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Neutral citation number: [2023] EWFC 24

Case no.: OX21C50028

IN THE FAMILY COURT
Sitting at Oxford

Draft sent: 5 December 2022
Judgment handed down: 25 January 2023

Before: HHJ Vincent

Between:

A LOCAL AUTHORITY

Applicant

and

Special Guardian 1 (SG1)

First Respondent

and

Special Guardian 2 (SG2)

Second Respondent

and

a father (F)

Third Respondent

and

a child (C)

(a child, acting through her Children's Guardian)

Fourth Respondent

and

Paternal Aunt 1 (PA1)

Fifth Respondent

Representation:

For the Applicant:	Claire Wills-Goldingham KC, instructed by the Applicant LA
For the First Respondent:	Jennifer Kotilaine, instructed by BH&O LLP Solicitors
For the Second Respondent:	Alicia Collinson, instructed by Griffiths Robertson solicitors
For the Third Respondent:	Craig Jeakings, instructed by Trueman's solicitors
For the Fourth Respondent:	Alison Williams, instructed by Oxford Law Group Ltd
For the Fifth Respondent:	Anne Davies of Reeds solicitors

Hearing dates: 21-25, 28-30 November, 1 December 2022, 24 January 2023

Approved Judgment

Judgment

Introduction: the parties and their positions

1. C is an eleven-year-old girl in her first year of secondary school. She is of mixed [Country A] and British heritage. She is living with foster carers, having been placed in their care at the outset of these proceedings a year ago, in November 2021.
2. C was born in [Country A], and for the first seven years of her life lived with her parents, who received extensive support from paternal grandparents and other members of the paternal family. Both C's parents struggled with the illness of drug and alcohol addiction for much of their adult lives. They met while attending rehab. C's parents separated in around 2017 and C and her mother came to England in December 2017.
3. In summer 2018 C's mother's addictions were overwhelming her, she could not care for C, and the local authority became involved. C was placed with her maternal grandmother (her mother giving consent under section 20) at the end of November 2018, but that placement broke down within ten days, and on 8 December 2018 C moved at short notice to live with her maternal aunt [SG1], and her husband [SG2]. At that time they had met her only once before.
4. The first set of care proceedings was issued in January 2019. C's placement with [SG1] and [SG2] was secured by an interim care order.
5. [SG1] and [SG2] were both appointed as C's special guardians at the conclusion of the proceedings in June 2019.
6. C's mother died on 13 September 2019.
7. C's father is [F]. He lives in [Country A]. He reports that he is now in recovery from addiction. He accepts that he is not in a position to care for C.
8. [PA1] and [PA2] are F's sisters, they are around a decade younger than him. They both live close to one another in [the USA] (having moved from [Country A] about ten years ago) and have children of their own. Another brother, [PU], also moved out to [the USA] at the same time and lives close to them. They have known C since she was a baby, she has spent a lot of time with them over the years. Together with the paternal grandparents, C was in [the USA] between December 2014 and March 2015, October 2015 to January 2016, and May to August 2017. Since C has lived in England, [PA1] and [PA2] have visited her, and she has made trips to stay with them in [the USA].
9. [PA1] was assessed as a potential carer for C in the previous proceedings. The assessment was positive. However, as [PA1] lives in America, C's placement could only be secured by her adoption. [PA1] could not put herself forward as a prospective adopter because she did not have American citizenship at that time. She has since applied for citizenship and says that she has had confirmation that this will be awarded next month.

10. During these proceedings initial viability assessments of *[PA1]* and *[PA2]* were done, both of which were positive. The local authority then carried out a ‘hypothetical’ parenting assessment of *[PA1]*. It was hypothetical because it took place in the UK rather than the US, and so *[PA1]*’s home environment could not be assessed, and because an overseas adoption is the only means by which C’s place could be secured with her family in America, it is not the form of assessment that is required for that process. The local authority had taken advice from leading counsel in respect of possible placement of C in America in the previous proceedings and was given permission to obtain updated advice within these proceedings. Further to that advice, the local authority said that it would pay for and facilitate a ‘home study’ assessment of either *[PA1]* or *[PA2]*. This assessment is the first step on the path to adoption. There is a cost to this, and the local authority invited one or other of the sisters to put themselves forward to limit the expense. There was a meeting and it was decided that *[PA2]* should be the one to be assessed as she is an American citizen.
11. By the time it filed its final evidence, the local authority had changed its position in respect of the paternal family. The local authority has ruled them out of consideration as a realistic placement option for C. On behalf of *[PA1]*, it is contended that the lack of the Home Study assessments is unfair, and has prevented the Court from having all the information it needs to have in order to carry out a full welfare analysis for C.
12. At this final hearing, the local authority, represented by Miss Wills-Goldingham KC, asks the Court to make a care order providing that C remains in foster carer (in her current placement) for the rest of her childhood. While acknowledging C’s strong wish to return to *[SG1 and SG2]*, the local authority’s assessment is that they would not be able to meet all of C’s complex needs, and in particular, would not be able to manage her relationship with her paternal family.
13. *[SG1 and SG2]* represented by Miss Collinson and Miss Kotilaine respectively, seek the return of C to their care under the existing special guardianship orders. They seek to challenge a number of the threshold findings sought, and do not accept the local authority’s assessment of their parenting capacity.
14. *[PA1]*, represented by her solicitor Mrs Davies, wishes for C to be placed with the paternal family. She suggests that the placement with *[SG1 and SG2]* is fundamentally unstable and that they are not able to meet C’s needs. If C were to be placed back with *[SG1 and SG2]*, she is concerned that the placement is likely to break down within another two or three years and she is very concerned about the impact upon C.
15. On her behalf Mrs Davies invites me to make a care order, inviting the local authority to change its care plan to one that pursues C’s placement with her paternal family in America. In the alternative, a further adjournment of the proceedings is sought, for full assessment of the paternal family to take place.
16. *[F]*, represented by Mr Jeakings, supports his sister in her opposition to placement with the special guardians, and in favour of placement with members of the paternal family.

17. C's guardian is CS, represented by Miss Williams. C has consistently said throughout these proceedings that she wants to go home to [SG1] and [SG2]. [CS] considers that C's wishes should be heeded, and that she should return to the care of her special guardians. [CS] recommends that the placement is shored up by the making of a twelve-month supervision order.
18. Before I can carry out a welfare analysis of the competing options, I must resolve some fundamental issues of fact. These centre around two trips that C made abroad with her paternal family in 2020 and 2021 respectively. The trigger for these proceedings being issued was that C was taken into the care of the authorities in US in November 2021, having travelled into [the USA] from [Country A].
19. I have heard evidence from all the parties and additional witnesses and read all relevant documents. We all shared the same space in the Court room (or virtually) and listened to the same evidence. However, the parties' respective interpretations of that evidence remains strikingly different.
20. [SG1 and SG2] allege that C was abducted by members of her paternal family in October 2021, and taken to [Country A] (via [Country B and Country C]) notwithstanding the agreement recorded on the order that C should not be taken to [Country A]. [PA1] accepts that C was taken to [Country A], whereas the intention had been to fly direct to America. However, she says this was a reasonable course of action to take in circumstances where she was told at the airport that the US border was closed to British citizens due to covid restrictions. Further, she alleges that the special guardians had asked her to take C into her care for the longer-term, this was not just a half-term trip, and in the circumstances, it was reasonable for her to arrange entry for C via [Country A], which would have enabled her to stay for longer than she could on a UK travel visa. [PA1] says that [SG1] clearly asked her in text messages and when they met in person at the airport, to take responsibility for C, to provide a home for her in America in the long-term, and to arrange for her education.
21. This is vigorously denied by [SG1 and SG2]. They say that the trip was always intended as a short-term visit, in accordance with the Court order.
22. The local authority seeks findings against both parties in respect of this episode in 2021, and against [SG1 and SG2] in respect of certain aspects of the trip C took to America between March 2020 and September 2020, at the height of the international lockdowns due to the coronavirus pandemic.
23. The guardian does not advance any case in respect of the fact-find, but irrespective of the findings that I am invited to make, considers that any risk posed by [SG1 and SG2] can be managed. She considers that C should return to their care. She does not support placement with, or further assessment of [PA1].

Chronology of events leading up to these proceedings

24. To set the context, I need to go back to the time of the previous set of proceedings.

25. In January 2019 C was noted to have an infection which upon investigation turned out to be caused by the presence of a hairpin within her vagina. She had surgery to remove it. The surgeon estimated that it had been there for about a year. C is said to have recalled to [SG1] (and also to Dr F and the previous social worker HJ) that it had been placed there by a man who was wearing gloves, and that she was half-asleep half-awake at the time. Otherwise, she has not been able to give any further recollection of when or how this object was inserted within her, or where she was when it happened. The doctor who carried out the child protection medical classified this as likely sexual abuse, and found no evidence of female genital mutilation (FGM). Nonetheless, this incident does appear to have been the foundation for subsequent fears expressed that C could be regarded as at risk of FGM.
26. At the final hearing in June 2019 (an IRH), C's mother and father conceded that they were not able to put themselves forward as carers for her. These were the agreed facts which formed the basis of the threshold document:
- *First Respondent Mother, [M], had, at the relevant time, a significant and serious history of substance misuse including both drugs (heroin) and alcohol*
 - *First Respondent Mother, [M], was continuing to abuse alcohol at the relevant time.*
 - *This caused C to suffer significant physical and emotional harm and neglect and placed her at risk of the same.*
 - *The First Respondent Mother, [M], and Second Respondent father, F, have exposed their daughter C to numerous incidences of domestic violence over many years. This has caused C significant emotional harm.*
 - *The Second Respondent Father, F, has a significant and serious history of substance misuse, which placed his daughter at risk of significant physical and emotional harm.*
 - *The parents failed to meet C's physical needs to a reasonable standard. On 18th January 2019 a 6cm hairpin was removed from C's vagina under general anaesthetic. Neither parent was aware of how the hair clip came to be placed in C's vagina or who did this to their daughter.*
27. Neither C's mother or father were able to put themselves forward to care for her at that time. [SG1 and SG2], and [PA1] were positively assessed as potential long-term carers. None of them was joined as parties to the proceedings, but did attend the final hearing.
28. C had only known [SG1 and SG2] for six months. By contrast, she had spent much longer periods of time with the paternal side of the family throughout her childhood. However, C had settled well with her aunt and uncle in England, and the special guardian assessment report was extremely positive. C was going to school, and her mother was in England. Further, [PA1] did not have American citizenship, so, based on advice sought and received by the local authority, it was not clear how C's placement with her could be achieved.

29. In May 2019, following discussions with *[SG1]* and with social workers, *[PA1]* agreed not to challenge C's placement with *[SG1 and SG2]* in the long-term. This concession was made on the basis that C would spend regular time with her family in America.
30. On 6 June 2019 HHJ Hughes made a final order in the care proceedings, making *[SG1 and SG2]* C's special guardians, and made a child arrangements order that provided that C would a) see her mother six times a year; b) have monthly video contact with her father for thirty minutes; and c) spend one week of the Christmas holidays and one week of the Easter holidays each year with *[PA1]* (one of those to be in England, one in the USA) and two to three weeks of the summer holidays in the USA. It was agreed as a recital to the order that *[PA1]* would return C to the jurisdiction following visits to America, would not allow C to visit *[Country A]*, and would protect her from female genital mutilation (FGM). No formal FGM protection order was made or had been applied for. *[PA1]* was directed to obtain a 'mirror order' in respect of the contact provisions in America. She says she registered the order with a public notary. I have not seen documentary evidence of the registration.
31. The special guardianship support plan was produced after *[SG1 and SG2]* had been provided with a single session of legal advice. It is not signed by them, and *[SG1]* has given evidence at this hearing that it was not something of which she was made aware at the time the special guardianship order was made, nor after. She says she was only made aware of it during these proceedings.
32. C travelled to America with her aunt *[PA1]* to spend time with her and members of the paternal family for a two-week holiday at the end of July 2019.
33. C moved to *[G]* primary school in September 2019, which was the catchment school for her.
34. On 13 September 2019 C's mother died. C's mother took her own life. C had been at her new school for less than two weeks.
35. In November 2019 *[SG1]* stopped the phone contact between C and her father.
36. *[SG1]* changed C's second name to *[the SGs' name]* by deed poll on 19 November 2019.
37. C's aunts *[PA1]* and *[PA2]* travelled to England from America in January 2020 to celebrate C's birthday with her.
38. On 14 March 2020, C travelled to America to stay with her aunt *[PA1]*. *[PA1]* came to collect her from London Heathrow. Due to the coronavirus pandemic, C ended up staying for six months. This is the first trip to America about which findings are sought, and to which I return later.
39. C returned to the jurisdiction on 8 September 2020, brought back by her aunt *[PA1]*.
40. Thereafter *[SG1 and SG2]* stopped contact between C and the paternal family (apart from a single virtual contact between C and *[PA1]* on C's birthday in January 2021).

41. On 15 October 2021, after no contact for nearly a year, [SG1] sent a WhatsApp message to [PA1] saying:

'Hi, I hope you are well? I need you take [C] for me plz. Can you arrange to come over to collect her as soon as possible? Plz do not call as I can't answer. Thanks.'
42. On 22 October 2021 [PA1] arrived to collect C and take her to America.
43. In the event, C did not travel to America, but flew with her aunt [PA1] from London Heathrow to [Country B], then [Country C]. In [Country C] they met with her uncle [PU]. [PA1] flew to America, and [PU] took C to [Country A], where she spent time with her paternal grandparents and visited her father.
44. On 9 November 2021 C's head teacher contacted [the] police and reported C as a missing child.
45. On 13 November 2021, [the] police received a report from the FBI that C was on a flight from [Country D] to [the USA], travelling with paternal uncle [PU]. She was met off the flight by the FBI and taken to hospital, effectively for a child protection medical. After her discharge from hospital, she was placed in a children's residential home in [the USA].

Chronology of these proceedings

46. On 15 November 2021 the local authority issued an urgent application on notice to the special guardians seeking an interim care order.
47. The local authority alleged that there were reasonable grounds to believe that C would be at risk of significant harm if in the care of her paternal family or her special guardians. It was alleged that the paternal family should have returned C to the jurisdiction on 31 October 2021, but that she had been taken to [Country C], and her whereabouts were unknown until she was found to be on the flight from [Country D] to [the USA]. It was stated on the application that C was at risk of FGM. The local authority at that stage had concerns that [SG1] was implicated in events that led to C being out of the jurisdiction. On the basis of information provided by C's headteacher, questions were raised about why [SG1] had not sought to alert authorities sooner and to recover C to the jurisdiction. Members of the paternal family had suggested they had concerns about the way that [SG1 and SG2] had cared for C. C herself was saying something similar to the authorities.
48. I heard the application and was persuaded that the quickest way to return C to the jurisdiction was to allow [SG1] to go to [the USA] and fetch C, as she had already completed relevant 'ESTA' paperwork to allow her to do so. I declined to make the interim care order at that point, but listed a hearing the following week, when it was anticipated that C would be back in the jurisdiction.
49. The local authority received some further information from the FBI/children's services in America, who had spoken with C and her uncle. The local authority renewed its application for an interim care order *ex-parte* to the High Court out of hours on 16 November 2022. Knowles J granted the interim care order. [SG1] had already set off for

[the USA]. Upon her arrival she was told that the local authority had contacted the children's home in America and instructed them that she would not be permitted to collect C after all.

50. A hearing was listed before HHJ Owens on 17 November 2021 at which the interim care order was confirmed. C was subsequently brought back to the jurisdiction by a social worker, arriving on 20 November 2021. C was placed in foster care.
51. [SG1 and SG2] indicated they wished to challenge C's interim placement in foster care at a contested hearing. As there was a significant dispute between the parties as to the events around C's trip out of the jurisdiction in October 2021 I listed a four day hearing on 7 December 2021 at which it was proposed I would hear evidence and reach some conclusions on the facts, in order to decide about interim placement.
52. By agreement, that fact-finding hearing was postponed to the end of February 2022. This was to enable the local authority to plead the specific findings sought, for relevant evidence to be obtained, and to afford [PA1] the opportunity of participating in the proceedings.
53. At a pre-hearing review in January 2022 [SG1 and SG2] indicated they would not seek to challenge interim placement, but did still wish a separate fact-finding to be held. However, I was persuaded that it would be better to roll-up the fact-find and welfare hearings. The issues of fact-finding and welfare were interlinked. To separate them out would be to hear from largely the same witnesses twice. There was no prospect of an early fact find bringing an early end to proceedings. There was no need for the fact find to take place before experts could be instructed to carry out the relevant assessments.
54. I vacated the fact-find in February and re-listed a final hearing in June 2022, by which time it was anticipated that assessments of [SG1 and SG2] and of [PA1] and/or her sister [PA2] would have taken place. This would have enabled proceedings to conclude around the twenty-six-week mark.
55. Unfortunately, the hearing in June 2022 was then vacated. The independent social worker Cary Woodhouse had not been able to complete the parenting assessment of [SG1]. In her initial assessment Ms Woodhouse had recommended a psychological assessment of [SG1]. [SG1] did not engage with that psychological assessment. An alternative expert, Dr Sonia Bues, was instructed, and [SG1] did fully engage with her assessment, however the initial delay pushed back the timetable for completion of the parenting assessment. This had a knock-on effect on all the other evidence. Dr Bues recommended a psychological assessment of C, which she was then instructed to carry out, by agreement of all parties. That pushed the timetable back further.
56. The local authority's final evidence was rescheduled to come in on 21 October 2022 and the final hearing was listed before me for two weeks commencing 21 November 2022. In the event the local authority filed its final evidence and care plan a week late, on 28 October 2022.

The law

57. A Court may only make a Care Order or a Supervision Order if it is satisfied that the child concerned is suffering, or is likely to suffer, significant harm and that the harm or likelihood of harm is attributable to the care given to the child or likely to be given if the Order were not made, not being what it would be reasonable to expect a parent to give (section 31 Children Act 1989).
58. The local authority says that the matters set out in its schedule of findings so far as they relate to [SG1 and SG2] if proved, will lead the Court to finding that the section 31 test is met. Many of the items in the schedule are disputed, and so my first task is to carry out a fact-finding exercise.

Fact-finding

59. The burden of proof in establishing the matters set out in the threshold schedule of findings is on the local authority. The standard of proof is a balance of probabilities; disputed allegations only become proven facts if it is more probable than not that they occurred.
60. Findings of fact must be based on the evidence (including inferences that can properly be drawn from the evidence), and not suspicion or speculation.

61. I must take account of all the evidence and each piece of evidence in the context of all other evidence:

'Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases has to have regard to the relevance of each piece of evidence to other evidence and exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.'

(Re T [2004] EWCA Civ 558 at para 33, per Butler-Sloss P.)

62. When considering the evidence of the witnesses I must take care to identify those parts of their evidence which are part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly.
63. I remind myself of the direction that, in a criminal case, would be called the 'Lucas' direction because it is based on the case of R v Lucas [1981] QB 720. If proved that a person has lied, the Court must analyse the relevance of the lie to the issues in the case. A lie may be in relation to an issue that has no relevance to the real issues before the court. Lies may be told for many reasons. A person may lie out of a sense of shame, misplaced loyalty, humiliation, embarrassment, panic, fear, confusion, emotional pressure, a desire to conceal other misconduct or for many other reasons. I have also been referred to the cases of In Re H-C (Children) [2016] 4 WLR 85 McFarlane LJ and H v City and Council of Swansea and Others [2011] EWCA Civ 195.
64. The evidence of the parties is very important and the Court must be able to form a clear assessment of their credibility and reliability. I further remind myself that credibility alone

cannot decide this case and that, if a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything.

65. The Court should consider how much weight to attach to discrepancies in accounts between witnesses or from one witness at different times. See *Re A (A Child)* [2020] EWCA Civ 1230 and in *Lancashire v R* [2013] EWHC 3064 (Fam); per Mostyn J:–

[8]... (xi) The assessment of credibility generally involves wider problems than mere “demeanour” which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. With every day that passes the memory becomes fainter and the imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited.”

66. See also Peter Jackson J (as he then was) in *LCC v The Children* (2014) EWHC 3 (Fam) about the notion of ‘story creep’:

[9] To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process which might inelegantly described as “story creep” – may occur without any inference of bad faith.

67. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.

Welfare

68. If I find threshold proved, I must go on to consider what, if any, orders I should make, having regard to all the circumstances, and in particular the welfare checklist factors set out at section 1(3) of the Children Act 1989. C’s welfare is my paramount consideration (section 1(1) of the Children Act 1989).
69. I must have regard to the general principle that delay is likely to prejudice C’s welfare (section 1(2) Children Act 1989).
70. Where the Court is considering whether or not to make one or more orders with respect to a child, it shall not make the order unless it considers that doing so would be better for the child than making no order at all (section 1(5) Children Act 1989).
71. The Court must adopt a holistic approach, balancing all the realistic options
72. The Court must identify the realistic options and provide an appropriate evaluation of each of them, adopting a holistic approach, and weighing them in the balance. (*Re B-S*

(*Children*) [2013] EWCA Civ 1146, *Re R (A Child) (Adoption: Judicial Approach)* [2014] EWCA Civ 1625 para 62; *Re G (A Child)* [2013] EWCA Civ 965 (para 54)), (*Re B (A Child) (Adequacy of Reasons)*) [2022] EWCA Civ 407).

73. In stressing the need for the Court to ensure that all realistic options were given proper consideration, Mrs Davies and Mr Jeakings referred me to the case of *Re H (A Child) (Analysis of Realistic Options and SGOs)* [2015] EWCA 406 at paragraph 31:

All of this stemmed from an assumption generated in poor case management that the special guardian was a realistic option and the father was not. That was not this case. At the time of the final hearing H had been living with her father for more than six months. It was accordingly incumbent on the court to undertake a comparative welfare analysis. That is missing and would have been difficult to construct on the evidence that was heard.

74. C's and each of the adult family members' Article 8 rights under the European Convention on Human Rights are engaged. The Court must only do what is necessary to secure C's welfare, so as well as only making orders if necessary in accordance with section 1(5), I must be satisfied that any orders I make are proportionate to the risks, and do not over-extend the level of state intervention in C's and her family's lives.

75. I have regard in particular to the case of *Re B* [2013] UKSC 33 in which the justices of the Supreme Court considered the approach the Court should take where the local authority's application is for adoption, but applies more generally. Baroness Hale said at paragraph 198:

'Intervention in the family must be proportionate, but the aim should be to reunite the family where the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and ending the relationship between the child and their family is only justified by the overriding necessity of the interests of the child.'

Alternative care plan

76. On behalf of their clients, Mrs Davies and Mr Jeakings ask the Court to invite the local authority to amend its care plan. The local authority has ruled out the prospect of C ever being placed in America. I am asked to invite the local authority to amend its care plan so that placement of C for adoption into her family is pursued.

77. I have been referred to *Re T (A Child) (Care Proceedings: Court's Function)* [2018] EWCA Civ 650. The Court may not write the care plan for the local authority, but the Court can (and should) assert its own view of risk and welfare. At paragraph 42, Peter Jackson LJ said:

*42. Although they touch upon the same subject, the decision of the Court of Appeal in *Re CH* (above) does not appear to have been cited in *Re W*. For my part, I would view the two decisions as seeking to make essentially the same point, though the tone in *Re W* is markedly more imperative. I particularly refer to the observations that it is not open to a local authority within proceedings to decline to accept the court's evaluation of risk [81]*

and that a local authority cannot refuse to provide lawful and reasonable services that would be necessary to support the court's decision [83]. I would agree with these propositions to the extent that the court's assessment of risk is sovereign within proceedings and that a local authority cannot refuse to provide a service if by doing so it would unlawfully breach the rights of the family concerned or if its decision-making process is unlawful on public law grounds. However, the family court cannot dictate to the local authority what its care plan is to be, any more than it can dictate to any other party what their case should be. What the court can, however, expect from a local authority is a high level of respect for its assessments of risk and welfare, leading in almost every case to those assessments being put into effect. For, as has been said before, any local authority that refused to act upon the court's assessments would face an obvious risk of its underlying decisions being declared to be unlawful through judicial review. That must particularly be so where decisions fail to take account of the court's assessments. Or where, as in this case, there is an impasse, there may have to be an appeal. But in the end, experience shows that the process of mutual respect spoken of by Thorpe LJ will almost inevitably lead to an acceptable outcome.

Supervision order with special guardianship orders

78. In June 2020 a report was published by the Family Justice Council Public Law Working Group to achieve best practice in the child protection and family justice systems (Special Guardianship Orders). It was noted that Special Guardianship Orders are private law orders which are not usually intended to be accompanied by Supervision Orders. The need for Special Guardianship Orders to be accompanied by a high level of assistance under a Supervision Order is a “red flag” to indicate that a Special Guardianship Order is not likely to be the appropriate Order. The greater the assistance required, the more likely it is that a Special Guardianship Order is not appropriate.
79. This guidance has been endorsed by the High Court, but remains guidance. Each case depends on its own facts, and the individual and unique needs of the child concerned.

Evidence

80. I have read the documents contained in an extensive bundle, which includes witness statements, assessments and reports, medical and expert evidence, documents from the previous proceedings, social care case notes, contact notes and foster care logs.
81. Over eight days I heard evidence from the following witnesses:
- Ms M, assigned social worker since July 2022
 - Ms J, social work team manager
 - SH, author of parenting assessment of [PA1]
 - Dr Sonia Bues, clinical psychologist,
 - Cary Woodhouse, independent social worker, parenting assessor of [SG1] and [SG2]
 - Mr G, acting head teacher at [G] Primary School in 2021

- [SG1]
- [SG2]
- F
- [PA1]
- [PU]
- CS, guardian

82. **Ms M** was assigned this case when it had already been in proceedings for eight months. She had no handover from the previous social worker who had gone off sick in May 2022 and never returned. In the nine-week intervening period, the case was held by her manager, **Ms J**. However, **Ms J** met **C** only once during that time, and that was by accident, when she drove her back to her foster carer after there had been a misunderstanding about contact. **C**'s experienced foster carer said that the communication she had from the local authority during this time was among the worst she had ever come across. She was not even told that the final hearing on 27 June had been adjourned.
83. **Ms J** agreed this was not acceptable, but said at the time she had no social worker to allocate the case to, and was herself stretched way beyond her capacity to cope with the caseload she was having to manage.
84. **Ms M** has worked extremely hard to get up to speed and has been praised in particular by [SG1] for building a good working relationship with her, where the relationship with the previously assigned social worker was more fraught. **Ms M** said it has been hard to build relationships with others in the case. She had not managed to speak with [SG2] until the Friday before the final hearing. She had a family group call with [PA1] in June, exchanged a few emails with her and a couple of phone calls. She spoke with [PA1] and [PA2] at the end of October, and met with [PA1] twice when she was in the UK at the end of that month.
85. **Ms M** is managed by an assistant team manager (**Ms GJ**) and a team manager (**Ms J**), but ultimate decision making is made by the head of service.
86. I agree with the submission made by **Mrs Davies** that **Ms M** seemed to have little control of what decisions were made above her.
87. An example of this was the decision to fund therapy for [SG1] recommended by **Dr Bues**. Reassurance was given in Court that this would be paid, and no problems were anticipated, on a later date at a Court hearing it was suggested that only fifty percent would be paid, and then it was refused altogether. **Ms GJ** said flatly she did not know the reasons for this, she said she had repeatedly asked for authority, but 'management' had told her no. During the course of the hearing **Ms GJ** renewed the request and confirmation did eventually come that the therapy would be paid for in full.
88. When it came to pulling all the different threads together, **Ms M** struggled to articulate the process by which she had come to form the conclusions set out in her final evidence.

89. She is not helped by a new template ‘realistic options’ box in the witness statement which does not set out columns for the pros and cons of the various options, but invites only brief reasons as to why an option has been ‘discounted’ or not.
90. Further, just like Ms Woodhouse, her conclusions were necessarily tentative because of the outstanding issues of fact. She made clear in her evidence that she wished to listen to the evidence of [SG1 and SG2] to understand what had happened in both 2020 and 2021, and to listen to the other witnesses, in particular Ms Woodhouse. Ms M attended every day of the hearing and listened attentively to the evidence. At the conclusion of evidence, the local authority’s position remained that it sought a care order for C.
91. In respect of the decision not to pursue the home assessment of the paternal aunt in America, and to discount the paternal family as a realistic option, she was not clear of the reasoning. She attended a meeting on 30 September 2022 with Ms GJ, her team manager and the head of service. This is when the care plan was decided. Ms M says this is the meeting where she was ‘advised by’ the head of service that the American assessment was not to be pursued. Most of the note is about [SG1 and SG2]. Regarding ‘America’, the note reads, *‘this is not in line with C’s wishes and feelings – we need the assessments of C to be clear about her needs in order to assess if [PA1] could meet these. Not able to safely manage the proposed ‘shared care’ elements from here. Like [SG1], [PA1] could go away and sort her status then approach us about an assessment under reunification later on.’*
92. Ms M did not seem to have any clear memory of this discussion. Since she was assigned to the case, the issue of any assessment of the American family does not appear to have been particularly on her radar. Apart from sending one email to provide details of the assessing agency in America to [PA2], she said she was not tasked with chasing up any outstanding assessments. Dr Bues’s report about C didn’t come in until 7 October 2022, but contrary to what the note suggests, there does not seem to have been any further attempt to assess [PA1]’s ability to meet C’s needs after the report was received. The effect of this meeting was to discount her as a realistic option.
93. In her final social work statement, Ms M says that she has seen the viability assessment of [PA2], but not the similarly positive one of [PA1]. In the section about the paternal family she rehearses the contents of the 30 September attendance note:

‘The Kinship assessment has not been completed. In reviewing the current circumstances for C, the Local Authority has considered that it is not C’s wish to relocate to America at this time. The Local Authority has also received C’s psychological assessment which needs to be considered in assessing [PA1]. The Local Authority does not feel that the ‘shared care’ elements proposed by Ms [PA2] and Ms [PA1] will meet C’s needs or offer her the stability that she needs

[F] [father] informed that he wishes for [PA2] to be assessed as C’s carer in the interim, however, once [PA1] had resolved her USA citizenship, then she would be C’s long-term carer.

At the present time, [PA1] does not have her USA citizenship but states this will be finalised within 2 to 3 months. [PA1] said that she lives within minutes of [PA2], and they see each other every day. I explained that due to the complexity of this matter, the Local Authority would need to be certain who the actual carer is. Unfortunately, the home study for-[PA1]-[PA2]was not started and it is the Local Authority's view that the family need to be clear who would commit to be C's long-term carer to be clear who would need to be assessed.

Moreover, [PA1] informed that [PA2]does not have a solicitor.'

94. Even though it is noted that the report of Dr Bues had now been obtained, *Ms M* does not appear to have actively considered it with reference to *[PA1]*'s ability to meet C's needs. Any assessment of the paternal family would of course have to identify who was going to be the carer (that had been done at a meeting in June 2022), and the prospective carer would need to have the relevant citizenship status to apply to adopt in America (which *[PA2]*did at the relevant time and *[PA1]* says will soon be forthcoming for her). This describes elements of the assessment process itself, they do not amount to good reasons to discount the paternal family as a realistic option altogether. The view that the arrangement would be a 'shared care' one seems to have come from a conversation with *[F]*, and not followed up with either of the sisters themselves.
95. **SH** (together with C's previous social worker [name redacted]), carried out a parenting assessment of *[PA1]*, who travelled to England in the summer of 2022 to spend time with C and take part in the assessment. *SH* had nine virtual meetings, and two meetings in the UK. She spoke to her husband and children. The report is overwhelmingly positive about *[PA1]*. *SH* formed a very positive impression of her, spent time with her and C together, and challenged her about the circumstances of the trip to *[Country A]* in 2021. The report was limited because *SH* did not travel to America to see *[PA1]*'s home, could not do checks for criminal records or involvement with children's social care, and had not seen the medical report that had been obtained (although she had been given to understand there were no issues). Five referees provided very positive and supportive references, describing a harmonious and well-functioning family life, and who had observed *[PA1]* care for C in *[the USA]*, noting the love between them.
96. *SH* described *[PA1]* as nurturing and compassionate, someone with good insight into C's needs, and a person who wanted to protect her and prioritise her. *SH* found however that there was too much uncertainty around placement in the US, where *[PA1]* had the right to live and work but does not have American citizenship. She felt a plan for *[PA1]* to come and live in the UK and care for C for a couple of years pending C being granted the right to live with her American family, was evidence of *[PA1]*'s commitment to C, but nevertheless could not be recommended, because it was a short-term option where C needs permanency, security, safety and stability.
97. *SH* concluded that if C could not be returned to the care of her special guardians, *[PA1]* could provide her with a very loving and safe family home in America (subject to the missing gaps of the assessment being filled in America). *SH* concluded that in the event

they did not recommend placement with the special guardians, the local authority should consider exploring possible options to place C with [PAI] and her husband in America.

98. In cross-examination SH accepted that she had not raised in her report a couple of concerns noted in the 2019 assessment (it was suggested [PAI] was too firm and forceful in telling C to walk with confidence and her head up, similarly too firm when telling her a glass of coke would ‘poison’ her, and at one point was reported to have spoon fed C unnecessarily). However, it was noted that overall the 2019 assessment was extremely positive, that her own observations of [PAI]’s interactions with C were warm and loving, and raised no concerns.
99. **Dr Bues’s** two reports provide valuable evidence to the Court and, in respect of the assessment of C, insightful and helpful information that will help future carers and professionals working with C, to understand her history, her particular needs and how best to meet them. In her oral evidence, Dr Bues underlined the opinions she gave with clarity and authority. She was authoritative, had read and assimilated all relevant information and her evident expertise shone through.
100. Her explanations around her working diagnosis of Foetal Alcohol Spectrum Disorder (FASD) were helpful. This is something that has been raised previously but there is some uncertainty around the earlier assessment. Dr Bues urges further investigation. Dr Bues highlighted both the immediate impact of FASD on C’s functioning but also in the longer term, she gave evidence that in adulthood, 80% of those with a diagnosis of FASD required assistance in daily living, 60% come into contact with the criminal justice system, 45% develop drug and alcohol issues, and 90% have mental health issues.
101. Dr Bues identified the strength of C’s attachment to [SG1], she identifies her as ‘mum’ and [SG2] as ‘dad’. She also recognised the importance of her relationship with her paternal aunts.
102. When told of C’s particular and seemingly escalating distress at this time, including hair pulling, and expressing a wish to end her life, Dr Bues identified that this was likely caused by continuing uncertainty over her arrangements:
- ‘what is driving her distress is the uncertainty around what will happen – what we are seeing at the moment is a young child struggling to make sense of the situation and expressing her distress in a more overt way.*
- What she needs is immediate support from those around her to give reassurance – but that will only go so far ... what is likely to help her move forward is her to have certainty around future living arrangements. Concerns around school are also a significant stressor on her.’*
103. Dr Bues identified C as having formed her primary attachment to [SG1] i.e. the person who is her source of comfort and support and who she depends upon for that. Dr Bues found [SG1] to be empathetic, loving and committed to C with an exceptional understanding of her needs, and able to meet them with sensitivity.

104. However, [SG1]'s mental health is vulnerable to stressful events, and she has at times become overwhelmed and unable to cope. Her vulnerability presents as a risk to C because her ability to care for C would be compromised in the event of further stressful events overwhelming her, as has happened in the past. Dr Bues diagnosed an adjustment disorder with mixed anxiety and depression, noting the impact of the ongoing proceedings upon [SG1]. In addition, Dr Bues said this response was *'underpinned by a long history of episodic mental health fluctuations.'* These can be seen as *'responses to stress which are experienced as overwhelming by [SG1], who at times has lacked appropriate coping strategies to deal with these stresses. This has resulted in her experiencing depressive symptoms, disturbed sleep, transient voice hearing and she has used maladaptive coping strategies.'* Over time these episodes have become less frequent and less severe, [SG1] reported she was more compliant with her prescribed medication and developing *'alternative, more positive, coping strategies'*.
105. Dr Bues attributed these difficulties to difficult childhood experiences and trauma suffered during adolescence and early adulthood which *'has impacted on her sense of self and her emotion regulation abilities.'* Dr Bues recommended trauma-focused psychotherapy to address early trauma, build upon existing coping strategies, and to prevent further deterioration in her mental health in the light of ongoing or future life stressors.
106. In Dr Bues's view, if this work were still ongoing it would still be possible for C to return to [SG1 and SG2]. But she said there would need to be a *'very clear and ongoing support plan'*. Unless C's needs were fully understood and an appropriate package of ongoing support is put in place, *'it is likely that the stresses of looking after a severely traumatised child will impact on [SG1]'s mental health, as it would do with anyone'*. Dr Bues recommended involving the ATTACH team at the earliest opportunity for advice (that referral was made over the summer but I think will not be progressed until after these proceedings have concluded) and in addition both [SG1 and SG2] and C to have specialist psychotherapy.
107. She was asked about the impact on her if C was placed away from [SG1 and SG2], having consistently said she wants to go back home to them. Dr Bues said that it was difficult to be definitive around that, and it would depend on how the decision was communicated to her, what kind of mitigation there was, and how well she was supported through the process. She said that C may well struggle to make sense of this, and would show distress. To have to navigate an additional loss, would be likely to have a significant impact and lead to further vulnerability.
108. **Cary Woodhouse's** written and oral evidence brought substance, experience, and heavy-weight analysis to this case. The preparation for her report was wide-ranging and meticulous, she had got to grips with a huge amount of material, cross-referenced, tested, researched and hauled it all in. She presented a clear portrait of C's life-experiences, her particular needs, and the relative strengths and weaknesses of [SG1 and SG2] in their capacity to meet those needs. As a witness Ms Woodhouse was insightful, able to

articulate with precision the process by which she had weighed various competing factors in the balance, and how those factors pulled and pushed against one another. The seriousness with which she has explored the issues was evident. Her evidence as a whole was a demonstration of exceptional social work.

109. Recognising C's strong wish to return home, and identifying many positive qualities in *[SG1]*, Ms Woodhouse has gone through the potential obstacles and difficulties with great care, and thought about how risks could be managed, paths smoothed, and support given so as to enable C to return to the care of her special guardians. However, for reasons clearly explained and articulated, in both her written and oral evidence, Ms Woodhouse does not support C's return to her special guardians.
110. Ms Woodhouse has explained the areas of concern in the parenting assessment and said to me that perhaps taking each one on their own, there might be a way to mitigate. However, the cumulative effect of all these concerns created a risk for C that could not realistically be managed and made the placement unstable. At the heart of her concern was a feeling that despite extensive attempts to explore matters with *[SG1 and SG2]*, in particular their decision making in 2020 and 2021, she could not get an explanation from them that enabled her to understand what lay behind their actions.
111. Having had the opportunity to consider all the updated evidence since she had prepared her own report, Ms Woodhouse said that if the Court made findings about the 2020 and 2021 trips to America that provided an explanation favourable to *[SG1 and SG2]* (in particular that in October 2021 their intention was only to send C to the USA for a short-term holiday), she would cautiously support a return to them. To that extent her recommendation was a 'contingent' one. Otherwise, she maintained the recommendations in her report.
112. **Mr G**, C's acting headteacher, had a clear recollection of relevant events, assisted by contemporaneous notes on the school system completed by him or members of his staff. I found his evidence to be reliable and of assistance in the fact-finding exercise.
113. *[SG1]* gave evidence over the course of two days. At times she struggled with her emotions, and it was an ordeal for her, but to her credit she persisted. She has found these proceedings to be a nightmare, starting with the drama of C's recovery from America back to England, her placement in foster care, and contact with her being restricted and supervised. The slow progress of proceedings has also taken its toll. The assessments, including in particular the psychological assessment, have been challenging for *[SG1]*, and she struggled to see the need to do this at first. It is to her credit that she did ultimately participate fully and to the best of her ability. Following Dr Bues's recommendation, *[SG1]* has recently started therapy, again a significant challenge for her. She has had to confront long-standing issues which have affected her mental health over the years. A letter from the treating clinician confirms that she has had nine sessions and will need between three and five more.
114. *[SG1]* came across as sincerely wanting to do all she could to make a good impression. In many ways she did; she came across as friendly, naturally wanting to put

others at ease and to be no trouble herself, and very grateful for any small accommodation of her needs. She evidently loves C very much, there is no question about that. She desperately wants C to return to her and her husband's care.

115. She gave full answers to the questions put to her and on the face of it seemed to be doing what she could to assist. However, there were a number of aspects of her evidence that gave me cause for concern. Despite receiving a great deal of information from her, I was left with large chunks of missing explanations. This was consistent with what Cary Woodhouse told me. She had tried and tried to get explanations but they never came. Dr Bues also felt that she had not been able to understand the reasons for what she describes as the poor-decision making around arranging C to travel to America in 2021.

116. I did not feel that [SGI] was deliberately trying to mislead, but the overall effect of her evidence was that information was given, but it was not coherent, it had gaps, or conflicted directly with what was written in black and white on a page in front of us all. Sometimes a direct question was met with a lengthy and generalised statement that touched on but did not answer the question. Sometimes an explanation was given with conviction but which made little sense, or was inconsistent with the contemporaneous evidence from a note or email or others' recollections, or was simply not credible.

117. A number of times she justified her actions as a response to someone else's behaviour towards her, but she had imputed motives to them without any possible foundation for doing so. A number of times she said she 'assumed' or 'presumed' that someone else had thought, said or done something, but it was difficult or impossible to see how she could have come to that view. This was particularly so with regards to members of the paternal family. For example she suggested they had 'mised' her into believing that the paternal grandfather was in America in October 2021, but she had never been told anything of the sort and she had never made any enquiry to that effect. She said to Dr Bues that she 'assumed' that if borders were closed to British citizens, an exception would be made for children.

118. She did not seem to feel the need to check on information or clear up any misunderstanding or seek advice, but pressed on with what she thought was the best course without reference to others. Knowing that C's father objected to her changing C's surname, she said she 'presumed' that she could do it anyway, as she had parental responsibility, so pressed ahead. She took the decision herself to stop his contact with C back in 2019, providing little explanation.

119. Another example of her acting in a way that had a significant impact on others without investigation or proper explanation is after C returned from the USA on 8 September, when [SGI] decided to stop all contact with the paternal family. On September 7 she sent a message to [PAI] saying '*god bless you all. She is soooo lucky to have u all in her life and part of her family*', followed by a string of loving and joyful emojis. She didn't respond to any messages for the next month or so save for sending two short messages in response to an enquiry after C's health. On 23 October [PAI] asked her if she minded her talking to C, asked her what was going on and said she was so worried

about her. [SG1] replied, '*[C] is ok. She is adjusting back to normal life. I'm sorry but I just don't have time to keep messaging, I'm really busy and trying to juggle lots of things.*' She then did not respond to any further messages from [PA1], all sent in a kind friendly and respectful tone, seeking to find out how C was doing and hoping, without putting any pressure, they might be able to talk to her soon. There was a call for C's birthday, but nothing else. On June 5 2021, [PA1] asked when she could come to collect C for her two week summer vacation and was met with this response, the first for eight months:

'There is no way [C] is going to USA, especially after last time with ur mother calling [F] all the time and telling Al she has to speak to him, plus your eldest son was absolutely horrid to Al. I also think that teaching [C] to be homophobic is disgusting. [C] can be whomever she wants to be and follow whatever religion she wants when she is older. She does not need Islam pushed down her throat. Don't even get me started on her safety or routine.'

120. There is no evidence of [SG1] ever raising any concern of this nature with the paternal family before this time. [PA1] did not reply to this message, and did not then send any further messages to [SG1] before she heard from her again in October 2021.
121. [SG1] accepted that she had lost her temper with Ms Woodhouse when she found out her recommendation, and told her that she would have '*blood on her hands*'. She has since apologised. Her feelings of anger towards the paternal family were evident; the tone of her messages to the father is rude and unforgiving, where his are measured and polite. I accept that they also had phone calls. She says his tone was very different; aggressive and abusive, and I do not have any evidence of this ([F] does not accept this). She says that in contacts with C he would cry and could not contain his emotions which distressed C.
122. [SG2] presented exactly as Ms Woodhouse described him. He was straight-talking and apparently much less concerned than his wife about the impression that he was making. She seemed to be aware of a need to say the helpful thing, for example in showing a willingness to promote contact with the paternal family. What she said was undermined by the evidence of her interactions with them, the views she expressed about them, and the previous decisions she had made to stop contact. [SG2] was much more forthright. He said he was angry, that trust had completely broken down, and the idea that there could be a bit of mediation, '*simply wasn't going to work – I could sit here and be polite and say we'll do it and we'll all be friends*', but once trust had been broken, it was not going to come back easily, and he had no idea how they would manage contact between C and her paternal family.
123. Where [SG1] said that previous decisions to send C to America had been made because she had been persuaded by [SG2], he said that they made their decisions jointly.
124. Consistent with the impression he gave to Ms Woodhouse, [SG2] did not seem willing to reflect on his own actions, nor to consider that there was any room for criticism to be directed at him or his wife. He was unrepentant about telling a lie in his response to threshold. This was about the decision not to have C back from America in August 2020. [SG1 and SG2] said they were on holiday in Croatia and so would not be there to collect

her. In fact it transpired that they were not on holiday but supporting their daughter whose mental health was in crisis. The lie was maintained in an earlier witness statement and his response to threshold but conceded just before the final hearing. [SG2] said he chose to do this out of respect for the privacy of one of his adult children. He maintained his view that there was no need for professionals or the Court to hear more about this child, and effectively that he was justified in telling the lie. Even if one accepts that there was a good reason for keeping information private, I am not persuaded that could only have been achieved by misleading professionals and the Court in this way. That he regards himself as entitled to be selective with the truth is a concern.

125. [PAI] has lived in the USA for eleven years and speaks good English. Her oral evidence was consistent with what she has said in her witness statements. I found that she gave a good account of the events with which I am concerned, her experiences of [SGI], the context in which the decisions she had to make arose, the competing factors that operated in her mind and the reasons that she acted as she did. She gave a clear narrative, which amounted to a credible explanation of the reasons that she arranged for C to travel to [Country A] – notwithstanding that she accepted she was aware of the agreement on the recital that C would not be taken there.
126. She accepted that she lied to [SGI] because she allowed her to assume that she and C were in America in October 2021 when that was not the case. She accepted that one lie then became a series of further lies, as she continued to maintain the impression that C was in the USA.
127. She said that the reason she allowed this situation to happen was that in all the circumstances that existed at the time, she felt she had no option but to arrange for C to travel to [Country A]. She knew that if she told [SGI] that would cause huge difficulties, and she effectively wanted to buy time until C had arrived in the USA.
128. I will come later to the findings sought around this, but at this time record that in respect of the evidence that [PAI] was giving to the Court, I was persuaded that she was a reliable witness, giving straightforward answers, without thought as to consequence other than assisting me with my investigation of the true facts.
129. F did not put himself forward for assessment in the last proceedings, nor in these proceedings. The information I have about him is relatively limited. The threshold findings from 2019 relating to him were that together with C's mother they had exposed her to domestic abuse, and to their drug use. The writer of the special guardianship report from 2019 says, *'We are aware that the relationship between [F] and [M] was characterised by domestic abuse. I infer from disclosures made by C that this may have been situational couple violence, rather than coercive control perpetrated solely by [F]'*. [F] is reported to have said that during ten years of marriage to C's mother there was one incident when he was physically violent and C witnessed it. I have no further information, and no findings are sought against him in these proceedings.
130. A risk assessment carried out by [the previous social worker] on 6 December 2021 in respect of C having contact with her father noted that C said, *'she knew her dad had not*

been nice to her mum when she was little but that he had always been nice to her and she had a good time with him in [Country A],’ and that he had never hurt her. She was worried however that she had ‘broken the rule’ about not seeing him, she was clear that she had been told not to see him. She said she didn’t want to have contact with her father at that time, but [the social worker] could not say whether these views were truly her own, or whether that was a response to ‘knowing or believing how her special guardians might be feeling about any such contact taking place.’ C said she did not want to see her father until, ‘[the adults] all get along and be nice to each other’.

131. If there were any rules in place, it was the Court order requiring [SG1 and SG2] to make C available for regular contact with [F]. It is of concern that it is C who felt worried that in fact it was she who was the one to have broken a rule.
132. Consistent with his report to [the previous social worker], and his witness statement, [F] told me that he is currently drug free. He said he has not used drugs since 2020, and finished with the treatment programme seven months ago. I have not seen any evidence either to corroborate this, or that conflicts with it.
133. The evidence that [F] gave orally was consistent with what he has said in his witness statement and was not undermined by cross-examination.
134. [PU] was straightforward and direct in his answers. At the same time extremely negative about [SG1 and SG2]. He fully accepted he had said the things to C about [SG1 and SG2] only having her in their care for government money and having sold her possessions online, and about which she is still clearly very upset. Concerns that he had picked up from discussions with his sister [PAI] and then built upon having spent time with C, were escalated quickly to the accusations which he shared with the officers who met him in [the USA], without him explaining the source of his information.
135. The information given by [PU] was a part of the reason that the local authority had concerns about C returning to the care of her guardians at the outset of proceedings. However, in combination with that, and arguably of more significance, were the concerns raised by Mr G, C’s acting headteacher, based on the information he had received directly from [SG1].
136. Nonetheless it was inappropriate and unhelpful for [PU] to say what he did to C. This made her confused and distressed. She remains conflicted and confused about his actions, which she now identifies as the reason that these care proceedings started, and the reason she has not been allowed to go back to the care of her special guardians.
137. CS is a social worker of eleven years’ experience, but relatively new to the role of Cafcass guardian. This was the first case assigned to her as a guardian, and she had to pick it up halfway through after the previous guardian retired from Cafcass. This is an exceptionally difficult case in many respects and would present challenges to the most experienced of guardians.

138. [CS] has come to a clear conclusion and set out her reasons for it. Her analysis places the most significant weight on heeding C's wishes and feelings and concern at her potential reaction to not being allowed to go home to the people she sees as her mum and dad.
139. While she has been clear as to her position, I find that [CS]'s reasoning skims over some of the complexities of this case.
140. I am concerned that the guardian has not wrestled with the questions arising out of the trips to America in 2020 and 2021. She seems to have satisfied herself having read [SG1 and SG2]'s recent statement that the explanation they have given in respect of the mental health crisis of their older child in 2020 stands as a satisfactory explanation for what happened in 2021. She has conflated two different occasions, and not grappled with the events which led to the issue of proceedings. She said to me that regardless of the findings I make, she is satisfied that any risk presented by [SG1 and SG2] can be managed. She describes the events of October 2021 that led to proceedings being issued as 'the incident', but that over-simplifies a complex set of facts which were yet to be determined.
141. [CS] said repeatedly that any risks relating to [SG1 and SG2] can be managed by a supervision order. [CS] criticised the local authority for not supporting [SG1 and SG2] in the past, but it is not clear exactly what she says should have been in place that was not. Given Dr Bues's evidence, the support plan around C and her carers is a crucial part of this case. Dr Bues says that without such support, any carer is likely to be challenged, and [SG1] has particular vulnerabilities to stress, so the support plan is all the more important. [CS] repeated in her written and oral evidence her confidence that 'support' from the local authority would 'manage risk', but she was not able to articulate for me in any detail what she says the risk is and how it could be managed. She suggested this would be by the local authority supervising contact with the paternal family, visiting on a very regular basis, by organising mediation and reviewing the supervision order in six to nine months.
142. This seems to me to be a leap of faith, and comes up short compared to Ms Woodhouse's very careful consideration of the nuts and bolts of risk management; what is the risk, what steps could be put in place to manage it, who would provide the support, for how long would it be needed. Given the parties' current views of one another, the hope that mediation will 'work' seems very optimistic. I assume that 'reviewing' the supervision order means considering extending it, but it is difficult to see that the circumstances which she says currently require a supervision order would no longer exist in a year or even two or three.
143. [CS] proposes a supervision order as it would be 'legally binding', so better than a voluntary child in need plan. But she does not address anywhere the concerns raised by the practice guidance, that if a special guardianship can only be supported with a supervision order that raises a red flag as to whether the special guardianship order is the right order to make.
144. In evidence she was asked about the local authority's decision not to pursue the home study report. The local authority made a decision about this on 30 September 2022

and communicated the care plan to the guardian on 14 October. She had no memory of assessment of the [paternal family] being discussed, and this was not something that she thought to raise. She said the purpose of the meeting was for her to listen. She does not devote much space in her final analysis to the question of the family in America. I consider it warranted greater consideration by her.

145. The reasons given by C for not wanting to live [with the paternal family] are recorded as being, *'I do not want to live in America because I do not want to be a Muslim. If I live in America, I will not be able to eat sausages. We won't have Christmas and Easter. Won't have my Sunday dinner. You can't take the dog for a walk in the fields.'*

146. [CS] has not questioned where C got this opinion about America. She is consistently described as a child who is impressionable. C started calling them 'mum and dad' within a couple of months of being placed with them on an interim basis at the start of care proceedings in which her mother was hoping ultimately she would return to her care. Within months of the final order C's mother died, and [SGI] stopped the calls to her father. Within six months she was separated at short notice from her special guardians for a period of six months, and upon her return, all contact between her and the paternal family was stopped.

147. In cross-examination, [SGI] said she had concerns about the impact on C of spending time in 'a traditional' [Country A] family. When asked to explain her concerns she said she did not feel that [PAI] would stand up to the male members of the family, and raised an objection about the way they ate – she said that she had to teach C to use a knife and fork. [SGI] had never met C until 2018, has never met her father, and had not met any member of the paternal family until the first set of proceedings in 2019. [PAI] gave evidence to this Court that she and her sister are both Muslim, married to Christians. They celebrate the festivals and some cultural practices of each religion but do not go to either church or a mosque on a regular basis. They dress as they choose to, in 'western' clothes. She and her sister met their husbands at university. They are independent working women, supported by their husbands in all their endeavours. This comes strongly through the kinship assessment of [PAI] prepared by SH.

148. I consider that [CS] could and should have made some further enquiry about where C had got the impression that she would not be able to have Christmas and Easter in America, or enjoy Sunday roast, or walk a dog. Even if nobody had influenced C to say this, if these were the reasons that C had ruled out going to live in America, there was not much substance to them.

149. [CS] accepted that C's cultural needs could be met by the fact of living with [SGI], who is half-[Country A]. However, this is not just about an appreciation of language, food and culture. C needs life story work that helps her to make sense of her experiences and that will include embracing not just her cultural identity, but her own past, helping her remember and retain positive memories from childhood, as well as understand and process the negative ones. She needs an understanding of her place in her family. If her carers demonise members of her family, and are negative about her religion of birth, tell her that

[Country A] as a whole country is a place of danger for her, then the reasons for, and likely effects of this, need careful exploration. The means by which this can be overcome requires careful thought and planning. The guardian did acknowledge when giving her oral evidence that it is important that C learns that *[Country A]* is not a bad place, and needs life story work around her family relationships. However, I am not persuaded that the guardian has engaged with this aspect of the case to the extent required.

Threshold findings

150. I have considered all the evidence in respect of the disputed issues.
151. The evidence of *[SG1 and SG2]* has shifted over time, and there are some inconsistencies in their two accounts. What they have said is in stark contrast with what is written in black and white in the WhatsApp messages or in emails sent at the relevant time. The reasons given in evidence for their actions at important times in C's life are not corroborated by contemporaneous records, do not fit with the wider context or are unconvincing.
152. I reject their contention that their decision to send C to her aunt in October 2021 was out of concern that they must not be in breach of the Court order. The order did not provide for trips in October, nor had the paternal family requested it. *[SG1]* had not previously felt obliged to comply with the terms of the order. She refused the request for a visit in June 2021, contrary to the order, she failed to make C available for virtual contact with her father, and between September 2020 and October 2021 (save for one birthday contact) with the wider paternal family.
153. The alternative explanation given by *[SG1 and SG2]* was that following C's sorrow at the death of *[SG2]*'s father, they wanted to arrange for C to spend time with her paternal grandfather, as they recognised he was an important person to her. There is no mention of this at all in any communications between *[SG1]* and the paternal family. In fact it turned out that the paternal grandfather was not in America. I reject this as a credible explanation. If this had truly been their motivation, one would expect them to contact *[PAI]* in advance, enquire as to the grandfather's health and propose a visit for C. Instead the message sent asked that *[PAI]* take C straight away, no questions to be asked. Like Ms Woodhouse and Dr Bues, I remain unsure about what the true reason for this request was. I find that *[SG1 and SG2]* have chosen not to be full and frank in their explanation. They have put forward unconvincing alternatives, which do not help me get to the truth of the situation.
154. I found *[PAI]*'s evidence to be reliable, consistent with the contemporaneous messages, with her own statements and her brothers. She has provided a credible explanation for the decisions she took. That is not to say that I condone her decisions to conceal C's whereabouts from *[SG1]*, and thereafter to repeat the lie that she had told, building on it with the photograph from the hospital. However, I accept her version of events as the more reliable account of what happened, and where there is a conflict, I prefer her evidence to that of *[SG1 and SG2]*.

155. Both the Easter and summer holidays had been booked in advance. The outgoing and return flights confirmed. Nobody could have predicted the pandemic and its consequences, particularly the closing of international borders, the lockdowns, nor how long these extraordinary measures would go on for. However, even allowing for that, and being careful to avoid the benefit of hindsight, I agree with the evidence of Ms Woodhouse that in the circumstances, [SG1]'s decision to try and rush C out of the country before the borders were closed is peculiar. It remains without good explanation. C's mother had died only six months earlier, she needed stability, the pandemic was a great unknown. If [SG1] genuinely believed that sending C earlier would mean that she had more chance of coming back sooner, I find that belief to have been misplaced, and based on assumptions without any rational basis. If there was any risk at all of C having to stay longer than expected in America as a result of border restrictions, it would have been ill-advised to send her. In fact, the WhatsApp messages show that [SG1] actually contemplated that from the outset: *'Hey there, is there any possibility of [C] coming to you sooner? I'm just worried that Trump is going to stop flights from the UK and then she won't be able to visit. If Trump stops flights to UK whilst she is there with you then she will have to stay with u longer. What do you think?'*
156. [PAI] replied to say yes she would talk to the airline to see if she could change the ticket, that C could stay longer, and asked how soon? [SG1] replied immediately, would tomorrow be ok. There is no prospect that C can have been properly prepared for this trip. She would have been rushed into it, and [SG1] would not have been able to tell her when she was coming back.
157. At the time of the special guardianship assessment of [SG1 and SG2] in April 2019 they were living in a three-bedroom property with an annex. The reporter notes that [SG2]'s father [R] was living in the annex and in the house were [SG1 and SG2], C, and their son [L]. [SG1] told me that at the start of lockdown her daughters [N] and [O] were also living the household, and later on their son [P] and his partner [Q] came to live with them for a short time between moving houses (she thought perhaps this was not until 2021). But to Ms Woodhouse, [SG1] said that when C first moved in with them, as well as [R] and [L], was [N], [O] and her boyfriend [S], [P] and his partner [Q].
158. [SG1] denied that the number of people in the household was the reason she asked that C go to America sooner. I cannot say whether it was or it was not, but if not lack of space, then the real reason remains unknown.
159. Once in America there was little that anyone could realistically do to get C home until the various lockdowns, flight restrictions and quarantine rules allowed. There was good communication between [SG1] and [PAI] throughout this period and no concerns raised about C, except once in August she developed an infection from pulling at her earring, which [PAI] consulted a doctor about and got some antibiotic cream. [SG1] told [PAI] this was an incident of self-harm, that it should be taken seriously (no suggestion

that [PAI] had not done so), and suggested some techniques to help provide reassurance to C.

160. Shortly after that [PAI] offered to bring C back to the UK, but [SG1 and SG2] put her off. Part of the reason given was justified; a question over quarantine rules raised the possibility of C travelling unaccompanied which [SG1] did not consider appropriate. However, the main reason given was that they were on holiday in Croatia. This was a lie. This lie was continued by [SG1 and SG2] even in their response to threshold and in witness statements. They have maintained that they felt justified in this because the truth was that at the time they were supporting their daughter [N] with a mental health crisis. I agree with Ms Woodhouse that their decision not to share information with professionals about the kind of pressures they were under at home raises a concern. Firstly that they feel justified in telling lies to professionals and to the Court if they consider the situation warrants it. C's carers need to be open and honest. Secondly, there is a worry as to how they might manage a situation in the future where they felt conflicted by other pressures in their ability to care for C. As a matter of fact, C was fine about remaining in the USA while in the care of her paternal family. But by asking for her to stay longer, delaying her return to school, creating potential issues around her visa, and uncertainty, [SG1 and SG2] demonstrated an inability to put her needs first.

161. Following C's return to the jurisdiction, [SG1]'s decision to stop contact without explanation was more than unkind both to C and her wider family. If she had concerns she had a number of avenues to pursue, starting with a request to talk through the concerns she had with [PAI]. Eventually there was a message alleging that C was being exposed to homophobia, having Islam 'pushed down her throat', being made to speak to her father, and that [PAI]'s son had not been kind. [PAI] has dealt with these allegations in her statement. I have seen no evidence to justify the accusation of homophobia, pressures in respect of religion, or that there was any real issue with her son other than cousins having a minor dispute over something at one time.

162. This period without contact must have been extremely confusing and would have represented a significant loss to C, particularly given that she had just spent six months living with her paternal family. She is likely to have been bewildered that [SG1] who had encouraged her to go to America was now indicating that it was a bad idea to be in touch with her family there at all. She may have wondered whether she had done something to upset them or that she had been rejected by them. It does not appear that [SG1 and SG2] supported her in any way with this. On a balance of probabilities, their actions caused significant emotional harm.

October to November 2021

163. I reject any suggestion that C was 'abducted' to [Country A], that there was any kind of premeditated plan to take her there. I accept C's father's evidence, consistently given to the Court and to the social worker in December 2021, that he had no forewarning of her arrival.

164. Having arranged to collect C and take her back to America, [PAI] was confronted with the difficulty that the US had closed the borders to British citizens as part of its response to the pandemic. She could fly back to [the USA], C could not.
165. I accept her evidence that if she left the airport or stayed for more than twenty-four hours she would then be subject to quarantine rules in place at the time and would have to stay in the UK for fourteen days. I accept that this was something she did not wish to do. Her family was in America, she wanted to get C to America, she had surgery booked and paid for 28 October 2021.
166. I accept [PAI]'s evidence that the plan she made evolved over the next few hours. She decided to fly first to [Country C] where there were no quarantine or visa entry requirements for either her or C. I accept her evidence that she then formulated a plan to travel with C to [Country A], ask her brother to obtain a [Country A] passport for C, for C to stay fourteen days there and then go to America. This would mean that C could spend time with her grandparents, to whom she is very close. It would mean that C could enter the United States, where she couldn't enter straight from the United Kingdom. And, given the difficulties that [PAI] had experienced the previous year with having to renew the three-month staying visa that C travelled to the USA with, it provided the potential to avoid a repeat of those difficulties. She anticipated that C would be awarded a visa for up to twelve months.
167. This plan was formulated on the belief that [SG1 and SG2] had asked her to care for C for more than just a couple of weeks - indeed for a significant period of time. On a balance of probabilities, I find that this was a reasonable conclusion for [PAI] to reach in all the circumstances, based on the WhatsApp messages and conversations she had with [SG1], and based on her previous experiences of [SG1]. In particular:
- In plain English this is what [SG1] asks her in the initial WhatsApp message:
'Hi, I hope you are well? I need you take [C] for me plz. Can you arrange to come over to collect her as soon as possible? Plz do not call as I can't answer. Thanks.'
 - That is followed up with the request, *'is it possible for [C] to stay long term? I don't know exactly how long though'*. I accept [PAI]'s evidence that this was all part of the same conversation. It could not reasonably be interpreted as a request to think about potentially having her long-term at some unknown future point, in the event that schooling was not sorted out in the UK. This message was consolidated with a later one, *'I wish you knew my pain. Thanks for taking her, I don't want her to go but it is best for her right now'*;
 - Unlike on previous occasions there was no discussion of a return date. In discussion about previous trips [SG1] had always checked the dates of the return trip and given a view. The return ticket for this trip was for 13 January 2022, just within the three-month visa limit;

- *[SG1]* never mentioned this being a trip to coincide with the half-term holiday. Her first suggestion for the departure date was 4 November which was after half-term. The date of 21 October was fixed to *[PAI]*'s timetable for her surgery, not with reference to half-term holidays;
 - When *[PAI]* sent a WhatsApp about enrolling C in school and asked what grade she was in, *[SG1]* replied 'grade 6' and volunteered some information. If this had been a short-term trip one might have expected her to question what was going on, to say, what are you talking about enrolling her in a school! She is just coming for a holiday! She did not. This is consistent with *[PAI]*'s evidence that they had immediately before then had a conversation at the handover at the airport when *[SG1]* had asked her to register C at school;
 - In 2020 *[SG1]* had sought for C to go to America in advance of the lockdown measures and before the borders closed. She had seemed relaxed about the prospect that this would extend C's planned holiday by some weeks. When *[PAI]* tried to arrange for her return in August, *[SG1 and SG2]* delayed it until September. This provided context for the later trip. It was not out of character for *[SG1]* to request a trip of this significance at short notice and with little or no explanation.
168. *[PAI]* would not have known it at the time, but there is further evidence to support the finding that *[SG1]* intended this to be a longer-term visit:
- *[SG1]* told C she was going to America, but C was worried because she did not know how long for. This is recorded by *Mr G* in his evidence of a conversation a teaching assistant had reported having with C, and which led to him contacting *[SG1]* on 18 October;
 - *[SG1]* told C not to tell anyone about this. She said this was because the plans for the trip had not yet been confirmed. I did not find this to be a convincing reason. By 18 October the plan had in fact been formulated. I find it more likely than not that the reason she told C not to tell anyone about the plan was that it was for a stay of unknown length;
 - *[SG1]* told a number of lies to the acting headteacher. She said (i) she had been told she was in contempt of court and she had to allow C to visit her family immediately and she was trying to fight the court order, was frantically 'pleading with any authority that would listen to me'; (ii) C was due home to return to the jurisdiction on 31 October 2022, ready for the new term; and (iii) she had been to the airport to collect C on 31 October 2022 but she was not there. I find that the reason she lied was that she had not in fact fixed a return date with *[PAI]*, but wanted to conceal this from *Mr G*;
 - *[SG1 and SG2]* had disagreed about the local authority's choice of secondary school for C and were not persuaded (it turns out rightly so) that her needs could be met in mainstream school. They accept that they had some discussions between themselves about the possibility of C being educated in America..

169. It has been suggested that because [SGI] at some point in the WhatsApp conversation proposed that C didn't come until later in November, she must have been talking about a short break rather than a longer stay. The messages as a whole do not support this. There is still no mention of a return trip or length of stay in any of the messages. Initially, [SGI] asked for [PAI] to take C, [PAI] said yes, [SGI] proposed 4 November. [PAI] responded with information about her surgery on 28th October so said she could collect C either before or after. They settled on 21 October. There was then some discussion about covid testing and quarantining and a question arose as to whether C could be tested in time for a flight on 21 October. [PAI] suggested rescheduling her surgery, [SGI] said no, don't do that, C could come later. In the end they satisfied themselves that the covid testing could be done in time and reverted to the original date of 21 October, for which the ticket had been booked. None of the messages that formed this part of the conversation could reasonably be taken as undermining the initial and subsequent requests to 'take C' and for that to be in the 'long-term', during the school term i.e. not a holiday, and without discussion of a return date.
170. The reason [PAI] asked her brother to come to [Country C] and take C on to [Country A] was that she had surgery booked in the USA on 28 October.
171. [SGI]'s actions during the time that C was away were not consistent with a person believing their child to have been abducted and who should have returned by 31 October. She did not call the police. As Mr G was contacting the police on 9 November 2021 he received an email from [SGI] asking him to 'hold off' doing so, as she was awaiting news from [Country A] and she didn't want to 'rock the boat'.
172. I find that the reason she did not want to 'rock the boat', was that further investigation would reveal that in fact, contrary to what she had been saying to Mr G, she had not had any expectation of C returning to the jurisdiction on 31 October, and was anticipating that C would be staying in America for a longer period of time, as per her messages.
173. It was wrong of [PAI] to conceal the fact of C's trip from [SGI]. I accept that she was motivated in part by concerns about C's welfare in [SGI]'s care, based on [SGI]'s decisions to prevent contact between C and her father, to send her to America for months in 2020, the completely cut off contact for a year, then issue the urgent message for her to take C straight away. That explains her thinking, but does not excuse her failure to contact [SGI], who surely would have come and got C. Failing that, [PAI] could have contacted social services. I do accept that her experience, in common with [SGI]'s, was that it was difficult – impossible - to get a response from social services where the child concerned was not subject to an open case. [PAI] was not a British citizen and did not have confidence that she would get the assistance she needed. This perhaps only reinforces her failure to call [SGI], which was the obvious and straightforward thing to do.
174. That she did not do so was indicative of the lack of trust between the two sides of C's family, which eventually escalated to the allegations and cross-allegations that led to international police and social services involvement.

175. [SG1]'s conversation with Mr G in which she raised concerns about C being subjected to the veil by her family, led to him asking if she had concerns about C going to [Country A], to which she said yes. He then raised the possibility of her being at risk of female genital mutilation, to which she said yes, she was terrified of this risk. There is no credible evidence whatsoever to link the paternal family to a risk of inflicting female genital mutilation upon C, or requiring her to be veiled. These fears are founded on mistrust, misplaced speculation and negative generalisations about [Country A]'s culture. The 'hairpin' incident in 2019 was not found to have any association with female genital mutilation. It is a mystery, it is evidence of sexual abuse, but it is not one which has any links to [PAI] or members of her immediate family. At this time, [SG1] in fact believed C to be in America.
176. On the 10 November 2021, [SG1] WhatsApped [PAI] and said she had bad news, *'the school have reported me to the police as I did not have authority to let [C] come to you as it is not stated in the court order.'* This was not true. The school had not reported [SG1] to the police. The court order did not prevent her from sending C to stay with her relatives. I am not able to come to any conclusion about the reason for this further untruth.
177. [PU] told C that she had experienced child abuse in the care of [SG1 and SG2] and that they were only looking after her to get money from the government. He had seen a gift sent by the family for C put up for sale on e-bay. His comments about abuse were based on a complete over-reaction from both him and from [PAI] to C's comments about squeezing hands for comfort. C's comments about helping out with chores round the house should not have been taken without any further enquiry as evidence of abuse.
178. [PAI]'s evidence that C was taken to hospital and then to the children's home in [the USA] as a result of a conversation that a member of the authorities in America had with [SG1 and SG2] was not challenged. Based on the information they were given, [SG1 and SG2] did not give authority for C to go with her relatives. It was alleged that she had been abducted, and potentially exposed to female genital mutilation (this report seems to have come from the UK police as a result of the concern initially raised by Mr G following his conversation with [SG1], in which she confirmed this as a real concern about which she was terrified). I appreciate by this time that [SG1 and SG2] had developed a genuine belief that there had been an abduction, which belief they retain. I find they are wrong to describe what happened in this way.
179. I have not seen documentary evidence about the admission to hospital, but have seen within the evidence that it was [SG1] who gave authority for the hospital to perform an intimate examination of C. I have not seen any evidence that the stay in hospital was authorised by any member of the paternal family. Their evidence is that they were ready and willing to take care of C. I appreciate that it must feel very unfair to [SG1 and SG2] to have to foot the bill for the hospital stay. I can offer no assistance in respect of a contract made in another jurisdiction and nobody has even shown the bill to me. It does seem a stretch to describe this as an element of 'travel expense' that [PAI] agreed to fund in respect of C's trips to stay with them in accordance with the child arrangements order in 2019.

180. As a result of the complete breakdown in trust between the two sides of C's family, she was placed alone in hospital, and then placed, alone, in a children's home in *[the USA]*, awaiting collection. In the misguided efforts of each side of the family to protect her from the other, C's welfare needs were completely lost sight of.

181. This was a failure of communication on a massive scale.

Schedule of findings

182. Findings 1.1, 1.2 and 1.3 are accepted facts and provide context, but are not relevant to threshold against the special guardians. The inclusion of the 'hairpin' incident within the schedule of findings is misleading. This was accepted in the threshold document from 2019 pleaded against each of the parents, none of the people putting themselves forward to care for C had any involvement with this.

1.1 C is considered by her school to be a vulnerable child. She has special educational needs, and has an Education Health, and Care Plan for learning difficulties.

1.2 Prior to moving to the care of her special guardians on 08.12.2018, C suffered significant physical and emotional harm, and neglect. She had experienced a life where she was exposed to parental substance misuse (which included alcohol and heroin), parental domestic abuse over many years, and her physical needs not having been met. [Agreed threshold in OX19C00002 dated 01.05.2021]

1.3 C had a 6cm hairpin removed from her vagina on 18.01.2019 under general anaesthetic which she said was placed there by a man, she thinks when she was in the USA or *[Country A]*.

183. The next finding rehearses a section of the Court order on 6 June 2019. Again it is factually correct, but is not a threshold finding for the purposes of these proceedings.

1.4 A Special Guardianship Order was granted on 06.06.2019 providing for C to live with *[SG1]* and *[SG2]*, which included a recital in respect of a Child Arrangements Order granted that same day in respect of contact between C and her paternal aunt *[PA1]* that:

D. And Upon the paternal aunt [PA1] confirming she will not allow C to be subject to FGM or any form of abuse and nor will she allow C to visit [Country A] at any time

184. *[PA1]* did record her agreement that she would not allow C to be subject to FGM or any form of abuse nor would she allow her to visit *[Country A]* at any time. I have some reservations about this recital. The evidential basis for a prohibited steps order banning C from visiting the country of her birth is unclear. The necessity and proportionality of it is not spelled out. In any event, this is not an enforceable prohibited steps order, but a recital. There is no evidential basis for an order in respect of FGM. Any order would have had to be subject to an application brought by an appropriate authority,

supported by evidence in proscribed form, including from the person allegedly at risk of FGM. Neither *[SG1 and SG2]* nor *[PA1]* were not legally represented at the hearing.

185. The next allegations relate to the 2020 trip, and I find them proved to the standard of a balance of probabilities:

2.1 At the instigation of *[SG1]* C left the jurisdiction on 14.03.2020 or 15.03.2020 for a holiday in the USA with *[PA1]*, approximately one month earlier than originally planned. She did not return to the jurisdiction until 07.09.2020 or 08.09.2020. The holiday was arranged by *[SG1]* at a time that she knew the USA was closing its borders due to the Covid-19 pandemic, and C may have to stay longer than expected with *[PA1]*.

2.2 When C could have returned to the UK on 19.08.2020, *[SG1]* declined because she had a holiday to Croatia for 2 weeks, was concerned that the unaccompanied minors service would not cope with C, and therefore suggested that C stays with *[PA1]* until September. Knowing that C was “not coping very well”, and “self harming” by 05.08.2020 did not change *[SG1]*’s mind about C staying until September.

2.3 *[SG1]* has misled professionals about the circumstances of that trip by untruthfully suggesting that C had unexpectedly had to stay longer than intended with *[PA1]*, and by misleading professionals about her engagement with *[PA1]* and C during that period.

2.4 The extended holiday with *[PA1]* in the USA between March 2020 and September 2020, for which C was not properly prepared, caused her to be unsettled and to suffer emotional harm. It occurred 6 months after C’s mother died by suicide in September 2019, meaning it occurred at a time that C had an increased need for stability in her life.

2.5 *[SG1]* and *[SG2]* caused C to suffer emotional harm by suddenly stopping contact with *[PA1]* after C had lived with her for approximately 6 months in 2020.

186. The next set of allegations concern the 2021 trip. I find all allegations proved, (save for the very last item) to the standard of a balance of probabilities:

3.1 *[SG1]* arranged by WhatsApp messages with *[PA1]* on 15.10.2021 for *[PA1]* to collect C as soon as possible, and keep have C stay with her long term. *[SG1]* considered it was “best for [C] right now” to go to *[PA1]*. It was never their plan that C would return to the UK on 31.10.2021. *[SG1]* and *[SG2]* have since lied about this arrangement to the court, C’s school, the LA, and the police.

3.2 *[SG1]* and *[SG2]* did not inform the school about those plans until after C had told the school on 18.10.2021 about not being in school later that week, and that she was worried because she didn’t know how long she was going for.

3.3 [SG1] was the instigator of C moving to [PA1] in the USA on 21.10.2021. Despite being the instigator of that trip, and telling [PA1] that she did not have any problems with her, saying, “I think you are amazing and I know how much you love [C]. Thank you for taking her” [SG1] lied that:

- She was against the trip happening, and trying desperately to stop it.
- She had concerns that C would be veiled or subjected to FGM during the trip.
- She had concerns (when she as a matter of fact did not know that C was not in the USA) that C would be abducted to [Country A] and [SG1] would never see C again.

3.4 Despite (incorrectly) believing that C was safe in the care of [PA1] in the USA, [SG1] lied and claimed she did not know where C was, that she was having to find C, and that she was approaching numerous agencies to recover the child for her. She at the same time, incongruously on 09.11.2021 asked the school not to contact the police about C being missing.

3.5 C left the jurisdiction on 21.10.2021 at 22:15 from Heathrow Airport with [PA1], and travelled to [Country C] via [city name redacted]. [PA1] departed [Country C] Airport on 26.10.2021 at 11:35 for [the USA] via London Heathrow, and C did not travel with her. C travelled to [Country A] with a person asserted to be her paternal uncle, where she stayed with her paternal grandparents and had contact with her father. [G19-G20] On 13.11.2021 she arrived in [the USA], with a member of her paternal family, where upon landing she was taken under the protection of Customs and Border Officers, taken to hospital, and thereafter placed temporarily into a child’s home in [the USA].

3.6 [PA1] deliberately misled [SG1] about the whereabouts of C between 21.10.2021 and 13.11.2021.

3.7 [PA1] allowed or arranged for C to travel to [Country A] in breach of her agreement as contained in the recital to the order of 06.06.2019.

3.8 During the police investigation to try and find C, [SG1] and [SG2] misled the Local Authority, police, and the school about what she [SG1] to arrange C leaving the jurisdiction on 21.10.2021, about her communications with [PA1] between 21.10.2021, and about their understanding of where C was in the period to 13.11.2021.

187. I find the following matters proved:

3.9 The child has suffered, and been at risk of suffering significant emotional and physical harm because:

- [SG1] arranged for [PA1] to “come over to collect [C] as soon as possible” to “stay long term” on 15.10.2021.
- [SG1] and [SG2] did not prepare C for that long term move.
- C left the jurisdiction on 21.10.2021 in the care of [PA1].

- **[SG1] and [SG2] did not properly check or arrange the travel to the USA to ensure that C could meet the entry requirements before she left.**
- **[SG1] and [SG2] did not adequately make arrangements for [PA1] to take on long term care of C.**

As a matter of fact C travelled with her paternal family to [Country A] and had direct contact with her father who is a significant risk of physical and emotional harm to her.

188. I accept the evidence that C did feel ‘emotional turmoil’, confusion and bewilderment as a result of being taken to [Country A], which she did not expect. I do not accept that I have sufficient evidence to establish to the standard of a balance of probabilities that C’s father did pose a significant risk of physical and emotional harm to her at that time. The agreed findings in 2019 do not automatically found the basis for findings that he posed the same risk to her in October 2021. The history taken by Ms Woodhouse from [SG1] was of a high level of domestic abuse perpetrated by [F] against C’s mother and I believe C herself, but this is not corroborated elsewhere in the evidence. I accept [F]’s evidence and that of family members that the time he spent with C was always supervised by others. I reject as lurid speculation the suggestion that he tried to get her to sleep with him in his bed. The non-sinister explanation of this, given by [PA1], that C slept in his childhood room in her grandparents’ flat, is the more probable.

189. The evidence of the conversation between C and [previous social worker] is that he was always nice to her but she had suffered harm as a result of witnessing the arguments between him and her mum. [The previous social worker] was not persuaded that C’s views about not wishing to see her father were based on her own experiences of him. She considered they were likely to be influenced by her knowledge of [SG1 and SG2]’s views about him and not wanting to ‘break the rules’.

190. The following items on the schedule of findings are also proved to the standard of a balance of probabilities:

3.10 [SG1] and [SG2] have neglected C by failing to protect her from that emotional and physical harm, and the risk of such harm, by lying or alternatively misleading professionals about what they knew of the arrangements for C leaving the jurisdiction, and about their communication with [PA1] between 21.10.2021 and 13.11.2021. This delayed C being located and protected.

3.11 Further [SG1] and [SG2] have caused significant emotional harm to C by lying about what was happening between 21.10.2021 and 13.11.2021 because:

- **Those lies caused an international abduction search for C involving Interpol, the FBI, [local UK] Police, [redacted] Police Department in [the USA], Child Protective Services in [the USA], and The National Crime Agency, that lead to C being removed from her paternal family when she arrived in [the USA] on 13.11.2021 and placed in a children’s home.**

- **The concerns that [SG1] expressed that the paternal family would genitally mutilate C causing C to have an unnecessary and intrusive intimate FGM medical examination on 22.11.2021.**

191. The last two items on the schedule are in relation to insight.
192. The first is an allegation that [PAI] wrongly ‘**did not consider she did anything wrong in permitting or arranging for C to stay in [Country A]**’ is rejected.
193. I find that [PAI] was wrong not to contact [SG1], and wrong to conceal her actions from [SG1], and to continue to perpetuate a lie that C was in America when that was not the case.
194. However, having heard all the evidence, I tend to agree with SH’s assessment that [PAI] found herself caught up in a ‘perfect storm’. In all the circumstances, and given her understanding that this was a longer-term trip, I cannot say that she was wrong to arrange for C to go to [Country A] to stay with her beloved grandparents, pending arrangements being made for her to enter the USA. I acknowledge that she had signed up to the recital in which she agreed not to go to [Country A], but the situation she then found herself in was not reasonably foreseeable, and the recital not an order enforceable by law. C now believes that her aunt ‘tricked’ her, and it was wrong to take her to [Country A]. She is bewildered by the whole situation.
195. I am not sure that it adds much, but as a general statement I find the last allegation proved in respect of [SG1] and [SG2], ‘**they do not understand or acknowledge what they have done wrong in respect of the 2020 and 2021 travel arrangements**’.

Additional findings sought by [SG1]

196. Miss Kotilaine sought on behalf of [SG1] a number of findings against [PAI] and the paternal family. I take each in turn:
- [PAI] knew that she could not apply for any order in respect of C until she obtained US citizenship. She lied to the LA in saying that she could get her citizenship in 3 years when the rule was clearly 5 years.*
197. Not proved. I am not satisfied that [PAI] sharing her hopes and expectations around a timescale for obtaining citizenship that has not yet happened amounts to a lie.
- Despite knowing the legal position and in the absence of any order from the court, [PAI] assumed that she had parental responsibility for C at the point she met C at LHR. [PAI]’s assumption was based on a misinterpretation of two text messages from NR which she recklessly never sought to clarify.*
198. Not proved. For reasons given above, I do not consider that [PAI] was ‘reckless’ not to clarify the meaning of [SG1]’s messages. The text messages were plain in their meaning and did not require any clarification. Everything that [SG1] did in subsequent

texts, in her acquiescence of [PAI]'s actions, was consistent with [PAI]'s interpretation. [PAI] is not a lawyer and did not assume 'parental responsibility' in the sense that Miss Kotilaine alleges, but it is clear that she did assume that C had been placed in her care by [SGI] for an extended stay, as she was in 2020. She was acting on the basis that [SGI] had asked her to be effectively 'in loco parentis', that it would be her responsibility to care for C then and for the foreseeable future, until longer term plans could be explored.

Within hours of assuming 'parental responsibility', [PAI] planned to leave C in her brother's care so that she could return to the United States in order to have elective cosmetic surgery ('I had a tummy tuck').

199. I have accepted [PAI]'s account of the evolving plans that arose as a result of the situation in which she found herself, which by the evening of that day led to her asking her brother to come to [Country C] to escort C to [Country A]. The surgery was booked and paid for, and it was not unreasonable for her to devise this plan in all the circumstances. This framing is unhelpful and does not add anything to the local authority's schedule of findings.

[PAI] did not apply for an ESTA to allow C to enter the USA.

200. I accept [PAI]'s evidence that the reason that C could not enter the USA was that the borders were closed to British citizens at the relevant time. I accept her evidence that her intention on leaving the USA was to collect C from London Heathrow and to take her straight back to [the USA]. She had done this twice before, had made request of [SGI] for paperwork, there is no reason to believe that she had not obtained the appropriate paperwork this time. This finding is not proved.

In the exercise of her 'parental responsibility' [PAI] travelled with C to [Country C] and then sent C onto [Country A] where she knew that C would see her father, despite the risk [PAI] accepts he poses to her.

201. I do not accept that [PAI] thought she had assumed full and permanent parental responsibility in the legal sense. She was acting on the basis that [SGI] had delegated care of C to her, as she had done the previous year.

202. [PAI] accepts that C travelled to [Country A]. I do not accept that the mere fact of C seeing her father posed a risk of significant harm. It has not been established to the satisfaction of this court that C's father did pose a risk to her at that time. [PAI] accepted that 'there was a kind of risk' given his history of drug misuse. However, I accept the evidence of [F] and his brother [PU], that C saw her father every day when she was in [Country A], but always in the company of others. I do not consider this finding adds to those sought by the local authority.

203. I accept the evidence of the paternal family members that contact with C's father was in the company of others and therefore appropriately supervised. This adds nothing to the findings sought by the local authority.

The purpose of the trip to [Country A] was for C to get an [Country A] passport which would allow C to enter the USA for 6 months where she was going to be enrolled in school. The paternal family colluded in this plan, but were advised to do so by [PA1].

204. This is right, and was a plan devised on the basis that C could not enter the USA directly from the United Kingdom at that time, and because of the clear request from [SG1] that [PA1] take C into her care for the long-term, a period of time unknown, and enrol her in school. The use of the word ‘colluded’ is unhelpful, and insofar as it suggests some pre-meditated planning, or a nefarious purpose, is factually inaccurate. I have accepted that the plan evolved over the course of a long day. This finding does not add anything to the local authority’s schedule.

[PA1] deliberately misled C’s Special Guardians about her own whereabouts from 21.10.21 once C was in her care. She deceived the Special Guardians in (a) failing to inform them that C was no longer in her care from 26.10.21, (b) failing to inform them that C had been sent to [Country A], (c) pretending that she was passing along messages to C from the Special Guardians and (d) asserting that she was hospitalised at a blood and cancer care treatment centre and that she was unable to speak to SGI because she was on an oxygen tube.

205. These facts are all accepted by [PA1].

[PA1] abducted C and caused her to experience emotional harm (through her fear and distress about going to [Country A] and her exposure to her father).

206. I reject a finding that C was abducted.

I accept that C may have felt confused and bewildered about going to [Country A] – Ms Woodhouse described her ‘emotional turmoil’. I accept that C had some confused feelings about seeing her father, although I am not sure that fear of him directly, as opposed to fear of ‘breaking the rule not to see him’ has been established. I do not accept that C experienced emotional harm as a result of mere ‘exposure to her father’. She was at risk of emotional harm because she had worries about going to [Country A], it was a new plan, and uncertainty is difficult for her. But the fact of a change of plan is not in itself evidence of emotional harm.

The paternal family including the Father, [PU] and [PA2], colluded with [PA1] in her plan to abduct C and take her to [Country A]. [PA2]organised the tickets, [PU] physically took her to [Country A], F welcomed her visit and applied for an [Country A] passport.

207. The language of collusion and abduction is inappropriate to the circumstances of the case. It reveals more about the prism through which the paternal family is viewed by the maternal family. It is an accepted fact that the father, [PU] and [PA2]supported [PA1] in her plan to take C to [Country A], and to apply for a passport for her. It is right that the father welcomed his daughter’s visit. This paragraph is again loaded and misleading and does not add anything to the existing schedule.

Welfare

208. I have regard to all the circumstances and the factors on the section 1(3) welfare checklist.

The ascertainable wishes and feelings of the child.

209. It has been put to various witnesses and said in submissions that the escalating concerns for C's welfare at this moment are likely to be due to her increasing worry that she will not be allowed to return to [SG1 and SG2]. C has said consistently that she would like to go home to them. However, Dr Bues and Ms Woodhouse identified the main concern for C at the moment as the continuing uncertainty of her position, which will need careful management. The guardian's own report frames this as increasing stress about the uncertainty, based on the report given to her by C's foster carer, who said C was under increasing stress, 'about not knowing where she will be living. She knows when the court hearing is and will often refer to the proceedings.' The note of the conversation records that C is 'sticking to the foster carer like glue and wants constant assurance that she is not going to live in the USA or with her dad and keeps asking about court'. In her letter to me she was very clear that she wanted to go home, and she did repeat that in our meeting. At the same time in that meeting, the stronger emotion I got from her was of confusion and wanting to understand what had happened:

'I know my mum would not do such a thing. I thought I had been tricked. My mum would never say something like that, and I am confused about what has been going on. I've been seeing my mum every Tuesday and saying I want to go home. I miss everyone. My mum says the same. When I feel like crying I just think about my mum. I want to go home to them.'

210. I am not diminishing her clearly expressed wishes at other times to go home to [SG1 and SG2], but, as discussed elsewhere in this judgment, it is not a completely straightforward picture.

211. There are different elements to C's current distress, of course wanting to be reunited with [SG1 and SG2], but also not to be living in a constant state of uncertainty. In the meeting with her social worker just before the hearing her upset and stress about friendships at school was very much the dominating worry for her. So far as not wanting to go to America or see her dad, her understanding that the reason she was removed from [SG1 and SG2]'s care in the first place was due to what [PU] had said, and because of being 'tricked' by her aunty into going to [Country A] and seeing her father, who she understood she should not see, despite having fond memories of him.

212. If this case were not in public law proceedings but a private law case, one would usually see a great deal of professional curiosity about the decisions of the special guardians to (i) welcome C's decision to call them mum and dad within two months of being placed in their care (I accept that they sought advice from the local authority and say they were advised it was ok); (ii) stop contact between C and her father within months of the special guardianship order being made; (iii) change C's surname to theirs within two

months of her mother's death and against the expressed opposition of her father; (iv) prevent her from speaking to members of the paternal family for a period of a year following her six-month stay with them in 2020. In December 2021 C was aware that her guardians had spoken negatively of her father and did not want her to see him, and her social worker queried whether her views could be said to be truly her own or were more to do with a need to align herself with their views.

213. C's wishes and feelings are important and her welfare my paramount concern, but there are complexities to her wishes and feelings – as a result of her experiences, her need to please others, her concern about disappointing those she loves, her conflicting loyalties, and the fact that she is relatively easily influenced by others. She is only eleven years old and, particularly given the dynamics of the wider family, should not have the burden of deciding her own arrangements placed wholly upon her. This is a complex picture. Her wishes and feelings cannot be the determinative factor. Both Dr Bues and Ms Woodhouse identify that it would be very difficult for C to be told she can't go home to [SG1 and SG2], but they do not regard it as unmanageable.

Her physical, emotional and educational needs/ Her age, sex, background and any factors which are considered relevant

214. C is nearly twelve. She is a lively, friendly, chatty, kind and caring girl. More than anything she now needs permanence, stability and security of placement. She needs the worry and stress created by the continuing uncertainty associated with these proceedings to come to an end.
215. She needs proper exploration of all her educational, physical and emotional needs. As well as ensuring that she is in the right educational setting, she needs help to manage socially, particularly with friendships, a diagnosis of FASD to be confirmed (or otherwise) and a clear plan for providing support to meet any elevated needs associated with that. She is likely (says Dr Bues) to need psychotherapy (dyadic psychotherapy).
216. Dr Bues was confident that C presented with some of the key features of FASD and this was also observed by Ms Woodhouse. These include difficulties with learning, concentration and memory, difficulties managing emotions and social skills, and problems with balance, movement and hearing. On top of this C's past experiences in her parents' care are likely to have had an impact on her development. C likes going to school and wants to make friends, but struggles to keep up with children her own age and every day is a challenge.
217. On a day to day basis, C needs to receive consistent, attuned, empathetic care, centred on her and her needs, in a setting where she feels loved and valued. She needs to know that her needs are a priority to her carer.
218. Her caring and kind nature is a positive attribute. Following her early life experiences of caring for her mother, and examples identified by Ms Woodhouse of her taking on a caring role at times to [SG1], overly concerned with seeking to soothe and please others, she needs support to regain a sense that her own needs are important, so that

as an adult she is able to set boundaries around other's expectations of her and not form habits of suppressing her own needs and feelings.

219. C needs to be able to explore and understand her identity, accepting and promoting both paternal and maternal extended family relationships. She needs life story work to process what has happened to her that led to the first set of care proceedings, the disruptions to her care arrangements following the making of the care order, the events of October to November 2021, and then these proceedings. She needs support following the significant losses of her mother, paternal grandfather and [SG2's father], the multiple separations from family members, and the continuing conflict between the different sides of the family. Dr Bues said C has experienced 'relational trauma'. In the first instance, specialist advice and support from ATTACH should help.
220. She needs support to understand her family history, her place in it, her cultural identity and heritage and to be supported to have loving and meaningful relationships with members of her extended family on both sides. She needs to feel free to form her own feelings and relationships and to be free from feelings of guilt or disloyalty, or a sense that she is the cause of her family fighting over her. Given that she is very impressionable and easily worried, members of her family on both sides must desist in making negative comments either directly to her or in her presence about other members of the family.
221. In August her foster carer reported that C's divided loyalties towards different members of the family were causing distress. An example was that C had told her aunt [PAI] to tell her father that she loved him, misses him and would like to speak soon. But she told the social worker that she hated him and wanted nothing to do with him. When her social worker talked this through with her, she became upset, tearful, quiet and worried and said that she felt [SG1] would be really upset. C later felt able to say that she both loves and misses her father but is still angry with him. This is reflected in the letter she wrote to him. She needs support to process and understand her past experiences, and to be able to express her own feelings without fear of judgement from others.

Effect on her of a change of circumstances.

222. Immediate return to [SG1 and SG2] would bring happiness and relief for C. Their love for her is not in doubt, she loves them and she wants to go home. She would be returning to a familiar environment and it is what she has consistently asked to happen.
223. However, this placement carries with it a significant risk of disruption, uncertainty and instability, which is directly contrary to C's needs.
224. Even if the local authority were able to provide the level of support under the supervision order recommended by the guardian in terms of supervising contact and arranging mediation, it is unlikely that [SG1 and SG2] could promote C's relationship with the paternal side of the family.
225. It is to [SG1]'s credit that she embarked on the psychotherapy sessions even when the funding was in doubt and she has done so during the currency of these proceedings. I

do not doubt that she has benefited a great deal, but it was difficult to see that the coping mechanisms she described to me in evidence were at all different from those she had described using at the time of the first set of proceedings. She has accepted to an extent that there was some poor decision making from her and [SG2] in both 2020 and 2021 – in evidence she seemed to suggest that her regret was allowing [SG2] to persuade her that C should go to America. I was not persuaded that either she or [SG2] have been able to acknowledge the harm that they caused to C by the decisions to send her away at such short notice, for uncertain periods of time, without any explanation to her, or preparation. Without acknowledgment and insight into what triggered the decision making and the impact it had, there is a significant risk that similar decisions will be made again.

226. A placement breakdown would be devastating.
227. If C were to stay in foster care, she would continue to receive the loving, consistent and attuned care she has received from [her foster carer] for the last year. She would not be living within her own family. She could however maintain her relationships with both sides of her family, at her own pace, and without fear of judgement. In time, there is no reason in my view why she could not be having regular staying contact with [SG1 and SG2] and in due course to travel to America to stay with the paternal side of the family for holidays as was envisaged by the contact order.
228. C would receive the maximum support to which she would be entitled from the local authority both now and as a care leaver.
229. Foster care does bring with it a risk of disruption and change, as placements do come to an end, and other children can come in and out of placement, which can cause difficulties for children. Those risks are mitigated in C's case because the foster family she is living with have committed to caring for her as long as is needed. The other two children in the placement are there on a long-term basis.
230. Not making a final decision and adjourning these proceedings for the purpose of facilitating the home study assessment of either [PA1] or [PA2] is not in C's interest at this stage. It is the uncertainty of these proceedings which has been a consistent source of distress for her. The timing for the assessment is uncertain, and further information is needed about [PA1]'s citizenship status before the assessment could proceed further. At this time C's relationship with her paternal family remains good and she adores seeing her cousins. They have been a constant in her life since she was a baby. However, while I have serious misgivings about what has influenced her views, she has expressed a clear wish not to go to America. She needs answers about her worries of [PU] saying things about [SG1 and SG2], and about her aunt 'tricking her' and breaking the rule to go [Country A].
231. The Court could make a final care order and invite the local authority to change its care plan to one that puts adoption into the paternal family as the first option and long-term foster care as the back-up in the event that the plan for adoption does not succeed.

232. The Court could invite the local authority to apply to the Court for permission to place C out of the jurisdiction with her family in America for the purpose of an adoption assessment.

233. There are some obvious disadvantages to this plan. It depends upon the local authority both amending its care plan to one of adoption and seeking the Court's permission to place a child in its care out of the jurisdiction. Because the home study assessment has not yet been done and there are outstanding enquiries around citizenship, police and medical records checks, we are not quite at a stage where the Court could have confidence that placement of C in America would almost certainly lead to a successful adoption. The further disruption and uncertainty of this is not in her interests at this time. She does not want to go to America at this present time, and there will need to be some work further to explore her feelings around this. The timescale for the assessments and legal process is unknown and the delay will cause significant distress.

Harm suffered and at risk of suffering/capacity of carers

[SG1] and [SG2]

234. As a consequence of the threshold findings I have made, I am satisfied that C was caused harm by the parenting she was receiving from *[SG1 and SG2]* at the time protective measures were taken.

235. *[SG1 and SG2]* love C and regard her as their daughter. At the time she was first placed with them in December 2018 they had met her only once. They took her into their home with only a matter of days' notice, welcomed her into their family, and provided her much needed stability, security and comfort at an incredibly difficult time for her. She was managing the transition from *[Country A]* to a new country, leaving behind her paternal grandparents, confronting her parents' separation, and once in England, the ongoing impact of her mother's addictions upon her and C, ultimately leading to them being separated. *[SG1 and SG2]* took care of her at a time when she was desperately missing her mum and worrying about her.

236. There are positive elements to the parenting that *[SG1 and SG2]* can give to C, and which they are committed to giving to her not just throughout her childhood, but for the long-term. C told Ms Woodhouse that she called them mum and dad, she wanted to go home to them, they supported her, played games with her, she could tell them her worries, and she loved them, and they were amazing.

237. *[SG1]* has been praised for the sensitivity with which she supported C with the investigations into and then procedure to remove the hairpin. Similarly, her sensitivity and support for C at the time of her mother's death has also been noted. Overall, Ms Woodhouse concluded that *[SG1 and SG2]* understood C's needs to a good standard. They have parented six children together, their relationship is mutually supportive and they are respectful of one another, and are ready to guide and support C as she enters adolescence.

238. There are four main areas of concern about the deficits in [SG1 and SG2]'s parenting that present as a risk of harm to C. (i) [SG1]'s mental health/health issues of both [SG1 and SG2]; (ii) [SG1 and SG2]'s inability to support C in her relationship with the paternal family; (iii) questions over decision-making and their ability to provide consistent, attuned parenting for C, and (iv) questions over their ability to engage with school, social services and other agencies to work with them to advocate for and support C.

Health issues

239. [SG1]'s commitment to C is shown by her willingness to undergo the psychotherapy, even though it has been a very challenging process for her. Dr Bues has been positive about [SG1]'s engagement with it. It is an improving picture. However, [SG1]'s mental health issues are long-standing and these sessions of therapy are not anticipated to fix everything. Dr Bues has maintained her recommendation that C, [SG1 and SG2] have specialist psychotherapy in the future. Dr Bues has seen an email from the treating psychotherapist, but there has not been time within these proceedings for a follow-up session to assess for herself what changes have been brought about by the therapy and her view on whether those changes may be maintained.

240. Before she started the therapy, [SG1] was said to have, *'poor coping strategies and can become overwhelmed by stressful events. She is still vulnerable to this as many of her challenging childhood experiences remain unaddressed.'* Risk factors for C around this are *'a tendency to minimise and deny problems, that she does not always recognise her own stress so becomes overwhelmed, and that she sets high standards, whilst struggling to recognise her limits and assert herself.'* Even though the evidence about the therapy she has had is positive, there is a wealth of evidence to suggest that these vulnerabilities, and therefore a continuing and significant risk for C, remain.

241. [SG1 and SG2] have reported that [SG1] has had significant episodes of depression in the past, including periods of 'total breakdown' where she had lost the use of her arms, legs and speech. [SG2] told Ms Woodhouse that an episode like this around three or four years previously had caused [SG1] to be in a wheelchair for three months. [SG1] thought it was perhaps five years earlier. In the past [SG1] has had a fear of asking for help with her mental health as she felt if social services became involved, she would be criticised, found wanting in the care of her children and they might be removed.

242. In her assessment, Ms Woodhouse discussed with [SG1 and SG2] times where C was likely to have been exposed to and affected by [SG1]'s mental health issues. They agreed that it was 'no secret' that she has her struggles. C is likely to have seen some of [SG1]'s significant emotions around the death of her sister, her anger towards both her sister, and to C's father. There have been descriptions of C coming home to find [SG1] crying, trying to comfort her and asking her what the matter is. On other occasions [SG1] being 'done' after work, going to lie down and C coming to lie down with her. C will tell her not to worry about what people have said to her at work and that she loves her. C is a child who *'worries about whether others are happy, well and safe, and over examines her*

own contribution to their physical and/or emotional states.’ It is of course not [SG1]’s fault that she experiences episodes of poor mental health, and it is to her credit that she is addressing it. However, because C is a child who is particularly sensitive to the physical and emotional health needs that [SG1] presents with, this is a risk factor for her. Ms Woodhouse, says, ‘living in an environment where health issues repeatedly impact on her caregiver could lead to a very stressful and uncertain care experience for C given that she is so vigilant over and feels responsibility to caretake, when such issues arise.’

243. Ms Woodhouse has identified that both [SG1 and SG2] have physical health needs that could impact upon their ability to care for C. They have not so far wished to have an updated health assessment (they did one in 2019) as they do not regard it as necessary, but said they would if the Court ordered it. [SG2] has diabetes, it is not clear how this is managed and what impact it has upon him at this time. In 2019 [SG1] was noted to have fibromyalgia, diabetes and a liver condition. The liver condition could make her tired and feel sick a lot of the time. The painkillers she was taking for fibromyalgia caused difficulties with tiredness and concentration, and the condition is made worse when she is under stress. Stress also adversely affects her symptoms of fibromyalgia and the liver condition. Again, having medical conditions does not on its own rule out a prospective carer, but in the particular circumstances of this case, where C is prone to take a caring role and to worry about her carers, this is a risk factor. Up to date knowledge and understanding of the picture would have helped and ought to have been provided voluntarily.

244. There is a continuing concern that [SG1 and SG2] will not be able to identify and then report about issues which may arise in the future that impact upon their ability to care for C. Whether the significant episode of poor mental health that caused [SG1] to be unable to walk for three months happened only very shortly before the special guardianship assessment or two years before, Ms Woodhouse noted that this was not apparently raised by [SG1 and SG2] with the assessing social workers.

245. The continuing reluctance to share information about their daughter’s mental health episode in 2020 and vagueness over the timeline of this, remains a significant concern.

246. Ms Woodhouse found [SG1 and SG2] to be defensive about their two daughters’ past mental health issues. One had anxiety such that a referral to CAMHS was made (although she was still on the waiting list when she turned eighteen and then discharged from the service, by which time things had improved with the support of family). The other daughter’s mental health issues were said to have been building since the age of fifteen and in 2020 there was concern that she had wanted to end her life. This was evidently an extremely concerning and frightening situation for the family and [SG1] was extremely distressed to have to recall it at all when giving evidence. She and [SG2] regard it as an invasion of their daughter’s privacy to have to share information about it, but their reluctance to do so does have relevance to the question of their ability to meet C’s needs. Firstly, they chose to hide this information from professionals and created a lie about the holiday to Croatia. Secondly, if the situation had been building for years, then one might expect there to have been some reference to this, and to the challenges with their other

daughter, in the initial special guardianship report in 2019, but there was no mention of it. Thirdly, Ms Woodhouse was concerned that having accepted that [SG1]'s mental health was not well managed in the past – she was not seeking help, not compliant with taking medication when offered – there did not appear to be any reflection as to how that might have impacted upon her children's experiences of her as a parent.

247. In December 2021 following the very stressful events of November 2021 when C was placed in foster care, [SG1] experienced a marked deterioration in her mental health, and again had an episode of slurring her words and finding it difficult to speak. During the meeting with Ms Woodhouse [SG1 and SG2] told her that the reason they had given for not being available to collect C from the airport in August 2020 was a lie – they were not on holiday in Croatia but supporting their daughter at a time of mental health crisis. Ms Woodhouse observed that [SG1] became very distressed, found it difficult to speak and was obviously struggling, looking very stressed and unwell. Her contact with C was cancelled the next day.

248. Once these proceedings are over and if C is returned to [SG1 and SG2]'s care that would mean the removal of a very significant cause of stress. However, her vulnerability to episodes of poor mental health remains and this continues to present a significant risk to C. The recent therapy has given her some more coping mechanisms; breathing techniques, meditation and reflexology. But from her own evidence to me it was a little difficult to understand that she was relying on any different coping strategies from those described by her in the initial special guardianship assessment.

249. [SG2] is obviously a very significant source of strength and support to [SG1]. However, Ms Woodhouse in her assessment was concerned that he has not been willing to disclose issues around mental health to professionals. Further, at this meeting where she saw [SG1] in great distress and struggling, she did not feel that [SG2] was able to see that [SG1] was not well enough to continue with the meeting (despite pushing herself to continue and saying she could do it) and to support her by encouraging her to take a break.

Inability to promote relationship with paternal family

250. [SG1 and SG2] have never met [F] but believe him to be a violent and abusive individual. They have not wanted C to have any contact with him, nor the wider paternal family. Their view seemed to be that they would ensure her safety by not promoting contact with her paternal family. They have not been able to identify any benefits to C of spending time with them. [SG2] described [PA1] as 'insignificant' and 'a nuisance attached to C.' On another occasion when contact was being arranged between C and [PA2], [SG1] has commented to social workers that it was a 'disgusting' side of the family, and there would be no contact with C and her paternal family if she were to come home. She was angry that contact was being facilitated with [PA2], but not with her own adult children. When it was put to her that C wanted to have a relationship with her aunts and her cousins, [SG1] is reported to have said to Ms Woodhouse, 'if she knew the whole truth do you think she'd want to?' They were adamant that any further contact with them

'is not going to happen'. [SG2] said they would have nothing to do with the paternal family ever again.

251. Ms Woodhouse's assessment is that they do not understand that stopping contact in the past has created feelings of uncertainty, loss and confusion for C. In her evidence [SG1] suggested she might be able to work with the paternal family in the future to support contact, with the help of the local authority, but that is in stark contrast to [SG2]'s evidence, and what she has said repeatedly to professionals. If C were to return to the care of [SG1 and SG2], there is no real prospect of them promoting contact with the paternal family. It is clear that their views about them have been communicated to C, and this has caused her distress, confusion and guilt at upsetting [SG1] for feeling love towards her own father, albeit her feelings for him are conflicted and complicated.

Poor decision making, inability to provide attuned, consistent parenting for C

252. In her final report, Ms Woodhouse highlights various examples of poor decision making, with a lack of clarity about why decisions have been made. She concludes, *'I have found it difficult to understand the difference between [SG1 and SG2]'s apparent understanding that C requires carefully made care arrangements and their commitment to her, against the various examples of their actions/poor planning in the past. The disparity leads me to conclude that there must be information I am missing to explain why plans were not made with greater attention to C's needs.'*

253. She goes on to say, *'I am left in a difficult position whereby although there should be a reasonable argument for returning C to [SG1] and [SG2]'s care, at the same time, I cannot offer assurance that C's needs would be reliably met by [SG1] and [SG2] in the future. This means I could not recommend them caring for C again under an SGO at this time.'*

254. Ms Woodhouse's analysis is supported by numerous and significant examples from her own assessment and elsewhere in the evidence, compounded now by my findings in respect of the local authority's schedule.

255. Within the contact she observed, Ms Woodhouse felt that [SG1] had good intentions, but her ability to respond to C was negatively impacted by her own health and functioning. Her anxiety would dominate interactions, she has not always been able to manage her emotions, seeming tense and anxious at contact, sometimes crying. C was very aware of her emotional states and is seen repeatedly to be trying to offer reassurance.

256. I find that there has been a general lack of ability to reflect and acknowledge on the impact of their words and actions upon C. About the decision not to accept C back into their care in August 2020, [SG1] said that she regretted it, but maintained that her daughter's ill health at the time amounted to a good reason.

257. This same daughter moved out of the family home in September or October 2021. [SG1] described that they had a difficult mother-daughter relationship and that tensions and the crisis had built up over years. C would have been exposed to the arguments and

stresses within the household – this is something that *[PA1]* reports her telling her about. *[SG1]* accepted that C would have seen this, but brushed over any damage done by saying that C would have seen them talking and making up which would have been healthy for her. She did not see any other adverse impact upon C. She said she and *[SG2]* argue and shout at each other, and C would have seen this too, but she always saw the repair, the making up. This they said had not caused their other children any harm, but given them a ‘taste of real life.’ This may or may not be the case, but C is a child who given her previous experiences of seeing her parents argue, her anxiety about the welfare of others, and feelings that she is responsible, needs much greater care and consideration.

258. The explanations around the decision making in March 2020 are not credible. *[SG1 and SG2]* denied that they were feeling particularly worried about the impending talk of lockdown, they did not have any particular concerns about C going to America save that the borders were going to close. They did not feel the need to prepare C for the trip. At the same time they have maintained that they always felt unhappy about the contact order and did not consider it to be in C’s best interests. If they genuinely had concerns about her spending time in America, then it would seem that the impending pandemic would have constituted a very good reason not to send C. But the reverse was true, they sought to send her sooner, notwithstanding that they acknowledged this might mean a longer stay. To Ms Woodhouse they just said that it seemed like a good idea at the time. I do not agree. C’s mother had died less than six months before, she needed stability and certainty, this trip reunited her with her paternal family who she loved, but otherwise brought with it a lot of unknowns as to how long she would be away or how her schooling would be managed. That *[SG1 and SG2]* did not apparently identify these as issues and did not see a need to prepare her for the trip is an example of poor decision making for C.

259. The circumstances of the trip in October 2021 have been extensively covered. The decision was made in haste, C was given no helpful preparation before she left. No attempts were made to put her in touch with her paternal family, with whom she had only one telephone contact throughout the whole year. She was told to keep the trip a secret which made her feel worried. She had no idea how long she was going to be away and was confused and anxious about this. *[SG1]* knew that within a week of C arriving in America, *[PA1]* was due to be having surgery, but she did not make any enquiries about who would be looking after C. Given that she had sent a text message saying that she did not trust *[PA2]*, or their mother, one might expect she would have wanted to reassure herself about the arrangements so that she could let C know the plan. On the day of departure, she did not come into the airport to check that all was ok with the flights. There is some suggestion that she was not allowed in because of covid, but *[SG1]* told Ms Woodhouse that she never came into the airport because she found it emotionally challenging to drop off C and did not want to show C her distress. Contrary to what she told the school, there was absolutely no pressure at all from the paternal family for this trip to happen, it was instigated by *[SG1]*. She has still not provided any credible explanation for why she did this. Again, the decision making was poor, and the preparation for C was poor.

260. [SG1 and SG2] have done well to support C in her daily routines, in particular to support her with sleeping and to soothe her when she has had nightmares. C has enjoyed being a part of a big family, and enjoyed the responsibility of playing her part. She has spoken with pride about the jobs she did around the house; tidying her room, laying the table and stacking the dishwasher. I reject any criticism from the paternal family that she has been under pressure to do more than she should in terms of housework.
261. C worries very much about other people's feelings and if she is responsible for them. She has struggled with friendships. In this context, she needs sensitive and attuned parenting. Ms Woodhouse discussed the question of setting boundaries with [SG1 and SG2]. It was acknowledged that C is desperate to please and is very well behaved. She is demanding to care for because she needs attention from her carer all the time, but she does not push at boundaries. However, both [SG1 and SG2] said that they had asked her to 'write lines'. [SG2] gave an example of C telling him about a problem with her friends at school, and him asking her to write out the words, *'I must not fall out with my friend'*. I agree with Ms Woodhouse that it was wrong for him to appear to be blaming her and punishing her for something that was causing her confusion and distress. He said he thought it would help to settle her, to 'level her', but she did not want to do it. She struggles with literacy and writing, and he says it took about an hour. This can only have been received as a punishment by her. On another occasion, [SG1] said that she saw on the CCTV they have that C had pulled one of the dogs' ears. She said that C was told to write some twenty-five or thirty-five times *'I must respect the dogs I must not hurt the dogs'* and was not allowed to go anywhere until it was done. Ms Woodhouse was concerned that these responses to C were punitive and in contrast to the emotionally intuitive responses that she needed.
262. Ms Woodhouse does not consider that [SG2] is able to make up for the deficits in his wife's parenting caused by her mental health issues. Historically he has tended to leave most matters of parenting to her. He has helped with being at home when C came back from school in the afternoons and would take her to brownies, but all aspects of her care were really in [SG1]'s hands. He has not gone to many contacts, largely because they conflicted with work (although he is self-employed, owning his own building company in which he builds new houses to his own timescale and chooses his own hours to work). He said to Ms Woodhouse that he does not like the contact sessions, as *'he is not in control of the environment and he cannot fully relax'*. He repeatedly struggles to engage with C when she raises topics that are on her mind, tending to shut down the conversation – *'not that again'* – or when she wanted to talk about friendship issues, he said, *'you just don't get on with them mate'*, and left it at that. His ability to support her with her learning is limited – he said her problem was that she was lazy. At times he appears to have said things that have caused her to be very worried – C told the police when she got back to England in November 2021 that he told her she was going to boarding school. It is [SG1]'s evidence that in both March 2020 and October 2021 it was [SG2] who persuaded her to send C to America, he says it was a joint decision.
263. For the avoidance of doubt, I accept that the 'squeezing' of hands described by C, [SG1 and SG2] was a way of comforting her, was not painful and could not be described

as any form of abuse, as has been suggested by members of the paternal family. I accept that [PAI] was genuinely concerned that C was offering her hand to be squeezed as a means of relieving the stress of an adult – that is consistent with C’s desire to please and to want to find ways to make things better for other people – but I do not consider it reasonable for her to have associated this as abusive.

Inability to work with others in C’s best interests

264. Ms Woodhouse felt that [SG1 and SG2] could have been more proactive in pursuing investigations into autism and FASD. I am not sure they could have done very much more in all the circumstances.
265. Ms Woodhouse is also critical of [SG1]’s decision to apply for a special school for C without visiting it, without having any discussions with the school about how they could meet C’s needs, and going only on the recommendation of the SENCO worker at C’s secondary school, who had not met C at the time. I understand that once the EHCP came back with a plan for mainstream school it was difficult to challenge that within the time available. It does seem odd to have applied for an alternative without having visited it. I have found that [SG1] did ask [PAI] to register her at school in America in October 2021. In all the circumstances, I am not sure that I have received a full picture of [SG1 and SG2]’s thoughts about schooling.
266. There is evidence that [SG1 and SG2] have not found it easy to work with C’s school and with the local authority to support her, and I find that this does amount to a significant risk factor for the future.
267. Mr G said that he had known [SG1 and SG2] for fourteen years as their older children were at the primary school. He said that [SG1] had not always been easy to contact over the years. Noting C’s vulnerability, her struggles to form effective friendships, the experiences that led her coming into the care of her aunt and uncle and the death of her mother early into her school career, Mr G said that they tried to set up a Team Around the Family (TAF) but [SG1 and SG2] were ‘not particularly responsive to this’. He said that they had not been able to form an effective working relationship with [SG1] who was not responsive to contacts – not answering phone calls, responding to emails only after a delay. These difficulties were compounded by Covid and then C’s extended stay in America. It was difficult for teachers to speak with [SG1] or [SG2] at the school gates, because C travelled to and from school in a taxi.
268. [SG1 and SG2] have strongly criticised Mr G for the letter which set out the chronology of his communications between him and [SG1] in October and November 2021, and his more general concerns for C’s welfare. [SG1] said he was ‘storming in all guns blazing’, because he wanted a promotion. She said his attempts to contact her had been unnecessary. She said, ‘he’s trying to communicate, I’m trying to work, C’s fine, in America, just back off.’ At the time of the parenting assessment she said his actions, when he, ‘stuck his boot in’ by reporting C as missing led to C being care. She did not seem to be able to reflect that the information she gave to Mr G was of course going to lead to him contacting the police. She said, he should have ‘just backed off and let me find out’.

Clearly that was not a choice for *Mr G* given the information that he had. *[SG1]*'s inability to appreciate that, but instead to accuse him of putting his self-advancement before doing his job properly, is a prime example of her making negative assumptions about the motives of others. It is damaging to C because it has affected her ability to work with professionals to promote her best interests.

269. If C were to be returned to their care, I do not have confidence that *[SG1 and SG2]* would be able to work with the school, social workers or other agencies to the level that would be needed to promote C's welfare and keep her safe. Neither *[SG2]* or *[SG1]* felt that the parenting assessment of them was necessary and do not see any need for further help with their parenting. They have said that they would not take any time off in future to attend social work meetings in future; professionals would have to work around their work commitments. *[SG2]* felt they would be scrutinised by professionals and this would be unnecessary, because they had enough experience from parenting their own children. He did not want 'masses of people coming in.'

270. Both *[SG1 and SG2]*'s relationships with social workers have been mixed. The guardian has, with foundation, criticised the local authority in the past for not providing enough support under the initial special guardianship support plan (about which *[SG1]* seemed to know very little. It was not signed by her, and was produced after the single session of legal advice she and her husband were provided with). During these proceedings the relationship with the social work team got off to an incredibly bad start after *[SG1]* arrived in America to collect C and was told that while she had been on the plane there had been a hearing to which her legal representative had not been invited, and she was now not able to collect C. Thereafter she was very stressed and unwell. The social worker at that time did not seem to feel the need to build their relationship, as the parenting assessment was to be carried out by the independent social worker. There was then a period of nine weeks when there was no social worker assigned to the case.

271. There have been faults on the local authority side, but also from *[SG1 and SG2]*. On occasion *[SG1]* has let her emotions get the better of her which has not been conducive to good working relationships. She told the initial social worker that '*she hated her*', although she subsequently corrected this to say she hated what social services had done. She has described *Ms J* as '*a witch*'. When hearing of *Ms Woodhouse*'s final recommendations she was not able to contain her emotions and said that *Ms Woodhouse* would have '*blood on her hands*'. *Ms M* said that at one point *[SG1]* tended to find loopholes to avoid direct communication with her, cancelling contact via the foster carer when she should have spoken to the social worker, not being responsive in terms of getting back to her with paperwork. It should be noted that this relationship has improved and *Ms M* has done well to support *[SG1]* to feel more able to participate in the proceedings and to get her views across the way she would want them to be heard. Nonetheless, this is something that a number of people have experienced from *[SG1]*. *Ms Woodhouse* found her to be 'elusive' and selective of how and when information was shared. Like others, she never felt that she achieved a full understanding of the events leading up to the trip in October 2021, because *[SG1 and SG2]* never told her the full story about it. Similarly, in relation to the 'troubles' in the family that *[SG1 and SG2]* have acknowledged to exist but

felt they could not share. Further, there was no acknowledgment when information had been subtly avoided or withheld. Ms Woodhouse concluded that it was difficult to ensure that a full understanding had been reached where there had been ‘such obvious avoidance of open sharing in our discussions’. This is consistent with the weight of the evidence. I regard it as a continuing risk factor for C.

272. The local authority should have done more to implement the initial special guardianship support plan but when Ms Woodhouse went through each of the items on the plan with *[SG1 and SG2]* there was little enthusiasm or acknowledgement that C might benefit from any of the measures set out. I am not persuaded that *[SG1 and SG2]* would now be able to work in a proactive, open and consistent way with other agencies so as to mitigate the risks for C of placement with them and to promote her welfare.

Paternal family

Paternal family as a realistic option

273. I find that the local authority has acted unfairly towards both C and *[PAI]* and the paternal family in ruling them out of their own considerations at a very late state in proceedings. My reasons are as follows:

- There is a body of evidence before the Court that suggests they have the ability to meet C’s needs. The two viability assessments are positive. The kinship assessment of *[PAI]* from the 2019 proceedings is very positive as is the detailed and comprehensive further assessment by *SH* in 2022. The assessment concludes as being ‘hypothetical’ and incomplete because a process of assessment in America was needed, and further exploration of the technical process would have been needed;
- *SH* made a clear and unequivocal recommendation that if placement with *[SG1 and SG2]* was not pursued, then the local authority should explore the prospect of placement with the paternal family;
- The local authority obtained advice from leading counsel that sets out the route-map towards placement in the USA;
- The local authority pursued this plan and recorded its intentions to do so on recitals to orders. The recital recording a promise not going to *[Country A]* seems to have been regarded by all as binding, and *[PAI]*’s breach of it beyond forgiveness. On the other hand, the recitals, repeated a number of times, recording the local authority’s intentions to facilitate the home study assessment so that all options for C could fairly be put before the Court are now dismissed as meaningless and something that the local authority could shrug off without need for further explanation. The Court could not have directed the local authority to compel the American authorities to carry out the assessment, and that is why it is on the recital, not an order. But this was driven by the local authority, and it was also recorded that the local authority would restore the matter to Court if there was an issue with the assessment. Pursuant to the assurances given in Court, the local authority had contacted the relevant agency in the USA, obtained quotes, held the meeting to identify

which aunt would be able to be assessed. The paternal family was entitled to rely upon these representations that the local authority would pursue the assessment;

- That the assessment was framed to be with [PA2]not [PA1] does not make a difference. The local authority had a duty to C to explore all possible options that would enable C to be raised within her family. [PA1] has been the party in this case, but her sister [PA2]remains a potential kinship carer who has been assessed as a viable option. The local authority did two initial viability assessments and then asked the sisters to elect one person to go forward because it did not wish to pay for home studies of both. It has done neither. It cannot reasonably say that the lack of information about [PA2's] situation rules her out as a potential kinship carer. The reason for the lack of information is the local authority's failure to pursue the assessment;
- The decision making around the change in approach is fundamentally flawed. The two reasons given seem to be (i) that C does not want to go to America and (ii) that managing a 'shared care' arrangement would be too much to manage.
- C has said she does not want to go to America, but this is plainly something that needs to be explored further. Firstly to understand the reasons that underpin those views. Secondly to explore whether her concerns could be addressed. To discount the possibility of her moving to America to grow up within the network of family that she has known since birth and who have spent long periods of time caring for her throughout the years because she has a false understanding that she will not be allowed to celebrate Christmas, Easter or eat Sunday roasts is obviously flawed reasoning.
- As to the second reason, Ms M was not really able to explain what the difficulties with the 'shared care' arrangement were, or why it would be 'too much'. She thought it might be that the paternal family had suggested that the placement with [PA2]could come first and then C move to [PA1]'s care when she got citizenship. This is something she got from speaking to C's father, not to [PA1] or [PA2]. This kind of temporary arrangement may well not be optimal for C who needs certainty and stability, but should certainly be explored in discussions with them. This is something to be considered in the process of assessment, it cannot reasonably be regarded as a reason not to proceed with the assessment at all.

274. C's placement with the paternal family has to be regarded as a realistic option for the Court to consider.

275. [PA1] has been extensively assessed and all the assessments of her as an individual have been overwhelmingly positive. Hers and her sister's commitment to C since birth is not in doubt. She is a loved and valued member of the family, adores her cousins, has spent extensive periods of time in their care over her life. They provide a connection to her mother, father, beloved grandparents. [PA1] has repeatedly accommodated requests at the drop of a hat to come to England either to collect C or to visit her, repeatedly putting her needs immediately first and foremost, leaving everything in America behind where necessary to spend time with her, to participate in the assessments or participate in Court

hearings. She has attended Court hearings remotely from *[the USA]* in the middle of the night due to the time difference. The assessments of *[PAI]* rate her highly in all categories, a loving and gentle bond with C observed, and ability to support her in all aspects of her life, including enabling her to maintain her relationships with the maternal side of the family. The communications between the paternal family and *[SG1 and SG2]* have been professional, courteous, and respectful in tone. *[PAI]* and her sister are supported by a whole network of family who live close by.

276. The single risk of harm comes from the trip to *[Country A]* in October 2021. *[PAI]* has accepted that she was at fault for telling a lie to *[SG1]* that was repeated. I have made findings about the decision-making around the trip to *[Country A]* and in all the particular circumstances of the case, I do not find that the fault that occurred is of such gravity that it should preclude *[PAI]* and all members of the paternal family from being considered as long-term carers for C. There were failures of communication on both sides. I have found that *[PAI]* reasonably understood that *[SG1]* had entrusted C to her care for a long-term stay.

277. The change of plan for *[PU]* to take C to *[Country A]* was unexpected and something that would have needed to be managed, but I accept his evidence that he is someone who C has known all her life, and who she had seen her every day of the six month stay the previous year. In *[Country A]* C was staying with her grandparents in a home she had known since birth.

278. There is no up to date risk assessment in respect of *[F]* and the most recent one from December 2021 does not identify any direct risk posed by him to C, rather identifies her feelings of confusion and conflicted loyalty about him. These feelings seem to be mostly driven by her fear of upsetting *[SG1]*. The local authority should in my judgement include in its care plan steps that should be taken to investigate and support C's relationship with her father further. This is likely to involve consultation and advice with ATTACH, wishes and feelings work with C, a review of contact notes so far, and discussion with C's carer, confirmation from *[F]* of his current circumstances, of the drug treatment programme he has undergone, up to date drug testing, consideration of work that could be done between C and her father to repair and restore their relationship, and an updated risk assessment. Some further investigation into the past may well be required. Ms Woodhouse was working on a very different understanding of the mother and father's relationship, and of the father as a violent perpetrator of abuse against both the mother and C, whereas the risk assessment from December 2021 has a different narrative.

279. It has been a repeated assumption since 2019 that C does not want to go *[Country A]*, and that *[Country A]* is a dangerous place for her. This does not appear to have been explored or tested in any detail and I remain unclear at this time why this stance has been maintained. If it is to with a perceived risk of FGM, there is no evidential basis for that. There is certainly no evidence to suggest that *[PAI]* or any member of the paternal family poses any risk to C of this type. She recorded her agreement not to take C to *[Country A]* and to protect her, but that in itself is not to be taken as evidence that *[Country A]* is dangerous or that *[PAI]* needed to be warned to act protectively; she has always done so.

280. The paternal family has been settled in *[the USA]* for over ten years, they have a successful business there and either have or are in the process of obtaining citizenship. They have children who were born in the USA and go to school there. *[PAI]* has been assiduous in complying with visa requirements, grappling with the difficulties posed by covid in 2020 such that she had to take C out of the country for a day to get a new three month visa, and was messaging *[SG1]* in August and September 2020 seeking confirmation of the eventual return date so as not to fall foul of visa requirements. She has previously collected and travelled back with C to and from the jurisdiction. There is no basis for suggesting that C would be at risk of abduction if she were to live with her paternal family, or go to stay with them in America for short-term visits.

The range of powers available to the court under this act

281. I have considered all the circumstances of the case, taking into account the findings of fact I have made, had regard to all factors on the welfare checklist, and weighed up the advantages and disadvantages of all the options before the Court.

282. I consider that to secure C's welfare I must make a care order to the local authority.

283. I am acutely conscious of the heartbreak that this decision will bring both to *[SG1 and SG2]*, but also to C, who loves *[SG1 and SG2]*, and wishes to return to their care. I do not make a decision against C's expressed wishes lightly, especially when it is against the recommendation of her guardian.

284. The principal reasons that I depart from the guardian's recommendation are that I have found that her analysis has tended to over-simplify what have turned out to be very complex issues. She is a social worker of significant experience, but in this complex case, it may have been helpful to have a guardian who also had experience of private law work. That may have enabled her to explore in more depth the impact that *[SG1 and SG2]*'s very strong views about the paternal family may have had upon C, the significance for her of maintaining her relationship with her paternal family, and the impact upon her of the loss of those relationships.

285. I have come to this conclusion in light of the findings I have made in respect of *[SG1 and SG2]*. I found Cary Woodhouse's evidence to be powerfully persuasive, and it was reinforced by the findings I have made.

286. I agree with Ms Woodhouse, and with the local authority, that this placement brings with it a significant level of risk to C. Despite their best intentions, I do not consider that *[SG1 and SG2]* are in a position to provide C with the consistent, emotionally attuned parenting that she needs. They cannot promote her relationship with her birth family but have given inconsistent, harmful and damaging messages about them, which have left her confused and distressed. They have not given a satisfactory explanation to me or to professionals about the poor decision making in 2020 and 2021 that meant C's needs were not prioritised. It would appear that at moments of stress for *[SG1]* and *[SG2]*, they have a tendency to make impulsive or ill-thought through decisions which have either caused or put C at risk of significant harm. They have not fully

acknowledged responsibility for their actions or been able to reflect on their impact on C. In the circumstances the Court cannot have confidence that things would be different in the future. Having therapy is undoubtedly a positive step, but I have had regard to Ms Woodhouse's careful analysis and to the views of *Ms M*, and I agree with both that this on its own cannot be regarded as the 'fix' that is hoped.

287. I do not consider that a supervision order would be sufficient to help meet the deficits in parenting that Ms Woodhouse and *Ms M* identify. It would require more than the local authority can reasonably put in place. The fundamental rejection of the need for support, the history of difficulties with working openly and honestly with professionals and to respond to constructive criticism with personal insults and accusations means that there cannot be confidence that any supervision order would be effectively implemented so as to provide the support needed to enable that C's needs were met.
288. The fact that a supervision order is contemplated signposts the level of risks that the placement brings with it.
289. The effect of placement breakdown on C would be catastrophic. Her need for stability is such that the risk of placement with [*SG1 and SG2*] is too high and outweighs the positives.
290. Foster care does bring risks with it. There is a risk that the placement may come to an end due to personal circumstances of the foster care or other reasons. Other children coming in and out of a placement can be destabilising. Foster care only lasts until a child is eighteen. Ultimately it is not placement with your own family.
291. However, C has been in this placement for a year and has benefited every day from the high quality consistent, attuned, therapeutic care from an experienced, kind and loving foster carer who is insightful and understanding of her needs, and well able to meet them. The risks are mitigated to a certain extent by the carer having already indicated that she can have C long-term, and the two other children in the placement being there on a long-term basis. The risk of disruption and change is as low as one could reasonably hope to expect. This foster carer can promote C's relationship with both sides of her family.
292. It is anticipated that C will need support from adult social care due to her additional needs. In the circumstances she is unlikely to hit the same 'cliff-edge' that is often identified as a particular risk factor for children who are placed in foster care. In any event, C has a wide network of family on both sides who will remain committed to her whether she continues to live in foster care or not, and so she is less vulnerable to finding herself without support as a young adult.
293. For the reasons given, I find that the local authority has been wrong to discount the paternal family as a realistic option within these proceedings.
294. On the basis of the evidence I have heard and read, I am satisfied that if it were possible, placement of C with her paternal family in America would be the best way to secure her welfare, throughout her childhood and her whole life.

295. The evidence so far is that *[PAI]* can meet all *C*'s needs. She is family, has known *C* since birth and is committed to caring for her not just throughout her childhood but for the rest of her life. *C* has spent extensive time in her care, loves her and her cousins, and she has been assessed as more than capable of meeting all *C*'s needs.
296. I have accepted *[PAI]*'s explanation of the circumstances around the trip to *[Country A]* in 2021. She was at fault for lying to *[SGI]*. She was at fault for failing to contact *[SGI]* to tell her there and then that *C* could not go on the flight to America. But the circumstances around this trip were complex, and there is no justification in my judgement for ruling out the possibility of *C* moving to live with her paternal family for this reason. Indeed, this is not the reason that the local authority gives for rejecting her. Of the reasons that have been given – *C*'s wishes and feelings, concern over which of the sisters would put themselves forward as a carer, and whether there would be an element of 'shared care' or not – all are capable of being resolved by further exploration and investigation. None of these reasons is sufficient to undermine the thorough and comprehensive assessments of *[PAI]* that the local authority has carried out.
297. I find that the local authority should continue with the home study assessment that it initially suggested and agreed to fund, with a view to placing *C* with her paternal family in America in the long-term.
298. The process for pursuing adoption in America has been set out in the legal advice and can safely be explored at a distance from *C* while she remains in foster care in this country. In time, if this begins to look like something that could happen, with the assistance of ATTACH and *C*'s foster carer, work can be done to explore *C*'s feelings about going to live with her family in America full-time, then thought about how the transition should be made. That the timescale being uncertain does not in my view mean that this should not be explored under the auspices of the care order. There is no harm to *C* in these investigations happening while she is in foster care. If the further assessments are negative, then the plan should be that she remains in long-term foster care.
299. I do not consider that any plan should be made for *C* to move to America now, or any time before the prospect of her permanent placement is much closer to becoming a reality. Although I have concerns as to how her views have been influenced, *C* is at this time expressing views that she does not want to go to America and that should be respected until further explored. Her need for stability and permanence dominates – she should not make any move if there is a risk that it is going to be undone within a short period.
300. I am in no doubt that it would not be appropriate to adjourn the proceedings pending these further assessments. This would prolong the uncertainty for *C* and likely to cause her significant emotional harm. The idea of her placement in America would need to be carefully managed, it would be very difficult to give her a narrative that proceedings were to be delayed for the express purpose of pursuing a plan that at the moment she is clear she does not want. The timescale and outcome for the assessment is unknown and

that means the proceedings could be extended for as much as a further year or even two. That is wholly unrealistic.

301. For all these reasons, I invite the local authority to reconsider its care plan so that the following takes place:

- Care order providing for C to remain in foster care long-term;
- Exploration with both [PA1] and [PA2] information about their citizenship status, timescales for obtaining it and impact on the assessments;
- Exploration with [PA1] and [PA2] which one would put themselves forward for the home study assessment;
- Pursuit of the home study assessment;
- Support for the prospective adopter to take steps in USA and UK to pursue application for an overseas adoption, which may include application to the Court to place a child in care overseas for the purpose of assessment and as a precursor to adoption;
- In the event that adoption cannot be pursued, for the plan to remain long-term foster care;
- Exploration and evaluation of the importance of C's relationship with her father and a risk assessment to inform considerations in respect of contact;

Contact

302. All plans in respect of contact will need to be reviewed and revisited once the work with ATTACH has started. C will need support to uncover her own feelings about different family members, to express them freely and for contact to go at her own pace.

303. Contact with [the SGOs] should be regular, they are important people and cherished relationships. However, it is likely that a great deal of support will be required at least in the initial stages to manage their feelings of disappointment around her, and to protect C from the levels of animosity that they feel towards the paternal family. The contact must be for C's benefit which means that it must be something that helps her to settle in her placement. This will be achieved if she has an understanding of why it is she cannot be with [SG1 and SG2], and they are able to take responsibility for the circumstances that means she is not able to return to their care. They must not undermine her placement and her stability by deflecting from their responsibility, or by giving her false hope that she might be able to come back to them.

304. I accept Ms Woodhouse's recommendation of direct contact reducing to six times a year. I would hope that at some point this contact could include staying contact. There could be more frequent video or phone calls.

305. Contact with the paternal family should continue to be regular. I understand that at the moment Saturday night contact is thought not to be the best time by the foster carer but this can switch.
306. I consider there needs to be an updated and more thorough investigation and risk assessment around C's relationship with her father and the benefits of contact. I would not disagree with the suggestion of virtual contact once a month in the first instance but this should be kept under review.
307. I would accept that C should not go to America for a little while, but she certainly needs to be allowed to spend regular time with her aunts, uncles and cousins if they are able to visit the UK. Neither the local authority or the guardian has explained to my satisfaction the reasons why this contact would need to be restricted or limited in the way set out in the care plan. In due course (perhaps as soon as next summer), I would expect that C should have the opportunity to return to America, either in line with the previous child arrangements order with trips every summer holidays and either at Christmas or Easter, or a longer trip if the plan for adoption is progressing well.
308. In the meantime, I would expect her to be having virtual contact every fortnight and more regular visits during the school holidays.

HHJ Joanna Vincent
Family Court, Oxford

Draft handed down to parties by email: 5 December 2022
Approved judgment handed down to parties by email: 25 January 2023

Addendum judgment: 25 January 2023

1. The draft judgment was sent out on 5 December 2022.
2. The parties' representatives compiled a list of corrections and clarifications which they provided to me on 12 December 2022.
3. At paragraph 282 of the draft judgment I had initially stated that the special guardianship orders should be discharged. This statement was not backed up with any reasons. Quite reasonably all parties queried this.
4. The parties sought clarification around the indications I had given as to contact.
5. Finally, the local authority indicated that it did not intend to accept my invitation to revise its care plan so as to pursue its original plan of assessing the paternal family.
6. I have gone through the list of clarifications and made some changes. Some of the clarifications strayed into comment, and I have not accepted them.
7. It was impressed upon me in the schedule that advice in respect of the process by which C might be placed with her paternal family in America was obtained only in the 2019 proceedings. The implication is that the local authority was not pursuing the same course in these proceedings. I do not accept this. On 20 May 2022 within these proceedings, I gave permission for the same legal expert, Deidre Fottrell KC, to be instructed to give updated advice, and my understanding is that was obtained, confirming that the same process would apply now. The same order provided that the legal advice from Irene Steffas from the previous proceedings was to stand as an expert report in the proceedings. It was noted that she had been approached and confirmed the contents of her advice remained good law.
8. It has been suggested that I have not given sufficient weight to the relationship between C and [SG1 and SG2] and the impact on C's wishes to go home to them not being heeded. This is commentary. I have been acutely aware of this throughout, conscious that the effect of my decision may be to increase C's present difficulties in the short term. However, I have set out the reasons why ultimately, I have regarded this option as too risky and unstable for her, and counter to her welfare interests.
9. I listed a short hearing for the parties to make submissions on the outstanding issues.

Special guardianship orders

10. In respect of the special guardianship orders, I am grateful for the opportunity to correct an error before the judgment has been finalised.
11. It was not a part of the local authority's case that the special guardianship orders should be discharged, and I did not receive submissions on the point at the time of the final hearing.

12. The local authority has now taken a position that the orders should have been discharged, but the special guardians themselves, supported by the guardian, oppose this. I have considered the written and oral submissions. I am satisfied in all the circumstances that those orders should remain in place at this time. In short, my reasons are as follows:

- It is not an automatic consequence of a care order that a special guardianship order is discharged. The care order envisages that the local authority will share parental responsibility, not extinguish it;
- C's relationship with *[SG1 and SG2]* is important to her, she regards them as her parents, loves them, and derives great support from the relationship;
- being told that this relationship is no longer recognised by law is likely to cause her emotional harm;
- *[SG1 and SG2]* are C's only close family members in this jurisdiction and should have a voice at children we care for meetings and in respect of significant decisions for her. They are entitled to continue to be consulted and should not be dependent on the local authority volunteering to consult with them.

Contact

13. Contact is a matter for the local authority as C's corporate parent to arrange and to keep under close review. I have heard further submissions about contact, but maintain my view that the level of direct contact proposed by the local authority is likely to be destabilising for C and could undermine her placement with her foster family. My own view is that six times a year for direct contact is still about right as the baseline, but I appreciate that reducing from weekly contact abruptly would not be in C's interests, and I can foresee that a higher level of contact, say monthly, could work well. I would prioritise less frequent but more high-quality outings, with other members of the family joining in, and including in due course overnight stays. I do consider the plan of once a week too much, although video calls or phone calls at that level would I think be a good idea. I agree that flexibility and responsiveness to C's needs is required. There needs to be careful analysis of how both C and *[SG1]* are managing, and the impact on C. Fortunately, C is living with an experienced foster carer who will be able to have input into getting contact to a level that works as well as an IRO.

14. I remain of the view that there should be regular contact with the paternal family, as set out in the judgment. This should be taken into account when considering how to manage C's time, and balancing the need for her to have meaningful relationships with both sides of her family, and to settle into life with her foster family, school friends and pursue her own activities and interests out of school.

Dispute over the care plan

15. Miss Williams was right to correct a sentence in the draft judgment that suggested I considered C should be adopted by the paternal family. Such a statement is premature

where the home study assessment is still outstanding. However, for the reasons given within the lengthy judgment, it remains my view that the local authority's decision not to progress the assessment is wrong. In doing so, the local authority has disregarded its own positive assessments of [PAI], given no weight to the conclusions I have reached as part of my fact-finding exercise, and, it is procedurally unfair.

16. The unfairness arises from the local authority's repeated assurances, recorded on numerous recitals to orders, that it was actively taking steps to progress a home study assessment of a member of the paternal family, then this course was suddenly abandoned at the eleventh hour, with no reference to the parties or the Court (despite a recital assuring the Court that this would happen). There was no transparency about how this change came about, and when the minute of the meeting finally emerged during the hearing, the reasons given for the change of position have not stood up to scrutiny. The concerns raised warranted further exploration in a fuller assessment, but did not reasonably justify abandoning the assessment altogether.
17. The local authority does not appear to have reflected in any meaningful way on the findings of the Court. It does not appear to have adjusted its proposals, even in respect of contact to the paternal family, let alone given due consideration to the prospect of further assessment for permanence, or how C's relationships with her paternal family may be repaired and nurtured.
18. With regard to the invitation to revise its care plan, the local authority submits the following:
 - Further assessment is inconsistent with C's need for stability and permanency. C's foster placement could be at risk if she found out that there was a plan to carry out a home study assessment of paternal family;
 - The local authority has had a legal advice meeting to discuss the judgment but will not share any information from that meeting – asserting privilege;
 - There was a professionals' meeting on 17 January 2023 which focused solely on C's education. Contact had been on the agenda, but was not discussed, nor were the proposed changes to C's care plan.
19. This response is wholly inadequate. It does not engage with the substance of the judgment or show that any thought has been given to balance the merits of further assessment against the risk of harm to C that is asserted.
20. Mrs Davies, on behalf of [PAI], told me that she has sought to engage the local authority in dialogue following the judgment, but has not even received any replies to her letters.
21. As to the only positive reason put forward against progressing the assessment, if the home studies assessment were to be carried out, obviously it would need to be done with great sensitivity to C. There would be no need to tell her of any plans for her to go and live in America unless and until that emerged as a realistic possibility.

22. This is not a good reason for declining to explore further the possibility of placement with the paternal family, where C has a long-established relationship with them since birth, there have been only positive assessments of them by the local authority, they are ready and willing to provide her with a home, and the Court has not made any findings against them that would preclude C's placement with them being explored as a long-term option.
23. What are my options?
24. Mr Jeakings urges me to refuse to approve the care plan, direct that the local authority must enable the home study assessment to be carried out, continue these proceedings until such time as we can return for an adjourned final hearing.
25. I have already considered this option in the judgment and rejected it, aware that it might lead to the present impasse. The reasons are set out in the judgment. Further delay of the proceedings would be harmful for C, she has been struggling with the uncertainty they have brought. The home study assessment would take some months to complete. I have not been persuaded that I have jurisdiction within these care proceedings to order the authorities in America to carry out the home study assessment (although I have not heard detailed argument on that point).
26. At this point in time, C's relationships with relatives on both sides of her family are at a sensitive point. Any question of her going to live in America would not be raised with her until her relationship with her paternal family had been repaired, and a successful assessment had taken place. If the proceedings were extended now for the purpose of assessment, it would be hard to shield her from the reason for the extension for it. There is a risk that she would indeed find this worrying and destabilising, and this could jeopardise the assessment process. It would have been better had the assessment taken place as originally planned, within the proceedings, but now, in my view, it is better that the proceedings come to an end, and the assessment happens as part of the care plan.
27. I could refuse to approve the care plan, until such time as the local authority demonstrated that it had properly reflected on its position. I could require a witness statement from the social worker setting out the factors that have been taken into account, and an analysis of the position.
28. I am not convinced that further time would achieve any shift in the local authority's position. The risk of delay and uncertainty for C remains.
29. I have approved the essential element of the care plan, which is that C should not return to the care of *[SG1 and SG2]* but should remain in long-term foster care.
30. The elements that remain in dispute fall squarely within the local authority's statutory duties to review contact on a regular basis and to review and consider the need for the continuation of any care order and the possibility of placement with family members. There is an argument that it will be for C's IRO to have a keen eye to ensuring that the local authority complies with its statutory obligations going forward, in light of the Court's

conclusions, which must be afforded respect, notwithstanding responsibility for implementing the care plan is with the local authority.

31. Further, case law is clear that where an impasse such as this has been reached, the appropriate remedy is for judicial review. This application would be made to the High Court, and is not dependent on these proceedings continuing.
32. In addition, Mrs Davies has indicated that she intends to apply to the High Court for an injunction under the inherent jurisdiction, compelling the local authority to follow a care plan as I have set out. Again, I do not understand that this application can only be made if the care proceedings are ongoing.
33. Having delivered a judgment, I should make an order that reflects the decisions I have made. If I do not, then I may deprive the parties of the right to appeal my judgment (or at the least I would create some confusion about the date from which time should run for them to do so).
34. In all the circumstances, I have come to the conclusion that further dialogue between me and the local authority is unlikely to achieve anything, and leaving the case running is likely to cause more harm than good.
35. I am satisfied that there are other routes that should now be pursued and that I should conclude this case so as to clear the way for them.

HHJ Joanna Vincent
Family Court, Oxford
Wednesday 25 January 2023