Neutral Citation Number: [2021] EWHC 1409 (Fam)

Case No: WV17C00664, WV18C00394 and WV20C00030

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/05/2021

Before :

THE PRESIDENT OF THE FAMILY DIVISION

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Re K (Children)

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Mr Stefano Nuvoloni QC and **Ms Laura O'Malley** (instructed by **Sandwell Childrens Trust**) for the **Applicant Local Authority**
Mr Nkumbe Ekaney QC and **Ms Wendy Frempong** (instructed by **Living Springs Solicitors**) for the **Respondent Mother**
Mrs Kemi Ojutiku (instructed by **Mould Haruna Solicitors**) for the **Respondent Father**
Mr Richard Hadley and **Ms Kathryn Taylor** (instructed by **Anthony Collins Solicitors**) for the **Children's Guardian**

Hearing dates: 4th, 5th, 6th, 7th and 10th May 2021

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Approved Judgment

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

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THE PRESIDENT OF THE FAMILY DIVISION

SIR ANDREW MCFARLANE P :

1. This judgment is given at the conclusion of a rehearing with respect to applications for care orders and placement for adoption orders relating to three children. The children are R, a boy now aged 4 years, J, a boy who will shortly be 3 years and Q, a girl aged 1. The proceedings, which started as long ago as December 2017, at a time when R was the only child, have been protracted and extensive as a result of the unrelenting efforts of the parents to avoid engagement with the local authority and with the court, and to conceal the birth of their subsequent children.

2. On 29 March 2019, following a six day hearing, Keehan J handed down a judgment determining a number of important factual issues ('the fact-finding judgment'). There followed an extensive further delay, again occasioned by the evasive behaviour of the parents, before Keehan J was able to undertake a final hearing, in which further findings of fact were made and which concluded with the making of a care order and a placement for adoption order with respect to each of the three children ('the welfare judgment') on 2 September 2020.

3. The Court of Appeal granted permission to appeal against Keehan J's welfare determination on the basis that the judge did not properly identify the risk of future harm to the children when undertaking his final welfare analysis. In the event, that ground of appeal was successful and, on 5 November 2020, the Court of Appeal (Underhill, Peter Jackson and Simler LJJ) allowed the appeal in so far as the judge's welfare determination was set aside and the matter was remitted to the High Court for re-determination.

4. It is right to stress that the ground of appeal did not involve any challenge to the findings of fact made by Keehan J either in the fact-finding judgment or in the welfare judgment. It is accepted by all parties that those findings, together with any subsequent findings made by this court, must remain the basis for determining whether or not any or all of these three children should now move forward towards an adoptive placement or, as the parents urge, remain in foster care for a period whilst the possibility of rehabilitation is further investigated following a course of couple counselling.

5. In due course it will be necessary to set out in some detail the findings of fact that Keehan J made. In doing so I will, of course, refer directly to both of his judgments. I should, however, stress that, save for reading the Court of Appeal judgment in November 2020, when I directed that this case now be brought into my list, I have not referred to either Keehan J's welfare analysis or any observation that the Court of Appeal made about it in the course of their judgment. What follows is, therefore, my own evaluation of the children's welfare based on the findings of fact that have already been made and based upon the altered position and additional evidence that is now before the court.

The factual background

6. Both parents were born in West Africa. The mother, who is now in her early forties, entered the UK in 2007 and became a UK citizen in 2012. She is said to have a Master's Degree and works as a professional consultant in a job which, on occasions, involves international travel. The parents underwent a religious marriage in their home country. Subsequently the father entered the UK and the couple were married in a civil service

at a Register Office in England in 2016. The father, although apparently only having a provisional driving licence, carries on business selling cars as a sole trader. There is no evidence of addiction or criminal conviction with respect to either parent. Both are said to have the ability to deliver good enough physical care for their children.

7. At this stage I gratefully adopt the factual summary of Keehan J's findings set out by Peter Jackson LJ in the Court of Appeal judgment:

> "5. Unfortunately, the parents set their faces against cooperation with the local authority. In July 2017, the police found the father hiding in the family home. From October 2017, the local authority was repeatedly unable to make contact with the family and on 22 December 2017 it issued an application for a care order in respect of R. Papers relating to the proceedings had been posted through the letterbox of the family home and on 21 December the mother and R left the jurisdiction.
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> 6. Because the child could not be found, the proceedings were allocated to High Court level and in January 2018 they came before the Judge for the first time. In the 2½ years that followed he conducted no fewer than 30 hearings. The mother returned to the jurisdiction, apparently without R. Orders were made that she should not leave the jurisdiction and that R should be returned. Despite this, both parents left the jurisdiction. At the time, unknown to the authorities, the mother was pregnant with J. Further orders were made and publicity was given to the return order relating to R.
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> 7. J was born in Florida in July 2018. As a result of the publicity, the mother was by chance identified in hospital. The father was arrested and both children were placed in care in the USA. Care proceedings were issued in relation to J.
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> 8. After legal proceedings in Florida, R was returned to the UK in August 2018 and J arrived here in October 2018. The boys were placed in the same foster home under interim care orders. The parents participated in a parenting capacity assessment over the course of several months. Their relationship with the children, seen at contact, was positive and R was noted to be a healthy child who had been well cared-for. They had suitable accommodation. Concerns remained about the initial incident in May 2017, about which the mother had changed her story, and about the events surrounding J's birth. Nonetheless, in January 2019, the local authority concluded that the two boys could be returned to their parents under a supervision order. The Children's Guardian did not agree. She expressed scepticism about the genuineness of the parents' co-operation and about the risks arising from domestic abuse and instability of care arrangements. She was concerned at the parents' stated intention to take the children to [Africa], where their welfare could not be monitored. More information was needed before a return to the

> parents could be supported and a plan for adoption also needed to be considered.
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> 9. After a six-day fact-finding hearing ending on 29 March 2019, the Judge found that neither parent had told the truth about what had led to the injury to R and that it was caused by one or other of them, that the mother had abducted R to avoid the care proceedings, that the father was complicit and that the parents were a flight risk. He found that the mother had lied about her statements against the father, and about what she had said to a doctor, a police officer, her former solicitor and her counsel. The father had also lied about a number of matters. Directions were given for a welfare hearing to determine the children's future.
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> 10. At the time of the hearing, again unknown to the authorities, the mother was expecting Q. From June 2019 she stopped attending contact to avoid her pregnancy being detected. She next saw the boys in December 2019."

8. At a hearing in September 2019, the father first informed the court that he had separated from the mother (who did not attend the hearing) and that he sought to care for the two children as a sole carer. The following evening police officers in Scotland stopped a car on the road to Stranraer, where there is a ferry terminal linked to Northern Ireland. The car was registered in the name of the father. The driver produced a provisional driving licence in the name of the father. He was reported as having said that he was travelling to the ferry and that he was accompanied by his wife. Both parents denied to Keehan J, as they denied to me at this hearing, that either of them was in that car on that evening.

9. Five days later the mother gave birth to Q in a hospital in Southern Ireland. She had attended two days or so earlier in the latter stages of labour. She gave a false name and a false address. Knowledge of Q's birth did not reach the local authority or the court until January 2020, some four months later, when the parents were again stopped in a car by police, on this occasion in the vicinity of the North Terminal of Gatwick Airport. Baby Q was with them.

10. Returning to events that were in the knowledge of the local authority and the court in the Autumn of 2019, the father persisted in presenting himself as being separated from the mother and as a candidate for the sole care of the two boys. At the final hearing in November adjourned part-heard to December, having heard evidence from the father, Keehan J, contrary to the advice of the local authority and the children's guardian, agreed that a rehabilitation plan should be implemented so that the two boys might be placed in their father's sole care. The judge required the father to return to the witness box and, with the assistance of an interpreter, under oath, the father agreed to the following matters. I quote from Keehan J's judgment in full on this point because of its importance in the overall factual context:

> "I made case management directions in respect of the progress of the rehabilitation plan. I required the father to return to the witness box, and with the assistance of [an] interpreter, under oath, the father agreed and confirmed the following matters in response to questions from me:

> i) he had fully understood what had been said in court at this hearing;
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> ii) he understood that the court had found him to have lied to the court in the past;
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> iii) he understood that the court had found that he had not engaged openly and honestly with professionals;
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> iv) he understood that the court was of the view that there had been times in the past when he had allowed himself to be ruled by the mother, although the father did not think he had;
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> v) he understood that this was his final opportunity to prove that he was able to separate from the mother and to work openly and honestly with the local authority;
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> vi) he understood that the timescales for the children and the need for final decisions to be made for their future could not be delayed any further;
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> vii) understood that it was a condition that from today he did not have any contact with the mother whatsoever, including direct or indirect communication including by telephone, text, email or social media or via a third party;
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> viii) he understood that if the court found there was any communication between him and the mother, the assessment period would come to an end;
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> ix) he understood that this was his final opportunity to put his children first and promised the court that he would do so;
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> x) he understood that if he sought the support of the local authority for assistance with housing, then he must be open and honest with the local authority in terms of financial disclosure; and
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> xi) he understood that he must contact the police and local authority promptly in the event that the mother made contact with him or attended at the family home of [address]."

11. The judge imposed a condition that the father have no contact whatsoever with the mother and the judgment records that the father fully accepted this condition. It is of note that mobile phone records show that the father telephoned the mother immediately on leaving the court on that day.

12. Subsequently, the local authority and the court learned that the police had been called out with respect to an alleged incident of domestic abuse at the parents' home in the Midlands. Both the mother and the father were there. The 999 call had come from the mother's phone.

13. It was, as I have already recorded, in December 2019 that the mother resumed attendance and contact with R and J. At no stage did she disclose the existence of their baby sister who was now three months old.

14. Following the discovery of Baby Q in the parents' car near Gatwick on 21 January 2020, she was removed into police protection and placed in foster care.

15. In the welfare judgment, following an extensive review of the evidence heard over six days, Keehan J turned to 'the factual matrix' and his findings of fact as follows:

> "Analysis: The Factual Matrix
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> 97. The mother and the father have serially lied to the court, to the social workers, to the children's guardian and to every other professional with whom they have had contact, including the police and health professionals.
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> 98. The mother is the most egregious liar I have ever encountered. The father has also serially lied to the court, to the social workers and to the children's guardian. Worst of all he lied to me about:
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> i) his separation from the mother;
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> ii) his commitment to maintain that separation and not to have any contact with the mother; and
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> iii) his commitment to put caring for [R] and [J] to the fore, which led me to require the local authority to pursue a rehabilitation plan for the boys to live with the father, which was contrary to the local authority's care plan and contrary to the recommendation of the children's guardian.
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> 99. They were right and I was wrong to have placed trust in the father.
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> 100. At the hearing on 18th December 2019 I had carefully explained to the father that:
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> i) I did not want to find myself forced to place his children for adoption;
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> ii) I wanted to give the children the chance to be cared for by a capable and loving father; and
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> iii) I required him to promise he would not have any further contact with the mother. I warned him, however, that if he breached my requirement for him not to have any further contact with the mother, it would be likely that I would be compelled and left with no choice but to place his children for adoption. I called him into the witness box, with his Twi

interpreter, to explain these matters to him and to ask him if he understood. He said he did.

101. Nevertheless, as the parents phone records reveal, within moments of the father leaving court he breached his assurances to me and he contacted the mother by her mobile telephone. He then repeatedly breached his assurances to me by repeatedly contacting the mother. He demonstrated an utter and complete disregard for everything I had said and he had said on oath at that hearing.

102. I am bound to conclude, on the totality of the evidence that I have heard, that I cannot trust a single word said by either of these parents.

103. At several points in her evidence the mother, as did the father when he gave evidence, admitted making mistakes in the past, apologising for these mistakes and asking the court to give them another chance. The mother used the word 'mistakes' as a euphemism for 'lies'. However, when one delved beneath these spoken words it was clear the sentiments expressed were hollow and unfounded. The mother, like the father, does not regret any of her past actions during the course of these proceedings: she does not regret fleeing with [R] to the USA, later joined by the father, to give birth to [J] and she does not regret concealing the birth of [Q]. She, like the father, does regret and resents the involvement of the local authority in her life and these court proceedings. She, like him, does not even begin to understand or accept the significant harm the children have suffered in their care and the significant harm they would each be at risk of suffering if they were returned to the parents' care in the future. I consider, the prospects of the mother making any positive changes for the better are remote, whether in the short, medium or long term.

104. These observations and comments apply with equal force to the father.

105. If any of the children were returned to the care of either or both the parents they would immediately be removed from this jurisdiction and/or would not made available to the local authority or the children's guardian.

Findings of Fact

106. I make the following findings of fact, on the balance of probabilities:

i) neither the mother nor the father accept my findings of fact given in my judgment of 29th March 2019 but, in particular, that [R] sustained an injury on 6th May 2017 during the course of domestic abuse incident involving both parents;

ii) the mother lied to a midwife on 15th May 2019 when she told her that she had received antenatal care in [Africa] in respect of her pregnancy with [Q];

iii) it was the father and the mother who were stopped by officers of the Police Service of Scotland on 21st September 2019;

iv) the father was driving his motor car to take the mother to the ferry terminal at Stranraer;

v) the father knew the mother was pregnant, knew she wished to conceal her pregnancy and colluded with her to do so;

vi) the mother travelled to the Republic of Ireland to give birth to [Q] at a hospital in [town];

vii) she gave a false name and a false address to the hospital professionals in order to avoid the birth of [Q] being made known to the local authority and to the court;

viii) thereafter the parents colluded with each other to conceal the birth of [Q] and her presence in the jurisdiction;

ix) in truth the father was never separated from the mother whether between September 2019 and January 2020 or at all;

x) the father never had any intention of being a sole carer for [R] and [J] to the exclusion of the mother;

xi) there was a domestic abuse incident between the mother and the father on 26th November 2019 which led to the parents telephoning the police;

xii) the father had seen [Q] prior to on or around 21st January 2020;

xiii) the parents were stopped by officers from the Metropolitan Police in the evening of 21st January near Gatwick Airport.;

xiv) the parents' intention had been to flee the jurisdiction on a flight from Gatwick either the mother alone with [Q],

the most likely, or together with the father, the least likely; and

xv) if the father's car had not been stopped by the police, the parents would have carried out their joint plan.

107. In relation to the children, I make the following findings of fact, on the balance of probabilities:

i) in her efforts to conceal her pregnancy with [Q], the mother absented herself from most contact visits with [R] and [J] between June and January 2020, which inevitably caused both boys emotional harm;

ii) in her efforts to conceal her pregnancy with [Q], the mother failed to provide her unborn child with appropriate antenatal care and, save in the immediate days after her birth, appropriate post-natal care, putting [Q] at risk of suffering physical harm;

iii) the parents' failure to engage with the local authority or with any professionals with whom they have had contact is wholly irrational and is not founded on any objectively reasonable grounds;

iv) there has been no change in the approach of the parents towards professionals over the course of the last three years and there is no basis for concluding there will be any change in the foreseeable; not least because, in truth, they discern no reason to change;

v) accordingly, if the children were returned to the care of the parents and any professional, most especially a social worker, was to seek subsequently to involve themselves with the family, the parents' instinctive and immediate response would be, at least, to refuse to engage and co-operate and, most likely, to flee irrespective of the welfare best interests of the children;

vi) therefore, the children would be at a real risk of suffering significant emotional and psychological harm from the stability of their lives being disrupted and abruptly changed over the years to come; and

vii) moreover, in light of the events of 6th May 2017 and 26th November2019, which the parents have consistently downplayed and minimised, the children would be at a real risk of suffering significant physical, emotional and psychological harm if they were returned to the care of the parents.

> Threshold Criteria
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> 108. On the basis of the findings of fact made at the conclusion of the hearing in March last year, set out in paragraphs 26-36 above, and the findings of fact made in this judgment, at paragraphs 104 & 105 above, I find the threshold criteria of s.31(2) of the 1989 are satisfied in respect of each of the three children."

16. Before moving on from the factual background as it was before Keehan J, it is important to record the various changes in care and location that the children have had throughout their lives as a result of their parents' actions.

17. On 6 May 2017, at the age of 72 days, R was removed from his parents' care and kept in hospital overnight. Following the service of the application for a care order on the parents on 20 December 2017, the mother and R left the UK and it is understood that R then spent a substantial period in the care of his maternal grandmother in Africa.

18. At the time of J's birth in Florida in the summer of 2018, R was with his mother. Following the chance identification of the mother and R, he was removed into foster care in the USA and two or three days later flown back with social workers to the UK and placed in foster care. Baby J joined him there, following his own return from the USA, nearly three months later. R and J were able to stay in that foster home until February 2020 (a period of eighteen months in R's case) before being moved to an emergency foster placement together for three weeks, then to a further foster placement for eight months before moving to their current placement together with Q six months ago. The evidence is that the three children can remain in their current foster home until final decisions are made. That home is not able to provide a long term home for them.

The plan for placement for adoption

19. The local authority plan is for all three children to be placed together for adoption. They will therefore be looking for adopters who are a suitable match for a sibling group of three West African children, the eldest of which is four and the youngest is one. In addition, there are early signs that one of the children may have a degree of learning disability. The specialist family finding social worker has advised the court that nationally, currently, the number of approved adopters has declined whilst the number of looked after children is increasing. It is said that currently prospective adopters prefer children under the age of three years. Successful placements of this nature have taken place provided the authority is given permission to publicise the children's circumstances through carefully chosen adoption publications and networks.

20. The local authority accept that the children's circumstances and the need to place them together may delay the process of identifying adopters and, indeed, it is accepted that identification of a placement may not be possible. The plan, therefore, is to have a focussed search for adopters for a period of twelve months after which time the plan for adoption would be reviewed.

Recent developments in the proceedings

(a) Psychological Assessment of Parents

21. At a preliminary hearing in December 2020 I granted an application under FPR 2010, Part 25 for the parents to instruct Dr Nicholas Banks, a consultant chartered clinical psychologist, to conduct an assessment of the parents. Although this application was supported by the guardian, I took this course, against the advice of the local authority, and at what was obviously a very late stage in these long running proceedings, having been struck by the astonishing degree of sustained and multi-layered deception that had been found by Keehan J which was to a degree well beyond the ordinary experience of the court. I did so for the sake of the children's welfare, and to assist the court and the professionals in at least gaining some understanding of the psychological processes that must operate to cause each of these two parents to behave in this way.

22. Because of the total failure of the parents to engage with any professional intervention hitherto, the instruction to Dr Banks was heavily regulated with conditions requiring the case to return to court if the parents failed to attend for more than one appointment. In the event they attended each of the sessions arranged by Dr Banks and he was able to produce a full report.

23. Dr Banks conducted three sessions with the mother and two with the father, each over a video link. With respect to the father, Dr Banks considered that there was a deficit in the father's ability to integrate emotional and cognitive information in order to provide a sound conclusion. This deficit might lead to distortions in his presentation and to misunderstanding. The father is unlikely to understand the role of formal organisations and institutions and is unlikely to be able to balance competing priorities leading him to be 'mono directional' in his decision-making and choices. Dr Banks identified 'a high level of denial and lack of insight as to the impact of the father's overall behaviour on the outcome of the current proceedings.' In short, the father did not consider that he had acted in a way that might demonstrate a lack of cooperation or deception. The father, in Dr Banks' view, feigned helplessness and lack of understanding of the English legal process as an explanation; a claim that Dr Banks considered was 'likely to have little foundation'.

24. The father explained to Dr Banks that, although he had agreed with the court order requiring him not to have any contact with his wife in order to facilitate the rehabilitation of the two boys to his care, he took the view that the court had overstepped its boundaries in imposing this restriction, had not given him any explanation as to the reasons for it and that it was, therefore, an unfair request. He claimed that he had effectively agreed to the conditions under duress.

25. Dr Banks found the father to be 'particularly psychologically defended using high levels of denial and minimisation to protect him from feelings of guilt, shame and blame', with regard to his involvement in the difficulties in the court process and the removal of the children. Importantly, Dr Banks advised 'this process will ultimately inhibit the father's capacity for change where he will find it difficult to manage future behaviour when not recognising that outcomes are a consequence of past behaviour.' Further, Dr Banks considered that the father had difficulties in mentalising and emotionally appreciating his children's experience and, when specifically asked about the impact on the children, the father gave more detail about the emotional impact on himself.

26. In view of the father's reliance upon an interpreter, Dr Banks decided that it was not appropriate to undertake psychometric testing of him.

27. With respect to the mother, Dr Banks' initial appraisal was:

> "The picture is of an individual who appears to practice deception through her attempts to bamboozle others, with this appearing related to narcissistic type tendencies in her functioning. There appears an underlying trend of the mother believing that she is able to 'talk her way out of anything' and mislead others without any apparent belief that others will be able to interpret her attempts at prevarication and that others cannot easily be fooled by her. This appears very much to be an underlying personality characteristic of the mother, rather than a situational defensive behaviour."

28. Dr Banks considered that the mother's adult attachment style was motivated by fear (of the authorities) leading to strategies of withdrawal and escape, and ways of dealing with the perceived threat which would become incoherent, self defeating and non-productive.

29. The mother is seen as by far the more dominant of the two parents within their relationship.

30. During his sessions with the mother, Dr Banks saw evidence of false beliefs, and an underlying theme of anger towards professionals. There was also 'a high degree of fragmentation and false innocence and blame with distorted episodes' which indicated that, essentially, the mother has difficulty in integrating both emotional and cognitive information. The mother identified difficulties in her relationship with the father, and displayed anger with respect to his behaviour, as she alleges it, of making contact with other women. Whilst the mother accepted that she had 'done wrong', Dr Banks, despite pressing on more than one occasion, was unable to illicit more that minimal examples of this from her – for example accepting that she had made a false allegation against the father with regard to the original injury to R in May 2017.

31. During the exercise of psychometric testing, the mother's scores indicated a high level on the 'Obsessive Compulsive Subscale'. Dr Banks advised that such individuals tend to be fairly rigid and follow their own personal guidelines for conduct in an inflexible manner, even when this may conflict with social norms. The mother also demonstrated elevated scores on the paranoia scale and the hyper-vigilance subscale. She demonstrated a markedly elevated score on the 'dominance scale'. Such a score, Dr Banks advises, identifies an individual who is generally domineering and tends to have little tolerance for those who disagree with their plans and desires.

32. In a further test designed to assess socially desirable responding, the mother's score on the 'self-deceptive enhancement scale' was very much above average indicating, in Dr Banks' view, that she shows 'a form of self-enhancement best described as rigid overconfidence akin to narcissism'.

33. More generally Dr Banks considered that the father exhibited passive aggressive characteristics of a type that would typically result in attempts to sabotage agreements or disrupt agreements that have been reached, while attempting to appear cooperative. It is particularly difficult to resolve the source of conflict within such individuals, due to it being denied.

34. The mother, too, is seen by Dr Banks as having passive aggressive personality characteristics. He considers that 'The mother is now faced with a situation where even with her back against the wall, she does not show good reflective qualities to consider alternative strategies to those that have clearly failed her.' She has a poor reflective capacity, which may give some insight to explain why the children's needs were not prioritised.

35. Dr Banks considers that 'individuals who show passive aggressive behaviour are highly manipulative and tend to avoid responsibility for their behaviour.' He further (and importantly) concluded:

> "I took the view that it would be very difficult to establish a cooperative agreement with either parent that would be upheld, due to the high level of defensive avoidance, denial and the huge degree of psychological defendedness used by both father and mother to avoid taking responsibility for their actions."

36. Dr Banks found that both parents take the view that Keehan J 'got it wrong' and that the court process was flawed. Both parents 'struggled to agree any point in the judgment'.

37. Despite his appraisal, Dr Banks concluded:

> "The parents would benefit from a couples therapy approach which would need to take place with two family therapists who could work with the parents to help achieve an alteration in the parents' perspectives of their behaviours. The approach here will need to be direct and challenging and certainly not a non-directive type approach, as this would only lead to both parents going round in circles and having their existing views confirmed."

Dr Banks advised that a minimum of twenty sessions would be needed, but that this was within the children's timescales in his opinion.

(b) Parents' Response to Findings of Fact

38. For this hearing each parent has filed a statement indicating which of the findings of fact made by Keehan J is accepted. In her document the mother only accepts the truth of the following findings:

> (a) that the police came to the hospital and she gave a statement to them on 6 May 2017;
>
> (b) that she lied about the evidence and the events of 6 May 2017;
>
> (c) that by chance a nursing professional in America identified the mother and alerted the authorities at the time of the birth of J;
>
> (d) that she gave birth to Q at a hospital in southern Ireland and that she gave a false name and address to the hospital professionals in order to avoid the birth of Q being made known to the local authority and to the court;

(e) that, thereafter, the parents colluded with each other to conceal the birth of Q and her presence in the jurisdiction (the mother states that she accepts this as she did not want a repeat of the USA trauma experience).

39. With respect to each of the other findings made by Keehan J which are stated expressly to relate to her, the mother simply accepts that the finding was made, often offering a caveat or exculpatory statement. Where it is found that she has not worked with professionals in the past, she states her willingness to do so in the future. In so far as the judge's findings expressly relate to the father, the mother states 'this is for father to answer', although many of the findings must also be within her own knowledge, for example the finding that the father never separated from the mother between September 2019 and January 2020 or at all. In relation to the first finding accepted at (a) above, the mothers case is that she lied in so far as she had asserted that the father had assaulted her and had thrown Baby R on to the cot or sofa. That 'acceptance' is therefore, in reality, a denial of the judge's overall finding which is of an abusive event on that occasion.

40. In the 'response to findings' document filed by the father, he adopts a similar approach. The following findings are accepted as being true:

(a) that the father lied about the events of 6 May 2017, lied when saying there were no problems in the marriage, when he asserted he had placed R on a cot/sofa and when he denied that the mother had grabbed him around the throat and/or had intended to strike him with an iron;

(b) that both of them had lied about what occurred in the family home on 6 May 2017;

(c) that by chance a nurse in America identified the mother at the time of Q's birth;

(d) that neither the mother nor the father accepted the findings of fact made in the judgment of 29 March 2019;

(e) that the father never had any intention of being a sole carer for R and J to the exclusion of the mother.

41. In all other respects, like the mother, the father either accepts that the judge made the findings, but offers an explanation or states that the particular finding is 'for the mother to answer'.

(c) Delayed disclosure of Permanence Reports

42. For reasons that have not been explained, whilst the bundle of documents prepared for the hearing and submitted to the court included the Child Permanence Reports (prepared under FPR 2010, PD14C) for each child, these had been deliberately removed from the version of the bundle sent to the parents and their lawyers. This omission only became apparent in the final moments of the oral hearing and was remedied by the delivery of redacted versions some days after the hearing. The error (as the local authority accept that it is) led, understandably, to complaint by counsel for each parent

and, from Mrs Ojutiku for the father, to the assertion that the omission amounted to a breach of the father's right to a fair trial under ECHR, Art 6 as she had not had the opportunity to cross examine the social worker on aspects of the reports or to make detailed submissions on the contents of them. The court offered to reconvene the oral hearing to allow cross examination to take place. In the event counsel for each parent opted to deal with the issue by further short submissions, rather than additional oral evidence. Mrs Ojutiku submitted that the reports lacked proper analysis of the necessity of adoption. Mr Ekaney QCmade similar submissions, adding that the approach taken was a further demonstration of rigid thinking by the local authority which had pervaded its whole approach to the case.

Position of the parties

43. The local authority, whilst noting the parents' cooperation in the assessment of Dr Banks and its conclusions, nevertheless hold to a care plan for adoption with respect to each of the three children. They seek full care orders and a placement for adoption order in each case.

44. The parents state that they are willing to engage in couples therapy as advised by Dr Banks. Dr Banks has identified a particular therapist who is, in his view, well suited for the role both in terms of racial congruence and having the ability to adopt a directional and robust approach of the type that he considers is necessary in this case. The parents therefore seek for the court to adjourn the proceedings to allow the therapy to run its course or, at least, until progress can be reviewed after four months, being the timescale advised by Dr Banks. It is the parents' long term case that, if the therapy is successful, the children can then be rehabilitated to their care.

45. The children's guardian, Jane New, whilst noting the changes that have taken place in terms of the parents' cooperation with the intervention of Dr Banks and in their willingness to meet her and embark upon discussion about the case, maintains her recommendation to the court which is that the only option which will meet the children's welfare needs is placement for adoption.

46. The hearing was conducted remotely, save that each of the parents attended court, supported by lawyers, and in the father's case an interpreter, to give their oral evidence.

Oral evidence

47. In his oral evidence Dr Banks confirmed his recommendation which was that, although the parents had only partially accepted the basis of the local authority's concern, there had been sufficient change for therapy to have an impact with the possibility that, in due course, the children might return to their parents' care. Although not expressly instructed to do so, Dr Banks offered an evaluation of the difficulties that might be encountered in finding an adoptive placement for the three children, who would be seen as 'hard to place', leading him to advise the court that a course of therapy lasting some six months was within the timescales for the children.

48. Dr Banks accepted that there were real difficulties within the relationship between the mother and the father, and that these are not acknowledged by either parent. This topic needed to be addressed during the therapy.

49. Because of the nature of the parents' difficulties, and particularly the mother's approach which is to push and talk so as to 'bamboozle' others, Dr Banks advised that the therapist needs to do, what he called, 'head-banging' therapy, so as to be directive with respect to each parent, rather than passive.

50. Dr Banks explained what he meant by the phrase 'personality characteristic' with regard to the mother's frequent resort to denial and deceit. Dr Banks said that a 'personality characteristic' was behaviour that occurs so frequently as to become an underlying characteristic of an individual's personality.

51. Overall Dr Banks maintained his view that it would be very difficult for the parents to get to the stage of establishing a cooperative agreement with the local authority.

52. In terms of the timescale of the therapy, Dr Banks advised that a period of around four months should be sufficient to establish a midway point at which it would be possible to determine whether the parents had demonstrated a capacity to change.

53. Ms Bernadette Gorman, the social work team leader, gave evidence in the absence of the lead social worker. She accepted that the local authority had not been in direct communication with the parents since August 2020. It was later conceded that, due to an administrative error within the local authority (which did not only apply to this case), the parents had not been invited to attend a looked after children review for well over a year. The local authority did not therefore have any direct knowledge of any change in the parents' approach since the hearing before Keehan J in August 2020.

54. Ms Gorman stressed that the evidence demonstrated that it was simply not safe for the three children to be in the care of their parents. She considered that nothing had changed in the last four years to demonstrate any, or any sufficient, engagement by the parents or that they had made any move forward sufficient to indicate that the degree of risk to the children might have changed.

55. Despite accepting that there are aspects of the children's profile which might reduce the pool of potential adopters, Ms Gorman did not agree that the children would be particularly difficult to place. She considered that there was a high chance of success of placing all three of them together in an adoptive home. In the circumstances, it was not in the children's interests to wait for at least four months while therapy was attempted. In any event, Ms Gorman's view was that any delay would be longer than four months because it was only at that time that Dr Banks could begin to assess whether there had been sufficient change. Further assessment would then be required by the local authority and the children's guardian before the case could come back to court.

56. In cross-examination Ms Gorman accepted that the parents' engagement with Dr Banks and recent meetings with the children's guardian indicated some level of change, but it was not, in her view, enough to identify a sound foundation upon which to build.

57. Although the local authority did not support referral to a therapist, and therefore would not look to fund it out of their own resources, if the court determined that therapy should take place, the matter would be reviewed.

58. Overall, Ms Gorman considered that change would only happen if the parents each engaged fully with therapy. She remains sceptical that they would do so. Whilst there

have been superficial changes by the parents ability to attend and speak to Dr Banks and the guardian, she did not believe that these were actually changes within the parents. The implication being that the parents were currently simply paying lip service to the process and no more.

59. The children's mother was the first of the parents to give oral evidence. Her evidence in chief was given with care and included a number of important concessions. She reported that reading Dr Banks' report had been 'a big shock' to her. She questioned 'how did I get this far?' and 'how did I let my children down so badly?' She was committed to engaging in intensive therapy. She had put her professional commitments on hold and could now spend the entirety of her time focussing on the children. She considered that if the children were adopted it would destroy her, and destroy the children.

60. From reading Dr Banks' report, the mother said 'I can see I come across as a liar and not willing to cooperate with social workers or put the children first.' She said that in acting as she had she had been trying to put the children first, but she could now see that she had gone about it in the wrong way. She could see that she had been too rigid and that she was difficult to work with. She accepted responsibility for the three children being in care; they were there because of her actions. She said 'I can see that I really let them down big time'.

61. The mother then gave an account of having attended counselling with the father at her church for a period of over a year ending shortly before the appeal hearing in November 2020. Initially the sessions had been three times a week, after six months they had reduced to twice a week for two months and then once a week moving eventually to once a fortnight and once a month. Since the church counselling had finished she had signed up with a local counselling agency.

62. In cross-examination the mother said that the church counselling had 'made a huge difference in our lives'. It had enabled both parents to reduce stress, pain and difficulties and to achieve peace and forgiveness in their relationship.

63. The mother agreed that the joint church counselling had been taking place throughout the period that the father had been presenting himself to the court as a potential sole carer for the children. There was a gap during the period of three months when she had taken time out and went to Northern Ireland to 'get my life together'. There was no time when the couple had actually separated. When the father told the court that they were separated the mother said 'that was a lie'.

64. The mother was asked about the second incident of domestic abuse on 26 November 2019. She asserted that the police had not been 'called'. Her phone had been in her pocket and accidentally a 999 call had been made without her knowledge. The police then called her back and she spoke to them. Coincidentally, this accidental 999 call had happened on an occasion when there was actually an incident of conflict between herself and the father.

65. The relevant police log (Bundle F203) indicates that a call was received at 6.20pm on 26 November 2019. The caller is named as the father. The following 'detail' is recorded:

> "No request - sounds of a female arguing with a male - shouting and screaming at a male - shouting give me the phone".

66. The police record then continues with note of a telephone call to the mother at lunchtime on the following day. She said that she was on her way to Hertfordshire. She is recorded as saying 'states she originally phones the police but [father] snatched her phone off her which is why his name is on the log.'

67. More generally the mother told the court that all known issues between the couple were now been resolved and that she was happy in the relationship with her husband.

68. With respect to the original incident on 6 May 2017, the mother accepted that the judge had made a finding, but she stated that there was a difference between the observations of two doctors as to whether or not R had sustained a bruise. The mother was therefore still seeking some clarification from the professionals on the question of bruising.

69. In her evidence the mother oscillated between stating that she had accepted Keehan J's findings, but then denying the truth of the matters that had been found. For example she maintained that she had never been to Scotland in her life and that Keehan J was therefore wrong in holding that she was in the car on the road to Stranraer. More generally, however she said that she accepted the findings that in the past 'we did things wrong', but now wanted to look forward. She said that the 'bad things that we did' did not in any event justify adoption, although she regretted acting in that way.

70. When asked to list the 'bad things' to which she referred, the mother stated that they were:

> (a) she could have been more open with the local authority only engaging with them to the extent of 40-60% rather than 100%;
>
> (b) she had not always put the children's needs first, for example taking a three month break in Ireland when she should have remained in contact with them;
>
> (c) putting the three children through stress, rather than settling the issues.

71. Similarly, the mother was asked what she meant by accepting that she 'came across as a liar'. She referred specifically to having made up allegations against the father on 6 May 2017, and not telling the authorities that she was pregnant or where she was around the time of the birth of the younger two children.

72. The mother now acknowledged the need to accept responsibility for what had happened and engage fully in therapy. She said 'Now we will open up and tell the truth.' They were desperate to avoid the children being adopted, had already opened up much more with Dr Banks than they had with the local authority, and they will continue to do so with the therapist.

73. In reply to a question from the court enquiring whether she accepted Dr Banks' assessment that it was a characteristic of her personality for her to deal with difficulties by denial and deception, the mother said that this was the opposite of how she saw herself. She considered that she was an individual who sought to negotiate with others, rather than to deceive or bamboozle them. In so far as Dr Banks suggested that her

behaviour originated from some difficulty in her childhood, she was clear that there had been no problem in her childhood which had been a happy one.

74. Whilst the father's general position was at one with the mother in opposing adoption, much of the detail of his evidence was at odds with hers. For example, he volunteered that there were real difficulties in his relationship with his wife that still needed to be worked on.

75. In his evidence in chief he was asked what part he had played in creating a situation where the children were not in their parents' care at the moment. In reply, the father could only point to the original incident in May 2017 where he said he regretted communicating with a woman or women on Facebook as that incident had brought about everything that followed. When asked in chief whether he would work with the local authority he said 'Of course I will'.

76. In cross-examination the father accepted lying to the court when he said he had separated from the mother and wished to care for the children on his own. He had felt under so much pressure. He felt that his only option was to tell lies.

77. With respect to the couple attending church-based counselling, the father's evidence was totally at odds to that of the mother. He did recall going to see the pastors, but said that he did not really get involved as he did not feel that the meetings helped him that much. It was put to him that the number of regular sessions described by the mother amounted to over a hundred. The father was very clear that he did not go that many times.

78. With respect to the car that was stopped on the road to Stranraer, the father accepted that it was his car and that the driver had probably shown his provisional driving licence, which he kept in the vehicle. He was, however, adamant that he was not the driver.

79. With regard to the initial incident in May 2017, he did not see any bruise on the child. He, like the mother, wanted a further investigation to clarify whether it was he or the mother who had caused any injury. This was, to him, important as, on his view, the only concern that the local authority could have over the parents' care of the children was the apparent bruise on R.

80. When asked about his relationship with his wife, he responded that ninety per cent of it was good, but ten per cent was not. The part that was not good related to his view that the mother did not respect him.

81. In contrast to the mother's evidence, the father maintained that he did not know that she was pregnant with Baby Q or that the baby had been born until he met her on the day that the couple were stopped near Gatwick Airport four months after the birth. He said that when she showed the baby to him on that day 'I was so surprised'.

82. The father was asked whether he recognised and accepted Dr Banks' description of the mother. This was plainly a difficult and complicated question for anyone to answer, but he generally accepted Dr Banks' conclusion. He said 'She needs to come down off her pedestal'. Asked what he meant by that, he explained that the mother needs to 'accept reality'. He agrees that she would need help to change.

83. Finally, the court heard oral evidence from the children's guardian. Ms New accepted that there had been some signs of change since the matter was initially determined by Keehan J in August 2020. Firstly, after four years, the guardian had for the first time had a meaningful discussion with the mother about the issues in the case. Secondly, there was now evidence of the mother consistently attending contact with the children. Thirdly, the mother and the father had engaged with all that Dr Banks required for his assessment. Fourthly, there were signs that the mother was beginning to engage with some of the adverse findings made by the court. Fifthly, the court now has evidence that therapy is recommended for the parents. Sixthly, that therapy is available and can commence immediately.

84. Despite these positives, Ms New remained concerned that the parents' oral evidence to the court did not indicate that there has been any change in the underlying position. She therefore still considered that adoption was the best option for the three children, although she accepted it was not without complications. Adoption was the clearest plan in contrast to the plan for therapy.

85. Ms New said that the question of whether it is adoption or not is 'finely balanced', and in cross examination that it is 'incredibly finely balanced'. Her overriding concern was the extent of the delay, both in the past and for the future, and the implications of that delay for the three children. In this regard, there were no clear timescales for the therapy and no guarantees. With a placement for adoption order there was a clear plan which would be put into effect. Ms New accepted that there had been a shift in the presentation of the parents, but she was not convinced that it was sufficient to justify further delay. She said 'After four years we need a plan that at least attempts to provide permanence'.

Further findings of fact

86. I now turn to consider what findings may be made in reliance upon the evidence adduced at this hearing.

87. Firstly, it is clear that there has been a change in the behaviour of both parents in that they have each attended their assessments sessions with Dr Banks and have each engaged with him in all that was required of them.

88. Secondly, both parents, but particularly the mother, have, for the first time in four years, met with the children's guardian and engaged with her in discussion about the children and the relevant issues.

89. In the context of a case which had hitherto been marked out by the wholesale failure of either parent to respond to reasonable professional requirements, these are both undoubtedly positive changes and indicate that there may be some potential for further change, and a more in depth engagement, in the future.

90. Thirdly, Dr Banks has put forward his professional opinion as to some of the likely psychological factors behind the past behaviour and current presentation of each parent. The construct offered by Dr Banks is not challenged by any party and can be accepted by the court as at least a valid working analysis. Of particular note is Dr Banks description of the mother's use of lies and deception. Dr Banks sees this as a personality characteristic, meaning that it is more than a defence mechanism to be used in particular situations, it is behaviour that occurs so frequently as to be part of her underlying

character. Coupled with this the mother has a pronounced narcissistic tendency. That was a finding that chimed with the father's advice that the mother needs to 'come down from her pedestal' and engage with reality.

91. Of particular note is Dr Banks opinion (set out at paragraph 35 above) that it would be very difficult to establish a cooperative agreement with the parents that would hold up, due to the high level of the parents' defensive avoidance, their denial and their huge degree of psychological defendedness. This conclusion is entirely supported by the analysis offered by Dr Banks with respect to each parent. Both the psychological labels that he attributes to the various elements of what he has identified from the parents' behaviour, and the, at times, striking evidence that he reports of their responses to him during his sessions, justify the application of terms such as 'high level' and 'huge degree'. Yet, despite the coherence of his analysis and his negative conclusion as to the ability of the parents to enter into a sustainable working agreement, Dr Banks' recommendation is that this couple could respond sufficiently to a single course of therapy to such a degree that his opinion as to their ability to abide by an agreement could change sufficiently for the authorities to trust them to work cooperatively in the future. With due respect to Dr Banks, that recommendation seems to be wholly at odds with, and not supported by, the body of his report.

92. No matter how directive and robust a therapist may be, the task in hand, namely bringing about sufficient change to establish a situation where the parents can each be trusted not only to enter into, but to stick with, a working agreement with the social workers for the protection of their children, is a very complex and substantial one. Not only must the therapist seek to challenge and turn around a long-established element of the mother's character, which is maintained by a high level of avoidant behaviour and denial, he or she must also address the difficulties that exist in the couple's relationship and enhance the father's ability to understand and resolve his own difficulties. In addition the therapist will be working with a couple for whom lies and deceit are second nature, and who are each in almost total denial that they have any problems that need to be resolved.

93. Dr Banks advises, and I readily accept, that it is not necessary for parents to exhibit a significant degree of understanding or acceptance of the nature of their difficulties before embarking on therapy. But, where the issue is should the course that would otherwise be in the children's interests be put on hold for months, there surely needs to be some basis for the court understanding and accepting that there is at least the potential for sufficient change to take place. Here, the description of the nature of the parents' difficulties, the degree to which those difficulties have been seen to be entrenched over years and the absence of any indication from the parents that they even recognise that they have those difficulties, make it difficult to accept that a single course of couple therapy could provide a commensurate remedy.

94. After reading his report and then hearing his oral evidence, I was therefore left in the position of understanding and accepting his analysis of the problems, but far less able to understand and accept that his recommendation for therapy offered a sustainable potential solution.

95. Fourthly, the court has the parents' respective responses to the detailed findings of fact made by Keehan J. These can only be described as being wholly minimal and self-serving. In the mother's case, once those elements which are indisputable (for example

'the police came to the hospital' and 'by chance a nursing professional in America identified the mother and alerted the authorities') are removed, the only statement which is a genuine acceptance of an adverse finding is that the parents colluded with each other to conceal the birth of Q and her presence in England. In the father's case, the only matters of genuine acceptance are that he lied about events in May 2017 and that he never had any intention of being a sole carer for the two boys. It is of further note that the mother's admission that the parents colluded together to conceal the birth of Q, is wholly at odds with the father's assertion that he did not even know of the pregnancy until he was introduced to his baby daughter at the age of four months.

96. Despite Keehan J's express and detailed findings, and despite stating that they accept that the judge made those findings, the parents' evidence at this hearing demonstrated that, far from accepting that the findings have been made and must form the basis of planning for the children's future, they still deny many matters of significance and seek to establish alternative conclusions. This is particularly so in relation to the bruise on R's eyebrow, the trip to Stranraer, the calling of police in December 2019 and the attempt to flee with Q via Gatwick Airport, but the reality is that (as the parsimonious response to the findings of fact demonstrates) this is their approach to any of the adverse findings save for the minimal matters that have now been admitted.

97. Fifthly, and strikingly given the stage that the court process has reached, the identification of her problems by Dr Banks, and the proposal for therapy to address those problems, during her evidence in chief the mother volunteered a detailed account of church-based therapy. Her account was, even on its own basis, internally lacking in credibility. It was roundly denied by her husband, who had only attended a few early sessions, but had not found them helpful and had withdrawn. He considered that there were still significant difficulties in the couples relationship. Against his evidence, the mother's account of a course of couple counselling for well over a year, totalling over 100 sessions, and which had resolved all the difficulties in their relationship can only be a blatant lie.

98. In this regard both parents told further lies during their evidence at this hearing. The father gave a detailed account of how his car came to be in Stranraer which stretched plausibility, was not backed up by any other evidence and was, in any event, contrary to Keehan J's finding. The mother's explanation that by chance, and wholly coincidentally at a time when she was actually having an altercation with her husband, her phone somehow dialled 999 on its own in her pocket was as astonishing as it was unbelievable. The performance demonstrated just how deep-seated the behaviour identified by Dr Banks has become and, insofar as the mother expected me to believe her, the degree to which she is wholly lacking in insight.

99. Sixthly and finally, whilst the mother made some impressive statements during the earlier part of her evidence in chief as to seeing now how she had failed her children, the remainder of her evidence and that of the father failed to demonstrate any degree of insight into the problems that must now be addressed or any acceptance of them.

The Legal Context

100. The court may not exercise jurisdiction to make a care order unless the circumstances of each child have been found to meet the threshold criteria in Children Act 1989, s 31(2). In this case, Keehan J has already found that the threshold criteria are satisfied.

That decision, which was not the subject of appeal, continues to apply. The issue of whether or not to make a full care order must be determined by affording paramount consideration to the welfare of the child and applying the welfare checklist in CA 1989, s 1.

101. In order to make a placement for adoption order the court must be satisfied either that the child is subject to a care order or that the CA 1989, s 31 threshold criteria are satisfied. In addition the court must be satisfied either that each parent consents, or that their consent to adoption should be dispensed with under Adoption and Children Act 2002, s 52 on the ground (in this case) that the welfare of the child 'requires the consent to be dispensed with'. Here, the applicable welfare provisions in ACA 2002 differ from those in the CA 1989: the court's paramount consideration must be 'the child's welfare throughout his life'.

102. The court is assisted by being required to have regard to the adoption welfare checklist set out in ACA 2002, s 1(4):

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

103. The approach to be taken has been explained in a number of well known cases and is not controversial as between the parties to this case: [*Re G (Care Proceedings: Welfare*

*Evaluation) [2013] EWCA Civ 965***;** *Re B-S [2013] EWCA Civ 1146; Re R (A Child) [2014] EWCA Civ 1625*].

104. In *Re B (A Child)* [2013] UKSC 33, the Supreme Court emphasised that interference in family life to the degree represented by adoption must only be considered when such interference was 'necessary', in the terms of ECHR, Art 8, and therefore proportionate; in short when 'nothing else will do'.

Welfare analysis

105. I now turn to consider how all of the matters that I have so far rehearsed are to be considered through the prism of the requirement to afford the welfare of each of these three children throughout their lives paramount consideration. Rather than adopting the conventional structure of following the elements of the welfare checklist in ACA 2002, s 1(4) in order, a concession made on behalf of each parent makes it possible to commence that analysis on the basis that, as at August 2020 when the case was heard by Keehan J, the only tenable outcome that could meet the welfare requirements of each child was to authorise placement for adoption.

106. In cross-examination of the guardian and again in closing submissions, Mr Ekaney QC for the mother conceded that, on the evidence before Keehan J and on the basis of his findings, in August 2020 that judge had no alternative but to order that the three children should be placed for adoption. Mrs Ojutiku made a similar concession on behalf of the father. Mr Ekaney QC and Mrs Ojutiku were right to make this important concession. It would, in my view, be impossible to sustain a submission to the contrary with respect to the situation before the court in August 2020.

107. The central question for the court now, therefore, is whether there has been sufficient change, by the opening up of the prospect of therapy for the parents, to justify, in the children's best interests, putting the otherwise inevitable move towards adoption on hold for a further period in order to determine, in four months or so, whether the therapy has demonstrated that the parents can, in a timescale compatible with the children's welfare, make and maintain sufficient change to be able to care for them safely.

108. There are important factors indicating that the road to adoption may not be in the children's interests which must be kept in focus at all stages. In the field of family law, adoption is the most draconian intervention that the state, through the local authority and the court, may make into a child's family life. It will only be justified, or regarded as a proportionate step to take, when there is no other arrangement that is likely to meet the child's life-long welfare needs. Here, there is no guarantee that a placement for all three children together will be found. The local authority are intent on keeping the children together as three siblings and, if after 12 months no adoptive home has been found, the search will cease and the care plan will be reviewed. The difficulty in finding a placement for three children together will be enhanced because of the importance of attempting to match the placement with their racial and cultural characteristics, because of R's age and because there is concern over the intellectual development of one of the children. The professional evidence, which I accept, is that these factors do not rule out the prospect of finding a family and the social workers, with their eyes fully open to these factors, nevertheless consider that it is probable that a family will be found. This outcome cannot, however, be guaranteed. Thus, whilst the route to adoption and the planned work is clear, success cannot be assured.

109. Alongside those factors, there is a premium to be attached to the fact that the competing option to adoption is the prospect of placement with the children's own parents. Here there is no issue about achieving a racial and cultural match; the parents are the full parents of all three children and, as parents, will have much to offer their children, both directly and in terms of connection with their wider family, that no substitute home could possibly give them. A degree of attachment has been established and maintained by each parent with each child through contact, albeit that the extent of that attachment and the degree that it may have been compromised by the mother's absence for substantial periods and the father's reticence to join in remote contact, has not been specifically assessed.

110. Despite the factors that exist in favour of rehabilitation to the parents' care, and against a plan for adoption, it is accepted that, without allowing time for the parents to begin to engage in therapy, there is no alternative other than for the court to authorise placement for adoption. In the circumstances it is not necessary to elaborate upon all of the individual elements in the welfare checklist. The welfare decision in this case turns upon an evaluation of the harm that the children have suffered or are at risk of suffering [ACA 2002, s 1(4)(e)] and the capacity of the parents (who present themselves together) to provide the children with a safe and secure home in which to develop and otherwise have their needs met [ACA 2002, s 1(4)(f)(ii)]. The extent of harm and the parents capacity to protect the children are the two factors that could justify adoption In this case, all other factors in the s 1(4) checklist are either in favour of placement with the parents, are neutral or do not 'require' adoption.

111. It is, therefore, necessary at this stage to establish a baseline by being explicit on the issue of 'harm' and to spell out the consequences, as I find them to be, of the findings of fact in terms of the likelihood that the children would suffer significant harm if returned to their parents' care today, and therefore without any attempt at therapeutic intervention.

Harm

112. These are public law child protection proceedings, in which the state is seeking to intervene in the life of a family to the extent of permanently removing three children from the care of their parents and extinguishing the parents' parental responsibility for the children. Such an incursion into the autonomous role of parenthood can only be contemplated, as a matter of law, where it is established that each child is suffering or is likely to suffer significant harm, and it will only be justified if no other course will meet the child's welfare needs. In most cases where the extreme course of adoption is being contemplated, the 'harm' from which it is said that the child needs protection will be obvious. That is not so in the present case. Here there is a finding that, four years ago, one of the children, when a very young baby, was injured by one or other parent and sustained a bruise to his eyebrow, and there is evidence of domestic abuse leading to police being summoned on two occasions. In other respects, the couples' ordinary domestic skills indicate that they could provide at least good enough care for their children. Serious though any bruise on a baby will be, and concerning though any occasion of domestic abuse is, such incidents, on the scale found in this case, are unlikely on their own to lead to a plan for permanent removal and adoption; such an outcome would be said to be disproportionate.

113. The factors that move this case from the level of harm described above arise from the sustained and multi-layered dishonesty that each parent has demonstrated at every turn. It is those factors that lead the local authority and the guardian to recommend adoption and to the parents accepting that the children could only be placed in their care if they are successfully able to engage in therapy. It is therefore necessary to be explicit in describing the 'harm' that it is said that the children are suffering or are likely to suffer in the care of their parents.

114. The starting point in evaluating harm is found in the extensive findings of fact made by Keehan J in March 2019 and August 2020. They are set out at paragraphs 6 to 15 and do not need repeating here.

115. Listing the past actions of the parents does not, of itself, establish that any of the children were suffering or were likely to suffer significant harm. At this point it is instructive to consider the definition of 'harm' in CA 1989, 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];
>
> 'development' means physical, intellectual, emotional, social or behavioural development;
>
> 'health' means physical or mental health; and
>
> 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical."

116. In addition to physical ill-treatment, represented by one or both parents causing the injury to baby R, and in addition to potential for a child's emotional, social and behavioural development to be impaired by witnessing the domestic abuse of one parent by the other, both of which are sadly not uncommonly encountered in the Family Court, the harm that arises from Keehan J's findings in this case, whilst coming squarely within CA 1989, s 31(9), is of an altogether more subtle or sophisticated order. It can be categorised as including:

a) If any of the children were returned to the care of either or both parents they would immediately be removed from this jurisdiction and/or would not be made available to the local authority (per Keehan J welfare judgment para 105);

b) The children would be exposed to a wholly unstable home life with frequent and haphazard changes of location and residence, both on a domestic and international basis;

c) They would be exposed to a parent who habitually and consistently lies in order to deceive others and get her own way;

d) The children would be unable to rely upon the truth of anything either of their parents may say;

e) Neither parent would cooperate with the reasonable, child-focussed, interventions of social workers, health professionals and others;

f) The children would be likely to have haphazard and unpredictable access to health care, dictated by the needs of the parent rather than the child;

g) Similarly, there would be haphazard and unpredictable engagement with schooling and education, dictated by the needs of the parent rather than the child;

h) The children would be exposed to the unstable parental relationship including episodes of domestic abuse, following which, rather than protecting the children, the parents would be likely to react to police or social work intervention by giving a dishonest account of events;

i) The children would be cared for by parents who have no insight into the developmental needs of a young child;

j) They would be cared for by parents who would fail to prioritise the needs of their children over their own.

117. The characteristics of life in the care of these parents that I have set out, which are based on the findings made by Keehan J, supported by the findings that I have made, would, I find, be likely to result in significant harm to each of the three children by the impairment of their physical or mental health, or the impairment of their intellectual, emotional, social or behavioural development. The daily experience of being brought up in the care of their parents would be unpredictable, unstable and volatile. It would be an experience with the children being immersed in a way of living where lies and deception are the norm and where concepts such as truth, honesty and consistency hold no sway.

118. Moving from the elements set out in the above list to consider a concrete example of what, on Keehan J's findings, would be the experience of the children if they were returned to their parents' care today, without any therapy, the likelihood must be that the parents would be likely to take flight with the children to an undisclosed destination as soon as possible. The children would be removed immediately from any connection with the professional caring authorities who have protected them over the past few years. They would be on the run with their parents, with no fixed abode, probably abroad, probably travelling under false names, probably avoiding any contact with the authorities in the country to which they had gone unless such contact was absolutely necessary. Such an action would be wholly contrary to the children's basic needs for stability, consistent care and protection. It would be an action driven by their mother and supported by their father, with absolutely no insight into the needs of their children and solely to prioritise her or his own needs rather than theirs.

Capacity

119. Unless the parents are able to change and move away from the pattern of behaviour that has led to the adverse findings of fact that have been made and to the identification of harm to the children that those findings establish, it is clear that they lack the ability to provide any of the children with a stable and secure home, or otherwise meet their

emotional and developmental needs in a way which is not harmful. This state of affairs is implicit in the concession that has been made as to the situation as it was before Keehan J in August 2020. It is also, as I have already held, the inescapable conclusion from the evidence.

120. The key question is, therefore, that which is set out at paragraph 107 above, namely whether there is sufficient evidence of the potential for change through therapy to justify, in the children's long-term interests, postponing the final decision to allow for a period of engagement with therapy.

121. In favour of the option of therapy are two important factors. Firstly, both parents state that they are desperate to do whatever is needed to regain care of their children. They have attended the required sessions with Dr Banks. They have fully engaged with this stage of the court process, including conducting discussions with the guardian. They state that they are committed to undergoing the recommended course of therapy and they have freed themselves of any work or other commitments to make themselves fully available.

122. Secondly, a therapist, whom Dr Banks considers would be particularly appropriate and would have the required degree of directness of approach, is available and, subject to funding, is able to start work immediately.

123. A third factor, and it is a crucial one, is that the instructed expert in the case, Dr Banks, advises that, despite the challenging nature of the task, there is a sufficient basis to justify embarking upon therapy with the aim of achieving sufficient change in the functioning of each parent to allow rehabilitation to be contemplated in due course.

124. I have already set out an analysis of Dr Banks evidence (paragraph 90 to 94) at the end of which I was unpersuaded that his recommendation for therapy was sustainable as a realistic option. That analysis was undertaken by considering the internal content of his evidence, and without, at that stage, taking account of the parents' own evidence to this court.

125. Once the parents' evidence is brought into consideration, the prospect of therapy being able to achieve and maintain a sufficient change in each parent are, in my view, further reduced to a significant degree. The findings that I have now made as to there being nothing other than minimal change in the parents' acceptance of past harmful behaviour, and their apparently undiminished ability to produce and develop new lies to this court, do not provide any basis at all for identifying that there is any prospect of change on the part of either of them (paragraphs 95 to 98).

126. Neither parent accepts Dr Banks' assessment of their individual problems; the mother simply does not see herself as Dr Banks sees her. Rather than receipt of the expert's report providing a mirror that each parent can look into and gain some understanding of what now needs to be addressed, this potentially dynamic moment has come and gone without any hint of impact in terms of enhanced self-awareness, and with the parents' dishonest behaviour presenting as firmly embedded as ever. One is driven to the conclusion that, when the parents say that they are willing to undergo therapy and will do whatever is necessary to establish that they can care for their children, they are simply saying what they perceive is necessary and doing no more than paying lip-service towards accepting that there is a need for therapy. It may be that they are not

deliberately doing so. It may be that they are incapable of seeing the truth of what Keehan J has said about their past behaviour and what Dr Banks says about why they behaved as they did. Be that as it may, the result is that they have not demonstrated to this court that they genuinely understand why they need therapy.

127. Taking this appraisal of the parents' evidence and presentation in the court process into account alongside my concern that the prospect of success in therapy does not seem sustainable even on Dr Banks' evidence because of the scale of the problems to be addressed, it is impossible to escape the conclusion that there is no realistic prospect of therapy producing sufficient enduring change of the scale and degree necessary to justify consideration of placement of the children in their care on the basis that it would then be sufficiently safe to do so.

128. Given my conclusion, which is that, despite Dr Banks recommendation, the evidence does not establish that the parents' problems might be sufficiently resolved through therapy, it is not strictly relevant to consider the question of an adjournment of the case for four months to monitor how the parents might engage with the therapist and establish a therapeutic relationship. Even if a positive report were received after four months, my conclusion that the degree of change that is needed to establish safe parenting is beyond the scope of the proposed therapy would still stand. Indeed to take four months even to reach that stage indicates just how much work would then need to be done in the months that followed, thereby stretching the time during which the children were, yet again, waiting for a permanent placement yet further.

129. On the issue of capacity, therefore, my sad conclusion is that the current lack of capacity to provide sufficiently safe, stable and nurturing care for their children cannot be reversed by a single course of therapy, starting as it would, from a baseline where the parents simply do not accept that there is any problem that needs to be addressed.

Adoption

130. On the basis of the welfare analysis that I have now undertaken, and despite maintaining at all points focus on the importance of keeping open the option of placement with parents, as opposed to permanent removal, and despite accepting that the adoption plan is not guaranteed to succeed and is not without difficulties, I consider that the local authority must now, in the life-long welfare interests of each of these children, be authorised to place them for adoption on the basis that it is the only one of the two competing options by which their needs can safely be met. On that basis, it is clear that the welfare of each child requires that the consent of each parent to adoption is dispensed with and that care and placement for adoption orders are made.

131. I have reached the conclusion that the children's welfare requires adoption based upon my own analysis and without adding, as it were, the weight that is added by the fact that this is also the considered opinion of the children's guardian. The opinion of an experienced guardian, who has known this case throughout its long life and who has plainly reassessed her opinion in the light of recent developments, necessarily commands the respect of the court. Were I to differ from her conclusion, finely balanced though it is said to be, I would need to identify good reasons for doing so. In the event there is endorsement rather than disagreement.

Conclusion

132. In the circumstances the applications of the local authority must each succeed. I will make full care orders and placement for adoption orders with respect to each of these three children.

133. If it is necessary to do so, I will grant permission to the local authority to publicise the children's availability for adoption through relevant adoption networks on the basis set out in the local authority evidence.