absorption. He saw himself as the victim of everything that had happened and showed neither remorse nor insight into the impact that the mother's death had had on the children.

76. In terms of threshold findings, I do conclude that the father was abusive and controlling of the mother. He sent her a large number of abusive texts in the period before her murder. I agree with the Criminal Judge that he was both jealous and possessive. In his evidence he consistently seemed to view his behaviour in this regard as simply being the response of any man, but I absolutely do not accept his behaviour both at the break-up and thereafter was within a range of normal, let alone acceptable, responses. It is clear from the evidence relating to [date redacted] 2016 that he exhibited anger and violence

in front of the children in a completely unacceptable manner. I find his explanation for the AP phone calls and texts impossible to believe and I accept they were part of a pattern of controlling behaviour. The clearest evidence of his desire to continue to control and manipulate the mother was in the lead-up to her death. I do not accept his explanation for the story of his going to prison for the robbery and I think the much more obvious explanation was the one the Trial Judge accepted; that he was jealous and possessive and manipulated the mother to spend time with him.

77. In terms of the events of the night of the Mother's death, I fully accept the conclusion of the Trial Judge. The father's factual account is completely inconsistent with the forensic evidence that was heard at the criminal trial. If the father was genuinely only trying to restrain the mother, then it is exceptionally unlikely that he would have killed her by strangling her, and even less likely that she would have survived for a significant period after the attempted strangulation. Quite apart from the precise circumstances of the mother's death, I find the father's account utterly lacking in insight into the impact on the children, and particularly A's position. A was in the room – indeed, as I understand it, in the bed – when his mother died. He was awake for at least part of the night. The idea that he will not be harmed, or will not have nightmares because he was asleep when she died, somewhat beggars belief. To put it mildly, the father continues to minimise and avoid the consequences of his actions.
78. Although the findings were formally accepted on his behalf by Ms Kelly, in reality the father appeared to me to take no responsibility for the mother's death; not even for the physical fact that his actions killed her. He still said that he had restrained her and that she had lived for a considerable time thereafter and questioned whether it was her restraint which led to her death. This was even though that version of events was wholly contrary to the forensic evidence.
79. On the basis of the evidence the father gave to me, I struggle to see how he will accept or be involved in creating any narrative that can be given to the children at the present time. It also seems to me a long way off for him to have direct, or anything other than minimal indirect, contact with the children given his lack of acceptance of responsibility and his lack of insight into their needs. I will therefore make the order sought in respect of the father not having contact, and future contact being at the discretion of the Local Authority. I do this taking into account Section 34 of the Children Act and the relevant presumptions of contact and involvement.
80. In respect of the father's view on placement and welfare, I give these views very little weight. His evidence was notable for his continued antipathy to MGM, and again a complete lack of insight or remorse for the fact that he is responsible for the death of her daughter. I have no sense, at this stage, that he is a man who can prioritise his children's interests over his own feelings.
81. The central issue in this case before me is whether the children should live with MGM or PA. As I said above, the children are fortunate that there are two strong, loving and admirable women who love them and want to look after them. I want to emphasise that

my decision is not about who would be the better parent - let alone who is the better person - and it is certainly not about criticising PA. The GOSH concern about MGM seem to focus on two things: that MGM was and would continue to process her own grief over the mother's death; and the sheer practicalities of being a single parent aged 55, looking after two young and emotionally damaged children.

82. All the family members in this case, on both sides, are having to deal with their grief over the mother's death in horrific circumstances. The father's family are also having to come to terms with the fact that their brother, son or uncle murdered his wife and this must be a very hard thing to do, particularly when PA and, as I understand it, most of the rest of the family had a positive view of the father up to the murder; and to some and varying degrees still do. I also appreciate that at least for MGM, she has universal sympathy and a good deal of some form of understanding from outsiders. It is perhaps instinctively less immediately obvious to people that the father's family also deserve sympathy and understanding and, as PA said, none of them had asked for this situation or can in any way be blamed for it.
83. I thought MGM was an impressive witness. She was able – and I think truly able – to say that the father was a good father and that he was part of the children's identity and she would not be negative about him as a father to the children. She seemed to me to be able to separate her own grief from the children's interests and she was open and honest about the support she would need and how she would get it. Of course, there will be moments when her grief for the mother may be overwhelming and there may be times when she struggles to maintain her composure about the father, but I am working in the real world, with people who have real, complex and doubtless shifting emotions. I think that MGM will make an excellent carer for the children. I do not accept GOSH's view that she will not be able to support the children because her grief may overwhelm her. In my opinion, this is a strong woman who has coped with an enormously difficult time and will, I believe, continue to be able to cope.
84. In terms of practicalities, of course for a grandmother who lives on her own, to have to look after two young children will be hard work, but in this regard, I do take into account the fact that MGM has a strong support network including people close by who can help out as need be.
85. PA was also, as I keep saying, a thoroughly admirable person and I have not the slightest doubt she loves the children and would do her utmost to put their interests first. She probably does have a good deal of emotional work to come to terms with what her brother has done, but I think she personally would be able to promote positive memories of the mother for the children and stick to the agreed narrative. I do, however, think that if the children were placed with her within the environment of her family and the wider paternal family, it would be exceptionally difficult for those children to have a consistent and comprehensible picture of what had happened. The impression I have is that different members of the paternal family are at different stages of coming to terms with the murder. PA, as she herself acknowledged, is only beginning to see the full picture of the father's actions. She and most of the family members will only have sat

through some parts of the criminal trial and she is the only one who has seen all the evidence in this trial. She, and the whole family, are not only having to come to terms with the fact the father murdered the mother, but also his behaviour before. It may be that her perfectly understandable and human desire to live in something of a bubble means that much of what she is now finding out is particularly difficult to come to terms with.

86. Another example of the problems – but not by any means the only one, or necessarily the most important one – her son, C, is only 13. He was very close to his uncle and doubtless finds it very difficult to conceive of how a man he loves could strangle his wife. Other members of the wider family may have some negative memories of the mother. It is inevitable that those emotions will impact on the children. It is at this point that I find the GOSH evidence difficult to accept – or, I have to say, with respect, really understand. They were very keen to promote consistency for the children and to draw up the narrative so the children would have a consistent understanding of what had happened. They emphasised at paragraph 7.36 of their report the priority for the children to be able to express their emotions and to be able to ask questions about their mother's death and their father's involvement.

87. In my view, any such consistency would be undermined at the very outset if the children are placed with PA and within the wider paternal family. I asked myself what the children would understand by being told that they should live with their father's family, rather than their maternal grandmother, and thus be surrounded by memories of their father and not their mother. This, in my view, could only be a thoroughly confusing position for them. This is even further exacerbated by what I know of A's character. He is constantly being described as being compliant and eager to please, which must make it even more likely that he would feel under an obligation to see his father in a more positive way, although there was some suggestion that PA could protect the children from the mixed emotions of the wider family. I think that this is both unrealistic, but also actually to put PA in an impossible position. Some of these difficulties will, I accept, arise in any event. If the children live with MGM, it is very important that they have lots of contact with the paternal family and I hope this will move reasonably rapidly, indeed very rapidly, to unsupervised contact. I suspect it will not be long before the children pick up some of the conflicting emotions and views around their father through that contact, and that is, I am afraid, something they are going to have to deal with, albeit, I hope, with a lot of help. However, if they live with their maternal grandmother - their primary carer and their home base – they will be outside that environment of feeling a pressure or a concern from the paternal family.

88. A second aspect of the GOSH evidence that I find difficult to understand is that they acknowledge, and indeed state, the need for the children to retain the memories and positive images of their mother. If the children are placed with MGM then it will be natural for her to celebrate the mother's birthday, to have pictures of her and to talk about her. She will remain as a positive presence in their lives. With the best will in the world, I do not see how PA can achieve that, even though I am sure she would do her

utmost. It seems to me highly likely, if not inevitable, that if the children lived with PA, the mother's memory would be gradually squeezed out and the children would be in an environment of positive memories about the father and at least some implicit pressure to speak less about their mother. It is of course important that the children do have positive memories of their father, as I think MGM said; he is part of their identity. It is important that they can appreciate and understand that identity. However, in my view, it will be much easier to achieve that balance if they live with MGM and see the paternal family than if the position is the other way around. I was very impressed by MGM's ability to speak positively about the father; I do not think that many people in her situation would have been able to do that. In my view, this is where Ms Kelly's criticism of the two assessments falls down. There is a much better prospect, in my view, of the children being able to understand what happened, but have some positive memories and thoughts about their father if they live with MGM than to understand and have positive memories of their mother if they live with PA in the midst of the paternal family. No amount of Social Work or professional support can overcome those issues.

89. I do also take into account the matter Ms Connell raised about the children's life-long interests. The murder of their mother will live with these children for the rest of their lives. Their relationship, of whatever kind, with their father will stretch beyond their childhood and thus his release. If they have lived in the paternal family for many years, that issue is only going to be more difficult for them.
90. I take into account the issue around schools, but I think that this is a matter that will have to be managed between MGM, the schools and the Local Authority. I cannot judge whether it is better for the children to have something of a fresh start in a new school, or to retain the support network of their existing school. I do not consider this to be in any way a determinative factor.
91. Equally, I have considered the other positive factors that Ms Kelly refers me to: PA's family life; the positive male role models; the fact that her and her husband are younger parents. However, as I do not view this as a tiebreaker situation, I do not think any of those factors outweigh the matters I have set out.
92. Finally, I also take into account the children's own views as recounted to me by TA and the Guardian. A has been clear ever since shortly after his mother's death that he does not want to see his father. B has told the Guardian that the children wanted to live with MGM and A said the same to the headteacher very recently. These are young children and I would normally give relatively little weight to their views, but there are two factors here which mean I should give slightly more than what would normally be the very little weight. The first is the magnitude of what has happened to these children, which is difficult to imagine. A is universally described as a child who is slow to express a view. Having plucked up his courage to express a view, I would be reluctant to ignore it unless I had a strong reason to do so. The second factor is that the decision here is not really a choice, as I see it, between two adults. It is more a decision about the context in which these children grow up. In the light of A's clearly expressed view that he does not want to see his father, and he and B's knowledge that their father killed their

mother, I do really worry about what they would gather or feel from a judge deciding that they should live with the father's family. Yet again, however, I would like to emphasise that this is not a criticism of PA. I do not read A or B's views as being in any sense a rejection of her, or any suggestion they do not love her. I read it more as being a sense of comfort and certainty about living with MGM.

93. For all those reasons, I will make the orders sought by the Local Authority.

End of Judgment

