Neutral Citation Number: [2020] EWHC 3638 (Fam)

Case No: PL18C00029

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/10/2020

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

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Between:

X COUNTY COUNCIL	**Applicant**
- and –	
(1) A MOTHER 'Y'	**Respondents**
(2) Mr and Mrs US	
(3) GC (through her Children's Guardian, Heloise Dove)	
(4) Mr and Mrs S	

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Ms Susan Campbell QC and Ms Nicola Isaacs, leading and junior counsel, (instructed by Legal Services, X County Council) for the Applicant
Ms Jennifer Smith, counsel, (instructed by A Firm of Solicitors) for the First Respondent
Ms Lisa Barraclough, counsel, (instructed by A Firm of Solicitors) for the Second Respondents
Mr David Lidbury, counsel, (instructed by A Firm of Solicitors) for the Third Respondent
Ms Lucy Reed of counsel, (instructed by A Firm of Solicitors) for the Fourth Respondents

Hearing dates: 15th to 19th and 29th June 2020
(Decision and abbreviated reasons handed down in writing on 31 July 2020 in advance of full judgment)

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APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down was 10.30am on 2 October 2020.

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

Mrs Justice Roberts :

1. This is an application by a local authority for final care and placement orders pursuant to section 22 of the Adoption and Children Act 2002. The current placement application was issued in January this year (2020) but the case has a long and protracted history. The child at the centre of these proceedings is a little girl, GC, who was born in 2018. She is now approximately 2½ years old. Her mother is Y, the first respondent. GC's father is not named on her birth certificate, but he is believed to be Z, the mother's partner[1]. Mr Z is no longer a party to these proceedings for reasons which I shall explain. GC is currently living with local authority foster carers, Mr and Mrs S[2]. She was placed with them in April 2018 when she was three months old and has shared their home for the past two years.

2. Within days of GC's birth, the local authority issued care proceedings. At that stage, concerns for GC flowed from her mother's history and the risks which were perceived to exist as a result of Mr Z's presence as part of the household. GC's mother had previously given birth to an older child, B, who had been placed with the maternal grandmother, 'MGM', pursuant to a special guardianship order. Y has a long history of mental health difficulties. She took a potentially fatal overdose when B, aged three months, was in her sole care. The local authority initiated the current care proceedings in respect of GC because of this history and concerns that Y lacked any insight into the risks posed by Mr Z. She and GC were placed in a residential assessment unit within ten days of GC's birth. The outcome of that assessment process was not positive in terms of this mother's ability to provide good enough care for her younger daughter. GC moved into foster care on 24 April 2018.

3. GC has not had any contact with either of her parents since May 2018. Whilst some contact with her maternal grandmother and her partner, Mr MGM, continued on a monthly basis whilst in the care of her foster parents, that contact with the extended family ceased in October 2019. Shortly thereafter, her grandmother and her long-term partner withdrew from these proceedings recognising that they were unable to protect GC from the potential risks posed by Mr Z in the context of a family placement.

4. GC's mother has since given birth to her third child, a son, BC, who was born in March 2019 and is now 17 months old. She has throughout these proceedings maintained her relationship with Mr Z and it is assumed that he is the father of

[1] Mr Z refused to cooperate with DNA testing and was at one stage disputing paternity of GC. He does not have parental responsibility for the child.
[2] We have referred to the foster carers throughout the hearing as Mr and Mrs S in order to preserve their anonymity.

her youngest child. BC was born in Europe at a time when Y and Mr Z had left England in order to disappear from the view of authorities in this jurisdiction. Immediately prior to the start of this hearing, they were living at an unknown address in a European Country having travelled through, and apparently lived in, two other European Countries for a period of time. Y is represented in these proceedings by Ms S who has been fully involved on her behalf throughout this hearing. GC's mother herself has not taken any direct part in the final hearing although I have a short video statement from her. Whilst I was told shortly before the commencement of this hearing that she had ended her relationship with Mr Z who was on his way back to England, I am very doubtful that this is a truthful representation of the current position. She misled the local authority on a previous occasion about her relationship with him prior to arriving in X having left her mother's home in town X and travelled with Mr Z via other locations. She confirmed in her evidence to this court that the relationship was ongoing and that Mr Z had taken BC to the beach when she recorded her video statement on 25 May 2020 shortly before this hearing began. She has been quite unable to remove herself from the relationship over the past two and more years despite the fact that it has come at the cost of any chance that GC might be returned to her care. From everything which I have heard and read about this case, it appears to me that the underlying dynamic of their relationship is one of coercive control and there are obviously ongoing and growing concerns for the safety of her youngest child, BC. I need say no more in this judgment about the steps which have been taken in order to address these issues. Mr Z's involvement with the proceedings ended within weeks of GC's removal. In early March 2018, his solicitor reported that Mr Z had given instructions that he was "washing his hands of it"; they subsequently came off the record and Mr Z was discharged as a party.

The risks posed by Mr Z

5. The initial multi-agency public protection meeting (MAPPA) in respect of Mr Z was held in 2014. From the information then available to the professionals attending that meeting, he was assessed as presenting a "very high risk" to various individuals including his mother, his father, the general public and specifically to paedophiles and registered sex offenders, children, known and unknown, animals, wildlife, pets and people from a different culture or religion, such as Muslims.

6. He has a significant history of criminal offending which includes acts of violence towards both people and animals. Previous reports contain references to "graphic fantasies" which involve stalking and killing paedophiles and harming animals. He is reported to have tormented his half-siblings in the past by giving them pets which he subsequently killed specifically to cause distress. Earlier psychiatric reports allude to a diagnosis of Asperger's syndrome during

his adolescent years together with subsequent evidence of various personality disorders including "dissocial, psychotic, emotionally unstable, panic attacks and post-traumatic stress disorder". Of particular concern in the context of these proceedings is his reported view that if he is not able to care for his child, no one else will. He reported during a telephone conversation with one of the independent social workers involved in this case that "if he wanted to, he would have the means to find [GC] wherever she was placed".

7. He has from time to time engaged with mental health services but his ability to engage is inconsistent and frequently non-existent over long periods of time. In these periods, his risk assessment has been escalated to "high". This lack of engagement makes his behaviour unpredictable. He has numerous offences which have involved violent assaults against both people and animals and is on record as having attended an appointment with a mental health professional whilst carrying on his person what appears to have been a bladed knife. In January 2018 the police received a report that Mr Z had purchased a quantity of pharmaceuticals which were potentially explosive if mixed together. He has made numerous serious and sadistic threats against both adults and children.

8. GC's maternal grandmother (who has cared for her half-sibling for a number of years) described Mr Z to an independent social worker as "unpredictable and dangerous". She regards his behaviour as "irrational" and "not that of a normal functioning adult who she would want anywhere near her or her family".

9. It appears that Mr Z has a significant skill set when it comes to digital technology. He appears to be proficient in "hacking" into digital and social media platforms even in circumstances where significant firewalls have been put in place to preserve confidentiality. This has been a particular concern in this case where several case management hearings, as well as the substantive hearing, have been conducted remotely. Such was the level of concern for GC's safety in her current placement that a formal risk assessment was prepared by a consultant psychologist, Dr Gough. I shall return to her evidence at a later stage of my judgment. She attended the final hearing to give oral evidence and has stressed to me the serious and significant risk of physical harm which Mr Z poses not only to GC but to those caring for her. She describes that risk as multi-faceted and one which is likely to continue into the future regardless of any decisions which I make in the context of these proceedings as to where GC should live.

The progress of the litigation to date

10. There are trenchant criticisms made of the local authority's conduct of these proceedings, not least because of the significant delay which there has been in securing a final resolution in terms of the future arrangements for GC. The first interim care order in these proceedings was made in January 2018 when A was a few days old. She has thus been the subject of this litigation for her entire life and, only months from her third birthday, there are still no decisions about her future. This judgment will bring that certainty for her and all those who love her but the degree of stress and distress which this long delay has caused to her family and her carers cannot be underestimated.

11. On 31 July 2020 I notified all parties of my decision in this case that GC would remain in her home with Mr and Mrs S on the basis of the local authority's current care plan which has the full support of the Guardian. In order to avoid yet further delay and enable future planning for GC, I handed down an abbreviated judgment which announced my decision and the reasons for it. I said that I intended to make orders pursuant to section 28(2) and (3)(a) of the Adoption and Children Act 2002 and under the inherent jurisdiction so as to enable GC's name to be changed as part of the risk assessment profile.

12. What follows is my full judgment with detailed reasons for my decision.

13. The local authority's care plan for GC has changed several times throughout the course of this litigation. Various family members have been encouraged to believe that a placement within the extended family was a clear option only to be told that support for that option was to be withdrawn. GC was placed with Mr and Mrs S, her current foster carers, on the basis that it was potentially an adoptive placement. They received GC into their home on that basis only to be told subsequently that other family members were being assessed as long-term carers for GC. When GC's maternal grandmother and her partner withdrew as potential carers, Mr and Mrs US stepped into the frame to care for their great-niece. Mrs US is the sister of GC's maternal grandmother, MGM. With her husband, she lives in the United States. They have several children, all now adults, the youngest of whom continues to share their family home with the US's young grandson. They have been positively assessed as carers and, having been given party status, they have attended throughout this hearing. With good reason, they point to several failings on the part of the local authority which they say has prejudiced the wider family's ability to keep GC within a family placement for the remaining years of her childhood and adolescence.

14. The proceedings were originally brought in the Family Court at X and case managed by a circuit judge. He had the difficult task of making early decisions for GC against the background of this moving landscape. Following a two-day interim hearing on 23 and 24 April 2018, the judge accepted the local authority's interim care plan and sanctioned the placement of GC with Mr and Mrs S.

15. There is within the material before the court a copy of the judgment which the Circuit Judge delivered at the end of that two-day hearing. GC's mother attended the hearing having made it plain at the start that she had accepted that the court would not place GC back in her care. As she has done throughout, she was supporting a placement of GC within her extended family. The judge was critical during that hearing of an assessment made by one of the local authority's lead social workers. He accepted the views of the Guardian that GC's particular needs were then pointing in the direction of "a quiet, calm and nurturing environment". At that stage she had no relationship with her grandmother and Mr MGM. However the judge was not prepared to rule them out despite observing that there had been some reluctance on their part to engage fully with social services.

16. In accordance with the recommendations of the Guardian, he directed that GC should move to her current foster care placement whilst there was a further viability assessment of GC's maternal grandmother and Mr MGM. On 10 June 2018 that assessment was completed by an independent social worker who recommended that GC should be placed with her maternal grandmother under a special guardianship order. Notwithstanding the acknowledged risks posed by Mr Z, the social worker envisaged at that stage that such a placement would enable GC to have some relationship with her mother in the future and recommended a 12 month supervision order to support them in respect of any issues over contact.

17. It was at this point that Mr and Mrs US became involved in these proceedings having been alerted by MGM over the Easter weekend that, without their co-operation, GC might well be placed on a long-term basis outside the family. The viability assessment which was prepared at the end of May 2018 reflected the fact that the USs were then living on a US Navy base in another jurisdiction but were planning to return to their home in the USA at the end of Mr US's overseas posting in about a year. Mrs US made it clear that, if necessary, she would return to the United States to care for GC immediately. At that stage, neither knew very much at all about GC's circumstances or the risks which Mr Z was then known to pose. The assessment records that *"she felt both MGM and Y are good parents and she would let them see [GC] any time"*. No criticism at all can be made of Mrs US for expressing that initial view. It is clear from what she told the social worker that, whilst she kept in touch with her sister, she was not up to date with family news and had not been drawn into events flowing from GC's birth in the early part of that year.

18. Throughout the summer of 2018 and notwithstanding her placement with foster to adopt carers, GC continued to have contact with her maternal grandmother and Mr MGM. The mother had given notice to the local authority that she and Mr Z would be travelling around Europe for 6 months from August 2018. By

that stage she must have been in the very early stages of pregnancy with BC although the existence of that pregnancy was not revealed to the local authority at the time. As I have made clear at the start of my judgment, I have little doubt that such a move was designed to ensure that the local authority did not become aware of the pregnancy. In July, the Guardian prepared a further report for the forthcoming case review hearing which a circuit judge was due to conduct in September of that year. She acknowledged the many positives which had emerged from the most recent assessment of the maternal grandparents and adopted the description of them as being "passionate and genuine in their wish to care for [GC]". However, she identified in her analysis some inconsistency in the information which had been provided. In the Guardian's view, this had the potential to impact on the evaluation of risk if GC were to be placed in their care on a longer-term basis. There is no need for me to set out the list of the Guardian's concerns: the most significant issue was the potential for Mrs MGM to minimise the risks presented by Mr Z.

19. On 28 September 2018, the matter was back before a circuit judge for further case management. The timetable set by the court for a resolution of GC's future had expired some four days earlier on 24 September. The final hearing had been listed over four days in November 2018. By that stage there were a number of third party family members who had put themselves forward as potential carers for GC, including further members of the extended family who, like Mr and Mrs US, were living in the United States. The solicitor who was then acting for the local authority had not complied with the court's direction in relation to these third party potential carers and this had caused slippage and delay in the timetable. In addition he failed to apply to the court for an extension of the timetable as a result of these failures. Mr and Mrs US had travelled to England and were present in the court building on 28 September 2018 although they were not present at the hearing. They were then pressing for a full viability assessment. With the support of the local authority, the judge agreed to sanction that course. He imposed a tight timetable and included within the raft of orders which he made on that occasion provision for all outstanding viability assessments. The USs were invited to attend the next hearing with legal representation.

20. Several case management hearings followed. A hearing towards the end of October 2018 which had been listed as a final hearing was adjourned part heard after the judge had heard from several professional witnesses. At that point the local authority withdrew its placement application on the basis of its alternative plan to continue with the family assessments. Mr and Mrs S were advised that the decision to place GC with them with a view to adoption had been rescinded. Formal advice was sought in relation to the legal formalities which would be required to accommodate a lawful placement with the extended family in the United States.

21. It is difficult to imagine the extent of the distress that this decision is likely to have caused to Mr and Mrs S. By this point in time they had been caring for GC for six months on the basis of an assurance from the local authority that its care plan was for adoption outside the family. The fact that they continued to provide unstinting love and care for this child is testament to their commitment to GC and her future notwithstanding the shifting sands on which they then appeared to be standing.

22. By February of the following year (2019), the local authority had filed a new care plan on the basis that, if GC's maternal grandmother was not considered suitable as a special guardian, they intended to proceed with a placement with Mr and Mrs US in the United States. GC, meanwhile, continued to live with Mr and Mrs S and looked to them to meet all of her complex and ongoing needs. From a human perspective, it is difficult to imagine the distress which the emotional pressures generated by this litigation must have been causing to all those involved. As I have said, for Mr and Mrs S who were continuing to care for this little girl and to provide for her every need despite the changing intentions of the local authority, the pressures must have been acute.

23. By March 2019 the local authority through one of its social workers had filed a transition plan for GC which envisaged her moving to the care of Mr and Mrs US for five weeks in this jurisdiction before she left England to make a new home with them in the United States. That was the plan when the matter came back to the circuit judge for a further four day hearing at the end of March 2019. MGM, GC's maternal grandmother, gave evidence on that occasion and confirmed that she recognised the risks posed by Mr Z and would be prepared to step back from her application for a special guardianship order if the court considered that a placement outside this jurisdiction was a safer option for GC In the light of the catalogue of complaints which was then before the court, the Judge decided to escalate the case to the Designated Family Judge for X.

24. In May 2019 Mr and Mrs S were given permission to withdraw their application for permission to apply for an adoption order. There was still no final listing before the DFJ. It was at that stage that I directed the case should be transferred to me. At a hearing in July 2019, I authorised the production of expert risk assessments by Dr Gough and Dr Tostevin and set the matter down for a ten day hearing on 23 March 2020.

25. By the end of the year, Mrs MGM and Mr MGM had decided to withdraw from the proceedings. It was clear by that stage that the route to a successful placement with Mr and Mrs US in the United States would have to be by way of adoption rather than special guardianship. In February 2020 there was a positive home study report which supported an adoptive placement with them. Notwithstanding that report, the local authority had by then revised its position once again from the foot of the two risk assessment reports which were then

available from Drs Gough and Tostevin. Mr and Mrs US were advised that the local authority would no longer support them as long-term carers for GC because of the risks to the child outlined in those reports.

26. There was a further hearing before me in the Royal Courts of Justice in London on 2 March this year (2020). That hearing had been listed to ensure that the case was ready for trial at the end of the month. Mr and Mrs US flew to England in order to attend that hearing. They were very anxious to pursue their application to care for their great-niece notwithstanding the local authority's change of plan for GC to remain with Mr and Mrs S.

27. Shortly thereafter we entered the period of the Covid-19 emergency. In the light of prevailing guidance at the time, the prospect of being able to conduct a final ten day hearing remotely in the very early days of the Government-imposed lockdown was agreed to be unrealistic. I remained extremely concerned about further delay for this little girl. Over the course of the next few weeks, I held several remote case management hearings. As the weeks went on and the guidance changed in line with our increasing familiarity with working remotely, I agreed to list the case on the basis of a remote hearing. I did not have ten days available within this child's time frame and I agreed with counsel that we would take a six day window which I had managed to create on the basis that judgment would have to be reserved at the conclusion of evidence and submissions.

28. In the meantime, I had acceded to the application made by Mr and Mrs S for party status in these proceedings. I explained why I had taken that unusual course when I made the order joining them as parties for the purposes of the final hearing. In short, this was a case where I had expert evidence from Dr Tostevin about the potentially catastrophic consequences for GC were she to be moved from her placement with her foster carers. In circumstances where there were family members offering her a home in the United States, an option supported by GC's mother, the foster carers were very concerned that I should make my decision on the basis of the very best evidence available. They felt that they could shine a light on GC's experience of life within their family unit which would provide me with greater insight than that which I would get from merely reading reports.

29. Thus, at the end of June, I heard this case remotely including a full week of live evidence. I am entirely satisfied that the hearing was fair and complied with the Article 6 rights of all the parties. The technology worked very well and enabled each of Mr and Mrs US to participate throughout: he joined the hearing daily from Poland where he was stationed and she from her home in the USA. We adjusted the court sitting day so as to accommodate the time difference with the United States. With regular breaks throughout the sitting day, we completed the evidence within five days and I consulted regularly with counsel to ensure that their respective clients were content with the manner in which we were

proceeding. With counsel and their instructing solicitors, the digital platform we were using accommodated approximately fifteen participants on a daily basis. I had a very good opportunity to observe the parties and the expert witnesses and did not feel at any disadvantage in my assessment of them and the evidence they gave me. Notwithstanding the remote nature of the hearing and the importance of the issues at stake, I regard this case as a model of what can be done in an international case involving expert evidence and the future of a child.

30. Before turning to the evidence, I propose to deal, first, with the law which I have to apply to the facts as I find them to be.

The Law

31. The local authority's current care plan is for GC to be adopted by her current foster carers, Mr and Mrs S. I have to consider whether to approve that care plan or adopt the local authority's alternative care plan to place the child with Mr and Mrs US outside the jurisdiction of England and Wales. In the light of the significant risk factors presented in this case by the assessments made of Mr Z and GC's mother, I do not propose in this judgment to address in any detail the component elements of each of these alternative plans.

32. In terms of placement and adoption orders generally, s. 52 of the Adoption and Children Act 2002 (ACA 2002) provides as follows:-

> "**52 Parental etc consent**
>
> (1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that –
>
> (a) the parent or guardian cannot be found or lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent, or
>
> (b) the welfare of the child requires the consent to be dispensed with."

33. S. 52(5) provides the statutory definition of 'consent' for these purposes:

> "(5) 'Consent' means consent given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made."

33. For the purposes of s. 52(1)(b), the question which must be asked is 'does the child's welfare require consent to adoption to be dispensed with ?'. What must

be shown in this case is that GC's welfare throughout her life 'requires' adoption as opposed to something short of adoption: see *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625, CA. Here, GC's mother will consent to GC's adoption if her daughter is placed with her extended family members; she does not consent to GC's adoption if she is placed permanently with Mr and Mrs S. Pursuant to s. 38(4) and (5) ACA 2002 GC can only be moved from her current placement if this court grants permission. Those subsections are engaged because she has lived with them for more than a year and they have given notice of their intention to adopt GC Since both GC's and her foster carers' Art 8 rights are engaged, the court would need to be satisfied that such permission is a necessary and proportionate interference with those rights.

34. In the same way, GC's mother's Art 8 rights are engaged in this context. Either care plan will result in the severing of those Art 8 rights. I have to consider Mr and Mrs US's inchoate Art 8 rights. On the basis of their current proposals, GC has the potential to experience GC family life in their home in the USA. They seek to argue that, based upon the two meetings they have had with GC and the biological connection which exists between them as a result of their extended family connections, they may already have acquired Art 8 rights for these purposes.

35. In the wider context of GC's welfare, the paramount consideration of this court must be GC's welfare throughout her life: s. 1(2) ACA 2002. Underneath that overarching principle I must give due and appropriate weight to those factors set out in the checklist of factors set out in s. 1(4) which provides:

> "(4) The court ….. must have regard to the following matters (among others) –
>
> (a) the child's ascertainable wishes and feelings regarding the system (considered in the light of the chid's age and understanding),
>
> (b) the child's particular needs,
>
> (c) the likely effect on the child (throughout [her] life) of having ceased to be a member of the original family and become an adopted person,
>
> (d) the child's age, sex, background and any of the child's characteristics which the court …. considers relevant,
>
> (e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court …. considers the relationship to be relevant, including –

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

36. For these purposes I bear well in mind two established principles which emerge from the European jurisprudence: first, it will generally be in a child's best interests to preserve his or her ties with family except in cases where those ties, in the circumstances of the individual case, would represent a contraindicator or future risk for the development or security of that child; and, second, it will always be in a child's best interests to ensure that he or she grows and develops within a safe and secure environment: see *YC v United Kingdom* (Application No 4547/10) [2012] 2 FLR 332, ECHR.

37. It will be apparent from the above that many of the factors which shape and inform the exercise of the court's discretion in terms of the welfare check list in s. 1(4) ACA 2002 are engaged in this case. I have to consider the likely effect of a change in the child's identity and status arising out of any decision to make an adoption order and these factors have to be considered separately in relation to each of the options before the court. In this context, I must consider the nature of the relationship which GC has with members of her extended maternal family and with her current foster carers, Mr and Mrs S. Each has stepped forward in what I am persuaded is a genuine and principled commitment to provide GC with a home and a family. There is no doubt that each of the potential placements available to her is underpinned by a great deal of thought, care and, to the extent possible, insight into what will be required to ensure that GC's next few years are as safe and secure as they can be. Those early years will inform GC's future as she grows into adolescence and later adulthood. They are vital years in terms of the prognosis for her future. The trajectory of her life has been interrupted by the events which shaped the early weeks and months of her experience of care and whomever is entrusted with the care of this child will need professional support to shape that insight into GC's developing needs over the years ahead.

38. What is required of the court is an holistic evaluation of all the circumstances. Both the positive and negative aspects of each option have to be considered in terms of GC's welfare. The court must conduct a granular analysis of the benefits and risks which flow, or are likely to flow, from each of the alternatives. This includes any risk in GC's current placement if it is approved, just as it includes risks in the alternative care plan which involves placement with Mr and Mrs US. The court must look not only at the direct risks which might flow from a placement once achieved or finalised but also at risks which could flow from legal or procedural obstacles in achieving such a placement. A crucial element of the overall balancing exercise will inevitably involve the relevant Art 8 rights of GC and all those willing to offer her a home and a long term family placement. I can only interfere with those rights to the extent that such interference is both necessary and proportionate. The evidence will inform that critical balancing exercise. In this case the court has the benefit of expert evidence in relation to the nature and evaluation of the future risk to GC in each of the alternative placements. Those assessments and the expert opinions from the professionals who have prepared the reports are an essential part of the global picture; whilst not determinative, they are nevertheless important. Similarly, in this case the court has the assistance of the professional views of a very senior and experienced Children's Guardian who has represented GC's interests throughout this litigation.

39. I have reminded myself specifically of all the guidance flowing from the Supreme Court in *Re B (A Child)* [2013] UKSC 33 and from the Court of Appeal in *Re B-S (Children)* [2013] EWCA Civ 1146. Each of these authorities emphasise the need for a solid and substantial evidence-based assessment of all the alternative options for a child so as to ensure that the court has sufficient information on which to reach its conclusions. I am satisfied that, in this case, there are only two realistic options for GC. As the evidence assembled in support of the case advanced by Mr and Mrs US now demonstrates, each will involve adoption and the reconfiguration of GC's legal status outside her immediate birth family. There is no possibility of GC growing up with the birth family which brought her into this world: the risks here are too great as even her mother acknowledges. Given that a placement outside the extended family is properly considered to be the most draconian option for any child in GC's position, the court must be astute in its survey of any alternative option which might preserve those family ties. Whilst there has plainly been delay and uncertainty in this case caused in no small measure by the absence of a clear and consistent care plan, I am satisfied that I am now equipped by a carefully researched evidence base to assess the options which are available in terms of the arrangements for GC's future.

The Evidence

40. I turn now to the evidence.

41. I heard from the two expert witnesses, Dr Anna Gough and Dr Maxine Tostevin, over the first two days of the hearing. Ms Talent Danga, the lead social worker, gave her evidence on Day 3. In terms of the evidence from the parties, I heard from GC's mother via a short video statement. Mr and Mrs US gave their oral evidence on Day 4 of the hearing. Finally, on Day 5, I heard from Mrs S, GC's foster carer. She gave her evidence remotely from the offices of her solicitor. For these purposes, I permitted her to give that evidence out of sight of the USs although they were able to hear every word which she said. Finally, I heard from Mrs Heloise Dove, the Guardian, whose evidence was completed successfully on Day 5.

42. Counsel submitted their written closing submissions the following week on the basis that I would prepare a reserved written judgment. I am acutely conscious of the investment which Mr and Mrs US and Mr and Mrs S have made in these proceedings and their outcome. Having listened to them carefully over a number of days, it is only right that I state at the outset my appreciation for the quiet dignity which they displayed throughout. Mr and Mrs US's wish to offer GC a secure home for the rest of her childhood and thereafter to launch her into adult life from the platform of what they intend should be a loving, settled home is as remarkable as it is selfless. They are thoroughly good people whose engagement in these proceedings has come from the very best place. They have already raised a family of their own and I could see the evident delight which Mrs US takes in the presence of her grandchild within the home she shares with her daughter. They are a thoroughly child-centred couple who have stepped into the breach of a very difficult family situation. Having had access to all the evidence in the case, they can have been in no doubt about the scale of the task which lies ahead given the clear risks posed to GC and to them by Mr Z. The individual care plans produced by the local authority demonstrate the extent to which they will need to make significant changes in the way they live their lives if GC were to move to live with them in the United States. It would have meant the severing of some important ties with other family members in England. All this they were willing to undertake in order to provide GC with the opportunity to grow up within her extended family. I should want them to know that they have this court's respect and gratitude for the stance they have taken.

43. Mr and Mrs S have shown a similar devotion to GC and her future wellbeing and happiness. It is difficult to underestimate the degree of stress and confusion which they must have experienced as these proceedings unfolded through 2019. GC was placed with them when she was three months old. They have loved and cared for her over more than two years as she has grown into the lovely child she is today. That unswerving devotion has not wavered throughout some very unsettling months over which the local authority's planning for GC has

changed and changed again. Over that period, GC has become a fully integrated member of their family. She is loved not only by Mr and Mrs S but by their young son who regards GC as a sister. That a choice has to be made between these two sets of prospective carers must be exquisitely painful for each but it is a decision from which this court cannot shy. I can only hope that they will read this judgment and understand why I have been driven to reach the conclusion which will be reflected in the order I propose to make.

44. At the end of the day, this case involves a critical assessment of future risk to GC. In this context, the evidence of the two expert witnesses is crucial and it is to that evidence that I now turn.

Dr Anna Gough

45. Dr Gough is a consultant clinical psychologist who was instructed to prepare a risk assessment of Mr Z. For obvious reasons that assessment was written from the foot of all the material which was then available to her: she did not meet with him for the purposes of preparing her report in September 2019. As she said in paragraph 2.2 of her report:

> "I have explored the historical risk factors in this case. I have concluded that Mr Z's absence leads to an impossible situation. There is no opportunity to consider dynamic and/or protective factors. Effective clinical management relies upon a working relationship with the person who has been identified as the risk. This is not possible in this case. When in UK *[sic]*, Mr Z did not engage in professional efforts to explore or reduce risk. Even the most robust external control (i.e. a custodial sentence) did not reduce the risks. Mr Z's current whereabouts are unknown – although Y has indicated that they are in [Europe] with their son, [BC]."

46. Dr Gough's conclusions are that:

(i) there will need to be external controls and safeguards in place to protect GC for the rest of her childhood;

(ii) those risks are likely to be better managed by professionals in this jurisdiction where the risk posed by Mr Z is well recognised;

(iii) any placement within the family increases GC's visibility to Mr Z and therefor his access to her;

(iv) whilst the risks to GC of an adoptive placement and the potential impact on her identity and sense of belonging are important factors to be weighed in the balance, there are natural safeguards which flow from such a placement away from family members who are known to Mr Z.

47. The fact that Mr Z has disengaged from these proceedings has not prevented him from being a significant presence in the litigation. In September 2019 he

posted a photograph on social media of the new baby, BC, sitting in a supported position with a small puppy. Above the photograph is a caption which reads, *"Finally my son stops being a boring little shit"*. Whilst BC is not the subject of these proceedings, Dr Gough has expressed clear concerns for this child, as she has for GC.

48. Dr Gough has set out in her report the material to which she has had access for the purposes of preparing her report. She has spoken to a number of professionals in the case and to a member of the Parole Board who has been involved with Mr Z in the context of his criminal offending. She has read previous risk assessments of Mr Z prepared in the context of his criminal offending and she has absorbed the risk analysis prepared by GC's Guardian, Mrs Dove. In paragraph 4.5 of her written report, she says this:

> "From the history in the case papers, there is evidence of reactive, instrumental / predatory, sadomasochistic and male dominance violence. There are human and animal victims. There are elements of control (e.g. stalking, hiding). There are elements of fantasy and careful planning. There are sexual themes throughout the known history of Mr Z – e.g. childhood abuse, his father is a registered sex offender, there are references to sexual violence in the case papers (e.g. threats to cut off the Social Worker's breasts, threats to pay a *"crack head"* to rape the Offender Manager's daughter)."

49. She has identified a number of static risk factors as well as dynamic risk factors which are likely to be in play in the future. The former includes both mental illness (including paranoia and psychotic symptoms) and personality disorder (with psychopathic characteristics). She points to the fact that the risks posed by Mr Z were unmanageable even in the context of a custodial sentence. He was required to serve the full term of a four year prison sentence. Since his release from that incarceration in 2016, he has not engaged at all with professionals. He was observed to repeatedly harm and kill pigeons by biting off their heads and tying them to a hot water pipe. He failed to engage with professionals on his release from prison and there has been no opportunity as a result to explore how risks might be managed in future. It is for this reason that Dr Gough concludes in her report that the level and nature of the risk he poses remains static: *"It has to be regarded as controlling, predatory and sadistic"* (paragraph 4.10). She regards him to pose a significant risk to GC of both physical violence and sexual harm. The level of caution required is *"extremely high"*. She does not regard geographical distance (i.e. a move to the United States) as necessarily offering protection to GC given Mr Z's obvious ability to travel between countries and the specific risk posed by his predatory internet-hacking. She concludes that the risks to GC and her carers of stalking, harassment and emotional abuse will not reduce as a result of increased physical distance alone. Further, because he is able to appear and disappear at will, it is impossible to work with Mr Z so as to manage risk in the future. Any risk

management plan must therefore utilise external controls to keep GC and her carers safe. This will inevitably involve multi-agency professional systems such as border controls, police intelligence, the local authority and multi-agency professionals.

50. Crucially in Dr Gough's view, if GC is to be protected from harm there must be complete confidence in those caring for her and "an unwavering ability to work with professionals in a straightforward, open and transparent manner". GC's placement within the extended family will require those carers to work openly and honestly with professionals who, in turn, must be absolutely sure that their advice is accepted and will be acted upon. Where, as here, there are concerns about some of the extended family members, including Mrs US's sister, GC's maternal grandmother, the court would need to be absolutely confident that a placement within the extended family would not expose her to risk as a direct result of those continuing familial ties.

51. Dr Gough's conclusions in her first report were that the risks posed by Mr Z remained high and, in her opinion, "unmanageable". She regarded the visibility of a placement within the extended family to increase the risk to GC through greater visibility in the future.

52. Following receipt of her report and in order to proceed from a level playing field, I acceded to a request from Mr and Mrs US that they should be assessed by Dr Gough for the purposes of a further report. I asked Dr Gough to meet with Mr and Mrs US in order to explore what risk management strategies might be put in place were GC to move to the United States. The results of that assessment were reflected in her second report in May 2020. It proceeded from the foot of what was obviously a frank and open exchange of views over more than one meeting. Mr and Mrs US engaged fully in that process. Dr Gough identified the position of emotional conflict in which they found themselves believing, as they do, so strongly in the value of family connection and ties. They told Dr Gough that they found it hard to imagine that a court would require them to cut off ties with their family in England as the price of caring safely for GC. It was the strength of these ties which led Dr Gough reluctantly to conclude that those beliefs and emotions around the importance of family would have a significant impact upon their capacity to keep GC safe despite their obvious intentions to do so.

53. When she gave her oral evidence, Dr Gough told me that she did not expect the risks she had identified would diminish over time. She remained very concerned that Mr Z's threats to find GC wherever she was placed heightened the risk to this child of a family placement. She believed that there was a serious and high risk of physical harm to GC were she to be placed with extended family members. She identified two principal risks to A: the first was the forensic risk of Mr Z discovering where she was and/or wider family members bringing

pressure to bear on the USs for information about GC or direct contact with her. The second and separate risk was the psychological damage which was likely to be caused by any fracture in the attachment she had now developed with Mr and Mrs S. In relation to the former, she had reached a clear view that, whilst Mr and Mrs US's intentions were genuine and sincere, their protective capacity going forward would inevitably be influenced by their emotions and the conflict which those emotions would create. Given the close relationship between Mrs US and her sister, she did not believe that it would be possible for her to sustain the necessary distance which would be required over the course of probably many years. GC's maternal grandmother held very clear views about wishing to maintain contact with GC so as to watch her growing up. Given the value which the USs place on family connections[3], Dr Gough saw a clear risk that their ability to protect GC in future years might slip as their perceptions of the risk reduced over time.

54. Dr Gough addressed some of these risks when she was cross-examined by Ms Barraclough on behalf of Mr and Mrs US. She dismissed as unlikely the possibility that many of Mr Z's thoughts could be confined to the realms of fantasy. She told me that the evidence established that his internet searches had involved violent acts to animals, death, torture and cannibalism. He had highly developed internet skills and was likely to be better placed than many to deploy those skills to find GC. His failure to engage with any professional agencies informed her conclusion, clearly expressed to me, that the risk he presents to GC and her carers is both "unassessed and unmanageable". Dr Gough acknowledges that there is no risk-free solution for GC but she plainly has significant concerns about the potential visibility of a placement within the extended family notwithstanding the potential advantage of geographical distance.

Dr Maxine Tostevin

55. Dr Tostevin was asked to prepare a report in order to inform the court about the second risk identified by Dr Gough: GC's attachment to her present carers and any risks associated with a change in those arrangements. She prepared her first report in December 2019 at a time when GC was almost 2 years old and had been with Mr and Mrs S for 19 months. She described in that report the harmful and developmentally traumatic effects which the care she had experienced in the first fifteen weeks of her life had produced. I quote below from paragraph 1.2 of her report because it encapsulates the essence of much of her oral evidence.

> "[GC] has been with her foster to adopt carers for 19 months. She identifies them as her primary carers and is beginning to demonstrate security in her

[3] Mr US was himself adopted as a child

> interactions with them. However, this is fragile, and she will easily revert to highly avoidant strategies when she perceives stress and threat. Should a move be considered for [GC], I would be very concerned that, at the age of 23 months, she would be placed in a position where those highly avoidant strategies would be fully triggered, where her bias for threat would be heightened once again and her 'window of opportunity' for recovery again with alternative carers would be a significant challenge for her. In the short term, the loss of her primary carers who have provided her with good care since the age of 15 weeks would be highly detrimental. In the longer term, it is likely that she will continue to use highly avoidant strategies to cope in her life, because those will become embedded as predominant strategies. Individuals who use highly avoidant strategies through their life are vulnerable to mental health difficulties through their life."

56. Notwithstanding the important opportunity of a placement within the extended family, Dr Tostevin was clear in her professional view that a move now for GC at this critical stage of her development would be highly detrimental both in the short and long term.

57. In May this year Dr Tostevin confirmed that view in her updated report in the context of a visit to see GC at her home with Mr and Mrs S. She remarked in particular about the extent to which her carers had developed "a highly attuned ability to read her and the way she expresses her needs". She looked to them for comfort and for safety and she was continuing to develop a secure attachment to them. Dr Tostevin concluded (paragraph 5.9):

> "Going forwards, my recommendations remain unchanged. [GC] will require care from this point on that is highly predictable; she will require significant preparation for new and novel experiences; she will require support with social relationships and emotional understanding from carers who are skilled at reading her non-verbally. She will require adults to offer her nurturing and affectionate care that is also sensitively boundaried and accepting. She will need carers who understand her unhealthy tendencies to cope through avoidance and withdrawal. She will need carers who she has developed a trust with and who she feels safe with. [GC] is now 26 months old and the opportunity for her to experience recovery is ongoing but slow. She can ill afford a disruption to this."

58. Dr Tostevin met with Mr and Mrs US prior to this hearing. She was asked to do so in the context of a transition plan for GC should the court decide that she should be adopted within a family context. It was her clear view that it was very unlikely that any such plan could be supported from GC's current home in circumstances where GC was already hypervigilant within her environment and would undoubtedly pick up on the distress of Mr and Mrs S. Dr Tostevin's professional view was that any transition plan would be likely to involve an intermediate placement which would cause additional trauma and harm to GC and was likely to add to the negative long term consequences of a removal from her current home.

59. During the course of her oral evidence Dr Tostevin stressed to me the deleterious consequences for GC were her threat system to be re-engaged by a change in her existing pattern of care. She saw a risk that the introduction of new carers would be threatening and dangerous and could lead to her 'shutting down' emotionally. She saw significant trauma in a move to the United States. Whilst she acknowledged in cross-examination by Ms Barraclough that these risks had to be balanced in the context of GC's welfare throughout her life, Dr Tostevin's view was clear. She accepted that Mr and Mrs US were good and committed parents to their own children and were likely to offer the same level of commitment to GC. However, she told me that GC's needs were such that it would not matter how good any substitute carers might be. Any move away from Mr and Mrs S at this stage would be damaging and traumatic for GC and was likely to leave her with irreparable longer-term consequences. She was asked about the difficult balance between ensuring her physical safety in a placement where Mr Z might be less likely to find her and the potential emotional harm involved in a move. Dr Tostevin's evidence was that this child's physical and emotional safety were interlinked, a view which I share. The emotional harm flowing from a move at this stage was "very significant" and it may well be that she would not recover from that harm. She said:

> "I am talking here about irreparable damage. [GC] would live her life because she has already learnt to survive but she would not have the best outcome."

At a later stage she said this:

> "I believe there is a significant chance that [GC] will have difficulties throughout her life with relationships, with her mental health and wellbeing if she is not offered the security of her current placement."

60. She was challenged by each of Ms Barraclough and Ms Smith, on behalf of GC's mother, as to whether or not an undiagnosed condition of dyspraxia (an issue in the wider family) might have contributed to GC's presentation. Dr Tostevin told me that, when she visited GC at Mr and Mrs S's home, the child had demonstrated a real eagerness to interact with the people around her with whom she was clearly so familiar. An autistic child or a child with an organic developmental disorder would be unlikely to present in this way. Whilst she could not rule out the possibility of dyspraxia, she told me that the tension she observed in GC's body could equally well be the result of past trauma or a reaction to perceived stress.

61. She had already observed the degree to which GC's defensive strategies had led to her speaking less. She explained how past trauma would have affected GC's ability to vocalise when under stress. One of Dr Tostevin's clear

recommendations is future work with GC by a speech and language therapist who is experienced in dealing with trauma of this sort.

62. Her observations of GC's interaction with her current foster carers led Dr Tostevin to conclude that she was unlikely to be suffering from a developmental disorder such as dyspraxia. This conclusion flowed from the "absolute joy" she had observed in GC as she interacted with those carers. She spoke of "a real eagerness to interact with people with whom she was familiar". When pressed on this diagnosis by Ms Smith on behalf of GC's mother, Dr Tostevin agreed that she could not rule out an element of verbal dyspraxia as contributing to her speech and language delay. Her professional view remained that GC's current presentation was the result of early trauma. This was borne out by an aspect of that presentation. When her defensive strategies were engaged and she was under stress and distressed, she lost the capacity to vocalise. This was the way in which she promoted her own survival by shutting down that part of her brain. These responses had informed her professional view that the removal of the security which GC's current placement provided would be likely to result in a significant chance that she would experience difficulties throughout her life in terms of future relationships, her mental health and entire wellbeing.

63. If GC is to stay with her current carers, Dr Tostevin's advice is that the issue of any change of name is dealt with slowly and over time. She told me that GC has reached a stage where she is always likely to remember her name and any change will need to ensure that the name given to her by her mother remains part of her life story. She did not agree with the proposition put to her by Ms Smith that a name change would cause emotional harm in itself. If she stays where she is, Dr Tostevin's view is that, from a developmental point of view, it would be better to introduce her to her new name sooner rather than later.

64. Of the potential ten week transition plan for GC were the court to decide that she should move to the United States with Mr and Mrs US prior to any adoption proceedings in that jurisdiction, Dr Tostevin was quite clear: this was a move she could not support therapeutically in the context of GC's welfare and best interests. Such a move would inevitably involve significant trauma for this child. She would be separated from the very people to whom she would naturally look to cope with the stress which a move to strangers in a completely unknown environment would provoke. She was concerned that a move at this stage would expose GC to the potential of multiple new carers. In addition to Mr and Mrs US, she would be living with their daughter and grandson. Dr Tostevin was concerned that this experience would be likely to remind GC of her early damaging experiences of the compensatory care she received whilst living with her mother in the residential assessment placement during the early weeks of her life.

65. In terms of balancing the potential longer term benefits of growing up in an extended family placement, Dr Tostevin saw this particular family placement as presenting a number of risks for GC. She saw it as a family placement in which the ethos over several years into her adolescence would be high levels of risk and the need to erect firewalls between her home and other members of the extended family. The perceived risk of exposure to the English maternal family members was sufficiently great that contact would need to be carefully controlled if not severed altogether. This would bring the potential for confusion on GC's part about her identity and her place within that family structure. She would need to understand a narrative about why she was different and could not have contact with her maternal grandmother and her half-sister in England. It would be difficult and potentially damaging for her to make sense of the fact that her birth family was not "safe". Giving her an inaccurate narrative about her life story would ultimately prove damaging in itself if that story did not coincide with her experience of family life. Being told that she could not reveal information to other family members about the life she was living in the home where she was growing up in case of exposing herself to Mr Z and her mother would involve high levels of stress and worry for a child who was already struggling with issues surrounding her own identity.

66. When Dr Tostevin was cross-examined by Ms Barraclough of behalf of Mr and Mrs US, she agreed that, in the light of the mental health difficulties suffered by her mother and father (Mr Z), there was a prospect that she had a genetic vulnerability to future issues of this nature. She referred to the epigenetic effects which she had highlighted in her written report. In this context she explained that growing up in a protective environment which did not trigger these vulnerabilities was the best protection for GC's future wellbeing in terms of her mental health.

67. She acknowledged that there was always a risk in the future that GC, as she grew older, might resent the loss of an opportunity to grow up within her extended birth family. However, she told me that she could not support a move to the USs however good their intentions. Not only would such a move be likely to involve two moves rather than one before she could travel to the United States to make a permanent home in that jurisdiction: it was Dr Tostevin's professional view that GC might not recover from the psychological trauma of those moves. She explained that, in terms of GC's time frame, the window of opportunity was closing for this little girl. Her opportunity to develop secure attachments was now at the very end of this window if, indeed, it was not already passed. She had already developed neurological connections with Mr and Mrs S whom she regarded as her psychological carers. In the event that her situation were to change now and she was placed with people she did not know and who did not know her, there was no guarantee that she would have the ability to make similarly secure connections in the future. In this event Dr

Tostevin thought it much more likely that any new carers, however well-intentioned, were likely to be dealing with a traumatised young child who felt threatened and in danger once again. Whilst she acknowledged the commitment that Mr and Mrs US were willing to make to GC, she felt that the proposal to take GC to live with them in the United States for ten weeks before formally embarking on the adoption process was, through no fault of their own, an indication of the extent to which they do not fully understand her needs at this time. Whilst she felt that the risks to GC might be mitigated if any move could be managed without a transitional placement, her primary concern was the extremely fragile nature of the security which GC was beginning to develop in her placement with Mr and Mrs S. In making it plain that she could not professionally support any move away from her current placement, Dr Tostevin told me her clear recommendation for the best possible outcome for GC for the remainder of her life was to remain with her current carers.

68. In terms of where the physical risk to GC's safety could better be managed, Dr Tostevin was clear that the child's physical and emotional safety were fundamentally linked together. The emotional harm involved in a change of carers at this stage in her development was very significant and she might not recover from such a change. Whilst she would obviously live her life in a home where the court could expect a good level of physical care and comfort, the damage to which Dr Tostevin was pointing was an inability in future to make healthy relationships and express her feelings in a way which did not trigger inbuilt defences learned in the first two years of her life. She would develop coping strategies but the prospects for emotional health and happiness in the future were likely to be significantly diminished by a change in the arrangements for her care at this juncture.

69. Dr Tostevin went so far as to tell me that she felt 'ethically compromised' in terms of any professional input she could provide by way of support for the transition plan supported by Mr and Mrs US. In her own words, she told me:

> "Ethically it is very difficult for me to put together [for the court] a transitional arrangement which I can support. My very clear view is that a move now will cause [GC] significant distress and irreparable harm and I cannot provide anything which will alleviate that harm."

70. She acknowledged that the relationship between Mr and Mrs US and the local authority was professionally fragile as a result of the grievances which they held about their treatment in these proceedings. That, in itself, was likely to make any ongoing relationship more difficult to manage in terms of future risk to GC. Dr Tostevin had concerns about the extent to which Mr and Mrs US had true insight into GC's ongoing needs. Whilst the Home Study report which had been undertaken in the United States had approved them as carers for a child under three years with minor or correctable developmental delay, Dr Tostevin's

evidence was that this was not a profile which reflected GC's needs which were significantly more complex. All the evidence points towards the fact that, as she grows older, GC is likely to need considerable support with her education and peer relationships. What will be required of those caring for her over the next few years is a consistent and insightful investment in supporting GC through these issues which are likely to be challenging in their various manifestations.

Social work evidence: Talent Danga

71. Much of the oral evidence of the lead social worker, Ms Danga, was taken up with questions about the perceived deficiencies in the local authority's approach to planning for GC. Ms Danga was not appointed in her role until April 2019. I recognise that she has no personal responsibility for earlier shortcomings. I shall have more to say at a later stage of my judgment about these matters but it is right to record at the outset that Ms Danga responded to these criticisms with a quiet professional dignity which was both appropriate and impressive. On behalf of her employer, she acknowledges that there have been mistakes. For the moment, I propose to concentrate on her evidence as it relates to the local authority's current care plans.

72. The local authority's final care plan for GC dated 10 June 2020 was subsequently modified on 19 June 2020 (the final day of evidence) to reflect its willingness to pay for additional therapeutic support for GC. The plan remains for GC to remain with Mr and Mrs S who will become her legal parents through the route of adoption. The view of the local authority that her complex needs are best addressed within their care is said to have been reinforced by the expert evidence from Drs Gough and Tostevin. The focus of the plan is very much on safety and healing from the childhood trauma she experienced during the first fifteen weeks of her life. Future therapeutic input through life story work will be informed by contributions from GC's biological family including her mother and maternal grandmother. In terms of the physical risks posed by Mr Z and, through him, Y (should they remain together), the foster carers have been assessed as able to work consistently and co-operatively with both the local authority and the police. There is ongoing liaison between both agencies and that communication will be vital in future to minimise the risks to which GC is exposed in this context.

73. As I have said, I do not regard it as appropriate to descend into detail in relation to the specific measures which are proposed in relation to safeguarding from Mr Z: the reasons are obvious. Suffice it to say that the amended care plan sets out in some detail the practical and financial support which will be made available to Mr and Mrs S in terms of any cost involved in relocation, security equipment and intelligence-sharing. In addition, the local authority intends to instruct a forensic psychologist to provide clinical and forensic guidance to all the

agencies who will continue to be involved in the safeguarding process in this jurisdiction. Dr Gough is already involved in identifying the appropriate expert to undertake this work. The protection required in future years will involve GC and her extended family throughout her minority. In terms of contact with her birth family, what is proposed is yearly letterbox contact with her mother which will in all probability include her brother, BC. Because of the extent of the perceived risk, photographs will not be shared in order to preserve the confidentiality of her placement with Mr and Mrs S.

74. In the event that the court were to decide that GC should move from her current placement to live in the United States with Mr and Mrs US despite the complexity of her attachment needs, the alternative care plan sets out the additional steps which would need to be taken to facilitate the requirements of the Hague Convention Inter-Country Adoption process. There is within the written material before the court a formal written opinion from a British barrister, CG, on the jurisdictional and immigration issues flowing from the permanent placement of GC with Mr and Mrs US in the United States. In order to acquire citizenship, any adoption process would need to conform with the 1993 Hague Convention on Protection of Children and Co-operation.

75. Since this advice informs the local authority's alternative care plan, it is convenient to deal with it here in the context of Ms Danga's evidence.

76. There are number of formal procedural steps which need to be taken. Mr and Mrs US have already been assessed locally in the US on the basis of the 'Home Study' report to which I have already referred. Subject to the issue of whether the authors of that report understood the nature and complexity of GC's attachment needs, they have been approved as carers. Going forwards, if the court approved a placement with them outside England, Mr and Mrs US would need to file a Form I-800A with the US immigration services (USCIS) together with the Home Study. Once approved through the appropriate channels in the US, the matter reverts back to the UK Central Authority (in this case the Department of Education) in accordance with Art 15 of the Convention. GC further report then has to be produced by the domestic Central Authority in order to comply with Art 16. Provisional approval then needs to be secured for the adoption from the US authorities which enables the child concerned to enter the United States using Form I-800. Once approved, the US Central Authority informs the UK Central Authority that the adoption may proceed. Mr and Mrs US are then at liberty to proceed to complete the adoption in the United Kingdom or to obtain 'legal custody' of the child to enable the US authorities to make an adoption order.

77. As the expert evidence makes plain, in order to facilitate an adoption in the United States, Mr and Mrs US would need to secure the court's approval to GC's placement with them for a period of ten weeks under Schedule 2 to the

Children Act 1989, paragraph 19. Thereafter they would need to make an application to the English High Court under s. 84(1) of the ACA 2002, the effect of which would be to remove the local authority's parental responsibility. The road ahead would then be clear for an application under the relevant Hague Convention adoption process in the United States. Before any of this can happen, they must secure provisional approval of the I-800 by USCIS.

78. As long ago as March 2019, the Guardian had highlighted the practical difficulties and the potential for delay in pursuing the US adoption route for GC. In terms of the child's timescale, she has pointed out that, if the process were to be completed within the United States, it could take between 18 months and several years to complete before permanence for GC could be assured.

79. As Ms Danga identified during the course of her oral evidence, the potential for the breakdown of a placement of GC with the USs during this transitional period is a real concern for the local authority. The alternative care plan dated 10 June 2020 deals with the Hague Convention adoption process in Section 4. The local authority's plan would be to proceed with the adoption process in this jurisdiction rather than in the United States where the potential for delay and uncertainty are so much greater. Having engaged the Article 15 process, a further delay of some eight weeks is envisaged whilst information is assembled for the Adoption Replacement Report. If GC is to be removed from the care of Mr and Mrs S, the likelihood is that the child would need to move to a bridging placement which could take a number of weeks depending on the time scales for introducing her to new and different carers. Introductions would be required in terms of the foster carers at that bridging placement and to the USs with whom GC currently has no established relationship. Whether or not there is a bridging placement, GC would need to be placed for ten weeks with Mr and Mrs US before formal steps towards an adoption could take place. The local authority's current plan is for that ten week placement to take place in this jurisdiction so as to minimise the distress and anxiety for GC and to enable the local authority to monitor any additional trauma and the USs' ability to manage this little girl's complex needs.

80. If an adoption order is made confirming a placement of GC with Mr and Mrs US in the United States, she will return to live with them in that jurisdiction and will have access to whatever services are available locally in The USA. The local police service would need to be engaged in arrangements for GC's ongoing security and safety. At the present time, there is no formal evidence before the court in terms of the likely extent of liaison between the two jurisdictions in relation to the risks posed by Mr Z or the measures which are likely to be available in the US to keep her safe within the home she would be sharing with her new adoptive parents.

81. In terms of the transition plan which is proposed by Mr and Mrs US, Ms Danga was asked to consider the practical implications for GC. It appears to be agreed that they would need to travel to this jurisdiction and spend a significant period of time here whilst the various legal steps and processes were implemented. In terms of quarantining after their arrival and the required period of residence before a formal assessment can be made, it seems that we are looking at a period of about fifteen weeks. Given GC's needs, there would then be a requirement for therapeutic parenting training, the cost of which would be underwritten by the local authority. A private therapist would be commissioned for these purposes over a six week period. Thus, the effective transition period for GC before a formal application for adoption could be made would increase to some 21 weeks (or c. 5 months). It is reasonably clear from the expert evidence on process and procedure that GC must not be placed in the 'legal custody' of Mr and Mrs US whilst all this is undertaken.

82. Thus, whatever steps are taken to mitigate these time frames, it is clear that a change of care now involving Mr and Mrs US will represent a significant delay in terms of GC's need for clarity and resolution in relation to her future placement. That delay is not of itself an answer to the binary issue which currently confronts this court but it is undoubtedly a factor which has to be weighed in the balance with a number of other factors.

Mr and Mrs US

83. In terms of the viability of implementing the transition plan outlined above, Mr US told me during the course of his oral evidence that he will be entitled to twelve weeks' 'adoption leave' if GC is placed in their care. He will also be able to take up to 12 months' leave without pay although this is not their preferred option. There is a further option of some form of 'leave donation' scheme whereby other colleagues may be in a position to cover for any period during which he is absent. He did not consider that it would be a problem to travel to, and remain in, this jurisdiction for up to twenty weeks if that was what was required to implement a transition in GC's care under the supervision of the local authority.

84. Whilst he readily accepted that this was an evolving plan (he described it as "an unknown variable"), both Mr US and his wife believed that a swift transition was the best option for GC.

85. In terms of the longer term implications for GC of a permanent move from her carers at this stage of her development, I found Mr US to be a remarkably candid and straightforward witness. It was clear to me that both he and his wife had listened carefully to the evidence of the two expert consultant psychologists and each was prepared to address directly the issues which that evidence identified in terms of the risks for GC.

86. In terms of their approach, I can distil the evidence I heard from Mr US into these headline points which I reproduce verbatim:-

- "GC's safety and security has to come first; we are in no doubt about that";

- "I believe my wife is capable of keeping her sister at a distance if she had to do that; it would be hard for her but I believe she could do it";

- "We respect Dr Tostevin's expertise. We know that GC does not know us. We are anticipating problems in terms of her adjustment; we will need to build a bond and meet whatever special needs she may have. Resources are available to us in the US and we will do everything we can to enable GC to reach her full potential";

- "At the end of the day, GC is better placed with us because, by having access to her biological family, we can provide her with a better environment to bloom and grow. From a risk management perspective, it is also safer for her. We can arrange physical and security barriers to prevent [her father] from gaining access to her";

- [of contact with the extended family] "GC has that right to see her siblings. B knows that she has a sister. So yes – if it could be done securely on an encrypted device, we would like GC to be able to talk to B and [BC]". [In relation to contact with her mother] "She is obviously a risk both now and in the near future. Contact could only take place if it could be done safely and securely";

- "If the court says that the only safe way to manage contact is letterbox contact, that is what will happen";

  Of the risk to [GC] of removing her from her existing placement with Mr and Mrs [S]:

- "We believe it is [GC's] right to be with her biological family but we have never said 'at all costs'";

- "Dr Tostevin's evidence has given us cause to pause and think about the options";

- "I agree that the process of explaining the family dynamics [to GC] will take huge skill and emotional attunement";

- "We respect the local authority's position but we believe that we can overcome these difficulties with professional help …. I do

believe it will cause trauma for GC to be moved now – absolutely. The longer term consequences … that is a harder question to answer but we will do the best we can. But we acknowledge that some harm may be done which we cannot fix or mitigate….. I agree that her needs will be more complex than those for which we have been approved. We do not currently have the training to care for a child with GC's specific needs….. Her needs will be much more complicated than anything we have had to deal with before but we are willing to step forward and do what we can. We believe that given tools, with our existing skills, we can give her a safe home and the skills she will need to develop and grow. We are pretty tenacious people";

Of the proposed transition plan:

- "I accept that the picture is far from clear. The current travel restrictions mean that I cannot come to the UK until after August. I do accept that there will be a period of limbo. I don't know if that would be as much as twenty weeks. Some of that has come to us as new information. I agree this is a potential point of risk from GC's perspective. I accept [that delay] has the potential to impact upon how the transition goes";

- "We have not looked into where we would stay during [the weeks of] this transition period. We would not stay in a hotel or a 'B & B'. We would have to provide an appropriate home for GC";

- [of the detail of the practical arrangements during any transitional period] "I accept that we have taken parts of these arrangements for granted and not even the local authority has been able to tell us how long this process would take. …. We understand that this situation is not going to be cut and dried. If we were to get to GC point where we see this is untenable, we would have to stop. I can see that disagreement between us and the professionals would cause real difficulties."

87. I have reproduced Mr US's evidence in this way in an attempt to convey the thoughtfulness of many of his responses to the questions put to him. It seems to me that he has trodden a careful path in his wish to assist the court. On the one hand, his background and professional training have given him clarity and insight into the risks which GC's parents pose to her in the future were they to discover where she was living. There is no immediate proposal advanced by the USs that they will be moving to a new property. They want to take her home and that home is the one they currently share with their daughter and grandson. I have no doubt that they would be prepared to make that move in the event that

was the price for keeping GC safe. When Ms Campbell QC pressed Mr US in relation to the future risks of permitting contact over social media between wider family members and GC, he accepted that these particular risks had not been at the forefront of his thoughts. He accepted that these were properly grounded concerns and told me that he would adjust the 'risk plan' accordingly.

88. I had the clear impression that what I had initially interpreted as a certain rigidity of thinking in Mr US's approach to risk management was not that at all. His military training and background have undoubtedly informed his professional approach to these issues as they now affect his extended family. However, that approach self-evidently softened when he was asked to consider specific aspects of the risks posed to GC. When he was pressed in relation to his wife's ability to cut herself adrift from her English roots and her family members still living in this jurisdiction, he was prepared to look at the underlying reality rather than the presentation of their case in this litigation. It was a moment in the evidence which demonstrated to me the extent to which he understands and loves the woman to whom he has now been married for many years[4]. He knows her, and probably better than anyone. When he was reminded that Dr Gough's evidence was that it would be unrealistic to expect Mrs US to live in some form of self-imposed exile from her family in England, Mr US said this:

> "Yes … she has a very strong bond with her younger sister, MGM. I believe that she *could* do this. She *would* do it [for A]. Is it realistic ? I don't know. She is perfectly capable of doing it. But I agree that it would be very difficult for her."

89. By the conclusion of Mr US's evidence, I had formed a clear impression that I was listening to a careful and generally insightful witness who was responding honestly to questions in his efforts to assist me in terms of the decision which confronts this court.

90. I suspect that Mrs US found the process of giving her evidence to be more challenging than her husband. In saying this, I do not suggest for one moment that she was not open and honest in her responses to the questions asked of her. In many respects, it is only too easy to see why she might have found the process daunting. Both she and Mr US have made a very significant emotional investment in putting themselves forward as the long term carers for this very vulnerable child whom they regard as an important part of their extended family, as indeed she is. The hearing, and Mrs US's role in it, was the opportunity provided to them to fight for what they believed to be the right and proper course in the face of an alternative plan by the local authority whose support and

[4] Mr and Mrs US were married in July 1992. They divorced in February 2010 but were remarried within seven months. There is nothing to suggest that their second marriage in September 2010 has been anything other than entirely stable for the last ten years.

commitment they had, until recently, enjoyed. The remote hearing itself was an unfamiliar forensic platform for the ventilation of these issues. She was many thousands of miles away from her husband whom she could see throughout but who was not the reassuring physical presence he would have been had they been sitting next to one another in court as they were on a previous occasion when the matter was before me in the Royal Courts of Justice.

91. Mrs US was aware that there were difficult issues which she would be asked to address in the course of her evidence. One of the local authority's concerns was her initial lack of transparency when she was engaging with Mr Wynne, an independent social worker who completed a report in the context of Mr and Mrs USs' earlier applications for special guardianship orders. That report (prepared in February 2019) addressed a number of issues including Mrs US's decision that her elder daughter (who had been raised by Mr US) should not be told that he was not her biological father. That decision, with which Mr US went along for a number of years, had caused friction in their marriage on previous occasions as Mr US believed that K (whom he regarded as his own daughter) had the right to know the truth.

92. As part of his assessment, Mr Wynne has recorded that Mrs US was initially deliberately vague about the circumstances of her pregnancy with K and the identity of her biological father. It was Mr US who grasped this particular nettle with Mr Wynne. He was fully aware of the identity of K's father with whom his wife had been in a relationship for some three years before they met. Her biological father had played no part in K's life. She was not told the truth about her paternity until, at 18, her aunt, MGM, told her the truth. When Mrs US was asked why she had not been open and honest with Mr Wynne prior to her husband's intervention, she explained that she had wanted to sever all connections with someone who had never been a father to her child and who wanted no contact or further involvement. Mr Wynne concluded this aspect of his report with these words:

> "I have addressed the issues raised by Ms US's initial reluctance to be open with me in the conclusion of this report but briefly, I feel she has unresolved issues around her older daughter's birth that I would like to see her address in a therapeutic context. I consider her husband's advocating honesty with me to be a mitigating factor in the couple's application to care for [GC]. I would also like to note that Ms US decided to be open with me the day after our initial interview and it is my belief that she recognises that she has some work to do in this area."

93. Mrs US accepted during the course of her oral evidence that she had initially told Mr Wynne that she did not know who K's father was. She was entirely open and honest in her explanation to me as to why she felt, after the passage of nearly 30 years, that she did not wish to bring this person back into her life. She

spoke movingly of the emotion she had felt when observing GC's mother, her niece, giving evidence in the form of a recorded video statement. She said that she could not understand how a woman could give up a child in order to maintain a relationship with a man. It clearly resonated with the fight she had as a very young woman to keep the child she loved when effectively abandoned by that child's father. Whilst I can understand from a human perspective why, as a mother, she wished to do everything she could to ensure that her daughter's sense of love and security over the years of her childhood was not punctured or diminished in any way through learning that the man she saw as her father and protector was not in fact her biological father, it does raise some issues in relation to what she really understands about a child's need to know his or her true identity. Were GC to make her long-term home with Mr and Mrs US, there would be many awkward questions and issues over the years. I suspect that each of them would need professional support to help GC through that ongoing process.

94. Mrs US was asked about her relationship with her sister and the likely impact on her of any self-imposed suspension of that relationship. She was completely transparent in her response to that question. Having acknowledged that she had enjoyed frequent contact with her sister in the last two years, she told me that the last time she had spoken to MGM, GC's grandmother, was in March or April this year shortly after their mother had been discharged from hospital in England. She said,

> "Sometimes I feel I want to pick up the phone and say 'Hi'. …. Yes, she has been on my mind but the time difference between us makes a big difference….. I do think about calling my sister but I haven't acted on it. …. I would love to pick up the phone. I have not fallen out with her but I am doing this for the right reason."

95. She accepted that she had become closer to her sister over the last two years because their common focus point was GC. She told me that her sister had asked questions about her grandchild, particularly after she and Mr MGM withdrew from these proceedings as potential carers. Mrs US told me she was aware that they might have to cut ties were GC to live with them in the United States. She spoke of her sadness for her sister who had been out to purchase all the clothes and equipment which she would need for GC when she was told by the circuit judge to expect to be caring for her granddaughter within six weeks before the local authority's care plan changed.

96. Mrs US was equally frank in her evidence that, until receipt of Dr Gough's report, she had not appreciated the extent of the risks for GC if some form of indirect contact with the maternal family was maintained. She accepts that she did not see the risk in providing photographs of GC to the extended family from

time to time. She recognised that when GC was old enough to have her own cell phone, her use of that device might need to be closely monitored.

97. It speaks volumes about the commitment which Mr and Mrs US are prepared to make to GC that, until the end of last year, they did not expect to find themselves in this position. Mrs US told me that, along with various other members of the extended maternal family, they had agreed to put their names forward as potential carers for GC without any real expectations of her being placed with them. It was only in November 2019 when GC's maternal grandmother, Mrs US's sister, withdrew from the proceedings that there was any prospect of "this becoming real". Perhaps the soundness of their intentions was best summed up in her response to Ms Campbell QC in these terms: "You would not be family if you did not try and do what [Mr US] and I have done".

98. In my judgment, having listened carefully to the expert evidence, Mrs US showed significant and developing insight into the very complex needs which GC's carers will be required to meet in future. Having heard Dr Tostevin's evidence, she now accepts that GC might find it impossible to rebuild bonds of trust with new carers if she is removed from her home with Mr and Mrs S. She recognises that GC regards her current foster carers as her psychological parents and she is generous in her acknowledgment of the very good job they have done to date in protecting GC and keeping her safe. She said to me:

> "If her foster carers get her, I shall be happy for GC as well because her foster carers are fighting for her as we are."

99. Mrs US recognises that GC will inevitably experience profound loss if she moves to live with them in the United States. She accepts that such a move will inevitably involve a transition placement before a final move to The USA and she is also alive to the possibility of a breakdown in such a family placement before any adoption order is finalised. She has pinned all her hopes on the patience and love which she believes she and her husband have to offer to GC in overcoming these very real issues.

100. Of their ability to protect GC from the risk of discovery by Mr Z and/or her mother over the years going forward, Mrs US told me she is acutely conscious of the risk they pose and will continue to pose. She accepted that there was a risk that a photograph of GC sent to a family member might well be circulated more widely but she also has confidence in those family members not to pass on such a photograph and/or any updates about GC's progress. She understands that her sister may well be desperate for news of her granddaughter but she told me that she would expect her to keep confidential any information she was given. She acknowledged that any ban on sharing family information which included GC would inevitably impact upon her daughter's ability to communicate freely with members of the extended family in England. She told

me that there had already been conversations with family members living in the US about not sharing photographs on social media.

101. Thus, in relation to the risks associated with maintaining GC's invisibility to her English family, I am satisfied that Mrs US has thought carefully about what will actually be involved in taking on her long term care over a number of years. I am entirely persuaded that, if asked to do so, she would commit at this stage to cutting off the contact she has enjoyed with her sister. I am less sure about how the passage of time might impact upon that resolve once these proceedings have come to an end.

102. There is also the separate, and different, risk to GC's psychological wellbeing. In my judgment Mrs US recognises that the family's plans for GC's relocation may well be a step too far for this child in terms of her psychological resilience to such a traumatic change. The USs clearly feel that decisions made in the past by local authority social workers have operated to deprive GC of the chance of a life growing up within her extended family. Mrs US believes that the decision at the outset to place GC with Mr and Mrs S without exhausting all other family-orientated options was fundamentally wrong, albeit that it received judicial endorsement as a holding placement. In response to a question which I asked her about how we move forward from where we are now in terms of what GC needs, she said:

> "What GC needed in her life at the beginning was not given to her. What the evidence tells us is that she needs to stay where she is – that is what Dr Tostevin and Dr Gough are telling us."
>
> ……
>
> "One day [GC] will come looking for us. She will look for her family. I will then be able to tell her, 'We fought for you but other people thought you needed to stay with your foster family. She will not resent us because she will know that we did everything to try'.

Mr and Mrs S: GC's foster carers

103. I do not propose to rehearse at any length the evidence which I heard from Mrs S. She gave evidence on behalf of herself and her husband who was caring for their son and GC whilst she gave her evidence. Mrs S spoke with great clarity in relation to the detail of their written evidence which had been placed before the court. As one of the few people who was in a position to do so, she provided me with a very clear and sharply focused picture of how this small child was coping with the legacies of her early life and the trauma which all agree she has suffered. She spoke to me about a very serious and withdrawn little girl who had struggled with the demands made upon her of the contact arrangements

which were formerly in place with her maternal family. She explained how she did not, at first, understand how serious the situation was in terms of GC's inability to make any eye contact when she returned from these weekly sessions until her grandmother and Mr MGM withdrew as potential carers. By July last year, Mrs S told me that GC had become overwhelmed with distress after contact and the separation which those visits had entailed from the home she shared with her foster family. She acknowledged that it was not until she saw Dr Tostevin's report that she realised the extent to which GC saw the world "as a dangerous place".

104. Mrs S was asked about how she saw her own and her family's role in any transitional arrangements to the USs were this court to endorse such a move. I could observe for myself the exquisitely painful dilemma which this presented as a proposition. Mrs S acknowledged that it would be very hard for GC were they not to be a part of that process. However, she acknowledged that the family would find it extremely difficult to provide reassurance to GC that either the USs or any transitional carers were safe people if that trust was to be broken once again should the placement fail.

The Guardian, Ms Heloise Dove

105. The Guardian's involvement in this case from the outset has been consistent. Since April 2018, shortly after GC's birth, she has prepared no fewer than seven detailed reports. She confirmed to me that her recommendation to the court remained unchanged: GC should remain in the care of her foster carers on the basis they would become her legal parents through adoption.

106. She regards the local authority's revised care plan for ongoing support as crucial for GC's future development and security. Securing the services of a forensic psychologist to work with GC and the family and the introduction of therapeutic life story work is, in the Guardian's view, essential. These elements must be incorporated into any final plan for adoption once GC ceases to be a "looked after child". She also supports a legal change of name as an important element of GC's future security.

107. In addition, the Guardian was able to help me with her observations in relation to the perceived failings of the local authority. These I shall come to in due course. In essence she told me that, had she been aware of the steps which the local authority had failed to put in place and the crucial information which had not been shared with Mr and Mrs S prior to GC's placement with them, she would not have supported the placement which she recommended to the circuit judge in April 2018. Nonetheless, she recognises that the question for this court

is not 'How have we arrived at this point ?' but 'What steps are in GC's best interests going forwards ?'.

108. The Guardian is not entirely confident that Mr and Mrs US properly recognise the extent of the task ahead of them were the court to decide to attempt a move to the extended maternal family. She does not doubt their sincerity for one moment. However, she told me that, despite their passion and optimism, it was not her considered professional view that they would be able to do what they so plainly wish to do for GC. She was very concerned about the emerging family dynamics and their effect on GC were she to grow up in the knowledge that she was living with one part of her extended birth family but other members of that family were so dangerous to her that she could not know them as her family. In the Guardian's view, this was highly likely to compromise her sense of identity and her safety within that family group.

109. The Guardian was also very concerned about the consequences of further delay for GC. The USs have not yet been approved as potential adopters for GC and, without the necessary formalities, she could not be placed with them in the United States even on a transitional basis. The Guardian was fearful that the current situation of 'limbo' would be extended into the future, and possibly for many months hence. She told me that she did not regard the case as finely balanced notwithstanding its complexities. Whilst she acknowledged that it was through no fault of Mr and Mrs US that they currently had no relationship with GC, the fact remained that it made any consideration of an attempt to place this child with her extended family even more difficult given the extent to which she looked to Mr and Mrs S as her psychological parents. Any attempt to move her now would, in the Guardian's view, cause her harm in terms of a significant impact on both her development and her ongoing needs into the future.

Discussion and analysis

110. One thing needs to be made plain at the outset. There is no doubt whatsoever about the commitment which several members of GC's extended maternal family have made to this small child as this litigation has unfolded. I have no doubt at all that her maternal grandmother was genuine and sincere in wishing to put herself forward as a long-term carer for her granddaughter. In a similar way, extended family members living in the United States, including Mr and Mrs US, have made themselves available as potential carers. For various reasons, it is the USs who are now agreed to be offering GC the only viable alternative to placement with her current foster carers.

111. Notwithstanding the concerns which the family has about the local authority's planning for GC, as between Mr and Mrs US and GC's foster carers there is a healthy respect for the stance which each is taking. The family members recognise the excellent care which Mr and Mrs S have provided for GC

throughout the time she has spent in their home. Through their counsel, Ms Barraclough, Mr and Mrs US have made it plain to the foster carers that, should the court decide that GC should remain in their care at the conclusion of these proceedings, they would regard themselves as "at their service" should they ever need anything for GC. Not only does that elegant gesture reinforce the clear impression I have formed about the fundamental human decency of the USs; it also says much about the care and concern which all involved in this case have for GC and her future.

112. In approaching my analysis of the placement options which are realistically open to the court, my starting point is the consensus that this is not a case where it would be safe for GC to be returned to the care of her birth parents. Mr Z, her putative father, is no longer a part of these proceedings. Y, her mother, accepts that adoption is the only realistic option for GC: the issue is whether that adoption should be achieved in the context of an extended family placement with Mr and Mrs US or outside the family with Mr and Mrs S. In the context of a non-family placement, Y does not give her consent and the court will need to dispense with consent if this option is to be pursued.

113. Thus the court is, in this instance, considering binary outcomes for GC.

114. The advantages of enabling GC to spend the informative years of her childhood growing up in a family placement are obvious. She has a wide extended family who love her and want the best for her. For Mr and Mrs US in particular, it is an appreciation of the importance of those family ties which drives and informs their wish to care for GC. In this context they underscore the importance to GC and her developing sense of identity of growing up with a family which shares biological and kinship ties. They are prepared to make a very significant personal investment in ensuring, as GC's adoptive parents, that she grows up with a clear sense of who she is and where she came from. With appropriate help and professional guidance, they wish to be able to share with GC a developing narrative about her life story which only they can tell. Her mother is, and will remain, a member of their family. They want to be able to talk to GC about her mother and to share with her the family memories and stories which only they can know first-hand. They want to be able to answer her questions in due course and provide the reassurance which only close family can provide. They want to be able to tell GC that, despite the sadness they share with her that she could not live with her mother, she was loved so much by so many within her family that the court was able to achieve the next best thing of ensuring she maintained her family and biological ties throughout the years of her childhood, adolescence and beyond.

115. In considering the benefits of a placement within the extended family, I have to bear in mind in the circumstances of this particular case that such a placement would mean, in reality, a placement within a fractured family unit. In the United

States, GC would grow up at the centre of a warm and welcoming family home where the significant individuals in her life would be her adoptive parents, one of their daughters and their small grandson. That is the current composition of the family who will be sharing a home together in The USA. In due course, K and her son may move out to a home of their own but, at least for the foreseeable future, they will form part of the home which GC will share with the USs. I say that this would be a placement within a fractured family unit because it is quite clear that, in order to keep GC safe from physical and psychological danger, Mr and Mrs US will have to sever ties with the English family members. Everyone is agreed that the invisibility which this child needs in terms of any exposure to Mr Z and, to lesser extent her mother if she remains in a relationship with him, is such that an ongoing relationship with the English family would be impossible. Depending on the extent to which Mr and Mrs US's older children and their families remain in touch with the extended family in England, there may need to be restrictions on GC's contact with, and exposure to, the US family members with whom she does not share a home. That in itself may create strains within the existing family dynamic. But, more importantly, it effectively dilutes many of the benefits which would otherwise flow from a placement within the extended family. Those family connections would be preserved within the nucleus of GC's home with Mr and Mrs US but she would have no real exposure to, or connection with, her half-siblings living in England and/or her English grandparents, aunts, uncles and cousins. She may find it confusing in future if the person she will come to regard as her mother has to visit England to see, or care for, her own mother or other family members when she herself is prevented from having any contact with them for reasons of her own personal safety. However sensitively this message is delivered in the future, it will be a difficult one for GC to absorb and understand.

116. Within a family placement which is potentially visible to Mr Z, Mr and Mrs US would need to remain in a state of constant vigilance, particularly as GC grows and starts to lead a more independent life in terms of her access to friends and social media platforms. She is bound to be curious and inquisitive about what her extended family and siblings look like. She may in due course want to initiate contact. It may or may not be possible for Mr and Mrs US effectively to monitor GC's use of social media as she gets older. I have every confidence that they would do their best but the consequences of some innocent interaction which exposes GC to the risk of visibility to Mr Z could have potentially serious consequences for her future safety and wellbeing.

117. I am also concerned about the practical implications of requiring Mrs US to sever ongoing ties with her family members in England. I have already heard that, in order to care for GC, she is willing to give up her employment and the career which she plainly values in terms of all that it brings her. She is employed by the US Air Force and works in a responsible position as part of a team. She

told me, very honestly, that she loves her work. She has a close circle of friends and colleagues whose company she values and this appears to be the focus of her social activities outside the family home. She told me that she would be sad to leave her job albeit that she is more than prepared to "fill [her] days with things around the home". I have no doubt at all that Mrs US is willing to make this personal sacrifice in order to care for GC but I am concerned about the social and family isolation which may come as a result. Her husband, who is also employed by the US military services, has a job which has in the past required him to travel away from home. I know not what the future may hold for this family in terms of its domestic and financial living arrangements but I do know that it would present a significant sea change for this family were GC to move to live with them. These are all 'unknowns' which cannot be measured or assessed by the court at this juncture.

118. There are also the practical effects of delay which have to be factored into the balance. On the present state of the evidence, there is no guarantee that GC would be able to make an immediate transition into the care of Mr and Mrs US were she to leave her current placement prior to a move to the United States. The expert evidence which I have considered above points to a delay of several weeks, if not months, before the court could be sure that the way ahead was clear to a successful adoption process and a final move to the United States which was compliant with that jurisdiction's domestic immigration processes. Throughout that period of delay, I am satisfied that there will be a material and continuing risk that any placement with the USs (or indeed any other transitional carers) might break down. I have the clear impression that the trial process itself together with the compelling evidence of Drs Gough and Tostevin have given Mr and Mrs US a much more clearly defined window of insight into the difficulties which are likely to present themselves if GC is removed from the security of her present placement. Were that placement to break down, there is no guarantee that a restoration of the status quo ante (were that possible) would redress the damage done to GC in terms of her psychological and emotional wellbeing. There is a risk in that event that this child's window of opportunity would have closed leaving her in a state of permanent limbo where survival became her default response to whatever future transitions might lie ahead. Having had the opportunity to assess Mr and Mrs US, I do not believe that they would wish to pursue any course of action if it was causing GC psychological distress and damage. I believe that they would wish to terminate any placement with them if, after professional support and input, this child became inconsolable as a result of any transition or change in the arrangements for her care. That decision would not be any reflection of a lack of commitment or dedication to GC. I am confident, were it to arise, that it would be driven by their wish to bring to an end a situation which was causing her distress and further harm. Each of Mr and Mrs US appeared to me to understand that this

may not be a situation where an abundance of love and an intention to do the very best they can will be enough for GC

119. All the evidence points clearly to the fragile recovery which has been, and continues to be, achieved as GC continues to be the beneficiary of the consistent love and care which Mr and Mrs S provide. Dr Tostevin's evidence was clear: any fracture in the provision of that care could have potentially devastating consequences for this child. GC's removal from her current placement and the only home she has known from the age of three months has the potential to leave her with lifelong consequences in terms of her ability to make and sustain healthy and long-lasting relationships. The evidence from Dr Tostevin is that those consequences are likely to impact her development throughout her childhood and adolescence. They will, in all probability, shape her experience of adult life. With the potential risk of a placement breakdown with the USs before any formal adoption process can be completed, the overall risk to this child is substantial. I have to balance the scale of that risk against the potentially positive benefits for GC of growing up within a home surrounded by family members with whom she shares a biological connection and, to a lesser extent, a shared history. As I have said, those benefits are tempered to an extent by what is likely to be the overlying dynamic of the fractured relationships with the wider English family. That dynamic, if it materialises, will bring for GC additional complications in terms of her sense of self and her identity within that family group.

120. If GC remains with her current foster carers, there is a risk that, as she begins to understand more about her life story, she may resent the fact that she was denied the opportunity to grow up with members of her extended family when the offer of a family placement was put before the court as one of the two options available. I recognise and factor into my assessment of the balance of risk the potential exposure of that course to a different psychological risk in terms of her sense of identity and sense of place/belonging. That is a risk which has to be balanced against the risks and likely consequences of removing her from her current foster carers which Dr Tostevin described on more than one occasion as "potentially catastrophic".

121. I have considered all these matters carefully. Whilst I acknowledge that Mrs US is prepared to make the very significant sacrifice of giving up her career and severing ties with her close and extended family members in England, I am concerned about the effect upon her or requiring her to take that step. She acknowledges that she is close to her sister, GC's maternal grandmother, and has in the past had to resist the temptation to speak to her sister during the latter stages of this litigation. It seems to me to be counter-intuitive to require this of her if the purpose of a placement within the biological family is to promote ongoing family ties into the future. In my judgment it would only promote

conflict and confusion for GC to grow up knowing that she had half-siblings and other family members living in England with whom she was allowed no contact. That in itself could be profoundly damaging. There is evidence that the USs' adult children currently living in the United States, one of whom shares the US family home with their grandson, have an ongoing relationship with the English side of the family, including their English grandmother. Their relationship with those family members is likely to be affected if GC was at the centre of a complicated family dynamic. In addition, any exchange of information between family members, advertent or inadvertent, only increases the risks of exposure to Mr Z and to Y if she chooses to maintain her relationship with him.

122. On behalf of the local authority, Ms Campbell QC submits, with Ms Isaacs, that Mrs US is in a position of conflict. She has demonstrated in the past that she is very concerned for her sister and "has genuine feelings (borne of years of shared experience) which are hard to switch off". I accept this as an apt description of her predicament. Each of Mr and Mrs US believes that GC "belongs" to the family. That is what Mr US told me as he commenced his oral evidence. It is clear to me from the evidence that the passage of time is unlikely to diminish Mrs MGM's understandable longing to hear news of her granddaughter. The cards and emails which were sent by both MGM and MA show the potential conduits for a flow of information within the family. I do not regard it as credible that any information about GC, however it was delivered and/or received, would not find its way eventually to GC's mother and, through her, potentially to Mr Z.

123. I am extremely concerned in this case about GC's physical safety and the risks posed by Mr Z. I view these risks as material, substantial and solid. They are likely to continue for years to come regardless of whether he remains in a relationship with Y. Whilst I accept that these risks may diminish in time were they to separate permanently, I have to bear in mind that they now have a young son. Given the history and dynamic of their relationship to date, their role as parents to BC is likely to perpetuate that ongoing connection and Mr Z's ability to manipulate the situation. Whilst I know that Mr and Mrs US are alive to these risks and would do everything possible to protect GC, she remains much more visible to Mr Z in a placement within the extended family. GC's mother is well aware of her aunt and uncle's living arrangements in The USA. The likelihood is that she knows, or is in a position to secure details of, their address. She is also supporting an adoptive placement in their home. I do not consider the geographical distance which separates England from The USA to be a sufficient protection when juxtaposed against the relative ease of digital exposure, a risk which is made greater by the skills and technical proficiency which Mr Z has already demonstrated. I am sure that there would be support systems and other protective measures which could be deployed locally in the

USs' home were GC to move to that jurisdiction but these are, in part, unknown at the present time and would only be effective to keep GC safe if those charged with her care remained hypervigilant throughout the years ahead.

124. I cannot eliminate the risk that GC's whereabouts will be discovered by Mr Z if she remains in the care of her present foster carers. However, weighing all the evidence carefully in the balance, I have reached the conclusion that the risks in this jurisdiction are lower and are containable with appropriate planning and support. There is already a body of evidence and information about Mr Z in this jurisdiction. Professionals within the criminal and civil justice systems are aware of his history and background albeit that this court does not have the benefit of a recent assessment. That background has already informed the expert risk assessments which are currently before the court. The police and other agencies are already on board in this jurisdiction in terms of the expert professional input and support which is reflected in both the current arrangements to keep GC and her carers safe and in the future arrangements which form an integral part of the local authority's care plan for the future. To an extent, these are unknowns in the context of a move to the United States with Mr and Mrs US. I am conscious that they have put much thought into a parallel plan to keep GC safe were she to move to share a home with them in the United States. They told me that they would be prepared to mirror any arrangements which might be put in place by the Ss in this jurisdiction.

125. On behalf of Mr and Mrs US Ms Barraclough points to the absence of any solid factual basis for the assessment of risk which Dr Gough has carried out. This was something which was acknowledged and addressed by Dr Gough when she gave her oral evidence. It is the inevitable consequence of Mr Z's failure to engage in these proceedings. Because of that lack of engagement, the court can only proceed on the basis of the best evidence available. I have summarised that evidence in paragraphs 5 to 9 of this judgment. Ms Barraclough invites me to scrutinise with care the reality or substance of the risk which Mr Z actually poses to GC since it is relied on by the local authority, in part, as justification for the need to suspend all contact between GC and her birth family save for letterbox contact. She submits that there is no logical reason why the same safety measures could not be put in place in the United States either in the US's current home or in any new home to which they might move in future if the risks of GC's visibility were perceived to be too great at an address which is known to members of the maternal family (which, for these purposes, includes Mr Z).

126. Whilst she accepts that Mr Z poses a risk to this child, she submits that the draconian outcome of adoption outside GC's birth family requires a careful and forensic consideration of the *actual* risk he presents.

127. It seems to me that 'risk' per se in this context has to be seen in the context of two questions. First is the question, 'What risk to GC should this court be considering in terms of any threat of physical or psychological harm which Mr Z may pose ?'. The next question is the degree or likelihood of that risk materialising.

128. In relation to the first question, I bear in mind that Mr Z has presented to professionals in the past as being both challenging and psychologically unstable in terms of his personality. He has past convictions and was the subject of a prison recall which resulted in a reasonably lengthy period of enforced incarceration. His risk profile is evidence-based and involves harm of a serious nature to both people and animals. His thought processes and ideation have extended from the maiming of small animals to cannibalism. He has posted a photograph of his son with an entirely inappropriate caption which demonstrates a complete lack of insight into any reasonable norms of child care. Shortly before GC's birth when there was already concern about whether or not she could be left safely in her mother's care, Mr Z made a clear threat that if he could not have the baby, then nobody else would. The earlier report of a consultant psychologist who assessed Mr Z in May 2017 referred to him being a low risk in terms of physical violence to a child. That assessment was prepared before he made the threat to which I have referred a few months later in December of the same year.

129. It is difficult to imagine why he would wish to harm a child in respect of whom he is the putative father but I am not dealing here with an individual who can safely be assumed to have the inherent paternal instincts and responses of a rational parent. I cannot eliminate a potential risk of abduction were Mr Z to discover GC's whereabouts. Such an abduction would, of course, be wholly inimical to her welfare both in terms of her physical safety and her psychological attachments. Mr Z has already established his ability to disappear under the radar with his younger child, BC. For a significant period of time during these proceedings, international law enforcement agencies were involved in trying to establish the whereabouts of BC and his two parents. Dr Gough was of the view that the risk of an intervention on the part of Mr Z was likely to remain a serious risk for some time to come were he to discover GC's whereabouts. In my judgment that risk is likely to be heightened in the immediate aftermath of this court's decision should GC remain with her current foster carers against her mother's wishes. Ms Barraclough submits that there is less risk of a physical abduction if GC remains within her extended biological family in accordance with the plan supported by her mother. Whilst there may be some force in that point, it is but one of the factors which has to be weighed in the balance of the decisions which need to be taken in order to keep GC safe.

130. There is in my judgment a clear risk of harassment at the very least were Mr Z to discover GC's whereabouts if she is living with Mr and Mrs S as a part of their family. That in turn carries the risk of a destabilisation of such a placement with all the attendant psychological risks for this child. I accept that he may also attempt to remove GC from that placement by abduction and thus the risk of physical harm to her and the existing members of the S family will remain a live risk in this jurisdiction were she to remain a part of her present foster carers' family.

131. Ms Barraclough on behalf of Mr and Mrs US seeks to argue that these risks highlight the positives of an extra-jurisdictional placement in the United States. In this context she prays in aid both the geographical distance and the border restrictions which are likely to act as a disincentive to Mr Z were he to attempt to remove GC from a placement with her clients. She points to the USs' training and the proximity of support from family and the military as protective factors in this event. Whilst I accept that Mr US's employers may well be able to provide some additional support in the event of any approach by Mr Z, there is no clarity of what form that support might take. Further, whilst they have children living in the United States (one of whom is part of their current household), it is difficult to see what additional protection they can offer over and above emotional and moral support.

132. Thus, in answer to the first question I posed in paragraph 127, I have reached a clear conclusion that the risks to GC posed by Mr Z include a risk of abduction, a risk of physical harm and a risk of harassment of her carers. Each involves as a consequence a significant and material risk of physical and psychological harm to GC and those caring for her.

133. In terms of the likelihood of that risk materialising, my second question, it seems to me that this will depend upon a number of variables. The measures put in place pursuant to the individual care plans will obviously be an important factor. Those arrangements will need to be flexible and will no doubt develop as future risk assessments are undertaken as GC's experience of family life changes over the years to come. Mr Z's ongoing connection with the family through GC's mother and their son, BC, is another factor which will need to be taken into account. If they remain in a relationship, Y's reaction to a placement of GC outside the extended family may well impact on Mr Z's response to the conclusion of these proceedings. The crucial point is that whether the risk of further intervention in GC's life by Mr Z is assessed to be high, low or somewhere in between on the spectrum, the foreseeable consequences of such intervention are potentially catastrophic for this child. As such, and in my judgment, they need to be taken very seriously.

134. In terms of GC's physical safety and wellbeing, it seems to me that, on balance, the scales are fairly evenly balanced in both placements. Whilst a placement

within the extended family may marginally diminish the risk of interference by Mr Z, I am persuaded that the specific measures which can be put in place to protect GC in a placement with Mr and Mrs S are clear and well thought through. Thus, were her physical safety and the integrity of the placement the only risk to GC, I might have been persuaded that a placement within the extended family was viable.

135. In my judgment the factor which tips the balance determinatively in favour of allowing GC to remain in her current placement is the psychological damage which is likely to result from removing her from that placement at this stage. I am persuaded by all the evidence I have heard that the overriding need to maintain the momentum of the fragile recovery she has been making over the last few months outweighs the potential benefits of a family placement. This is a child who has already developed a psychological bond with these carers. Whilst I do not propose to rehearse the detail of the evidence I heard from Mrs S, I am satisfied that GC's current foster carers are highly attuned to her needs and the signals she sends them about her needs. They are already communicating effectively with GC and have significant insight into how to meet the very complex needs she has as a result of the damage she sustained in the early weeks of her life and probably before her birth. As the expert evidence in this case demonstrates, Mr and Mrs S have experienced at first hand the manner in which GC reacts to threats and perceived danger from adults she does not know or with whom she has no bond. They know how to reassure her and provide the sustained care and comfort she needs. They have cared for this child since she was three months old and GC herself has known no other home or care system for the past two and a half years. That is effectively the entirety of her young life to date.

136. I look at the balance through the prism of GC's lifelong needs. Ms Barraclough urges me to consider the prospect that GC might well survive and recover well from a move to an extended family placement with Mr and Mrs US. She asks me to weigh in the balance whether "less progression" in that placement might be an acceptable outcome for GC when viewed alongside all the potential benefits which a family placement might bring in terms of GC's long term future. She points to the possibility that GC's presentation may be partly organic in terms of the family history of dyspraxia and this outcomes for GC could be equally well managed in either household.

137. I have considered all of these factors. I have found Dr Tostevin's evidence helpful and ultimately persuasive in reaching my conclusions. I am not persuaded that this child would survive a separation from her foster family. The risks for her are simply too great. When I weigh these risks against the potential benefits to GC of growing up in a home with her extended family, albeit a fractured family, the way ahead in my judgment is clear. This is no reflection

at all on Mr and Mrs US. They have already been the subject of a number of positive assessments. It is not their fault that they currently have no established relationship with this child with all the uncertainties which that brings in terms of forward planning. There is nothing more they could have said or done for GC. Sadly, in their aspirations to offer GC a permanent home, they have inherited the legacy of the damage and harm which this child suffered in the very early weeks and months of her life. To sanction a course which the evidence shows will cause significant harm to GC in circumstances where there is no clear plan or guaranteed outcome of a successful placement with the family is not something which I can support for this child. The delay in this case has already been unacceptable in terms of any reasonable time frame for GC.

138. In reaching my conclusions I bear well in mind that the mere fact that a child has been placed with prospective adopters can never be determinative nor can the mere passage of time. That is clear from *Re B-S* [2013] EWCA Civ 1146, para 74 (vii). Nevertheless, as the Court of Appeal recognised, the longer a child has been placed, the greater the adverse impacts of disturbing that placement.

139. Mr and Mrs S are committed to the ongoing provision of that care for GC for the rest of her minority and beyond. They already regard her as their child and as an integral part of their family. They seek the security which an adoption order will provide. They have demonstrated an ability to work effectively and openly with professionals notwithstanding the changes in the local authority's position during the course of this litigation. They have maintained their commitment to caring for GC even when it seemed likely that the court might sanction a move into the care of the extended family. That commitment has required courage and personal resilience and they have not wavered despite the formidable obstacles which this litigation has presented during its course. I accept that they love GC, as does their son who is in all but name her brother. That safe anchor to a psychologically sustaining family would be but one factor to weigh in the balance of GC's lifelong needs were it not for the cumulative weight of the contraindicators of a move at this stage. I have set these out above and do not repeat them here. I am satisfied that Mrs S will continue to be available to GC as a full-time carer and that she and her husband will have available to them over the forthcoming years all the resources which will be needed to ensure that this child has the optimum prospects of a happy, safe, settled and psychologically secure childhood and adolescence. That foundation is what she desperately needs if she is to emerge into adulthood as a rounded and balanced human being who is capable of forming secure attachments and relationships as she moves on with her life.

140. I have no concerns about the insight which these carers will bring to future life story work with GC. That will be an important part of her development. She

will need to know in an age appropriate time frame who she is and where she comes from. I have confidence that Mr and Mrs S will guide her through this stage of her development and will ensure that she is made aware that she had, and has, a birth family which loves her and was prepared to make very significant personal sacrifices to ensure that she had a home in circumstances where her parents were not in a position to provide one. Mrs S has participated fully in this hearing and has seen for herself the manifestation of that commitment as Mr and Mrs US gave their evidence. I have no doubt that their sincerity impressed her as it did me. That will be an important part of the story which A will need to hear.

141. I have carefully considered the amended final care plan which the local authority has put before the court. It includes provision for additional therapeutic intervention and support within GC's placement the details of which I do not propose to rehearse in this judgment. I am satisfied that this funded package is necessary and in GC's best interests in terms of what will be needed going forwards. It is in line with the specific recommendations which were made by Dr Tostevin. In addition, there is provision for ongoing co-ordinated support from the Police and Children Services designed to ensure the family's and GC's safety. That support and its reach across other agencies will need to evolve and develop over time as their needs change and this must be kept under review at appropriate intervals. For reasons which will be apparent, I do not propose to set out in this judgment the detail of those arrangements which includes an element of contingency planning.

142. I have borne well in mind all the factors set out in s. 1(4) of the 2002 Act (the check list). I have set these out in full in paragraph 35 of my judgment and do not repeat them here. Standing back and surveying all the evidence which is before the court and the conclusions I have reached in relation to GC's ongoing needs both now and for the rest of her life, I am satisfied that an adoption order in favour of Mr and Mrs S is the only option which will meet those welfare needs. This will be achieved by making full care and placement orders which will enable that adoption to proceed once the matching process has been completed. I have reached this clear conclusion despite the opposition of GC's mother who does not consent to this course. Whilst her views are important, I propose nevertheless to dispense with her consent to the course I propose to take. I do so because I do not consider that she has the necessary insight into GC's ongoing needs and/or the nature and extent of the risk which Mr Z poses to A were he in a position to identify her whereabouts. I do not accept that a placement within the extended family which is in accordance with the wishes of GC's mother is a sufficiently protective factor to keep her safe and/or to outweigh the significant contraindicators of a removal from her current placement at this stage of her development. In all the circumstances of this

case, I am satisfied that, in accordance with s. 52(1)(b) of the 2002 Act, GC's welfare requires the court to dispense with the consent of her mother.

143. Mr Z is GC's putative father. He does not have parental responsibility and was discharged as a party to these proceedings in March 2018 since when he has taken no part in these proceedings.

144. I recognise that this course represents a significant interference in Y's Art 8 rights and, to an extent, GC's own Art 8 rights and the inchoate rights of Mr and Mrs US to a family life which includes GC. For all the reasons which I have explained, I regard that interference as both necessary and proportionate in the particular circumstances of this case.

Change of name

145. For the purposes of keeping GC safe from the risks to which she is currently exposed, I propose to make an order authorising Mr and Mrs S to change GC's forename and surname prior to the making of an adoption order. Once an adoption has been made, Mr and Mrs S will have full parental responsibility for GC and will be at liberty to take that step without further reference to the court. In the specific circumstances of this case and the risks to GC which have been identified, I am satisfied that this step needs to be taken sooner rather than later.

146. In this context, I must consider once again the Article 8 rights which are engaged. GC's name is an important connection with her biological ties to her birth family and her mother in particular. It is the name which Y chose for her and she told me during the course of the video statement which I admitted as part of the evidence that she would not give her consent to any change in GC's name.

147. In this context I have carefully considered the guidance given by the Court of Appeal in *Re C (Children: Power to Choose Forenames)* [2017] 1 FLR 487. The application in relation to a name change is brought under section 100 of the Children Act 1989 and is a request that this court should exercise its inherent jurisdiction to allow Mr and Mrs S, in consultation with the local authority, to change GC's name in order to keep her safe and to bring her an additional element of stability and security in her family placement with them. In terms of risk management for this child, Dr Gough's evidence was that a change of name was an important means of protecting her and that any delay in achieving this end would leave her exposed to unnecessary risk in terms of her exposure to the risks posed by Mr Z.

148. As Lady Justice King acknowledged in *Re C*, the name given to a baby by his or her mother is an important aspect of the exercise of her parental responsibility. As here, in circumstances where GC cannot be brought up by

her natural parents, it forms an important part of her identity and it has the potential to remain a lasting link to her birth family. Any attempt to change her forename or surname represents a significant step in GC's life and an obvious interference in her own and her mother's Article 8 rights. Before the court can interfere in those rights, it must be satisfied that there are good reasons for doing so.

149. In terms of a change of surname, the House of Lords held in the leading case of *Dawson v Wearmouth* [1999] 2 WLR 960, [1999] 1 FLR 1167 that any such change should not be made unless there was clear evidence that it would lead to an improvement in the overall welfare of the child concerned in accordance with the checklist set out in s. 1 of the Children Act 1989. That was a case which concerned a private law dispute between parents but it was cited with approval by Lady Justice King in *Re C* : see para 47.

150. Strictly speaking, the local authority, exercising parental responsibility through the foster carers, do not need the court's permission to allow GC to be known by a different forename. Acting in its capacity as an adoption agency for these purposes, it can exercise its powers to determine the extent to which these prospective adopters may meet their parental responsibility under s. 25(4) of the ACA 2002. However, the local authority does need permission to allow her to be known by a different surname. This is because of s. 28(2) and (3) of the 2002 Act which provides that where a child is placed for adoption, or where a placement order is in force in respect of a particular child, a person may not cause him or her to be known by a new surname unless the court gives leave or each parent or guardian has given written consent to such a course.

151. In this case, a change of name is an integral part of the local authority's care plan for keeping GC safe. Where, as here, it is acknowledged by all parties that the risks to GC are sufficiently grave to justify an adoptive placement outside her immediate birth family, the court's inherent jurisdiction is engaged in relation to a change of name. Unlike the position in *Re C*, this is not a case where such a change is being contemplated because the name which has been given to GC by her mother is in itself a name which is likely to cause her emotional harm and/or expose her to a risk of serious bullying in the future. Rather, the risk to GC flows from the fact that her forename and surname, and a combination of the two, increases her exposure, visibility and potentially the location of her placement to Mr Z and to her birth mother if she continues to remain in a relationship with him.

152. I have in the course of this judgment analysed those risks and I am satisfied that, notwithstanding the objection raised by Y, this is a case where GC's welfare requires the exercise of the court's powers in this respect. I am also satisfied that these arrangements should be put in place sooner rather than later and it is for this reason that I propose to sanction a change of name for GC before the

completion of the adoption process by Mr and Mrs S. It is undoubtedly an interference in Y's and GC's Article 8 rights but that interference in the circumstances of this case is both proportionate, justified and necessary. To the extent that a balance must be struck between Y's Art 8 rights and GC's own Art 8 rights, the child's interests and her overriding need for protection must prevail: *Yousef v The Netherlands* [2003] 1 FLR 210 and *Re B (Care: Interference with Family Life)* [2003] 2 FLR 813.

153. Mr and Mrs S have agreed that, at an appropriate point in her development, GC should be shown life story videos which Mr and Mrs US will make available. It will be important in due course for GC to know and understand the depth of their commitment to her and to her future. That commitment shines brightly from the tireless attempts they have made to offer her a permanent home within her extended birth family and the considerable personal sacrifices they were prepared to make in order to enable that to happen. GC will in due course need to know why it was not possible for her to live with her mother or members of her mother's family. Those reasons have nothing to do with an absence of love or commitment as far as Mr and Mrs US are concerned and GC will need to know that in clear terms. Having listened carefully to Mrs S as she gave evidence on behalf of herself and her husband, I am entirely satisfied that they recognise the importance of this life story work in the context of GC's psychological wellbeing and her emerging sense of identity from within the security of her placement with the S family.

Conclusion

154. In conclusion, I endorse the local authority's amended care plan and I propose to make final care and placement orders in respect of GC. As an incidence of the placement order, I will make an order pursuant to s. 28(2) of the ACA 2002 giving permission for GC to be known by a different surname. I shall also exercise the court's inherent jurisdiction to permit a change of forename. I propose to leave the timing of that change in the hands of the local authority in consultation with the foster carers. In the event that it is agreed that the process of changing GC's name should be commenced prior to the formal matching process, the local authority has the court's permission to proceed as an incidence of the parental responsibility which it currently holds for GC pursuant to the care order which is currently in place.

Injunctions

155. In March this year, I made a raft of injunctions against GC's mother including one which prevented her from contacting, or attempting to contact, the child either directly or indirectly. That injunction was necessary because Y had sent various cards to GC. I made an exception to that injunction which permitted her to send letters and cards to GC through two named individuals at the local

authority's Children's Service offices. One of those individuals was Ms Danga. At the same time, I made an injunction prohibiting Y from publishing on any form of social media any material which might identify the child as being the subject of these proceedings or which might lead to her whereabouts being identified. I directed that she must remove a series of Facebook posts which she had made concerning GC and these proceedings. Each of the injunctions was expressed to remain in full force and effect unless and until the court made a further order.

156. Those injunctions will be reflected in my final order and will continue in full force and effect for so long as GC remains a minor, in other words until her 18th birthday. In my judgment, the continuation of these orders in the particular circumstances of this case is both necessary and proportionate. It is vital that the security and integrity of GC's placement with Mr and Mrs S is maintained and I regard Y, through her connection with Mr Z, as posing an ongoing risk to this child. Any attempt to publish information about her on social media in the context of these proceedings may expose GC to the risk of greater visibility to Mr Z. Whilst I recognise that these orders may engage Y's Art 10 rights, those rights are not absolute. Insofar as I regard my previous orders as both necessary and proportionate in order to safeguard this child, they must remain in place during her minority. It will, of course, be open to Y to apply in future for a variation or discharge of the injunctions should she wish to do so. Since this case will now pass to the adoption team, the two individuals named in my previous order will no longer be involved in this case. For the purposes of facilitating future letterbox contact, I will ask counsel to provide that, under the terms of the new order, this should in future be facilitated by the relevant adoption team or agency.

157. As far as other parties or individuals connected with these proceedings are concerned, they should be aware that the integrity and confidentiality of these proceedings, and any information concerning GC, will be covered by the provisions of section 12 of the Administration of Justice Act 1960. The effect of that section is to prohibit publication of information about proceedings held in private which relate to the High Court's exercise of the inherent jurisdiction, are under the Children Act 1989, the Adoption and Children Act 2002 or which relate wholly or mainly to the maintenance or upbringing of a minor. These proceedings concerning GC are captured by that section. This prohibition is without time limit. It operates to prohibit dissemination of what went on in front of the judge in court and the documents filed for the proceedings including written evidence, reports and written submissions. It also prohibits notes or transcripts of evidence and submissions, extracts from documents filed and summaries of them even where such documents are anonymised.

Costs

158. The local authority has already met the costs of Dr Gough's initial risk assessment completed in September 2019. When Mr and Mrs US became parties to these proceedings in March this year, they sought the court's permission for a further report from Dr Gough in relation to their own application to care for GC in the United States. It was agreed at the time that the costs of this exercise would be shared. Through Ms Barraclough, they now seek to be relieved of any financial contribution to the costs of that second report, the report prepared by Dr Tostevin and the attendance of both experts at court. The local authority objects to any reapportionment of those costs and points out that the only challenge to the evidence of Dr Gough came from Mr and Mrs US and GC's mother. Whilst she has the benefit of a public funding certificate, the USs have been funding this litigation privately. They accept that they are financially stable and raised no objections before closing written submissions to bearing a fair proportion of these expert costs. On behalf of her clients, Ms Barraclough submits that liability for Dr Tostevin's costs was specifically reserved. Further, she says that these assessments should properly be considered to be the evidential foundation for the local authority's holistic overview of the realistic options it was placing before the court before filing its final evidence. She maintains that her clients had to seek party status to challenge local authority failings and to avoid further delay for GC. In these circumstances, she submits that the local authority should absorb their share of these costs.

159. In relation to Dr Gough's second report, I am quite clear that Mr and Mrs US should make a contribution to its cost. They sought party status in these proceedings not simply because they wished to challenge what they perceived to be local authority failings. They had a separate case to advance which was in direct contradistinction to the final care plan relied on by the local authority. In support of that challenge, they secured the court's permission for an extension to the expert evidence which was then available. In my judgment the costs of this second report from Dr Gough should be shared equally between the local authority, Mr and Mrs US and the public funding certificates held by GC and Y.

160. Mr and Mrs US were not parties to this litigation in December 2019 when Dr Tostevin prepared her first report. On behalf of the Guardian, Mr Lidbury reminds me, quite properly, that the starting point for the apportionment of the costs of Dr Tostevin's second report and the attendance of the two experts at the trial should be an equal division of the costs as between the four parties to the proceedings at the time it was ordered.

161. For the purposes of her second report dated 25 May 2020, Dr Tostevin was asked to update her earlier report. For these purposes she did not carry out a specific assessment of Mr and Mrs US. There was no need for that exercise

because her task was different from that undertaken by Dr Gough whose focus was on the physical security of GC's future placement. Dr Tostevin's evidence, which I have found, ultimately, to be a determinative factor in maintaining the placement with Mr and Mrs S, was directed towards the psychological risks to GC of fracturing those ties. That evidence was plainly an important part of the whole picture but it would have been required to support the local authority's final care plan whether the alternative option for the court was a placement with Mr and Mrs US or another member, or members, of the extended family.

162. I am well aware that the local authority has underwritten a very significant bill of costs in this litigation. To the extent that these costs have increased as a result of both delay and the need to collate further evidence as the evolving care plan for GC has changed, the authority is, to an extent, the author of its own misfortune as a result of the failings I have identified in this judgment. I would regard it as impermissible for the court to impose a further financial penalty on the local authority simply as the cost of those failings. Any costs order must be both principled and fair. That said, I do not regard it as either appropriate or fair to require Mr and Mrs US to contribute towards the costs of Dr Tostevin's two reports or her attendance at court for the purposes of speaking to those reports. Dr Tostevin's evidence was an integral component of the local authority's case. It was required for the essential purpose of providing the court with an evidence-based evaluation of its final analysis in terms of a care plan for GC. As has been made clear in both *Re B-S (Children)* and *Re B (A Child)*, both cited above, a local authority pursuing care and placement orders is under an obligation to ensure that sufficient evidence is made available to the court to enable it to carry out a proportionate evaluation and balancing exercise.

163. Given that the local authority is already meeting the legal costs of the foster carers who were given party status at a late stage of proceedings for reasons which I have explained earlier in my judgment, I do not propose to make any costs orders in relation to Mr and Mrs S.

164. In summary, my order in relation to the outstanding costs issues will be as follows:-

(i) the costs of Dr Gough's second report and her attendance at the final hearing for the purpose of giving oral evidence will be divided equally between the local authority, Mr and Mrs US, Y and GC. Each will make a contribution of 25% to those costs either directly or through the appropriate public funding certificate;

(ii) the same apportionment of costs will apply in respect of Dr Tostevin's two reports and her attendance at court save that the local authority will pay 50% of these costs, thereby absorbing any share which would otherwise be attributed to Mr and Mrs US as parties to this litigation.

Criticism of the local authority: alleged failings

165. I do not consider it appropriate to conclude this judgment without including some judicial comment about the local authority's conduct of this case. I had originally intended to take that course by way of a 'Postscript' or Annex to the body of my judgment. I have decided against that course. The failings of this public body, which are in large part accepted, should be acknowledged by me and recorded within the body of this judgment.

166. There have been a number of criticisms of the local authority's conduct of this case. Those criticisms emanate both from the extended family and from the Guardian. The local authority accepts that there were a number of failings prior to the current lead social worker taking over conduct of the case in April 2019. Much of Ms Danga's evidence was absorbed with meeting those criticisms. The first point which needs to be made is that, whatever those shortcomings may have been in the past, this local authority has now made a clear commitment to fund its current amended care plan so as to put in place what is likely to be needed to keep GC and the S family safe and to ensure she has the benefit of expert therapeutic advice and support.

167. Ms Danga was elegant in her acceptance of the anger and frustration which GC's extended family has felt. On behalf of her employer, she accepted that the case has not been managed as it should have been. She acknowledged that there had been clear errors on the part of the local authority. Those errors flowed in the main from decisions made by a previous social worker and as a result of a failure properly to communicate with the family members who were putting themselves forward as alternative carers for GC. Ms Danga told me that the local authority has already instigated an internal review in relation to what has happened in this case with the objective of learning from those mistakes.

168. In relation to the position of Mr and Mrs US, there is an acceptance that for a period of about nine months the local authority supported them in their aspirations to care for GC on a long term basis. Ms Barraclough has described their experience as "a rollercoaster" which has been characterised by a catalogue of shortcomings involving a lack of communication, consultation and planning.

169. These issues have already been the subject of judicial comment. Following the interim hearing which he conducted over four days in March 2019, the judge reflected a number of these failings in the order he approved at the conclusion of that hearing. These included the following:-

    (i) the appointment of an inexperienced social worker who had no previous experience of an adoption case with these complexities and an international element;

(ii) the absence of any relevant experience in members of the social work team in relation to the process or procedure of an American adoption by US nationals;

(iii) at that point in time, the recent change of plan by the local authority to support an American adoption of GC by Mr and Mrs US and the impact of that decision on her earlier placement with foster to adopt carers in this jurisdiction;

(iv) the problems and issues caused by the actions and inaction of the social worker first appointed to deal with the case;

(v) the very poor communication between the local authority and the extended family members;

(vi) the failure of the local authority to comply in a timely way with court directions such that the solicitor acting for the local authority had been required to file two separate statements dealing with these failures;

(vii) delays and failures in complying with court directions whilst the allocated social worker was away;

(viii) poor record keeping within the local authority leading to a breakdown in communications with the family and an inability on the part of the independent reviewing officer to keep pace with developments on behalf of GC;

(ix) poor communication / forgetting to make arrangements leading to the cancellation of contact with the maternal grandmother and her partner in circumstances where those family members had already travelled long distances and incurred accommodation expenses for these purposes;

(x) poor information sharing with the local authority leading to the social worker being asked to prepare a final analysis/recommendation without sight of the advice from counsel about immigration/adoption issues;

(xi) failing to progress exploration of the wider family options in a timely fashion;

(xii) failing to advise family members that they were entitled to challenge the viability assessments which had been undertaken. This failure introduced further delay for GC because assessments prepared in April and May 2018 were not made available to the individuals being

assessed for several months and, in one case, nearly a year later. The court was thereby deprived of the opportunity to consider those assessments at the final hearing which had originally been scheduled in November 2018, fresh assessments having been ordered in October 2018;

(xiii) the failure to secure in a timely way information relevant to immigration and adoption in the United States;

(xiv) the absence of any joined up thinking in relation to the commissioning of a special guardianship assessment in circumstances where the local authority knew that the only means by which GC could be placed in the United States was adoption;

(xv) the failure by the local authority to formulate a transition plan which was based on the advice received in relation to US domestic law relating to immigration/adoption;

(xvi) the failure by the local authority to provide a sufficiently detailed special guardianship support plan despite being directed to do so by the court and ignoring the direction that it should liaise with Y County Council as to the additional resources proposed by that authority.

170. There have been further instances where I was told that the local authority has been lax in ensuring that confidential information about the foster carers has been sufficiently protected. From a child protection point of view, these lapses could have been significant. They were certainly a cause of concern for Mr and Mrs S who have their son's safety to consider as well as their obligations to GC.

171. This is a dispiriting catalogue of failures for which there is little, if any, excuse or justification. I acknowledge and accept that designated leadership roles within the local authority's legal and social work departments changed during 2019. As a result of those changes and the escalation of these proceedings from circuit judge to High Court judge tier for the purposes of all case management hearings and final disposal, I was able to ensure that a greater discipline has been brought to bear on the timetable. I am satisfied that communication has improved and there has been a much more proactive approach within the authority's legal department. It is only right that I express my thanks to Ms Danga and to Ms Pouya, the lawyer who has been dealing with the case since January 2020. In recognising the former shortcomings, each has been of considerable assistance to the court in terms of achieving a final hearing in the midst of the global pandemic we have experienced. In this context, I wish to acknowledge the invaluable assistance I have had from all counsel appearing in the case. The work and measured judgment which each has applied to the professional task in hand has been exceptional. The case has presented different

challenges for each of the six barristers involved in the case. They have met those challenges on behalf of their respective clients whilst at the same time ensuring that I had an immaculate set of written submissions and other material to assist me in the preparation of my judgment.

172. That said, it is equally important to note that the failings of the local authority have had real and significant consequences for GC, the members of her extended birth family and Mr and Mrs S, her foster carers. The changes in direction in terms of planning for GC's future have resulted in delays and confusion. The decision to place GC with Mr and Mrs S in anticipation of an adoptive placement outside the family when consideration to an intra-family placement had not been ruled out and at a time when viability assessments were ongoing is difficult to justify. It was certainly in breach of the existing guidance in force at the time of placement[5]. Thus, whilst I accept that the placement with Mr and Mrs S carried the imprimatur of the court in terms of its approval of that interim care plan, it has had the consequence of creating the impression of a status quo which will have left Mr and Mrs US feeling that they have not been litigating on a level playing field. Whilst I am confident that the final hearing itself was entirely compliant with their Art 6 rights to a fair hearing, as counsel have confirmed, they must have asked themselves what the outcome might have been had GC been entrusted to their care following the hearing in November 2018. In this context, I understand that they feel keenly that it is not they who have lost an opportunity as a result of the local authority's failures but GC herself.

173. On behalf of the local authority it is said that, once these failings and the judicial criticism they provoked came to light, there has been no attempt to disguise the errors and/or downplay the problems they have caused for the family. The original social worker who recommended the placement of GC with foster to adopt carers has been referred by the local authority to the Health and Care Professions Council. I am told that the task of the new team in establishing what has gone wrong in its legal department has been hampered by the failure of Ms Pouya's predecessor to keep full and complete records in relation to his conduct of this litigation. This appears to be evidence of lax practice at best if not blatant inefficiency. In their written concluding submissions, Ms Campbell QC and Ms Isaacs have set out the relevant steps in the litigation chronology which they contend provides some mitigation for the actions taken by the local authority. I accept that some of the delay in the case has been caused by the need to investigate parallel processes in the United States following the positive

[5] Whilst I accept that the placement with Mr and Mrs S was sanctioned as a holding position by the judge, he did so on the basis that the original social worker's viability assessment of GC's grandmother and her partner could not be regarded as "the final word [on their] abilities". Instead he ordered the preparation of a further report by an independent social worker. In the circumstances, it is difficult to see what other option was open to him at that time.

assessment of Mr and Mrs US by an independent social worker. That assessment had been completed in February 2019 but it was undertaken in contemplation of a special guardianship placement. That was then followed by the need to take specialist legal advice in the United States in relation to the home study process. On behalf of the local authority it is said that at that point Mr and Mrs US were two amongst a number of other family members who were putting themselves forward for assessment as carers for GC.

174. There were delays in securing the US home study report and the court has a statement from Ms Pouya explaining why some of those delays occurred. There were problems in processing an international payment to the authors of that report which caused a further delay of a month before work could begin. It then took over five months to finalise that report with the result that it was not available to the court until February 2020.

175. There is now a final resolution in place for GC but it has come at the expense of delay and a great deal of anxiety for all those involved. Mr and Mrs US and the foster carers, Mr and Mrs S, together with their families, have had to put their lives on hold for far too long to await the outcome of this litigation. It is the right outcome for GC and I am as sure as I can be, knowing what I know of the USs, that they understand it is the right result given the body of evidence presented to the court. They have not lost their fight for GC; they stayed the course to the bitter end and left an indelible impression on the minds of all those who heard the evidence they gave. Their willingness to offer GC a permanent home gave this court its best opportunity to weigh up the competing options from the foot of positions which were motivated and informed in each case by a perception of this child's best long term interests.

176. I propose to direct that a copy of my judgment in this case is released to the Director of Legal Services for this local authority and to the Designated Family Judge for X. In this context it is right that I record the fact that she has had no active role in this case to date but I want her to be aware of what has gone wrong. In this way I hope that lessons might be learned in order that children and families using the services offered by this local authority will not find themselves in the positions of GC and all those who have demonstrated such extraordinary commitment to her.

Postscript

Following the formal hand down of my judgment, copies were sent to the Director of Legal Services for the local authority and the Designated Family Judge. It is right that I should record the promptness with which the failings which I identified have been addressed. I have since been in communication with the Director who has provided me with a detailed plan which has been put in place to address the matters of concern which I raised and the steps which have already been taken to implement that plan.