Neutral Citation Number: [2023] EWHC 3512 (Fam)

Case No: NG21C00154

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2023

**Before** :

**MRS JUSTICE LIEVEN**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**NOTTINGHAMSHIRE COUNTY COUNCIL** — **Applicant**

**and**

**MOTHER (M)** — **First Respondent**

**and**

**FATHER 1 (F1)** — **Second Respondent**

**and**

**FATHER 2 (F2)** — **Third Respondent**

**C1, C2 & C3**
**(By their Children's Guardian)** — **Fourth - Sixth Respondents**

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Miss Anita Thind** (instructed by **Nottinghamshire County Council**) for the **Applicant**
**Mrs Kemi Ojutiku** (instructed by **Mould Haruna Solicitors**) for the **First Respondent**
**Ms Wendy Frempong** (instructed by **Living Springs Solicitors**) for the **Second Respondent**
**Ms Louise Sapstead** (instructed by **Timms Solicitors**) for the **Third Respondent**
**Ms Vickie Hodges** (instructed by **Jackson Quinn**) **for the Fourth to Sixth Respondent**

Hearing dates: **13-15 & 19 June 2023**

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

This judgment was handed down remotely at 10.30am on 23 June 2023 by circulation to the parties or their representatives by e-mail.

.............................

MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mrs Justice Lieven DBE :**

1. This case concerns three children, C1 a girl aged 10, C2 a boy aged 4, and C3 a girl aged 3. The First Respondent is the mother of all three children ("M"). The Second Respondent is the father of the two younger children ("F1"). The Third Respondent is the father of C1 ("F2").

2. The Local Authority ("LA") was represented by Anita Thind, the Mother was represented by Kemi Ojutiku, F1 was represented by Wendy Frempong, F2 was represented by Louise Sapstead and the children were represented through the Children's Guardian by Vickie Hodges.

3. The background to this case is that both M and F1 are currently in prison. F1 is serving a life sentence for murder, and the M is in prison for manslaughter. Both were sentenced by HHJ Lockhart KC at Coventry Crown Court on 12 March 2021. F1's earliest release date is 2036. According to Ms Bell of the Probation Service the M will automatically be released in May 2027. The M is eligible for early release in May 2025, and might be eligible to be released in May 2024, but that depends on her fulfilling certain criteria which at the moment are not certain.

The applications

4. The following applications are before me.

    a. The LA's application for placement orders in respect of the two younger children;

    b. F2's application for a Prohibited Steps Order ("PSO") to prevent the M from removing C1 from his care;

    c. The M's application for a s.8 order for C1 to spend time with her;

    d. The Guardian's application for a s.91(14) order to prevent the M from making applications in respect of contact with C1 save with the permission of the court.

The background

5. The M and F2 commenced a relationship in 2011 and separated in 2013. C1 was born in December 2012. I understand C1 initially had a good deal of contact with F2, but this then became much less frequent until the proceedings commenced. I am told that until the start of these proceedings C1 had been told by the M that F1 was her father.

6. The M and F1 married in an Islamic ceremony in April 2017. The make-up of F1's family is relevant to many of the issues in the case. F1's parents live in Pakistan. There are four siblings; PA2 was married to V1, who was the victim of the murder ("the victim"). PU1 is married to PUW, the victim's sister. PA1 is the youngest sibling, and puts herself forward to look after C2 & C3. The victim and F1 were first cousins.

7. There was a history of domestic abuse by F1 of the M, some of which is accepted by F1. This seems to have occurred throughout the course of the relationship. There was

a report in September 2018 to the then Local Authority, Birmingham Children's Trust ("LA"), about F2 being abusive to the M, and her having attempted suicide, although the M has always denied the veracity of the allegation of a suicide attempt. This was shortly after C2's birth.

8. C2 was born in July 2018.

9. On 22 August 2019 the M reported to Women's Aid that she had been assaulted by F1. There is reference to a knife, but the M says that was a different incident. F1 accepted two incidents of what I would describe as very serious domestic abuse of the M, both of which C1 witnessed at least in part.

10. The murder took place on 17 November 2019. The very brief background is that the M alleged that the victim had sexually assaulted her. This then led to a sequence of events which culminated in the victim being killed with a knife by F1. The parents then got into a car with C1 and C2 and were stopped by the police firearms unit. F1 was arrested by armed officers which the children observed.

11. A number of the sentencing remarks of HHJ Lockhart KC are highly relevant to the issues I have to decide. I am not bound by them as findings of fact, but the Judge had presided over a lengthy trial and had heard a large quantity of evidence, I therefore give them the utmost weight. The key passages are as follows:

> *"I find that more anger and vitriol came from you, M. I find that the texts, the telephone calls and the other social media traffic indicated that you would not let this lie. You had decided that you had been wronged, you were determined to have it out once and again with V1. This at a time when you would have F1 at your side. I find that you issued an ultimatum to F1, V1 and PA2 leaving, or "me leaving". F1, at your hands, was under some pressure, M."*
>
> …
>
> *"At this moment, you, M, said words of encouragement to*
>
> *F1, "kill him". On the finding of the jury, you did not actually wish for this to happen, but in every sense you encouraged him to assault V1 as he went forward. I find, of course, that I cannot be sure that you wanted him killed, but you were encouraging him as he went forward."*
>
> …
>
> *"It should have been dealt with by the police. I have made a sure finding that you here took the law into your own hands. If there was some provocative conduct by V1 -- and I am prepared to find that in the weeks and days before this event there may have been -- then because there were so many other ways of dealing with it, it offers little by way of mitigation. That said, I do find that your co-accused M, did, in a wholly despicable way, encourage you to violence. It is hard for me to assess exactly what weight to give this factor, but I take it into account in your favour in the way that I can."*

…

*"It is urged on me that I should not find that there was an intention by you to cause harm falling just short of GBH. I find myself readily able to reject the submission, having set out what my sure findings are in the case. You intended that there be a fight and you went to start it. Only a serious assault on V1 by you and F1 was going to fulfil your intent. Any submission that you had a minor role is roundly disproved by my sure finding."*

12. F1 was given a life sentence with a 25 year tariff; the M was convicted of manslaughter and given a 10 year sentence. I asked for clarity from the Prison Service as to the M's possible release dates. In a letter dated 16 June 2023 the Probation Officer at HMP Foston Hall informed me that she is eligible for being Released on Temporary Licence ("RoTL") on 31 May 2025. However, that was subsequently changed to such release being possible in May 2024. It is also possible where prisoners have made exceptional progress during their sentence for them to be recategorized a year early, i.e. on 31 May 2024, but it is not possible to know if that would apply to the M at this stage.

13. PA1 was staying with the family at the time, for which see below. She was closely involved in the events of the day and was communicating with the family in Pakistan. She sent a series of texts to the M, which included as follows:

    *"'iu told u tk handle it', 'u didnt listen', 'werw all fucked'."*

14. The children have had an unsettled time since the murder. C1 and C2 were in foster care for a few days and then moved to a Maternal Great Aunt. C3 was placed with her once she was born in February 2020. In May 2020 after the M was released on bail the children moved to live with her and the Maternal Grandmother ("MGM"). On 7 November 2020 C1's surname was changed from J to S without F2's consent.

15. In February 2021, shortly after the end of the trial, the MGM contacted the LA and requested support. She applied for a Special Guardianship Order ("SGO"). However, in July 2021 the MGM indicated that she could not continue to look after C2 & C3, and she subsequently gave notice that she could not continue to look after any of the children.

16. An Interim Care Order ("ICO") was made on 13 August 2021 and the children were placed together in foster care. It can be seen from this chronology that the children have now been in foster care for nearly two years. That significant delay has been caused by a number of factors. One is that in mid-2022 relatives of the M put themselves forward to care for the younger children. They were initially positively assessed and the parties agreed that any decisions should be delayed whilst that process was undertaken. However, in February 2023 they pulled out of looking after the children.

17. C1 moved to the full time care of F2 and his partner (Ms H) on 31 August 2022. They were positively assessed and she has been doing very well there. The children are currently having fortnightly contact in the community which they enjoy. It has been extremely difficult to arrange overnight contact.

18. It has also proved extremely difficult to arrange video contact between the younger children and the M and F1.

19. The children have had some direct contact, in prison, with the M. I understand C1's last direct contact with the M was on 16 March.

20. The case was listed to be heard before Mrs Justice Roberts on 24-27 April 2023 sitting in Mansfield. Most unfortunately, the prison transport contractor failed to deliver the M to court on the first two days of the listing and were very late on the third. Roberts J had no choice but to adjourn the matter.

21. I note that on the first day of this hearing (24 April) the M was again not produced. I appreciate that this is a common problem that the Criminal Courts have to deal with on a daily basis. However, I think it is worth drawing attention to the fact that it has led to the waste of four days of a High Court Judge's time, which could have been spent dealing with other cases.

22. There have been a large number of assessments in these proceedings.

23. A sibling assessment was carried out by Rose Devereux on 1 February 2022. It is clear that the siblings are very close and they can all show affection and comfort one another. The assessment says:

> *"… [D]espite the siblings differing in age and having different interests, they are all able to comfort and show affection to one another, they do not exhibit negative behaviour connotations towards one another. The assessment considers the impact of separation of the siblings should C1 and her younger siblings have different care plans. The assessment concludes 'it is recommended that if F2 is positively assessed by the Local Authority and C1's long-term care plan is that of placement with her father, then the separation of the siblings would be deemed necessary and proportionate to allow C1 to reside with her father, and C2 and C3 to reside in an alternative placement, which is deemed suitable to meet their needs throughout childhood.' And 'It would be important for the children to have an ongoing relationship as this is important for their identity throughout their childhood. The means of such relationship will be determined at a later date within their care plans as it is important that the children's safety is the priority throughout any decisions which are made.'"*

24. Various people have been put forward to care for the children, and particularly the younger children. That is one of the factors that has led to the extreme delay in this case.

25. Ms PA1 is the Paternal Aunt and the M strongly supports her as a carer for the children. There was an Initial Viability Assessment which did not rule out PA1 so there was then a full child and parenting assessment carried out by Rosanna Kapur dated 10 February 2022.

26. Ms Kapur identified the following concerns. There was a history of domestic abuse between F1 and M which PA1 was aware of. She herself has been the victim of

domestic abuse. However, she did not appear to consider the emotional impact of the domestic abuse on the children. She denied knowing about the tensions within the family prior to the murder, but Ms Kapur considered this not to be true. PA1 seemed naïve at times, not considering the difficulties of looking after the children once the M was released from prison. Ms Kapur was very concerned about the wider family dynamics. PA1 seemed to take regular advice and guidance from her parents in Pakistan. I will return to PA1's oral evidence below.

27. There were two applications for an Independent Social Worker to carry out a further assessment of PA1. I rejected the applications as I considered that Ms Kapur had carried out a professional assessment and there was therefore no necessity, the relevant test, for a further assessment; the application was made on the basis that the M and PA1 did not agree with the conclusion, rather than that there was any material gap in the assessment.

28. The M has also put forward a friend, Ms LG, as a carer for the children. The LA carried out an assessment, which was negative. The concerns raised included that LG demonstrated limited insight into the domestic abuse and the impact that would have had on the children. She had had some knowledge of the domestic abuse but had not reported any concerns to the LA or the police. She said she was unable to "pass judgement" on F1's behaviour despite the domestic abuse and the conviction for murder.

29. LG was sent the negative assessment on 24 December 2021 and told she had a right to challenge it, but failed to do so. She was given a further opportunity which again she did not take up.

30. In early 2022 an uncle and aunt of the M, Mr and Mrs R, put themselves forward to care for the younger children. On 11 July 2022 I ordered that they be assessed. They were positively assessed on 11 November 2022. However, on 16 January 2023 they withdrew their offer to care for the children. This issue led to many months of delay in the case and highlights the need for clear and honest conversations to be had at the outset of a connected persons assessment.

31. Just before the hearing the Paternal Grandparents in Pakistan put themselves forward to care for the children. In my view this was far too late in the process for it to be appropriate to adjourn to order an assessment. In any event, for the reasons I set out in my conclusions, I do not consider such a placement could possibly be in the children's best interests.

The parties' positions

32. The LA propose that C1 stays with F2 under a "live with" Child Arrangements Order ("CAO"). A Specific Issue Order has already been made that will allow her to change her surname back to that of her father.

33. The LA supports F2's application for a PSO to prevent the M removing C1 from his care, or from school.

34. In respect of the younger children, the LA seek final care orders and placement orders. The LA consider the sibling relationship should be prioritised in any search for

potential adopters. The LA consider that if an "open" adoption is found, with sibling contact, then C1's contact with her mother should be limited to letterbox contact. This is in order to maximise the prospects of finding an adopter who would accept sibling contact.

35. The M does not oppose a CAO for C1 to live with F2. However, she does oppose a PSO. She does not oppose the name change.

36. She opposes the plan for the younger children. She argues for further assessment of PA1 and LG and/or for direct placement with one of them. In the alternative, she says the younger children should be placed in long term foster care. She undoubtedly hopes in the medium term that they will be returned to her care.

37. Both the M and F1 accept that threshold is crossed.

38. F1 adopts the same position as the M.

39. F2 is neutral on the placement of the younger children. He opposes the M having any order for contact with C1 and supports the Guardian's application for a s.91(14) order.

40. The Guardian supports the position of the LA and positively advances the s.91(14) application.

<u>The evidence</u>

41. Ms Kapur was the children's allocated social worker between August 2020 and May 2022 and from 4 April 2023 to the present time. My impression was that she had thought very carefully about the difficult balances that are involved in this case and knew the children well.

42. The LA Plan is that C1 remains with F2 and his partner. C2 and C3 be made subject to placement orders with the intention that they be placed together. The hope would be that the adopters would agree to continuing sibling contact with C1. She said that sibling contact should be a minimum of twice per year, but she hoped it would be more than that.

43. However, her view was that adopters were unlikely to accept sibling contact if C1 was continuing to have contact with the M. Therefore, she was proposing that if the younger children are adopted then contact between the M and C1 is ceased.

44. If there ended up being a closed adoption with no sibling contact, then she accepted there would need to be direct work with all three children. She accepted that the loss of contact between C1 and C2 & C3 would be a very significant loss for all of them.

45. She said that C1 was very well settled with F2 and his partner. When C1 moved to live with them Ms Kapur had not been the social worker, but she thought that C1 had coped better with the separation than she had expected. She said that C1 loved her mother deeply and has a very good relationship with her when she sees her. But C1 has lots of mixed emotions, including being angry and upset about the M's decisions in the past and wanting to protect her younger siblings.

46. C1 was living with F2 simply under a CAO and he had parental responsibility for C1. Therefore any future contact between C1 and her M was a matter for F2. Ms Kapur thought that F2 was unlikely to take C1 to visit the M in prison.

47. She thought there were too many external variables to have any confidence that the younger children could be placed with their mother once she was released from prison. She said there were issues around the M's past mental health history, domestic abuse, home conditions and the M's openness and honesty working with the LA. Further, her certain release date of 2027 was too long for the children to wait for a permanent care.

48. She had not carried out the Interim Viability Assessment of PA1, the Paternal Aunt, but she had carried out the kinship assessment. She did not think PA1 was a suitable carer for the children. She had not been honest about her mental health history. Further, she had seriously underplayed events within the household before the murder. PA1 had been very reluctant to give contact details of the Parental Grandparents. She did not seem to understand the impact that domestic abuse within the household would have had on the children.

49. Ms Kapur felt that PA1 would need very extensive support and even that would not cover concerns about what would happen when the M was released from prison.

50. Ms Kapur accepted that there were some very difficult balances to be made, but she thought that it was right to prioritise the sibling relationship over the children, and in particular C1's relationship, with the M. She did fully accept that C1 loved her mother and the break in contact with her would have a significant impact.

51. She felt that F2 could prioritise C1's emotional needs and support contact with her as long as he felt this was safe for her.

52. The M described the children in very moving terms and I have no doubt she loves them very much. However, I thought that she was unrealistic in terms of the future and very selective in her evidence of the past. Much of her evidence about the children was really about what she wanted rather than what would be in their best interests. This was particularly true in respect of the M's support of placement with PA1.

53. She did not accept that she was guilty of manslaughter or that she had said "kill him" as HHJ Lockhart KC had found. She did not accept she had "encouraged [F1] to violence". She did not accept that she had any responsibility for V1's death.

54. It was the pattern of the M's evidence that she minimised the harm the children had suffered when living with her and minimised her responsibility for it. She said F1 had been violent to her, particularly when he was drunk and he would become aggressive. On one occasion he came home drunk when she was in bed with C1. He put his hands round her throat. There was another occasion when he slapped her and C1 was in the room and saw what happened. Another time he had been shouting at her and had a knife.

55. In relation to C1's comments about "UB" (LG's sometime partner) she denied that C1 would have known about him and F1 shouting. But it later transpired that C1 would

have been present when the M and Ms Griffin were talking about this. She said "C1 has got the wrong end of the stick". Again, the M avoided responsibility for what C1 knew.

56. She denied that LG had tried to persuade her to leave F1 and go to the Police when the M told her about the domestic abuse. This again conflicts with LG's evidence, and there is very little reason to believe LG would have been untruthful about this.

57. She explained that she had engaged in therapy whilst in prison in respect of domestic abuse and her responses to it. She felt that she had made major progress in her thinking in this regard and understanding her responses. She had undertaken a course of DBT but did not feel she needed any further work to address the traits of Borderline Personality Disorder which had been identified.

58. She accepted that she had seven proven adjudications in prison, although none since March 2022. She did seek to somewhat minimise these, but that was perhaps understandable.

59. She believed she would be eligible for Open Prison/Open conditions in May 2024. She would be able to get Child Centred Reunion Leave now, which would allow her to see the children in the community.

60. She said she accepted that C1 was happy and settled with F2 and would not seek to remove her from his care. I note that nowhere in her written statements does the M say she accepts that the children cannot live with her when she leaves prison. She is clear in her written statements that she will seek to regain care of the younger children at least.

61. She spoke about how much PA1 loves the children, but made no reference to the fact that PA1 had only stayed with the older children for 5 days and had never met C3. She was either being wholly unrealistic or trying to mislead the court as to the relationship that had existed.

62. She said that when PA1 lived with the family, which during her evidence was assumed to be for three weeks but was later in the evidence established to only be five days, she had said she was living at Magnolia House because she wanted to move to larger accommodation. I am confident that both she and PA1 lied about this, and PA1 knew about the domestic abuse and knew why the M was not living in the house.

63. She said that she had not wanted the children placed with their Uncle PU1 because he was married to V1's sister. I do not think she was honest with me about F1's family. She said she did not know where PA2 (V1's wife) lived and said "I don't talk to her" but PA1 said PA2 was very much still part of the family. I do not think either the M or PA1 were honest about what was going on within F1's family.

64. She said that when she is released she would have choices about who she lived with, and could live with a family member. However, she said the only member of her family she spoke to was her Aunt L. She was plainly very angry with her mother (the MGM), who had looked after the children for a period, but then felt she could no longer do so.

65. She did not intend to have any ongoing relationship with F1, save as far as she had to over the children.

66. PA1 is F1's sister. She was initially put forward to look after the children and was subject to a negative assessment. She said that she had come to the UK on 21 October 2019 to live with her husband who she had married the previous year in Pakistan. Her evidence was that she had only lived with him for 5 days, but he had been abusive and she had left and gone to the police, who had helped her to live in a refuge. She had moved to live with F1 and the family on 31 October 2019, 17 days before the murder. However, at the end of her evidence I pointed out to her that she had told the police on the day of the murder that she had moved to Osborne Grove on 12 November, five days before the murder. At that point she changed her evidence and said that 12 November was the correct date. I do not see how this could be an innocent mistake. The difference between having lived with the family for only five days rather than 17 and therefore having such limited time with the children at such a memorable and intense time, is a not an easy mistake to make.

67. Therefore, she has spent a total of five days with C1 and C2 four years ago. She has not seen them in person since. She has never met C3. I accept that she sends them presents, but the relationship with them is certainly not as portrayed by both herself and the M.

68. She said in answer to Miss Thind that she did not know about domestic violence between F1 and the M. However, when questioned by Ms Hodges she accepted that she did know when she lived in Pakistan that F1 had been abusive to the M and had "slapped her". She also then said that she thought she had heard about F1 trying to strangle the M. I thought she was deliberately trying to minimise what she knew about the domestic abuse until Ms Hodges pointed to her earlier statement. In my view it is very likely that she knew that the M was not living at home because of the domestic abuse.

69. In relation to the murder, she had told the Social Worker that she was aware that there had been a "little argument", which was plainly a very significant minimisation of what had happened before the murder. She had been in very close contact with the older generation of the family in Pakistan on the day of the murder. It is relevant that her actions that day suggest that she was looking to those elders for both decision making, but also for sorting out problems.

70. I do not think PA1 was honest about what was going on in her and F1's family since the murder. She said the family had moved on from the murder and did not discuss it. But she then said they don't talk about the M and "don't want to know her". She later said that her sister PA2 (V1's wife) "did not feel good" about the murder, but she is very much part of the family. She said that there had been no discussion about her looking after the children. I find this very difficult to accept.

71. She said if she had the children living with her, she would look to the LA for advice and decisions around contact with the M.

72. LG is a friend of the M and put herself forward to care for the children. She had been negatively assessed by the LA in late 2021. The LA wrote to her twice saying she could challenge the assessment, but she did not respond to either letter.

73. She said that her circumstances had now changed because she was moving to a larger property in September and would be able to look after the children.

74. LG said that she had tried to persuade the M to go to the police in respect of one incident of domestic abuse. She said she raised this with the M on a number of occasions. The M denied this.

75. She was very evasive about the father of her child, Mr WH, who C1 called "UB". She did eventually accept that C1 would have been present when she and the M were discussing UB and F1, who were good friends, and how they got drunk and shouted. She said the shouting was "not aggression", just him being loud.

76. F2 spoke very movingly about C1. He was not a particularly articulate witness and had trouble describing emotional reactions, but I think he had real love and empathy for C1. He was plainly keen to protect her from her very bad experiences in the past. He accepted that C1 loved her mother very much and would be very upset not to see her. He said that C1 is very upset when contact with the M is cancelled. He also described how upset she becomes after visits, when she comes home and talks about all the terrible things that have happened. He said she is physically distressed and then takes time to settle back down. I note that this doesn't mean C1 doesn't love her mother, and her distress is doubtless in part because she is so upset that her mother is in prison and not with her.

77. C1 had spoken to him about her life before the murder, including the day of the murder, the alleged abuse by F1 and abuse of her mother.

78. F2 felt very strongly that C1 should not see her mother in prison because it is not a good place for children to visit, even if the prison tries to be more child friendly. He was fully prepared to support contact with M in the community but thought that at least for a time this should be supervised.

79. He also described C1's relationship with her younger siblings. He thought she would be devastated if she stopped seeing them. He said that she comes back from seeing them distressed and she blames herself for everything that has happened.

80. C1 had a time when she came to F2 when she was having nightmares, including with lots of violence. But that seems to have settled down in the last few months.

81. He thought she would be very upset if she couldn't see either her mother or the younger siblings. He thought it would be worse for her not to be able to see C2 & C3 than not see her mother until she was 18, but he totally accepted that she would be very upset in either situation.

82. Mr Thompson, the Guardian, gave oral evidence after hearing the other witnesses. I thought he was a careful witness who had thought very carefully about his recommendation. He was clear that there was no ideal solution in this case.

83. He wanted the younger children to have the same opportunity for a stable family as C1 had. C1 had been very anxious about C2 & C3.

84. He wanted the s.91(14) order for 6 years because he felt C1 would worry if applications were made and she was back in proceedings. This was particularly

important around school, which C1 viewed as a safe place away from the conflict she had experienced at home.

85. He was confident that F2 would promote sibling contact. He was also full of praise for Ms H who was very empathetic and insightful to C1.

86. He was "cautiously optimistic" that the LA would find prospective adopters who would accept sibling contact. He thought the length of search period, 6 months which could be extended to 9 months, was appropriate. He did not think that the ages of a children should be a significant barrier to finding an adoptive placement for C2 & C3 together.

87. He felt that if the younger children were placed in long term foster care there was still no guarantee of sibling contact with C1, and a much higher risk of placement breakdown.

88. He was clear that if C2 & C3 were placed for adoption then the M's contact with C1 should be limited to letterbox contact in order to protect the possibility of sibling contact. Effectively he did not trust the M not to destabilise C1's placement or to try to find out the location of the younger children.

89. He had decided that it would not be right to discuss with C1 the possibility of her not seeing her mother. He felt C1 did not understand the degree to which the M was culpable for V1's death. C1 does not see her mother as having failed to protect her from F1, so at the present time her understanding of the risk posed by the M is quite limited. He felt she needed work to understand those risks before she could make decisions about contact in the future.

90. He did not think PA1 was a realistic option. The point he highlighted beyond what Ms Kapur had already covered, was that PA1, if her evidence was to be believed, either does not ask questions or is not being candid, particularly about the domestic violence. A protective carer, particularly for children in a vulnerable situation, needs to ask difficult questions.

91. He also questioned her motivation for coming forward and suggested that she might have been influenced by other people, in particular either the M or the wider family.

<u>The law</u>

92. The Court must have regard to s.1 of the Children Act and since the plan is for adoption, to the welfare checklist in s.1(4) of the Adoption and Children Act 2002. The court should treat as its paramount consideration in accordance with s.1(2) of the 2002 Act, the child's welfare throughout their lives.

93. In respect of placement, s.21 of the Adoption and Children Act and s.52 apply to that application. Section 52(1)(b) provides:

> *"The Court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the Court is satisfied that-*
>
> ...

*(b) the welfare of the child requires the consent to be dispensed with."*

94. In Re P (Placement Orders: Parental Consent) [2008] 2 FLR 625, the Court of Appeal held that the word "requires" has a connotation of the imperative (i.e., what is demanded rather than what is merely optional or reasonable or desirable. What has to be shown is that the child's welfare throughout his/ her life requires adoption as opposed to something short of adoption.

95. It is for the Local Authority to establish that nothing else will do: see Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33, Re B-S (Adoption: Application of s.47(5)) [2013] EWCA Civ. 1146 and Re R. As Baroness Hale of Richmond said in Re B:

> *"…the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."*

96. The judge must evaluate all the options and undertake a holistic evaluation of the child's need. In Re B-S, the Court of Appeal stressed the following three points:

> *"i. Although the child's interests are paramount, the Court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.*
>
> *ii. The Court 'must' consider all the options before coming to a decision.*
>
> *iii. The Court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer."*

97. In Re B-S, the Court held that the following two elements are essential when the Court is being asked to approve a care plan for adoption and make a non-consensual placement order or adoption order:

> *a. There must be proper evidence both from the Local Authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option; and*
>
> *b. There must be an adequately reasoned judgment by the Judge.*

98. Further, in Re N (Refusal of Placement Order) [2023] EWCA Civ 364 Baker LJ stated:

> *"The approach to be adopted by a judge when deciding whether to make a placement order is now well-established and need not be repeated at length again here. Under Article 8 of the ECHR, any interference with the exercise of the right to respect for family life should be proportionate to its legitimate aim. There can be no greater interference than the*

*permanent removal of a child. Consequently, the relationship between parent and children can be severed "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short where nothing else will do", per Baroness Hale of Richmond in Re B (Care Proceedings: Appeal) [2013] UKSC 33 [2013] 2 FLR 1075 at paragraph 198. A judge determining an application for a placement order must therefore carry out a rigorous analysis and deliver a reasoned judgment. The key requirement of the judgment, as stated by McFarlane LJ in Re G (A Child) [2013] EWCA Civ 965 at paragraph 54:*

*"is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.""*

99. In re-M-H (a child) [2014] EWCA Civ 1396 the Court of Appeal considered the test for dispensing with consent and the 'nothing else will do' test. Lady Justice Macur observed that that phrase was often taken in isolation from the preceding words referring to exceptional circumstances and the overriding requirements of the child's best interests. She noted that:

*"it stands to reason that in any contested application there will always be another option to that being sought. In some cases, the alternative option will be so imperfect as to merit summary dismissal. In others, the options will be more finely balanced and will call for critical and often anxious scrutiny. However, the fact that there is another credible option worthy of examination will not mean that the test of "nothing else will do" automatically bites.*

*The holistic balancing exercise of the available options that must be deployed in applications concerning adoption is not so as to undertake a direct comparison of what probably would be best but in order to ascertain whether or not the particular child's welfare demands adoption. In doing so may well be that some features of one or other option taken in isolation would produce a better outcome in one particular area for the child throughout minority and beyond. It would be intellectually dishonest not to acknowledge the benefits. But this is not to say that finding one or more benefits trumps all and means that it cannot be said that "nothing else will do". All will depend upon the judge's assessment of the whole picture determined by the particular characteristics and needs of the child in question no doubt often informed by the harm which she has suffered or been exposed to."*

100. It is always important to bear in mind what Mr. Justice Hedley said in Re L, which was that:

*"[S]ociety must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences*

*flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."*

101. That approach has been endorsed by the Supreme Court in Re B, where both Lord Wilson and Baroness Hale emphasised the very diverse range of parents and the diverse standards of parenting that society must be willing to tolerate:

> *"[T]he State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs."*

102. The Court must take into account the Article 6 and Article 8 rights of the children's parents but where there is a tension between the Article 8 rights of the parents on the one hand and the Article 8 rights of the child on the other, the rights of the child prevail: see *Yusuf v The Netherlands*.

103. In Re M (Children) [2013] EWCA Civ 388 the applicability of the Lucas direction to family proceedings was highlighted by Ryder LJ:

> *"7. A Lucas direction is a criminal direction derived originally from a case on corroboration, R v Lucas [1981] QB 720. It is used to alert a fact-finding tribunal, that is a jury in a criminal trial, to the fact that a lie told by a defendant does not of itself necessarily indicate guilt because the defendant may have some other reason for lying; that is, he may lie for innocent reasons. A witness may lie because she lacks credibility, or because she has an innocent motive for lying. If she lies about the key fact in issue, that is one thing; if she lies about collateral facts, that may be quite another. A judge of fact may not be able to separate out every fine distinction, but may nevertheless conclude that an allegation is proved, despite the fact that the witness has lied about other matters.*
>
> *8. This is often simplified in the circumstances of emotionally-charged allegations remembered through the fog of distress and relationship breakdown as a core of truth surrounded by sometimes exaggerated and sometimes badly recollected or hazy memory. There may also be an overlay of deliberate untruth arising out of the anger and distress of the breakdown and/or the nature of the application before the court, and I remind myself this was a strongly disputed application. It is also too frequently the case that a Family Judge is faced with internally inconsistent or even untruthful witnesses who are locked in a battle in which their energies and antagonism have sadly come to be focused on who should look after the children or have contact with them."*

104. In Re K (Children: Placement Orders) [2020] EWCA (Civ) 1503 Peter Jackson LJ stated at paragraph 29 of his judgment that:

> *"The next general matter concerns the significance of lies. The correct approach to lies in relation to fact-finding is well known and the Judge appropriately gave himself a Lucas direction in that context. Here the more pertinent matter for our purpose concerns lies in the context of welfare. Lies, however disgraceful and dispiriting, must be strictly assessed for their likely effect on the child, and the same can be said for disobedience to authority. In some cases, the conclusion will simply be that the child unfortunately has dishonest or disobedient parents. In others, parental dishonesty and inability to co-operate with authority may decisively affect the welfare assessment. But in all cases the link between lies and welfare must be spelled out."*

105. The law on s.91(14) and s.91A is well known and does not need to be repeated.

Conclusions

106. This case involves making some very difficult decisions, and it is important to accept that there are no "good" outcomes here. I have to find the least worst outcome, with the greatest chance of achieving the best for the children.

107. I am being asked to make Placement Orders in respect of C2 & C3, and there is therefore a very high test which the LA need to pass. In summary, I need to consider that "nothing else will do" and consider all realistic options. I also have to apply the welfare checklists in both statutory schemes.

108. The M and F1 accept that threshold is crossed. The only additional factual matter which needs to be noted is that F1 and the M accept that C1 was exposed to domestic violence by F1 on at least two occasions.

109. The children have had an extremely difficult and traumatic childhood, largely because of the actions and choices of the M and F1. I accept the M loves the children very much and has a very close relationship with C1 and C2 in particular. However, she is to a significant degree the author of her own misfortunes, and much more importantly the misfortunes which have been inflicted on the children. She has been the victim of domestic abuse, but that does not remove her culpability for the index offence and the harm that the children have suffered.

110. This background means that it is particularly important that the children have as stable and permanent a home going forward as is possible to achieve. They need high quality and consistent parenting. They also need a placement that will be sensitive to, and be able to deal with, the long term consequences of the trauma they have suffered.

111. C1 is doing very well with F2 and his partner, but it is obvious listening to F2 that she too is likely to suffer long term trauma and will need help throughout her childhood to deal with that.

112. I have no hesitation in dismissing PA1 and LG as not being realistic options to care for the children. I accept PA1 has the advantage of being a family member and may well have a genuine commitment to the children. However, I agree with Mr Thompson and Ms Kapur that she appeared naïve and unrealistic about the challenges of looking after them in the long term. She did not appear to have thought out at all

how she would deal with the position when the M comes out of prison, when in my view she is highly likely to seek to have the younger children returned to her care.

113. She also had not thought about what the children would be told about their mother, given the circumstances of the murder. This seems particularly problematic given that the M blames F1 for the offence, and takes no responsibility, but F1's family are in all probability hostile to the M (PA1 said that "they did not want to know her").

114. I think PA1 was either being hopelessly naïve about the challenges faced by the interfamilial relationships, or was not being honest. I suspect, as does Mr Thompson, that she is heavily influenced by her family

115. I am very concerned that she was not truthful about how long she had spent with the family in Birmingham in 2019, and in my view about what she knew about domestic abuse by F1 to the M. I accept that the fact she lied about the time she had spent with the children and the domestic abuse does not mean none of her evidence was true. However, I do not think that she is capable of keeping the children safe, either from the M or from the paternal family or meet their long term emotional needs.

116. LG gave no sensible explanation for why she had not challenged the negative Viability Assessment if she genuinely wanted to care for the children. In any event, I was concerned by her responses to questions about her sometime partner and domestic abuse. Her contact with the children is limited and again I have little doubt that if she cared for the children, she would seek to return them to the M.

117. The Paternal Grandparents have now put themselves forward as carers. In my view this is far too late in the process. If I thought that they had a very high chance of being successful carers I might consider adjourning for further assessment. But given the fact that they live in Pakistan; had considerable involvement in the events leading up to the murder, and bring with them many of the same complexities as PA1, I see no basis for adjourning to allow their assessment

118. I then consider whether the younger children can remain in foster care until the M is released. This might be as soon as next year, or possibly the following year. There are two very significant problems with this course. Firstly, one or two years is a long time for these children, who have been living with instability since November 2019. If we wait for one to two years then they are likely to be impossible, or at least much more difficult, to adopt together. Secondly, it is in my view extremely doubtful as to whether they could be placed safely with the M when, or even soon after, she is released. There are major concerns around her mental health, her ability to protect the children from domestic abuse, and the circumstances around the index offence which she still seems to be in complete denial about.

119. I do not doubt the M's love for the children. However, I do not believe she will work openly and honestly with the LA.

120. Therefore, there is a very serious risk that the children would be left in a period of instability, and effectively limbo, for an unquantifiable period. This is strongly contrary to their welfare interests.

121. There are well established problems with long term foster care, in particular the instability inherent in such a placement. Further, as Miss Thind points out there is no guarantee of sibling contact, or that C2 & C3 would stay together if they are placed in long term foster care. Therefore I do not consider this is a realistic option to meet C2 & C3's needs.

122. What makes this case so difficult is that if I accept the LA's case, it may be that sibling contact is lost between C1 and the younger children. I accept that this is an enormously important relationship for these children. C1 has felt herself responsible for her younger siblings, and they have doubtless looked to her for stability and love through very difficult times. To not allow them to continue to know each other, and feel, albeit at some distance that they are part of a family may well have life long impacts upon them. I would do everything within my power to preserve this relationship.

123. To maximise the chances of a prospective adopter accepting sibling contact, I consider it inevitable that I would have to very much restrict C1's contact with her mother. I accept that would be a very significant loss for C1. She loves her mother, and undoubtedly wants contact with her, even though at times it may be upsetting and bring back very bad memories. However, I accept that it will make it very much harder to find prospective adopters if they think there is a prospect of C1 talking to the M and thus giving her a way of tracing C2 & C3. Given the index offence and the M and paternal family's adamant opposition to adoption, this must be a very real concern.

124. I had considered adjourning the placement applications in order to see whether a prospective adopter came forward who would support sibling contact. However, I was persuaded by counsel for the LA, Guardian and F2 that that would be the wrong course. It would both involve the Court taking a role which could be said to be contrary to that envisaged in the statutory scheme, but also it would be likely to cause more difficulty in finding adopters, and importantly delay in the process. I note that the Care Plan is strongly supportive of sibling contact, and I very much hope this will be acted upon in the placement search.

125. Therefore, bringing all these factors together in a holistic analysis, I consider the only realistic outcome which meets the younger children's needs for stability and a loving home, within a reasonable timeframe, is for placement orders. The most important relationship to maintain for all the children is that with their siblings, and to maximise the chances of that relationship being maintained I have no choice but to very much restrict C1's contact with her M.

126. I accept that it may prove very difficult to stop C1 contacting her mother by electronic means, particularly when she is a little older. However, the life story work which is planned for her should help her to understand the role her mother played in the index offence and the risks she poses both for C1 but also for the younger children's placement.

127. I should make entirely clear that I make none of these orders to punish the M. I have no doubt that she will be deeply upset by them, as I fear will C1. However, I must by statute focus on the best interests of the children. Taking the competing considerations I consider the LA's plan the best options for all three children.

128. I will therefore make the placement orders sought by the LA and dispense with the consent of the parents. I do this taking into account the factors in both welfare checklists.

129. I will make the PSO sought in order to give C1 and F2 and his partner the maximum sense of security in C1's placement. Mr Thompson described how school is C1's safe place where she feels she can get away from all the issues around her home and family life. It is very important to protect this, and also to minimise the chances of the M destabilising her hard won sense of security. Although the M says that she would not seek to destabilise the placement, given her desire to regain her children when released and her and the paternal family's strenuous efforts to influence the court through emails, late letters and applications, I am not confident I can rely on the M in this regard.

130. It is important to remember that although C1 is well settled with F2 and Ms H, she has only been there since August 2022. The stability of that placement should not be simply assumed, and it is very important to protect it going forward. The next few years are not going to be easy for C1, and it is not hard to imagine the M acting to try to get more influence over C1's life.

131. I do not think it is appropriate to make any order for contact or spending time by C1 with the M at this stage. C1 has been having some face to face contact with the M which she has enjoyed, albeit it can also be destabilising. It is hardly surprising that C1 has conflicting emotional responses in this regard. F2 is adamantly opposed to C1 going into the prison to see the M. I can understand this concern, and he is C1's primary carer and I think I should respect his views. However, C1 loves her mother and wants to see her. If this can be facilitated, either by Ms Kapur supporting C1 in a prison visit or by the M having contact in the community, then I would strongly encourage F2 to allow this.

132. I will also make the s.91(14) orders. This is an unusual situation because the M has not made multiple applications and may never do so. But for the same reasons as the PSO, and given the background of this case, I think it is important to put in place a filter for any applications. I will make it clear that if the M can show that she has done the requisite work and has gained more insight into her responsibility for what has befallen these children, there is a good chance that an application would be permitted.

133. I do however note that if C2 & C3 are adopted, then the need to ensure that the M does not become aware of the details of any adopters may be relevant in whether any application for further contact with C1 would be permitted.