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Neutral Citation Number: [2021] EWHC 884 (Fam)

**IN THE FAMILY COURT
IN THE MATTER OF THE CHILDREN ACT 1989**

Date: 29/03/2021

Before :

Mr Justice Poole

Between :

Re J, G and H (Children: Supervision Orders)

Susan George instructed by the Applicant Local Authority
Ann May (instructed by Arani Solicitors) for the First Respondent Mother
Ummar Farooq Ahmad (instructed by AL Law) for the Second Respondent Father
Jo Brown (instructed by Freemans Solicitors) for the Third Respondent, J
Deborah Piccos, of, TV Edwards LLP for the Fourth Respondent, G
Victoria Roberts (instructed by Miles and Partners) for the Fifth Respondent, H, by her
Children's Guardian, Ms Rush

Hearing dates: 2 – 12 and 29 March 2021

JUDGMENT

Mr Justice Poole:

Introduction

1. The mother and the father married in X¹, the country of their birth, in 2003. After a few years they moved to England until, in 2011, after the birth of their third child, the family moved to Y where the mother had lived for a while when a child, and where some of her own family still resided. In April 2013, mistakenly believing that his wife had been unfaithful, The father took a sharp, metal implement to the mother's head, striking multiple blows. He pleaded guilty to an offence of aggravated assault and was sentenced to seven years in prison. He had served time in prison on remand, was released after four further years, and was then deported to the United Kingdom in 2017. In September 2019 the mother brought her children to England where they have since remained. She resumed her relationship with the father and moved in with him shortly after arrival. The family lived together again for a few weeks before the applicant Local Authority became aware at the end of October 2019 and obtained an interim care order on 17 December 2019.
2. The children are J, who is 16, G, 13, and H, 10. They continue to live with their mother in the town of Z. Their father left the family home after the Local Authority became involved and agreed not to have contact with the children save as arranged by the Local Authority, since when the children have had only limited, indirect contact with him. The Local Authority now applies for final care orders in respect of the children, seeking their placement together in long term foster care. J and G have instructed solicitors. H is represented by their Children's Guardian, Ms Rush. By the conclusion of the hearing before me it, none of the respondents contended that the threshold was not met, but they all oppose the Local Authority's application that the children be placed in long term foster care. The Guardian has proposed a Supervision Order for J, a Care Order with placement at home for H, and a similar order, or a Supervision Order in respect of G.
3. The issues for the court to determine are whether the threshold for making a care or supervision order is met and, if so, what orders should be made having regard to the children's welfare. In order to determine those matters there are certain key, disputed issues which require my determination. They are,
 - i. Whether the attack by the father on the mother in 2013 was pre-meditated: the father denies that it was.
 - ii. The mother's intentions when she travelled with the children to England in 2019. The Local Authority says that the mother came here to reunite the family, the mother says that she only intended to stay temporarily and visited for the purpose of securing therapy for H. She and the children would have returned to Y but for the intervention of the Local Authority.
 - iii. The risk of future harm to the children from their father.

¹ In this published version of the judgment, the identity of the children is protected by anonymising the names of every member of the family, countries of origin and residence (other than England), the distinctive implement used by the father to assault the mother, and whether the children are male or female - hence the use of the pronouns "their" and "them" throughout.

- iv. The ability of the mother to protect them from harm from the father.
 - v. The mother's ability to care for her children. The Parenting Assessment states that the mother is unable to provide "good enough" care for the three children, emotionally and practically. Although the Local Authority has not relied on this in its final threshold document, it is a matter that needs to be addressed in this judgment.
4. I have been the allocated judge since December 2020. I have read the hearing bundle, the supplemental bundle, a bundle of papers from Y, and the parties' position statements. At a two week hearing I have heard evidence from Dr Ziyal, Neuropsychologist, Dr Chalmers-Brown, Psychologist, Dr Parsons, Forensic Psychologist, the local authority Parenting Assessor, the Allocated Social Worker, the mother, the father, relatives and three friends who support the mother, and from the Guardian, Ms Rush. Prior to the evidence being called I met J at their request, in the presence of their solicitor Ms Hollmann who circulated a note of our meeting to all parties. The documentary evidence in this case: is voluminous: 2400 pages of evidence from Y, and about 2000 further pages within the hearing bundles.
 5. With the agreement of all the parties the hearing was conducted remotely during the Covid-19 pandemic. The mother has had the benefit of an intermediary from Communicourt. Ground rules were laid down which included provision for frequent breaks during the hearing and questions to the mother to be reduced to writing for consideration by the intermediary who suggested some re-wording to aid the mother's understanding. A great deal of evidence was submitted shortly before and during the hearing. I am grateful to all the legal representatives for their flexibility in dealing with late evidence, and to the intermediary for assisting the mother. I am also grateful to the interpreters who assisted, in particular Ms T for her patience and adaptability.
 6. Although they did not take part in the final hearing, I am grateful for the assistance of staff at the Y Embassy who have provided information to the Court and facilitated meetings for J and G to allow them to explore the implications of their returning to Y without either parent.

History of Events

7. The mother was born in X in 1979. When she was nine her family moved to Y but her father subsequently returned to his home country. Her mother remained in Y and she and her husband have been separated, but not divorced, for many years. The mother says that she was accepted at universities in Y but her family would not allow her to go. She has reported that as a child, her father beat her, once tying her up and whipping her when he mistakenly believed that she had drunk alcohol. He was generally quick to temper and, according to her, once badly beat her mother. The mother came to live in England at the age of 18. She undertook courses in estate agency and in childminding. She married the father in 2003 when she was aged 23. J was born in 2004, G in 2008, and H in 2010. The family moved to Y in 2011. The mother now lives with her three children in the town of Z. She does not carry out any paid work.

8. The father was born in X in 1966. He is a British national. He is currently unemployed and lives in the town of Z.
9. I have read the documents received from agencies in Y. There is no evidence of domestic violence before the attack in 2013. By all accounts, including their own, the mother and the father had a warm relationship.
10. In April 2013 the father, under the mistaken belief that the mother had been unfaithful, struck her multiple times with a sharp metal implement, including blows to the head. The mother suffered serious head and brain injuries. She was unconscious for a number of days and in hospital for three months. She sustained impaired vision and it is apparent that she had significant mobility problems for a long time after the assault. The consequences of her brain injury are considered in more detail later in this judgment.
11. The father was charged with attempted murder but that charge was not pursued when he pleaded guilty to an offence of aggravated assault on the basis of an agreed statement of facts. In sentencing him to seven years imprisonment on 12 September 2014, the judge said,

“The agreed statement of facts ... disclose a horrible vicious assault based on an unreasonably held belief in infidelity... I agree that there are overwhelming elements of misogyny in this; in other words, hatred of women. The victim, [the mother] did nothing, repeat nothing, to bring this upon her... [she] has shown courage in her rehabilitation which I find to be nothing short of heroic. She has taken herself from being paralysed to walking on her own with a cane.... The admitted facts speak for themselves. There are so many aggravating factors here. To list but a few, this is horrific abuse of a spouse. It is pre-meditated. To say that it has a significant impact on the health of the mother is an understatement. This was committed in front of young children...”

12. The father had spent time in custody on remand and was released from prison in 2017 and deported to the United Kingdom. It should be noted that a number of documents within the evidence submitted refer to the father’s conviction for “attempted murder”. He was convicted, on his pleas, of aggravated assault not of attempted murder.
13. The children were in the house at the time of the attack, as were other, adult family members. The children did not witness the attack and there is no evidence that they saw their injured mother, but the father saw them and hugged them before he was taken away by police. At that moment they lost both parents – their father going into custody for a prolonged period, and their mother being admitted to hospital, unconscious. The children were taken away from their home by police, the house was sealed as a crime scene, and they were then looked after by their maternal uncle and maternal grandmother. When the mother was well enough to return home her brother

and mother continued to help her to care for the children. In November 2015 local children's services became involved after the mother reported that her brother and mother had been physically and verbally abusive to her. She moved into a shelter with the children but swiftly returned back to the family home. Children's Services maintained an involvement with the family until November 2018. It was unable to verify the mother's allegations and no injuries were observed even after she made specific accusation about suffering bruises or about being poisoned. Children's Services were concerned that the children were frequently exposed to adult conflict within the home and that the mother was unable to refrain from arguing or spreading false information about other adults in front of the children, even when workers from Children's Services were present. The mother was noted to be unable to manage stress, she would not take medication for depression that she had been prescribed. The mother had been observed to "wail, rock, and hit herself when confronted about child protection issues."

14. In July 2017 the mother left the family home with the children once again to stay in a shelter. Staff at the shelter reported concerns about the mother neglecting the children's basic needs. Once again the mother and children returned to the family home. Thereafter workers at Children's Services were concerned that the mother had left the children unsupervised. They advised members of the extended family to apply for custody of the children and on 17 December 2018 the court ordered that the children be in the temporary care of the maternal uncle and maternal grandmother. An agreement was signed under which the mother's contact with the children was to be supervised by members of the family, but it was not adhered to. Although the tenor of these reports is that the mother was the source of disharmony, there is evidence, for example a recording of a complaint by G, of physical force being used by family members against the children, and the mother. Many of the mother's actions during this disruptive time might be viewed as steps taken by her to protect her children. Furthermore, she was still on the long road of recovery from a severe brain injury.
15. On 8 May 2018 the mother travelled to England. She did not inform members of her family of the reason for the trip but in England she visited the father. According to his evidence they discussed issues and decided to reconcile. On 24 July 2018, back in Y, the mother informed a Children's Services worker that she had reconciled with the father and planned to move with the children to the United Kingdom. Relations within the family grew ever more tense until a proposal was put forward for a cousin of the mother, who lived in another city, to care for the children with the mother living with them. This arrangement began in September 2018. The family file was transferred to Children's Services in that city, who worked with the family until August 2019. The mother indicated in early 2019 that she was unhappy living in the new city. It later transpired that the mother had moved out of her cousin's house in January 2019 to live in a basement apartment with the children until March 2019 when she moved with the children to a shelter in another city. They moved to another shelter in the same city in April 2019 and then moved to an apartment there in June 2019.
16. The Children's Services decided to support the mother to care for the children herself. It was reported that from April to September 2019, the mother "was able to demonstrate that she had been able to provide for the children's basic needs while they resided on their own... [Children's Services] noted however that she often

required [her eldest child's] help and support..." [G28]. Concerns about the mother's mental health continued. The mother then told Children's Services that she was taking the children to England, for H, who was struggling at school, to see a "light/energy therapist". J travelled to England earlier than their mother and siblings, having initially attended a wedding in Europe, and in fact stayed with the father for a week in August 2019. The rest of the family left Y on or about 16 September 2019. The father met them at the airport and he stayed with the mother, G and H at a hotel for a few nights. He then returned to his own flat whilst the family stayed at the home of a friend of his, before he secured a two bed flat in the town of Z for all the family, including J.

17. On 27 September 2019 the Children Services Social Worker LM, who had been working with the family in Y, spoke by Skype to J who informed him that the mother intended to remain in England with the children but that they and G would prefer to return to Y. In an email that day, J told the Social Worker LM that they would soon be living with the mother and father together. It seems that the family moved to the two bedroom flat at the end of September 2019. Children's Services contacted the NSPCC in England and the NSPCC made a referral to local Children's Services who, in late October 2019, found that the children were living with the mother and father in the two bedroom flat in the town of Z. On 29 October 2019, the father agreed to move out whilst an assessment was carried out. The father had lived with the family for approximately one month. There is no evidence to prove that he has lived with the mother or children since that time – he and the mother have honoured the agreement to stay away from their home.
18. The mother and children continued to live in a two bedroom flat until March/April 2020 when they moved to a four bedroom home with a large garden. The children all attend school. Their contact with the father has been limited to supervised, indirect contact, but J and G have been reluctant to spend even that limited time with him.

Allocated Social Worker

19. The allocated social worker is an experienced social worker who impressed me with his thoughtfulness and commitment to this family. Several parts of his evidence appeared to me of considerable importance:
 - i. He has made numerous unannounced visits to the family home but has not found the father there, and the children have never indicated to him that the father has been in the home. Given the views of J and G about their father, I am sure that they would have told the allocated social worker had the father broken his agreement to stay away from the family home.
 - ii. He told the court that the mother had engaged with Children's Services and with him "since day one". The mother has not been in conflict with any services or agencies but "presents as a well-mannered, calm, considerate and a very thoughtful woman." He said that he had "nothing but the greatest

admiration for her” and was impressed by her “love, affection, and commitment to her children.”

- iii. He articulated a significant concern in this case when he said that the mother caused the children to relocate away from their familiar environment to live in a different country where they did not want to live, with a man who they had last seen being taken away by police having inflicted the most heinous injuries on his wife. He considered that this showed a lack of insight by the mother into her children’s feelings. As he said this, the mother became visibly upset and we had to take a break in proceedings.
 - iv. The allocated social worker was clearly concerned about the mother being under the influence of the father. He suggested that it was the father who was behind her expensive use of a “light/energy therapist” for herself and H, therapy that is not evidence-based. He expressed his view that the father had persuaded the mother to bring the family to England to reunite. He fears for the consequences should the father exercise similar influence in the future.
 - v. He accepted that the mother and children had had a more stable life since arriving in England, in particular since moving to their current home in mid 2020. He had noticed what he called “absolutely remarkable” progress by H since his first involvement with them in the summer of 2020. Their social interaction with him had completely changed from almost complete silence to free-flowing chatter.
20. The allocated social worker described being in the family home one morning when he had agreed to take G to an interview at a school they were hoping to attend. They had twice previously missed the interview, and it is evident that had he not been present they would have missed it again because the mother was so behind time in preparing breakfast and getting everything ready.
21. The allocated social worker highlighted the mother’s failure to engage with certain other services when offered to her. He mentioned her referrals to Mencap and to a local Association for the Blind as examples.
22. The allocated social worker confirmed that a suitable foster carer has been identified. She is 28 years old and lives alone. She is currently in full time work. She has experience of fostering but has not fostered three siblings previously. She would have to move house to accommodate them and would give up her work whilst the children settled in with her. She intends that her sister, who is another approved foster carer, will move in with her to assist. She lives about 20 minutes away from the mother’s home and the allocated social worker confirmed that the care plan is for the mother to have frequent contact with her children. I was provided with Transition Plans and Care Plans for the long term fostering of all three children.

Expert Evidence

23. Dr Anna Chalmers-Brown is a Chartered Psychologist and registered Clinical Psychologist with specialist experience in the field of children and families. Her first report is dated 6 April 2020. During the interview with Dr Chalmers-Brown, the mother said that she had travelled with the children to England in September 2019 to see the light/energy therapist. He had helped the mother in Y after the assault and she wished him to see H as their concentration was poor. He “uses his hands to scan her organs”. The mother said that the father’s assault had been wholly out of character and he had never laid a hand on her or the children previously. She told Dr Chalmers-Brown that ideally she would want the whole family to be together again but that if the Court decided that her husband needed to stay away, she would accept that and continue with contact arrangements. She reported having been “mentally abused” in Y by her mother and brother.
24. Dr Chalmers-Brown conducted psychometric testing which did not reveal depression, anxiety or significant symptoms of post traumatic stress disorder. Verbal comprehension was in the borderline range but could well have been affected by English being a second language and disrupted education. Perceptual reasoning (measuring non-verbal reasoning) and working memory were in the Extremely Low range. However, Dr Chalmers-Brown was concerned that the mother’s visual impairment obscured her true level of cognitive functioning and she suggested a full neuropsychological assessment.
25. Dr Chalmers-Brown also assessed the children. The summary of her opinion in April 2020 was that J and G showed no evidence of anxiety or depression and were, overall, at low risk of future emotional or behavioural disorder. Both showed mild signs of difficulties with their emotional and social development. On interview, H became talkative and comfortable. On self-reporting, H scored above the clinical threshold for anxiety, specifically panic, and for depression. It was also noted that their verbal comprehension, fluid reasoning and Full Scale IQ were all in the extremely low category. All three children had a positive attachment to their mother and spoke warmly of her, but J and G expressed displeasure about being brought to the UK and about their mother having reunited with their father. She states,

“I am of the opinion that the children have suffered harm as a result of the assault, its immediate aftermath and the subsequent years of instability and inconsistent caregiving. While there are no diagnosable mental health difficulties at this time for J and G, the impact of frequently moving house and schools and being witness to conflict within the family cannot be underestimated. H is selectively mute and has significant learning needs, both of which may have been exacerbated by the instability of the past few years. School are currently applying for an EHCP. Nevertheless, the children all seem to have positive attachments to their mother and wish to remain in her care. They do not appear to have a significant attachment to their father. All three children expressed a wish to return to Y.”

26. In oral evidence Dr Chalmers-Brown confirmed that her findings as to the mother's cognitive impairment and mental state had been similar to those of Dr Ziyal. Dr Leyla Ziyal is a Chartered Consultant Clinical Neuropsychologist who has provided three reports on the mother, dated 22 November 2020, 14 December 2020, and 23 February 2021. It was only in the third report that she was able to comment on CT brain scans from Y. The first report is a general assessment; the second is an investigation of the impact of her brain injury on the mother's parenting ability, risk awareness and therapeutic needs. Dr Ziyal assessed the mother remotely or in person on four occasions before providing her reports. Her written and oral evidence is marked by attention to detail and a desire to understand the mother's abilities as well as her deficits. She found that the mother demonstrated Borderline to Very Low cognitive levels ranging between the 1st and 5th percentiles for verbal comprehension and perceptual reasoning. Her memory performance was more effective than her cognitive abilities. Her executive performance was well below average, testing revealing executive function between the 1st and 6th percentiles, but language difficulties may have had an impact on performance. Her mood state was stable with no indications of depression, anxiety or hopelessness, but she scored highly for "tough-mindedness", indicating a possible tendency to repress expression of emotion, and low levels of sensitivity and empathy, and for dissimulation. Dr Ziyal explained in oral evidence that the high score for dissimulation was not necessarily an indication of false reporting. A high score might also indicate a naïve or "un-streetwise" individual who is answering genuinely that, for example, they never disobeyed their parents, rather than someone who says that in order to impress or to create a false impression of goodness. Given that the mother did not seek to impress in her answers to the tough-mindedness questions, Dr Ziyal interpreted the mother's high scores for dissimulation as indicative of naivety rather than conscious or unconscious false reporting.
27. In her first two reports, Dr Ziyal was reluctant to ascribe the mother's low functioning on assessment to the brain injury sustained in 2014, not least because of the absence of information about pre-injury functioning and the fact that she did not have access to the CT brain scans. She also advised in her second report that it is "highly probable that the mother's present cognitive profile is an underestimate of her true potential. In addition to impaired vision, socio-cultural/educational and linguistic variables would have had an adverse effect on her effectiveness in each of the three domains under investigation." On making suitable adjustments, the mother's results indicated low average levels at the 27th percentile of her peers for verbal effectiveness, and good average to low average memory function. Executive function, adjusted, was still "well below average and ranges between the 16th and 0th percentiles". [E327]. Dr Ziyal found consistency of performance in testing and no evidence of mental illness, poor impulse control, poor emotional regulation or post traumatic stress disorder. Her assessments indicated self-confidence in her parenting effectiveness. They also showed lowest attachment and communication with J, highest with H. However, Dr Ziyal told the court that these were simple tests of attachment, not an exploration of whether there was any attachment disorder.
28. The CT scans became available to Dr Ziyal only shortly before the hearing. She reported that the CT brain scans in 2013 after the assault, showed bilateral occipital and parietal contusions with associated haemorrhage, and left inferior frontal non-haemorrhagic contusion, with subsequent encephalomalacia in the parieto-occipital region and frontal poles bilaterally, greater on the left. A scan performed in April

2018 showed bilateral occipital and parietal contusions not significantly altered and left inferior frontal non-haemorrhagic contusions unchanged. Diffuse sulcal effacement was demonstrated. Dr Ziyal concluded that the CT scan results,

“support the inference that the mother’s brain injury has had a major impact on her cognitive architecture ... it would be safe to infer that the bilateral [encephalomalacia] and sulcal effacement has resulted in an overall decrement in cognitive effectiveness but its greater involvement in left hemispheric inferior frontal structures has caused better differentiated impairments in memory and working memory in the auditory-verbal modality and in the executive function of abstracting ability.”

29. In oral evidence, Dr Ziyal explained that the mother had sustained a “severe brain injury”, leaving her unconscious for several days and with a significant period of loss of memory, including no memory of the assault itself. The scans show widespread brain damage that has probably caused an overall reduction in cognitive functioning but also greater damage in areas that have led to particular impairments in memory, working memory and abstraction ability. That last impairment affects her ability to plan, organise, and structure her day to day life.
30. In this report of 23 February 2021 Dr Ziyal had also had the opportunity to review a Communicourt report on the mother, prepared with a view to her receiving assistance from an intermediary at the hearing. She found consistency with her own conclusions.
31. Dr Ziyal had reviewed evidence from assessments made in Y and expressed the strong view that they were at odds with her own findings on detailed assessment of the mother. She concludes that “Clinical observation does not corroborate the contention that the mother’s ability to handle stress and to deal with difficult situations is in deficit.” [E311]. She added,

“Her comportment during interview, her comprehension of explorative questions and the coherence of her account of events do not support the contention that she is incapable of understanding information given to her.... The information on offer about the mother’s life experience in the last 7 years indicates that she has been completely deprived of support and subjected to intense levels of instability and stress. Despite these prolonged and severely debilitating circumstances she has coped and maintained the integrity of her personality and of her family. This is a considerable achievement, especially in an individual who has sustained a probably severe brain injury.” [E312 paras. 3.2.4 to 3.2.8]

“I have not encountered any evidence to suggest that the mother is unable to prioritise her children’s needs before her own, that she is not cognisant of safety and risk factors regarding her children, and that she is unaware of the harm that exposure to

domestic violence or conflict may cause to the development of children.” [E313 para. 3.2.9]

32. Dr Ziyal was very clear that, notwithstanding that it is nearly eight years since the brain injury was inflicted, the mother even now has the capacity for improvement in her functioning. She recommended that an occupational therapist be engaged to oversee the support work that the mother receives and should continue to receive, and that psychological therapy should be deployed, both interventions being likely to improve her ability to structure her daily life, deal with practical arrangements, and have greater insight into the impact on her and the children of her limitations. Dr Chalmers-Brown effectively deferred to Dr Ziyal on the question of further rehabilitation.
33. Both Dr Chalmers-Brown and Dr Ziyal told the court that the removal of the three children from their mother, as the Local Authority proposes, would be “devastating” to them, causing deep distress.
34. Dr Parsons assessed the father. He reported that in April 2013 the father had been ruminating for at least a week about the idea that his wife had been unfaithful. His thinking was distorted and based on trivial incidents. For about two hours prior to the attack his anger had built. He went to look for an implement with which to strike the mother. His assault on her was not planned long in advance but it was clearly pre-meditated. The risk of the father acting in the same way again had to be considered in the context of his distorted thinking at the time of the attack, his understanding of why he acted as he did, and his commitment to preventing himself from repeating such thinking and action. Dr Parsons noted the father’s evidence that he had not written the entries in the worksheets for his prison work during sessions directed at controlling his offending behaviour. He described this as very worrying. If true, then the father may have misled prison authorities in Y, who had released him early in part because of his work in these sessions, or he was misleading the court now because he did not want to be associated with comments in the written work about exercising control over his family, or the work done was slipshod and could not be relied upon. In any event, the father’s evidence gave rise to increased concern about the risk he posed to others. Dr Parsons’ view was that the father has yet to confront his own conduct and the consequences of it. He expressed a professional opinion that the lack of empathy shown in the father’s final statement to this court was remarkable. He said that the father was capable of empathy - he was not psychopathic - but showed none for his wife or his children. His expressions of remorse might as easily be for the impact of his conduct on his own life as for its impact on his family. Dr Parsons advised that it was unlikely that the father would re-offend in the same way, and that the risk of him doing so was “low”, but it was “real”.
35. Aside from the risk that the father might violently attack a member of the family, causing physical harm to the person attacked, and emotional harm to other members of the family, Dr Parsons advised that there is the risk that he might cause the children emotional harm if he became more involved in their lives.

“In my opinion, [the father’s] lack of understanding and empathy for the children poses a very significant, immediate and real risk of emotional harm. In my view, there is a very significant risk that [the father] will dismiss or minimise the children’s concerns and would not take the children’s views into account when decisions were made about his interaction with the family. I have not assessed the children and indeed, I am not qualified to do so but I must point out that in my view, [the father’s] current views in relation to the children, pose a very significant risk of immediate emotional harm.”

36. A Parenting Assessment was performed by the local authority parenting assessor, dated 4 December 2020. It is a very lengthy document and the parenting assessor’s oral evidence took some time also. Whilst her approach was thorough, it was clear that because of the timing of her assessment process and report, she had been unable fully to reflect on developments since the autumn of 2020. She had not, for example, assessed the children’s wishes and feeling since some six months before the hearing. I was concerned also that she set the bar very high in terms of her expectations of the mother’s parenting, and by focusing on the mother’s limitations, she sometimes missed the larger picture. For example, she concludes that the mother is not providing good enough care practically (as well as emotionally) to all three children, but the mother has sole care of J who is well-dressed, well-nourished, healthy, and has good attendance at school where they are making excellent progress. Even if J is relatively self-sufficient, it is very difficult to understand how a conclusion could be reached that the mother is not providing good enough practical care for J. The same applies to G. The parenting assessor told the court that certain interventions had not been forthcoming because the mother did not think she needed it, or that a particular support service was not in place because the mother did not engage with it. The fact that the mother’s impairments might compromise her ability to understand her own limitations and to organise her time, did not seem to be at the forefront of the parenting assessor’s analysis.

37. The parenting assessment is best summarised by paragraph 5.3 of the report in which the parenting assessor refers to the demands on the mother as a parent, and concludes,

“The mother’s cognitive needs make it difficult to manage these competing priorities and it is my view this is leading to less than ‘good enough’ care for all the children, both emotionally and practically.”

The Mother

38. The mother was a pleasant and open witness, who gave her evidence with the help of an intermediary. Hourly breaks were taken when she gave her evidence and, with the intermediary’s help, questions were worded in such a way that she could understand and respond. Through the computer screen, I could not see any scarring or obvious signs of the mother’s head injury. As with many individuals with a brain injury, people encountering her briefly would not know that she was impaired. It is only with

the knowledge of the injury, and with observation over time, that her impairments become apparent. She had some word finding difficulties, problems with ordering memories, and she displayed very concrete thinking. Nevertheless, she showed some insight, she had clearly reflected on the evidence in the case, and she appeared to give sincere and genuine answers to the questions put. Dr Chalmers-Brown has certified the mother as having capacity to conduct proceedings [E21] and there is no hint in the evidence that she lacks capacity in other spheres of decision-making such as residence or contact with others.

39. The mother clearly loves her children. She showed a good understanding of their individual characters and needs. She showed awareness of some of her limitations but has a lack of understanding of the extent to which her brain damage affects her executive functioning in terms of planning and organisation. My overwhelming impression however was of a woman of remarkable resilience. She had a very difficult childhood, suffering physical abuse and witnessing physical abuse of her mother. She was in a coma for several days after the attack in 2013, awoke from that unable to walk or see, and has made an impressive recovery to her present condition. During the past eight years she has brought up three children sometimes in the face of very difficult relations with her mother and brother in Y, sometimes resorting to living in sheltered accommodation. She has moved countries and has negotiated a potentially very difficult relationship with the applicant Local Authority whilst remaining courteous, co-operative, and optimistic. Whatever concerns there might be about her ability to protect and care for her children, the fact is that J is an impressive young person doing excellently at school, G is a well-liked young teenager who is making good educational progress, and H is a much-loved child who has close bonds with their mother and siblings. They have significant educational needs but is beginning to make some educational progress. All three children are reported to be well-mannered, respectful, kind, and helpful to others. Given the circumstances, the mother must take credit.
40. Criticism is made of the mother's engagement with support and services offered to her but much of that criticism fails adequately to take into account her impairments. The mother has missed a number of appointments with professionals, but one of the consequences of her brain injury, as Dr Ziyal's evidence made clear, is that the mother's executive function is now "well below average". Impaired executive functioning means that she is deficient in organising and planning. She needs help to attend appointments on time and would benefit from repeated reminders of appointments. She needs help with planning how to travel to an appointment and with how to manage with obstacles such as an ill child, or a missed bus. In addition, the mother's visual impairment means that she cannot read correspondence. Criticism of her for missing appointments or failing to take the initiative in relation to support services, fails to acknowledge the mother's disabilities.
41. The Local Authority has insisted that H remain at their current school, but it is a long distance from the family home. The journey to school involves the mother walking with H for over 15 minutes and catching two different buses. The mother also had two other children to manage in the morning. She is partially sighted and has impaired executive functioning meaning that planning to ensure H arrives at school at a particular time each day is a difficulty for her. It ought not to have surprised anyone

that H was often late to school. Once a taxi service was provided for H their prompt attendance at school improved significantly.

42. The mother is partially sighted. A sight test on 16 January 2021 [SG70] shows visual acuity of 6/60 for both eyes. At one point during her rehabilitation in Y she used a cane. She ceased needing a cane and has not used one since being in England. The parenting assessor says at paragraph 5.5 of the Parenting Assessment report [E243], “She refuses to use a cane despite numerous accounts of falling over and she has been unwilling to engage with counselling via the [local] Association for the Blind”. I have a letter from that Association at [J324-325] which refers to contact with the mother and does not mention any recommendation that she uses a cane. It does state that she is “a very kind and gentle lady. I believe she has been misinformed every step of the way on her journey as someone who has recently lost their eyesight. [She] has not been provided with sound advice.” One source of unsound advice is identified as the light/energy therapist. However, the parenting assessor’s criticism of the mother for refusing to use a cane is not justified on the evidence provided to the court.
43. Those who have worked with the mother over time, such as her Domestic Violence therapist and the allocated social worker praise her for her co-operation. I have received a Care and Support Plan dated 10 March 2021 in respect of Adult Services to the mother. She appears to have engaged in the process of making this plan. Support is planned to help facilitate access to community facilities and to maintain nutritional needs, and an additional one hour every weekday morning to help establish a morning routine and to help her support the children. She will also receive support with managing household correspondence, emails and appointments [SE63].
44. The mother has engaged in therapy through Every Step Matters, directed to her experience of domestic abuse. A letter from her therapist dated 21 January 2021 shows that she had attended 28 sessions. I understand that she has now completed 36 sessions. Therapy is ongoing and may continue for as long as it is beneficial. The mother is reported to have been “extremely consistent” in keeping appointments, and “fully engages” in the sessions. She has been open about her experiences and to exploring the impact of them on herself and her children. She has “taken on board the strategies we have discussed.” She has been “authentic”. She has also participated in specialist therapeutic groups for survivors of domestic abuse. The therapist’s advice is that “consistent and ongoing emotional support is vital for [the mother] considering all that she has faced.” The mother’s evidence to the court suggested that the focus of this therapy to date has been on her abuse at the hands of her own family, not her husband’s attack. Nevertheless, her engagement in this therapy is extremely encouraging.
45. Without doubt, the greatest concern about the mother’s parenting arises from her evidence about her arrival in England in 2019. J was already in England having arrived as part of a long-planned trip to Europe. From the mother’s evidence, she brought G and H to England having booked one-way flights only three days before departure. The purpose of the trip was to make arrangements to take H to see the light/energy therapist so that they could receive therapy. The other children would go with them. As it happens, due to unforeseeable circumstances the light/energy therapist could not see H and the mother and children stayed in England waiting to

hear from him. The mother told me that she expected that she might have stayed until January 2020 but for the intervention of the Local Authority. Even if her account is accepted she uprooted her children from their home in Y for a prolonged trip to Europe and decided to stay with their father when they were in England, renting a flat together, without any adequate thought for the emotions, fears and views of the children. The mother's decision-making and parenting at that time was poor and exposed them to a risk of harm.

46. The current position is that the mother is co-operative with the Local Authority, her children are all progressing, they are all engaged in their education, they have good attachment to their mother, they are clean, well-fed, adequately housed, they are integrated into social networks, and they are pleasant, kind and well-mannered children. There is stability in their lives and the mother has managed to keep apart from the father. She has managed her children without any input from him and she has kept them safe.

The Father

47. The father gave evidence via an interpreter. He was a quiet, undemonstrative witness who nevertheless became upset when asked about the impact of his attack in 2013. He said that other people were jealous of the relationship he had with the mother prior to the assault in 2013. He did not raise a hand to her or the children, or anyone else before the assault, and he has not done so since then. He expressed remorse for what he called his "heinous crime" and acknowledged that it has had a deep effect on the children, as well as the mother. At the same time, he deflected responsibility for what he had done, telling the court that if only his wife's Uncle, with whom he had visited the shops shortly before the attack, had taken him to one side, or if only his wife had been with one of the children when he found her (already with a sharp metal implement in his hand) then the assault would not have occurred. He denied that the assault was pre-meditated and told the court that the sentencing judge's remarks were just the judge's opinion about what had happened. The father told me that he had wrongly believed that his wife was being unfaithful to him but that he had only thought of harming his wife when he took some items he had bought at the shops to the basement, saw the open toolbox, and reached for an implement. The implement he took hold of was a sharp metal tool. He then went up two flights of stairs to the master bedroom and on seeing his wife come out of the en suite bathroom he attacked her. He did not know what had come over him. He was unable to tell me what feeling he had at the time. The attack ceased when the maternal uncle entered the room and told him to stop. The father told me that he himself called the police to report what he had done. The children had been in another bedroom on the same floor where the attack took place. They were brought downstairs and he spoke to them and hugged them before the police took him away.
48. The father told me that in prison he was asked to participate in an offenders' course but explained that he could not read or write English. He was told to do the course in English in any event. Other inmates made the hand-written entries on the paperwork that the court now has, and much of what was written did not represent his views or

feelings. He said that the course provider would spend 20 minutes a day with him after the 40 minute group session talking through the course content with him. This happened every day for three months, according to the father. There are no separate records of this additional work and no evidence that the course provider had made alterations to the hand-written entries on the documentation that were made by other inmates. Accordingly, the course notes are of very little value to this court and do not assist to demonstrate that the father has undertaken any valuable rehabilitation work.

49. The father explained that events in September 2019 happened quickly. J came to Europe and during her trip spent a week with him in England. His wife came over with the other two children with a view to accessing treatment for H from the light/energy therapist. He found a two bedroom flat where the family could stay and they all moved in together. It does not seem to have struck him, or indeed the mother, that it might have been more prudent, and better for the children, for him to rebuild a relationship with them more slowly, or to take advice on how to re-connect with them.
50. The father expressed remorse and has sworn to the mother and solemnly told the court that he would never act in the same way again. He put his loss of control down to ignorance and stupidity but it appeared to me that this demonstrated a lack of insight. Ignorance might have led him to believe, on the basis of instinct rather than evidence, that his wife was being unfaithful, but ignorance does not explain the brutality that flowed from that belief.
51. The father sought to impress upon the court that he is now determined to make amends to his wife and children. However, in this as in other aspects of his evidence, his focus is on satisfying his own needs, rather than those of his children. It is his desire to make amends that motivates him. The reason he gave for staying together at a hotel on arrival in England was that he desperately wanted to spend time with the children after a gap of so many years. The reason he wants to have contact with the children is because they are the focus of his life. His determination to dedicate his life to making amends supports the view that he firmly believes that it is in their best interests for him to play a more active role in their lives.

The Children

52. A sibling assessment by the allocated social worker noted that “while the children are together in their current placement, with their mother, even with the stated challenges, they appear to be thriving, albeit slowly and reluctantly.” The allocated social worker recommended “that the sibling group should be placed together in any permanent care arrangement.”

H

53. H is now aged ten. Of the three siblings, they are the one who has struggled with their education; indeed, they have learning difficulties. An Educational, Health and Care Needs Assessment of H was performed by Dr Robert Blasco, Educational Psychologist on behalf of the Local Authority, on 23 February 2021. H receives considerable adult support in class and is receiving face-to-face education. For most

of the time at school they have one-to-one support. At school they remain selectively mute and have very limited social integration. Despite the one-to-one support they have received, they have significant literacy delay for their age and there are similar concerns about their reading and numeracy skills. They are assessed as working at a Year 1 or lower level (while in Year 5). They may well not be suitable for mainstream schooling at secondary level.

54. An email from H's school dated 1 March 2021 states that "up to 23.02.21, H's attendance is 84% - [they were] present for 168 sessions out of a possible 200. I would like to add that attendance below 95% is a concern and anything below 90% is considered persistent absence. The formal record of lates for the same period of time is 19." I note that of those 19 lates, only one was after the register had been taken. Also, as I understand it, some of the period covered by these statistics was before the provision of a taxi service. H's Personal Educational Plan dated 3 March 2021 was provided to the court. They have had speech and language therapy and their Educational and Health Needs Assessment is due in April 2021. It was noted that they had made "small steps of progress" with their basic reading, writing and number skills, with intensive support.
55. As noted above, H was found by psychologist, Dr Chalmers-Brown to show signs of anxiety and depression. The parenting assessor found that they had close relationships with their siblings, and that they communicate well with their mother who shows them a great deal of attention. H is the most likely of the three siblings to want to talk to their father but conversations between H and their father have been observed to be one-sided, with H chatting persistently about whatever is on their mind without requiring much response from the father.
56. The Guardian, Ms Rush, reports that H's speech and presentation has improved somewhat in recent months but they are very reluctant to engage in discussions at school or to make eye contact with others. There are no such problems reported at home. The Guardian reports that "H appears to be content in the care of their mother. They have a good relationship with their siblings and mother." Their wishes and feeling are difficult to discern, according to the Guardian, but "I think that H wishes to continue to be placed with their mother wherever that may be." That accords with all the other evidence in this case.

G

57. Attendance information from G's school indicated 82% attendance record in the autumn of 2020, but the 18% non-attendances were all due to illness and were authorised absences. They have been receiving specialist tuition and reports are that they are working hard, doing fine and want to learn, have a good attitude, are very organised, and have improved a lot. I have received a Personal Education Plan from December 2020 [J371] which notes "more than expected progress" in most subjects, that G felt they had "settled very well" into the school and had made friends with a small group of children, and that they had made "good progress... their behaviour and uniform excellent however attendance needs to improve."

58. The parenting assessor reported that G is quiet, self-sufficient and sensible. I noted that one of the mother's support network who gave evidence to me broke into a wide smile when asked about G, of whom she was clearly fond. G looks to J for guidance and as an advocate on occasions, but they have made their own views very clear. In their Position Statement G tells the court that they want to stay with their mother, that their mother is able to take care of them and their siblings, and that if they were removed from their mother's care "I would feel angry, mad and sad. I don't want to go!" They are reluctant to have contact with their father. They are close to both siblings. It upset them to be brought to England and to find themselves living with their father. They initially expressed a clear wish to return to Y but they appear now to be more settled in England and in any event accept that they would prefer to stay in England if moving to Y meant they would be separated from their mother and siblings.

J

59. J is aged 16 years, 5 months and is currently in year 11 studying for their GCSE exams or assessments this summer. An email from the Deputy Head Teacher at J's school dated 25 February 2021 reads,

"I can confirm that J's attendance at school is exemplary - 98%. Their attendance in lessons on remote learning has also been exemplary - above 95%. They are attending a great deal of online tuition - often 3 hours a week outside school hours. They are doing exceptionally well at school."

60. J's Personal Educational Plan dated 2 March 2021 was provided to the court [SG139 to 163]. It remarks on their excellent progress and hard work.

61. Some assessments have suggested that J has carried the burden of compensating for their mother's impairments – they have had to act as the second adult in the household, performing more chores and taking more responsibility than should be expected of a child. J themselves do not see it that way and is anxious to correct the notion that the contributions they make are out of the ordinary. They certainly express no resentment on that account. What they does resent is having been removed from Y. Earlier in these proceedings they had a firm wish to return as soon as possible. Now, they wish at least to complete their GCSE's here before making any decisions about their future. They are contemplating applying to university, and that is a realistic goal for them. At their request I met J (remotely) with their solicitor before the hearing. They talked about their education and about their feelings regarding this case. They struck me as an insightful and intelligent young person. They clearly do not wish to be moved to a foster carer. At some point they would like to return to Y – they do not enjoy living in England by comparison – but they will wait for an appropriate break in their education. J is 16 years 5 months old. They are described by others as dutiful and compliant, but they also have their own views about where they should be living and with whom. They are loyal to their siblings but do not wish to live with a foster carer. They are old enough simply to refuse to move to a foster carer or to leave foster care following a placement.

62. The parenting assessor expressed concerns that the mother is very negative towards J. In my judgement, having regard to the evidence as a whole, I believe that their concerns are over-stated. Both the mother and J are strongly opposed to being separated from each other. There was some conflict between them in relation to the events of late 2019. J is articulate and, whilst dutiful, independent-minded. Their mother loves J, as she loves all her children, but a 16 year old with different ideas about where and how they should live, may pose challenges for any parent, not least one who has the impairments that the mother has. However, I do not perceive the relationship between J and their mother to be dysfunctional or a source of harm to J.
63. In the parenting assessor's assessment [E247] she says, "these children are kind, helpful and considerate". That speaks highly of the mother who has brought them up all their lives and has done so without their father for the last eight years, and amidst family conflict in Y. They have a strong bond with each other and they all strongly wish to remain living with their mother. The children will not pressure the mother to reunite with the father, quite the reverse. Whilst J has helped their mother to cope over the last few years, the evidence does not persuade me that they have shouldered an unreasonable burden which ought not to be placed on a young person. In that I disagree with the parenting assessor's analysis and prefer J's own characterisation of their role as being within the norm for a young person in their culture.

Support Network

64. I heard evidence from three witnesses from the mother's support network, two are distant relatives of the mother, and one is a family friend. All three have had contact with her, albeit less so during the pandemic restrictions, and all promise to support her in the months and years ahead. Although one witness referred to the assault in 2013 as an "accident" at one point, and another explained why it might be referred to as an accident, I thought that, on balance, all three women understood the true nature of the attack. One called it "inhumane". They all appeared genuinely to understand that the father represented a risk to the mother and the children should he live with them in the future. They were all very supportive of the mother but assured the court that they would inform social services or authorities if they knew that The father was in the home, or if they believed that the mother needed help.
65. One witness is a graduate who came to England as a teenager. They have a good relationship with J and I am sure they can offer helpful guidance to them, and in time to G, about their choices for higher education.
66. On 19 February 2021 the Local Authority organised a video Family Group Conference attended by the three witnesses from the mother's support group, one of their spouses, an uncle and a cousin of the mother. The allocated social worker was also in attendance. The members of the family's support network offered help at the meeting in accordance with their evidence to the court. The record of the meeting supports the view that the support network is committed to helping the mother and the children and is aware of the core issues in this case.

67. Earlier in these proceedings, consideration was given to the possibility of placing the children with family members. The maternal grandmother still lives in Y. She has told the Local Authority that she is happy to support the mother to look after the children but does not put herself forward to care for them herself. Neither do the two maternal uncles living in Y put themselves forward to care for the children. I note that both the maternal grandmother and the maternal uncles have cared for the children previously. The mother's second cousin also lives in Y. She had a successful viability assessment and she previously lived with the mother and children but she does not put herself forward to care for the children. One of the witnesses and member of the mother's support network in England, had a successful viability assessment with her husband, but they do not put themselves forward to look after the children, having decided they would not wish to compromise their care for their own children. They do offer support.

The Guardian

68. Ms Rush gave balanced evidence to the court. She has formed a good understanding of each child and was realistic about the mother and father. Her reports and oral evidence were well-reasoned and I give them significant weight. Ultimately her recommendations were that the children should stay with the mother, with a supervision order in relation to J, a care order in relation to H, and either a supervision order or care order in relation to G. Her overwhelming concern was the risk to the children from the father's involvement in their lives but she considered that this could be adequately managed with the children remaining with their mother. She did not believe that J would accept long term foster care and there was a risk that G might not do so either. Therefore, the Local Authority's plan risked separating the siblings which was against their wishes and their interests. Separation for their mother would add disruption to their lives just as they are benefiting from some stability and would risk H's current progress being reversed.

The Legal Framework

69. I apply the following principles:

- i. The burden of proof lies on the Local Authority that brings the proceedings and identifies the findings they invite the court to make.
- ii. The standard of proof is the balance of probabilities, *Re B (Care Proceedings: Standard of proof)* [2008] UKHL 35. Baroness Hale said at [70] "Iwould announce loud and clear that that the standard of proof in finding the facts necessary to establish the threshold at s31 (2) or the welfare considerations at s1 of the 1989 Act is the simple balance of probabilities, neither more not less."

- iii. Findings must be based on evidence not suspicion or speculation - Lord Justice Munby in *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ. 12.
- iv. The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence – see Dame Elizabeth Butler-Sloss, President observed in *Re T* [2004] EWCA Civ. 558, [2004] 2 FLR 838.
- v. The opinions of medical and other experts need to be considered in the context of all the other evidence. In *A County Council v KD & L* [2005] EWHC 144 Fam. at paragraphs 39 to 44, Mr Justice Charles observed:

“It is important to remember that (1) the roles of the court and the expert are distinct and (2) it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision.”
- vi. The evidence of the parents and any other carers is of the utmost importance. They must have the fullest opportunity to take part in the hearing and the court must form a clear assessment of their credibility and reliability.
- vii. It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720.
- viii. Domestic abuse having occurred in this case I must follow the principles and guidance at PD 12J of the Family Procedure Rules 2010.
- ix. Findings of fact will form the basis for consideration of whether the threshold has been met. By s. 31(2) Children Act 1989:

“A court may only make a care order or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm and (b) that the harm or likelihood of harm is attributable to (1) the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him or (2) the child being beyond parental control”.
- x. In *Re J (Children)* [2013] UKSC 9, at paragraph 47, Baroness Hale, said:

“The threshold comes in two limbs and each has two distinct components. In the first limb the court must be satisfied (a) that the child is suffering significant harm and (b) that that harm is attributable to the care being given to him, not being what it

would be reasonable to expect a parent to give to him. The second limb the court must be satisfied that (a) the child is likely to suffer significant harm and (b) that that likelihood is attributable to the care likely to be given to him if the order is not made, not being what it would be reasonable to expect a parent to give to him”.

- xi. By s. 31(9), "harm" means "ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another" and "development" means "physical, intellectual, emotional, social or behavioural development."
- xii. By s. 31(10), “Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.”
- xiii. The relevant date with respect to which the Court must be satisfied is the date on which the local authority initiated the procedure for protection under the Act. In this case the date of the application for a care order is 11 December 2019. The parties have identified that as the relevant date and I proceed on that basis but arguably it was 29 October 2019 when social services secured the agreement of the father to leave the flat where the family was living. In this case it makes no difference which of those two dates is taken as the relevant date. I shall take it to be 11 December 2019 since that was agreed by the parties and the hearing was conducted on that basis.
- xiv. The reference in s. 31(2) to a child being likely to suffer significant harm does not necessitate a finding that harm is probable. Lord Nicholls in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, said, “In this context, Parliament cannot have been using likely in the sense of more likely than not The context shows that in s. 31(2) (a) likely is being used in the sense of a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case.”
- xv. Because it is generally in the best interests of a child to be brought up with its natural family, "society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent [I]t is not the provenance of the state to spare children all the consequences of defective parenting Only exceptionally should the state intervene with compulsive powers and then only when a court is satisfied that the significant harm criteria in s.31 (2) [are] made out" (per Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050).
- xvi. (7) However, "[t]he test under s.31 (2) is, and has to be, an objective one. If it were otherwise, and the 'care which it is reasonable to expect a parent to give' were to be judged by the standards of the parent with the characteristics of the particular parent in question, the protection afforded to children would be very limited indeed, if not entirely illusory. It would in effect then be limited to

protection against the parent who was fully able to provide proper care but either chose not to do so or neglected through fault to do so. That is not the meaning of section 31(2). It is abundantly clear that a parent may unhappily fail to provide reasonable care even though he is doing his incompetent best" (per Hughes LJ in *Re D* [2010] EWCA Civ 1000).

- xvii. If I find threshold proved, I must go on to consider section 1 of the Children Act 1989. The children's respective welfare during their minorities is my paramount consideration. I must consider the welfare checklist in section 1(3). In particular, I must have regard to
- (a) The ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);
 - (b) Their physical, emotional and educational needs;
 - (c) The likely effect on them of any change in their circumstances;
 - (d) Their age, sex, background and any characteristics which I consider relevant;
 - (e) Any harm which they have suffered or are at risk of suffering;
 - (f) How capable each of their parents, and any other person in relation to whom I consider the question to be relevant, is of meeting their needs; and
 - (g) The range of powers available to the court under the Act in the proceedings in question.
- xviii. I must not make any order unless I consider that doing so would be better for the children than making no order at all.
- xix. Delay is likely to prejudice the welfare of a child.
- xx. I should consider the realistic options and conduct a "global holistic analysis of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare"

Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965; [2014] 1FLR 670.

In *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882, para 50, McFarlane LJ makes it clear that:

"a global holistic evaluation' is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant checklist [CA 1989 s1(3) or ACA 2002 s1(4)]. Such analysis is required by CA 1989 s1(1) and/or ACA 2002 s1(2) when a court determines any question with respect to a child's upbringing ... the factors that must be given due consideration and appropriate weight on either side of the scales of the welfare balance may be such as to require an analysis of some sophistication and complexity. However, whatever the issue before the Court, the task is the same: the Court must weigh up

all of the relevant factors, look at the case as a whole, and determine the course that best meets the need to afford paramount consideration to the child's welfare. That is what, and that is all, that I intended to convey by the short phrase 'global holistic evaluation'"

- xxi. I should approach the applications on the basis that the best place for any child is within the family of origin unless there are clear welfare grounds to prefer an alternative. I must consider, in relation to each child, whether they could be cared for by a member or members of their family to a satisfactory standard within an appropriate timescale, not whether they might be better off being in foster care.
- xxii. The children and parents' Article 8 rights under the European Convention on Human Rights are engaged and I must be satisfied that any orders I make are lawful, necessary, and proportionate to the aim of safeguarding and promoting the welfare of the children.
- xxiii. I also have regard to Art. 6 of the ECHR and must ensure procedural fairness. The mother is a disabled person within the definition of the Equality Act 2010 and required the assistance of an intermediary fully to participate in this hearing. Frequent breaks were taken during the hearing, and the other parties submitted their questions for the mother in writing for consideration and comments by the intermediary.

Submissions

- 70. The Local Authority submits that the risk to the children from the father, both of physical harm to them or their mother, and of emotional harm flowing from such physical harm, or from his involvement in their lives, cannot be kept within manageable limits whilst the children remain living with their mother. She is too easily influenced by the father to be able to keep him away from the family after the conclusion of these proceedings, when the spotlight will no longer be on her. Long term foster placement will protect the children by removing the chance of the father living with them or becoming more involved in their lives.
- 71. By the time of closing submissions, the mother accepted that the threshold was met at the relevant time due to the risk of harm to the children from the fact that the father was living with them or would have been living with them but for the intervention of the Local Authority. The mother maintains that the children should remain living with her. She is able, with appropriate adult services support, to look after them well enough. They have a close emotional bond with her. She now understands the necessity of keeping the father out of their lives, save for supervised contact as the court considers appropriate. She has engaged with professionals and has a support network. Criticisms of the mother are unfair and discriminatory because they take no account of her disabilities. The proposed foster placement is wholly unsatisfactory. In any event J will not accept it in which case the siblings will become separated. It will

be extremely detrimental to them to be separated from their mother and then from each other.

72. The father supports the mother's position. He seeks to persuade the court that he has reformed and will never again cause harm to his wife or children. Nevertheless, he accepts that he should keep away from the family now and would accept a court order to that effect if it was thought necessary.
73. J's position is that they should remain at home with their mother until they leave the family home for the purpose of their education. They oppose any form of statutory intervention for them as being unnecessary and disproportionate. G takes a similar view but accepts that a supervision order may be a proportionate response in their case. On behalf of H it is submitted that a care order with placement at home with their mother, would be appropriate. The Guardian supports either a supervision order or care order with placement at home with the mother for G, and a supervision order for J.

Discussion and Conclusions

74. At the outset of this judgment I identified five key matters that required determination, which I now address.

(i) Was the attack by the father on the mother in 2013 pre-meditated?

75. The father attacked the mother with a sharp metal implement. He says that he was carrying out building work in the basement of the house and that the sharp metal implement was in a toolbox there. He has told this court that the attack was not pre-meditated. I accept that it was not planned days ahead, but I reject his evidence that he did not think about what he was going to do in advance of attacking his wife. The father told the court that he was in such a disturbed state when he was shopping with the maternal uncle in the two hours or so prior to the attack, that the uncle ought not to have left him alone when they returned to the house. Although the father was unable to say what emotions he was feeling at the time, on his own account he was in an agitated state for some time before the assault, and during the time he returned to the house, went to the basement, picked up the sharp metal implement, went up two flights of stairs, and found the mother. He did not act spontaneously in the heat of the moment. He discussed his belief in his wife's infidelity with the maternal uncle, collected a weapon, went upstairs, found his wife, and attacked her. In any event, when benefiting from legal representation, the father agreed to a set of facts as the basis for his plea and sentence. It appears that, as a consequence, the charge of attempted murder against him was dropped, and a plea to aggravated assault was accepted by the prosecution. I do not have a copy of those agreed facts but the sentencing judge referred to them and observed that they showed that the attack was pre-meditated. The father benefited from that agreement by avoiding trial for attempted murder. It is of significant concern that he has not come to terms with what he did, that he now seeks to persuade this court that the attack was not pre-meditated. I am entirely satisfied that it was pre-meditated.

76. The apparent pretext for the attack is flimsy. The father's suspicions that his wife was having an affair were based on the most unremarkable behaviour, such as going to a late night supermarket. There is no evidence that he spoke to his wife about his suspicions. There was no argument or accusation. She had no opportunity to explain. Without any warning he attacked her with a sharp metal implement. This was not an act of stupidity, as he now explains it, but was an act of callous brutality. He could well have killed the mother and only stopped hitting her with the sharp metal implement when her uncle came into the room. And yet he tells this court in a statement that, "I never wished to harm my wife to the extent that I did..." Quite clearly he intended to cause her serious harm, administering multiple blows to her with a sharp metal implement.
77. It maybe thought to be naïve to accept that this violent outburst occurred as a huge, solitary wave in an otherwise calm sea. However, the evidence does not disclose any evidence of previous control, coercive behaviour or violence by the father against the mother. The father's prison worksheets do refer rather obliquely to his desire to exercise control, but for reasons already given the evidence is not reliable and in any event does not provide cogent evidence about their relationship. The family members, the contemporaneous reactions of those close to the couple as recorded in the records from Y, and the mother's own evidence, all point to a warm relationship prior to this terrible event. I accept that the warmth of the relationship may have existed because the mother was generally submissive to the father, but I have received no evidence to suggest that there was any conduct that might be considered to be domestic abuse prior to the explosive violence in April 2013.

(ii) The mother's intentions when she travelled with the children to England in 2019.

78. The mother had visited England in 2018 and had spent time with the father. She returned in 2019. Before she arrived, the father had told LM that the couple had reconciled. J had already come to England via a family wedding in Europe and had stayed for a week with the father in England. They are adamant that they viewed the trip as a holiday and fully expected to return to Y to resume their education there. That is also G's view. They travelled to England with their mother and H. The mother's account is that she too expected the trip to be a temporary one. As already noted, her account is that she wished for H to see the light/energy therapist but had to wait in England to make contact with him. Social services intervened before she managed to make contact and see him. In fact, H did see him in January 2020.
79. I have no evidence from the light/energy therapist confirming these matters. Whatever the authenticity of the light/energy therapist's services, it is clear that the mother holds him in high regard. Documentary evidence from Children's Services in Y confirms that the mother told them, in advance, of her flight to England with the younger two children, and that the purpose was to then connect with the light/energy therapist so that H could receive therapy. The Social Worker, also knew that J had spent a week in England with the father and he spoke with both J and the father about the time they had spent together. He recorded that there were insufficient concerns to prevent the mother from going with the children overseas. The mother's trip to England with G and H was not made covertly.

80. Nevertheless, the mother did not have to stay with the father on arrival in England, or when waiting to hear from the light/energy therapist, but the fact is that she chose to do so. The uncontested evidence was that she shared a hotel room with the father on the night of her arrival. Within two weeks or so they were living together with the three children in a two bedroom flat. The records from Y show contact between the Y social worker LM and J on 27 September 2019 in which they informed him that they were “going to live with their parents. Parents’ plan was for J and mother to come back to Y to take care of loose ends and then they would move permanently back to England.” Both the mother and father told Y Social Services that they had reconciled in 2018. They apparently had not told the children. J and G wanted to come back to Y and live with their grandmother.
81. In his statement of 29 June 2020, the father says that it was his and the mother’s intention to reunite in England. He says at paragraph 6 [C98] that “before my family joined me in the UK, I received a call from a Social Worker in Y called LM. In this conversation we discussed the family coming to join me and it is clear the Y Authorities were aware of the developments. LM did not have significant concerns about the family reuniting and this made me feel secure that my wife and I were making the right decision for the sake of the family.” The notes made by LM [Y bundle at 2340] do record a conversation with the father on 13 September 2019, before the mother left Y, in which the father said that they “wish to live together if possible. And rebuild their life. [the mother] is coming soon. Just a focus ... a plan for small child H. They have a problem ... they cannot read or write alphabet. She has a plan to bring her to England to a doctor.” LM apparently asked whether the mother was going with the children for a visit or to rebuild their life, and the father is noted to have replied, “This time it is just for a visit. They will sit down and talk about what they want to do in the future though.” He gave LM an address of a friend’s house at which the family would be staying in England.
82. LM contacted the NSPCC on 18 October 2019 after he had made several failed attempts to speak with the parents about what was happening in England, and after several communications from J and G, expressing frustration about the fact that their parents were apparently choosing to stay in England against their wishes.
83. It is possible that the father and mother were both trying to pull the wool over LM’S eyes and that there was never any intention for the mother to return with the children to Y. It is also possible that the father and mother may have wished for different outcomes from the trip to England. However, it is sufficiently clear from the records made by LM in Y, and I find, that both parents planned that the mother and children would have a fairly substantial stay in England, that one purpose of the visit was for H to receive therapy from the light/energy therapist, but that another purpose was to spend time together again as a family, with a view to making that a permanent arrangement at some point in the future. The father secured a two bed flat for himself and the whole family. They did not discuss the plan with the children. Had it not been for the visit of social services at the end of October 2019, it is likely that the family would have continued to live together in the flat for at least some weeks or months. The mother continued to pay rent on her home in Y and, on balance, I accept her evidence that she intended to return there after the trip to Europe. She did not buy return flights because she did not know when the therapy would end. However, the parents clearly did look forward to a permanent reuniting of the family in England at

some point, and they did not include the children in their plans to spend substantial time together as a family, and to disrupt their education by staying in England for a prolonged period, with a view to permanent relocation.

(iii) The risk of future harm to the children from their father.

84. There is no evidence that the father has caused any physical harm to his children. The harm he has caused them is emotional and psychological harm by attacking their mother and causing her severe, lifelong injuries. This harm was aggravated by the fact that they were in the house at the time. As a result of his actions the children were suddenly without either parent able to care for them. Their mother has permanent visual and cognitive impairments – with significant consequences for the children’s upbringing. In addition, they effectively lost their father on the night of the attack. To that extent there is ongoing harm to the children. However, the most significant risk to consider is that which would arise if the family were to reunite and the father were to live with the mother again, or at least have substantial contact with her and the children. Dr Parsons’ persuasive opinion was that there is a real continuing risk that the father might violently assault a member of his family or someone else close to him in the future. Further, his closer involvement in the children’s lives represents a “significant risk” of immediate emotional harm to them. No risk of violence towards a stranger has been identified.
85. The father’s assault on the mother in 2013 came from nowhere so far as the mother was concerned. One of the mother’s friends from her support network who gave evidence convincingly told the court that the father was a mild-mannered, quiet man who everyone had considered was non-violent. The police documents from Y show that the immediate reaction of relatives after the assault had been the same – there had been no previous abuse or violence within the relationship. However, he acted with explosive and uncontrolled violence in April 2013 and it would be naïve now to regard him as a non-violent person, particularly in the absence of compelling evidence of self-awareness as to why he acted as he did. He has proved himself capable of extreme brutality towards someone close to him. Nor did it take very much to provoke him to extreme violence. Even from the father’s own account, his anger was wholly disproportionate to the circumstances as he perceived them to be. His perceptions were distorted and even now he shows little to no empathy towards those harmed by his actions. It is difficult therefore ever to rule out a repeat of such behaviour. His violence sprang from nowhere and it could spring from nowhere again were he in a close relationship with the family. His behaviour did not significantly change in the days before the attack and no-one had any grounds to believe he would act as he did. So, there must be a risk that if he felt the same way again, no-one would be able to see the violent outburst that was coming. The father is clearly a continuing danger to his wife. Dr Parsons’ opinion accords with all the other evidence in this case: there is a low but real risk that if the father were to reunite with the mother, then he could perpetrate serious violence against her again.
86. If the father were to attack the mother again then clearly the consequences for her could be catastrophic, but they would also be very significant for the children. Severe

emotional and psychological harm to them would follow from any repeat of events in 2013, or, given the history, an assault on the mother of any kind.

87. Although he has never been physically violent to the children, he has not lived with them or had direct contact with them, save for a few weeks in 2019, over the past eight years. Were he to have closer involvement with his children and were he to be challenged by them in any way, there is a risk that his distorted views might provoke him to anger and violence.
88. Aside from the risk to the children from the impact of further physical violence by the father, there is a risk of emotional harm to them from any greater involvement of the father in their lives, especially were he to live with them again. Dr Parsons identifies this as a significant risk of immediate harm. The father's lack of empathy for the children is exemplified by his decision, together with the mother, that he should stay with G and H in a hotel immediately on their arrival in England in 2019, and then, shortly afterwards, move the family into the two bedroom flat shortly afterwards. G, for example, had been five years old when the father had hugged them having brutally attacked the mother, and was taken away by the police. On arriving in England six and a half years later, G had not seen their father in person since that night in 2013. Without any apparent thought for their feelings, the father made arrangements for them to live with him again. The fact that G, or the other children, might have deep and troubled emotions about him and their relationship with him, about their safety and their mother's safety, and about numerous other aspects of the family dynamics, did not stop him. Whereas I discerned the mother now to understand the harm and the potential for further harm that this caused the children, I did not discern any similar depth of understanding on the part of the father. I accept Dr Parsons' view that the father lacks empathy for his children and that his greater involvement in their lives would present a significant risk of causing them immediate emotional harm.

(iv) The ability of the mother to protect the children from the risk of harm from their father.

89. The mother has visual and cognitive impairment. She is undoubtedly a disabled person within the meaning of the Equality Act 2010. All the evidence suggests that if the mother's ability to care her children is impaired, it is due to her disabilities, and not related to any malice or wilful neglect on her part. In relation to her ability to protect them against the risks that arise from their father, the picture is a little more complex. Many comments have been made by those assessing the mother that she does not understand or appreciate the severity of the harm caused to her by the father. She has observed on at least one occasion that he is the only person who has not hurt her. She also came to the United Kingdom and chose to live with the children in a flat in the town of Z. Having carefully considered the evidence in this case, it seems to me that there are a number of reasons for the mother's difficulty in accepting that she is at risk from the father:
- i. The evidence suggests that the mother's experience of the father prior to the attack was positive. She saw him as someone she could rely upon and they appear to have had a warm relationship.

- ii. There are strong cultural influences and expectations that she must not divorce him and that they should remain together.
 - iii. There was no hostility in the build up to the attack. It came out of nowhere from her point of view.
 - iv. She has no memory of the attack or of the immediate aftermath.
 - v. She has difficult relationships within her own family. She was beaten as a child and she has had a stormy time with her own mother and brother since 2013. By comparison, in ten years of marriage prior to the attack her husband had been a support to her, and, I accept, there is no evidence that he had hurt her.
 - vi. Her contact with the father since 2013, limited though it has been, appears to her to have been positive from her point of view.
 - vii. The mother's brain damage impairs her ability to process the events that occurred.
 - viii. The mother has felt dependent on the father, possibly due to the nature of their relationship in the past, and possibly also due to her impairments.
90. For these reasons the mother has struggled fully to appreciate the risk that the father poses to her and to the children. It is troubling that she reconciled with the father in 2018, that she allowed J to stay with him in 2019, that she later brought the younger two children to England in 2019 and readily reunited with the father and started living with him again, and that she did so without including the children in that decision. I note that the social work records from Y show that when the social services in England intervened on 29 October 2019, whilst the father was calm and co-operative, the mother was said to be "hysterical" and pleading with them to allow the father to stay. Her actions and mindset in September to December 2019 demonstrate that at that time she did not think that there was any risk from the father, she did not adequately consider the risk of emotional harm to the children from re-uniting so suddenly with the father, and she was not able to protect the children from harm stemming from the father's return into their lives.
91. However, since Children's Services have become involved with the family at the end of October 2019, the father has stayed away from the family home. The evidence establishes that the mother has had some contact with the father, for example by telephone, but there is no evidence to show that he has spent time in the family home or with the children other than as allowed by the Local Authority. I also take into account the evidence of the witnesses from the mother's support network. They impressed me as caring, thoughtful and properly informed women who understood the importance of supporting the mother to keep the father out of the family's daily lives, and to manage her children as effectively as possible. The mother has shown herself able, with professional help alongside such informal support from friends and family, to play her part in managing the risk that the father poses to the children. She has not undermined the agreement for the father to stay away. I have no evidence that she has met him on the sly and I accept her evidence that she has not done so. She has therefore played her part in protecting herself and the children from the father since October 2019. The question is whether she is able to continue to protect the children from the risk of harm from the father in the future.
92. The mother told the court that she had no intention of living with the father, that she would honour any direction that he should not enter the family home, and that she

understood that it was not in the children's interests for him to live with them or to have more than limited, supervised contact with them. The history of the case gives reason to treat her assertions with caution. Not only did she decide to bring the family together in September 2019, but even as late as August 2020 the mother informed the court that she and the father were in a relationship together. Why should the court believe the mother now when she says she will have nothing more to do with the father other than to inform him of major issues in the children's lives and to allow supervised contact?

93. I have little doubt that the main trigger for the mother's change of heart has been the threat of her children being taken away from her to be placed in long term foster care. The Local Authority's proposals for foster care have had a salutary effect on the mother. However, even if that threat is removed, I believe that the mother will continue to understand that her choice is whether to prioritise her children or her husband, and that she will always choose the former. The mother appears to have genuine faith in the views of professionals and respect for the court. She understood the social worker LM as having permitted her to go to England and stay with the father – reading his notes I understand why she believed that. She has worked well with the allocated social worker. And she has paid a lot of attention to Dr Parsons' views about the risk to the children posed by the father. I have no doubt that she has listened attentively to the advice of her legal representatives. Professional advice and then the threat of foster care for her children, which the Local Authority raised in January 2021, have combined to bring home to her the choice she has to make – her husband or her children. She recognises that she cannot choose to live with both, she has to choose one or the other. Once that stark choice became evident to her she had no doubts – she will put her children first.
94. The mother will receive support from a network of family and friends to ensure that she keeps the father separate from her and the children. Adult services will be visiting her to help her on an almost daily basis. J and G would not tolerate their father being in the family home. The mother knows that there is no second chance and that if the father did move into the family home, this would quickly become known to the Local Authority with the consequence that her children might be removed from her care.
95. The risk of the father causing physical harm to the mother or children is low but real but the risk arises if he is living with or in close contact with the family. For so long as he is not living with them and has a very limited involvement in their lives, that risk will be significantly reduced. The mother's actions in 2019 in collaborating with the father to bring the family together in England, exposed the children to a risk of harm. She ought not to have put herself or the children in that position. However, I accept that the mother has genuinely listened to advice and she has realised that if the children are to continue to live with her, she must keep apart from her husband. I am satisfied that she now understands the necessity of keeping the father distant from the family and, with support, she will be able to ensure that that distance is maintained, and the risk to her and the children kept effectively managed.

(v) *The mother's care of her children*

96. The parenting assessor concluded that the mother was unable to give “good enough” care to all of her children, emotionally or practically. Although her assessment report was written in December 2020, the Local Authority’s threshold document, dated 21 January 2021, relies only on the risk posed by the father, and the mother’s inability to protect the children from that risk. Concerns about the mother’s ability to provide practical and emotional care to her children were not considered to be sufficiently significant to be included as a ground for claiming that the threshold for a care or supervision order was met. In relation to J and G, that is not surprising. Obviously, they have been adversely affected by their father’s attack on their mother – in a moment they lost both parents’ care. Even when their mother had recovered sufficiently to care for them again, she was cognitively and visually impaired and could not offer them the same level of practical and emotional care as she had previously been able to offer. Nevertheless, by the time social services intervened in England in October 2019, J and G had been brought up by their mother for over six years after the attack. There was no evidence of physical, emotional or other harm to them. Their development was as should be expected. They were angry for having been removed from Y, and rightly there were concerns about the risk to the children presented by the father and their close proximity to him but, in relation to their day to day care and their emotional, social and educational development, their mother had, in the face of great difficulties, been a “good enough” parent to them.
97. The Local Authority’s final threshold does not refer to the mother’s ability to provide ‘good enough’ care for H, given H’s particular needs, the additional demands they place on the mother, and the effects of the mother’s impairments on her ability to meet those needs. Nevertheless, I need to consider these matters in relation to welfare. The evidence gives rise to a number of concerns in this regard:
- i. H is likely to be formally assessed as having special educational needs. They are far behind the educational milestones for reading, writing and arithmetic, that they should be attaining.
 - ii. The mother is unable, due to her own impairments, to assist H with reading and writing. The mother told me that she cannot read H’s schoolwork, and she cannot read books to them.
 - iii. The mother’s brain damage limits her ability to plan and organise her time, causing H to be repeatedly late for school before the Local Authority intervened with the provision of a taxi service.
 - iv. The mother’s reliance on the light/energy therapist. It is not for me to comment on the light/energy therapist’s qualifications or effectiveness, save to remark that a competent healthcare professional would be unlikely to offer to heal shoulder joints, eyesight, and learning difficulties with the use of energy, even, during the pandemic, by transmitting energy via a photograph of the “patient”.
98. On the other hand, the evidence establishes that the mother can adequately look after H’s practical needs in terms of clothing, hygiene, and nutrition. She also appears to have a good emotional bond with H. They love each other very much. It also appears that under the care of their mother, perhaps due to the support offered by the Local Authority, H has made some progress – the allocated social worker described their progress with social interaction as being “absolutely remarkable”, the most recent PEP suggests that their educational progress has been more gradual. H will shortly

have an Education, Health and Care Plan that will identify the support they need. Nevertheless, the mother's impairments do mean that she is not able, without help, fully to meet H's particular educational needs.

Threshold

99. The parties agree that the relevant date for the threshold is 11 December 2019 when the Local Authority applied for a care order. Arguably, the date of the Local Authority's first intervention, 29 October 2019, when they secured the agreement of the father to leave the then family home, is the relevant date. At either date, the children had only relatively recently arrived in England. J and G were unhappy to be in England, had been removed from their daily lives and relationships in Y without prior planning, had not been asked about spending so much time here or about living with their father, and had both expressed a wish to return to Y which their parents appeared to be disregarding. H was selectively mute. Concerns were raised that they could not read or write. The mother had suffered a severe head injury and there were well-founded concerns about her decision-making and ability to protect herself from physical harm from the father, and the children from emotional harm. All three children were or had recently been living with the father who had so seriously injured their mother, whilst they were in the house, in 2013. He had agreed to leave the flat on 29 October 2019 but in the absence of a care order there were good reasons to believe that the mother and father would reunite under one roof once again, as they had so recently chosen to do. The children were living in very unstable and disorientating circumstances: in a country in which they did not want to live, with their violent father very much back in their lives, and under the care of a mother who had not taken proper steps to prepare them for the enormous changes happening to them.
100. In the absence of a care order there was a real risk that the mother would have resided, once again, with the father. Accepting Dr Parsons' evidence, I am sure that the father presented an ongoing and significant risk of immediate emotional harm to the children. He also presented a low but real risk of physical harm to their mother and to them. The consequences, if the risk of physical harm had materialised, would have been catastrophic, not only in terms of physical consequences to the victim but also in terms of the emotional harm to the rest of the family. The mother was not, at that stage, acting adequately to protect the children from such harm. She had taken steps by bringing them to the UK and then moving in with the father, even if that was intended as a temporary arrangement, that exposed them to these significant risks of harm.
101. Hence at the relevant time the children were each likely to suffer significant harm and the likelihood was attributable to the care likely to be given to each child if the order were not made, not being what it would be reasonable to expect a parent to give to them. By the time of closing submissions, no party argued that the threshold was not met on those grounds.

Welfare

102. The Guardian's most recent analysis includes a useful review of the available options in this case [SE21]. In principle, they are continuation of placement of the children with the mother, kinship care, long-term fostering, special guardianship, or a child arrangements order for the children to live with their mother with orders for contact with the father. However, kinship care and special guardianship are not options in this case because no family member or friends have put themselves forward as potential long term carers. The only realistic options are therefore that the children continue to live with the mother under a care order, supervision order, or subject only to a child arrangements order, or that they are placed under a care order in long term foster care. I have to consider the options by reference to the welfare checklist in relation to each child and keeping within the legal framework set out earlier in this judgment. Each child's welfare is paramount.

The Children's Wishes and Feelings

103. The wishes and feelings of all three children are reasonably clear. It is understandable that J's wishes and feelings have changed over the past few months, and that G's have too. Firstly, as time has passed they have become more integrated into life in England, in particular in their school. Secondly, they have learned more information about what a return to Y would entail for them. As they have been given more information, their views have evolved. All three children strongly wish to avoid going into foster care. The evidence to this court is that placement in long term foster care would be devastating to these children, and that is how the children themselves see it. They wish to stay with their mother, albeit that J does not like living in England and wishes, at an appropriate point, to return to Y. The children wish not to be separated from each other. J is at an age where they are contemplating leaving home to pursue further education. Their wish to return to Y might also lead, in time, to separation of the siblings. In one sense this would be a natural development in a family: that the eldest child will leave home as they begin further education and their first steps to an independent adult life. The wishes and feelings of the older two siblings are strongly held, H's less forcibly expressed. I take into account the ages of the children when considering the weight to be given to their wishes and feelings.

Physical, Emotional and Educational Needs

104. These three children need to be kept physically safe and they need stability and support to meet their emotional needs. J is a very independent young person, G is doing well at school. H has significant educational needs and requires ongoing intensive support in their education. The children have thrived once stability has been achieved here in England since the summer of 2020. They moved into suitable accommodation, they have had a stable home life, and they have been engaged in consistent educational provision. H will soon have an Educational Health and Care Plan which will assist them to receive the support they need.

Effect of Change

105. I have no doubt that removing H from their mother's care would cause them significant emotional harm, and risk reversing the progress they have made with their education over the past few months. The expert advice to this court was that removal from the mother would be "devastating" to all the children. J might be the most robust in dealing with such a change, but I accept that the change would be devastating to them. I do not believe that they would accept long term fostering and it is likely that they would remain with their mother. In those circumstances they would be divided from their siblings, assuming G was compliant with a foster placement, which would be traumatic for them as well as to the other children. The impact of a change to foster care would also be devastating for G.

Age, Sex and Background

106. J is only a few months away from their seventeenth birthday. They will complete their school education in just over two years and are looking to leave home to go to university. G is thirteen and at a time of their development when they are particularly likely to want advice and guidance from their mother. H has a particularly close emotional bond to their mother. The background of all three children was in Y. J and G have wanted to return to their home country for most of the duration of these proceedings, but they are more settled in England now, they want to remain together as siblings and with their mother, and in my judgement J will see out their education in England before considering their options for higher education in Y as well as here. The children' background in Y after the attack in 2013 was disrupted by several changes of home and location. The stability they have had more recently has been beneficial to them. The children have a religious and cultural background and the proposed foster carer is, I am told, a religious but not cultural match. At present, and certainly once the Covid-19 restrictions are lifted, they are surrounded by a support network that shares their backgrounds.

Risk of Harm

107. The children have not suffered physical harm in the past, but they have suffered emotional harm due to their father's attack on their mother, and they are at risk of suffering harm in the future were he to have any greater involvement in their lives. I have already addressed the ongoing risk of harm from the father. I consider there would be a low but real risk of physical violence against the mother and children should he live with the family again. There is the risk of physical violence perpetrated against the mother, which would be likely to cause the children emotional harm. There is the risk of physical violence perpetrated by him against one or more of the children, which would cause physical harm to the child assaulted, and emotional harm to their siblings. Were such risks to materialise, the consequences would be very severe for the children. It is difficult ever to envisage the risk of harm from the father ever disappearing. In this case the risks of harm have to be balanced. However, the evidence, and in particular the opinion evidence of Dr Parsons, shows that the father is likely to comply with court orders to keep away from the family home. Whilst he is not living with the family, the risk of his committing a further violent attack on the mother or a child, is significantly reduced to a manageable level. If he were to live with the family, then the risk would be a real and continuing one.

108. Were the children to live with a long term foster carer, then the mother would be living alone. In my judgement, one of the incentives for her to abide by agreements or orders for the father not to enter the family home, has been her desire to continue to care for her children. With that incentive removed, the risk of her allowing the father into her home would increase, and so would the risk that he would commit another violent act against her, with consequential emotional harm to the children. It would not require the children to be present in the home at the time of any future violent assault by the father on the mother, for them to suffer emotional harm by reason of such an assault. Indeed, they might suffer greater emotional harm following any future assault on their mother, if they had been removed from her care and into foster care. They might well also experience great anxiety knowing that the mother was alone and vulnerable to the father. Long term foster care would remove the children from the family home, and therefore serve to protect them against physical violence against them by the father, but it would not protect them against emotional harm consequent upon any future attack on their mother, indeed the risks of that happening would, if anything, be higher were the children to be removed from the family home and the care of their mother.

Capability of Parents

109. The mother generally meets the children's emotional needs and the children have a loving bond with her. Unsurprisingly she has some clashes with her teenage children, and she helped to cause upset to J and G by her actions in bringing the family together in England in 2019. The parenting assessor concludes that the mother is not able to care for the children on her own without the support from another adult. The parenting assessor reported that the mother struggles with basic care needs, providing stability, setting boundaries to the children, establishing consistent daily routines and ensuring that the children's emotional needs are considered. I am sure that the mother does struggle in those respects: she has had a very difficult eight years since being brutally attacked by her husband, but, against the odds, she does meet her children's basic needs. The house is clean, the children are healthy, the elder two are doing well at school. I am satisfied that the mother manages to meet the children's physical needs, and provided that they can be kept safe from risk stemming from their father, I have no doubt that the mother will be able to meet their physical and emotional needs in the future if the children were to remain in her care. I note the Adult Services plan. I assess the mother's capabilities in the context of the support she will and ought to receive as a result of her own impairments. The proposed help will support her to be a capable mother to her children. The mother's impairments do impede her ability to help the children with their education. J has taken those matters into their own hands. They are keen to investigate their educational options and have shown some maturity in that respect. They are excelling at school. G is progressing well at school and their educational needs are being met and are likely to be met in the future were they to live at home with their mother. H has significant educational challenges and their mother is unable to help them as well as she would have been but for her injuries and ongoing impairments. However, H is making some progress, there will be ongoing intensive support for them from publicly funded services, and the evidence shows that there would be a significant risk that their education progress would be reversed by the emotional upheaval of being separated from their mother.

110. Due to the risk he presents to them, there is no question of the father being permitted to meet the day to day needs of the children. He is not capable of meeting their emotional needs, for the reasons set out earlier. For the foreseeable future, no long term arrangement in the children's interests would involve the father having more involvement in their lives than he has presently, whilst they are children.
111. The mother is now capable of protecting the children from the father. She has been on a long road of recovery from her severe injuries and she has learned from the involvement of professionals in her case, particularly over the last six to nine months. I am satisfied that she understands the need to keep the father away from the family home and at a distance from her children's lives as well as her own.

The Range of Available Powers

112. A suitable court order prohibiting the father from threatening or using violence against the mother and children and restricting him from coming to the family home would offer a substantial measure of protection for the children. The parents have been compliant to date with the agreement that the father should not go to the family home. I acknowledge the risk that once these proceedings are over, the level of scrutiny and monitoring may diminish, and the risk of the mother agreeing to the father becoming more involved in the children's lives might increase. However, my assessment of the mother is that she will abide by any court orders and that she is now committed to putting her children's needs above those of her husband. The father too is anxious to prove that he has changed and he can demonstrate that by abiding strictly by court orders designed to manage and minimise the risk that he presents to his family. He and the mother would be very likely to comply with an order restricting his contact with the children and preventing him from living with the mother whilst she has care of the children. The time the children spend with the father can also be subject to an order to continue with supervised, indirect contact only. The father has parental responsibility in relation to each child. The Court has the power to make Prohibited Steps Orders to restrict the father's exercise of parental responsibility and thereby his involvement with the family, so as to reduce risk further.

Conclusions on Welfare

113. The option of long term fostering has to be considered in the light of the identified foster carer. The Local Authority has been able to identify only one suitable carer. She is 28 years old and currently lives alone and works full time. Her current house would not be suitable for the three children. She would stop working for a period of time after the transition of the children to her care. She plans to move to a house with her sister who is also an approved foster carer. I am reassured by the assessment that the proposed foster carer is committed and capable, however she has not looked after three siblings previously, and the challenges of managing three children aged from 10 to nearly 17, who do not want to be in foster care, the youngest of whom has educational needs, and with the background that these siblings have, would be considerable. The carer's ability to provide good enough care for these children is contingent on her stopping work, moving home, and receiving help from

her sister. The carer is young herself, only 12 years older than J, and I have concerns about the longer term stability of the proposed placement.

114. The Guardian acknowledged that the Local Authority's transition plans for the children were well thought out, but it is not realistic that J would agree to any transition to long term foster care.
115. I give significant weight to the views of J and G who are old enough and mature enough to see the bigger picture, to understand risk and benefit, and to come to a considered view. They are very clear that they do not want to go into long term foster care.
116. Removing the children, or any of them, to long term foster care would cause them immediate emotional harm, and probable harm to H's educational development. It might reduce, but would not remove, the risk of direct physical harm to them from their father. It would, if anything, increase the risk of emotional harm to them caused by a further assault by him on their mother. It would be likely to lead to immediate sibling separation which would be detrimental to each of them, in particular, because of their ages, H and G.
117. The central concern in this case is the risk of harm to the children from the father committing a further violent assault, or from his becoming more involved in their lives. Were he to live with the mother and children that risk would be low but real. The consequences for the children were the father to commit a further assault on their mother or on one of them would be potentially catastrophic. In my judgement the risk can be managed and kept to a minimal level by the children remaining with their mother but with court orders to restrict the father from being in the family home. This protective measure can be supported by the assistance of the support network. The mother will also have the assistance of adult services and that will add a layer of protection from any risk that the father might move back into the family home. In any event, I am satisfied that the mother can now be trusted to keep the father away from the family home. Her very strong motivation for keeping the father at arm's length is that she knows that she has to do that to keep her children in her care. I am also satisfied that the father will abide by an order to that effect. He has done to date, he has assured this court with apparent sincerity that he will continue to do so, and his long term interest is served by complying with the court's requirements.
118. The mother needs assistance due to her impairments. H needs intensive input because of their educational needs. However, with assistance through Adult Services, Children's Services, and an Educational Health Care Plan, the mother is capable of meeting the needs of the three children. J and G are healthy, intelligent children who are doing well at school. Were it not for the risk from the father, and concerns about the mother's ability to protect them from him, I would have no substantial concerns about the mother's ability to care for them. The suggestion that the mother is unable satisfactorily to meet their needs and that she is not a "good enough" parent to them is, in my judgement, unreasonable. In the absence of the risk presented by their father, long term foster care would surely not have even been contemplated for J and G. H has particular needs and the mother's impairments limit her ability to meet those needs. However, she is able to meet their emotional and physical needs – it is their educational needs where the concern lies. On balance I am satisfied that with

appropriate services and support, The mother is capable of meeting H's needs whilst they remain at home.

119. I am sure that removing these children to long term foster care would be contrary to their welfare and that their welfare is best protected and promoted by their remaining in the care of their mother. At the invitation of the representatives for the children and mother I announced that decision at the conclusion of the hearing, reserving my reasons to this written judgment. Following that announcement, the Local Authority has provided new Care Plans based on the children remaining with the mother in which they propose 12 month Supervision Orders for each child.

120. Having regard to their respective ages, needs and circumstances, and the mother's abilities to meet their needs whilst they live with her, it seems to me that the realistic options for intervention whilst each child is at home are as follows:

- i. For J, a Supervision Order or no order other than a child arrangements order. I do not believe that a Care Order in their case would be practical, proportionate, or in their interests, given their age and character.
- ii. For G and H, a Supervision Order or a Care Order.

121. The new Care Plans now served by the Local Authority are detailed and helpful. The mother will continue to benefit from support from Adult Services including weekday morning assistance to help with the early morning routine, five hours a week assistance with shopping, bills etc., one hour a week to help with correspondence, and a taxi service to take H to school and to bring them back again (pending any other service provided in the light of the forthcoming EHCP for H). The mother will continue with therapy with Every Step Matters and will be offered re-referral to the local Association for the Blind and support for her parenting through the Early Intervention Scheme. The mother has agreed to engage with the Sensory Team to assess what further assistance they may offer including input from an Occupational Therapist. Work is proposed with the father akin to an offenders' rehabilitation programme. H will benefit from provision in line with their EHCP. An allocated social worker will be in place for the children and an allocated social worker from the Adult Team for the mother. There will be six weekly reviews through the Child in Need procedures. Support for parenting from the support network referred to earlier in this judgment will be available. I observe that a formal agreement with members of the support network might serve to formalise their involvement in supporting the mother and children, in particular in relation to reporting concerns or other matters to the Local Authority.

122. The Care Plans propose remote contact with the father for 45 minutes each month, if the children choose to engage, to be supervised by a family member.

123. A Supervision Order does not give the Local Authority parental responsibility. It is less restrictive than a Care Order and its essence is to be advise, assist and befriend the child. It does not endure for the whole of the child's childhood, but lasts up to 12 months, with the power for the court to extend it for a total of up to three years.

124. I am satisfied that it is in J's best interests to be subject to a Supervision Order for 12 months. I believe it to be in their interests to remain with their mother and siblings at home during that period and to continue with their studies in England. J will benefit from support under the order. There would be a small additional risk of harm to J in the absence of a Supervision Order. The package of measures including a Supervision Order and orders preventing the father from being in the family home, will offer sufficient protection from risk, and the additional restrictions that a Care Order would bring would be disproportionate and unnecessary.

125. In respect of G and, in particular in respect of H, I have considered carefully whether a Care Order should be made but with them remaining with their mother at home. The Guardian proposes a Care Order for H and invites the Court to consider one for G. I note the recent publication from the Public Law Working Group, *Best Practice Guidance: The Application and Case Management*, March 2021. From paragraph 33 onwards, the guidance states that there should be "exceptional reasons" for a court to make a care order on the basis of a plan for the child to remain in the care of her parents or carers.

"If the making of a care order is intended to be used as a vehicle for the provision of support and services, that is wrong. The means/route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order which may be an appropriate order to support the reunification of the family.

The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers or some lesser legal order and regime is required.

It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers."

126. I alerted Counsel to the Guardian to this Guidance but the Guardian maintains her position that H, and possibly G, should be made subjects of Care Orders but with placement at home with their mother. On exploring her position with the Guardian, it was clear to me that her main reason for advocating a Care Order over a Supervision Order was not because of the powers it gave the Local Authority to remove the children if needed, nor because the Local Authority would share parental responsibility, it was that a Care Order would last longer than a Supervision Order. A Care Order for H could last a further eight years, whereas a Supervision Order (although it can be later extended to a combined total of three years) is for 12 months only.

127. I understand the Guardian's concern but in my judgement there are no exceptional circumstances justifying a Care Order for H and G in this case. I bear in

mind the family's Article 8 rights, in particular those of the mother, and that a Care Order can only be justified if it is necessary and proportionate to the risk of harm. In this case the risk of harm which a Care Order, or Supervision Order, is being directed to is the risk that comes from the father. I am satisfied that orders to keep the father away from the family home are sufficient to reduce the risk of harm to a minimal level. Such orders can be in place until H and G are 18. I have found that the mother and father are likely to abide by such orders. The purpose of a Supervision Order would be to support each child so as to help enhance the stability of this family and embed and secure the continuing progress that each child is making. It will also serve to help the mother to protect them from risk, with a view to her being able to continue in that role after the end of the Order. If continuation of the Supervision Order is required to meet and manage ongoing risk from the father then extensions can be sought, potentially until H is 13 and G 16. A Supervision Order for each child is sufficient and proportionate. A Care Order is not necessary and would be disproportionate to the risk in my judgement. The Court should impose the least restrictive order that is sufficient to meet the risk. A Supervision Order for each of H and G will do that.

128. I conclude that it is in the best interests of each of the three children that I make Supervision Orders for 12 months in accordance with the new Care Plans submitted by the Local Authority. This option best serves the children's welfare. The mother is able to protect them from harm from their father, particularly as she will be supported by suitable orders to keep him away from the family home. Supervision Orders will help to protect the children and to keep them with their mother when separation from her, and potentially from each other, would be so harmful to them.
129. I will hear any submissions in respect to the details of the order of this Court. I have not heard submissions in relation to the new Care Plans but, subject to any points of detail, I endorse them. Subject to any contrary submissions, I shall make an order that the children shall live with the mother with no contact with the father except for supervised, indirect contact for 45 minutes per month, with supervision, if the children choose to engage. The father can also send cards and gifts to each child on their birthday, to be sent via a named member of the support network.
130. The existence of a Supervision Order should not prevent J visiting Y this summer in the school holidays if they so wish and if travel restrictions allow. I have every confidence that they will return and they should be free to travel to see family and friends.
131. I have already indicated that in my judgement orders are necessary to prevent the father from living with the family and from entering the family home. Orders are required to protect both the mother and children from the risk of harm from the father that would arise from his life becoming more proximate to their lives. Intervention in the form of an order to control the father's behaviour is required. The father has indicated he would accept and abide by such an order. I shall hear submissions on the merits and terms of Prohibited Steps Orders to restrict the father's exercise of parental responsibility for example in relation to decisions about the children's health and education, so as to limit his involvement with the family. A Prohibited Steps Order

cannot be granted to forbid a child's parents from having contact with each other – *Croydon London Borough Council v A (No. 1)* [1992] 2 FLR 341 FD - and is not suitable to restrain assault or molestation. The father's behaviour to date has not been characterised by harassment or molestation, but he has committed an act of brutal violence against the mother with the children in the home. He does not make overt threats of violence, but the risk of violence is real as explained in this judgment. An appropriately worded non-molestation order can serve to prevent the father from using or threatening violence against the mother and the children, and from coming within a specified zone within which the family home is located. I shall hear submissions on the precise wording of the order, since although he knows that the family live in the town of Z, the family's address may not be known to the father. The order should last until the youngest child is 18.

132. The father can best make amends for his terrible actions in April 2013 by leaving his wife and children alone. Even so, limited contact will serve to keep the children aware of their father and gives him some opportunity to rebuild trust so that, in adulthood, the children may choose to have closer contact with him. His best hope for that happening is if he abides by the orders I make to keep away from them and the mother whilst they are children.
133. The mother should know that she has gained admiration for the way she has recovered from the attack and her injuries. She made a bad mistake in reconciling with the father and bringing him together with the children in England in 2019. She has persuaded this court that she has learned to prioritise the needs of her children over her relationship with their father, and that she understands that she must keep distant from the father whilst the children are in her care. If she fails to live up to that expectation she will be at risk of losing her children. She has shown great resilience in very difficult circumstances and I expect her to continue to work with support services to improve the lives of her children.
134. The children are at the centre of this court's judgment. It was a pleasure to speak to J and to learn about G and H too. Their wish to remain with their mother is supported by the court. The Local Authority became involved in their lives and the court made interim care orders because they needed protection. There is no criticism of the Local Authority for its actions in 2019. The fact that their father was living with them put them at significant risk because of what he had done to their mother in 2013. The Local Authority's concern for their safety has led it to ask this court to place the children in long term foster care. That is not necessary to protect them, and it would not serve their best interests which are to stay with their mother, and with each other. The court knows that J and G would have preferred not to be living in England. They will have choices to make as they reach adulthood, but their best interests lie now with staying together with H and their mother in the town of Z. I wish them all well.