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Case Number: RG23C50043

IN THE FAMILY COURT AT SLOUGH

The Law Courts
Windsor Road
Slough
SL1 2HE

Date: 7 October 2024

Before

HIS HONOUR JUDGE RICHARD CASE

Wokingham Borough Council v The Mother and Others (No 2)

Between

WOKINGHAM BOROUGH COUNCIL

Applicant

and

MOTHER (1)
FATHER (2)
THE CHILDREN (3-4)

Respondents

Representation

For the Applicant: Mr Kirkwood, counsel instructed by the Applicant Council

For the Respondents: Emma Gatland, counsel instructed by the First Respondent Mother
Oliver Wraight, counsel instructed by the Second Respondent Father
Paul Murray, counsel instructed by the Third to Fourth Respondent
children by their Children's Guardian, Guy Brazil

Hearing dates: 30 September, 1-2 October, 4 October and 7 October

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

APPROVED JUDGMENT

This judgment was handed down remotely at 9am on Monday 7 October 2024 by circulation to the parties or their representatives by email.

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Summary

1. I have listened carefully to the evidence and submissions made on behalf of the parents. As I set out at the end of this judgment I feel their pain in being separated from their Children and I acknowledge there are no good outcomes for the Children. I also acknowledge the likelihood that if they could the parents would go back in time and act quite differently.

2. Neither of the realistic options (foster care or return to the Father's care) represent a good result for these Children. What I am really looking for is the least bad option.

3. This is a case where there is huge uncertainty for the Children under either option; the decision that has to be made is set against great suffering for the family and CE in particular. I find the balance falls in favour of making Care Orders. What tips the balance is that while there are no guarantees for an improving situation in foster care the risks of harm are lower than in the Father's care in light of the assessment of his ability to meet their needs set against findings he perpetrated harm yet does not fully accept the harm inflicted by him or the Mother.

4. The parents will be devastated by this decision especially when coupled with the Mother's recent incarceration but I hope in time they can come to accept the situation, make the best of it and work with the Local Authority to ensure the Children can have the best possible relationship with them.

Parties and Background

5. The parties and background are set out in my judgment dated 8 November 2023 (*Wokingham Borough Council v The Mother and Others* [2023] EWFC 196 (B)). Since then the Mother has been sentenced to a term of 27 months' imprisonment arising from a guilty plea on a similar basis to the findings set out in my previous judgment.
6. The Children remain in foster care pursuant to Interim Care Orders.

Positions

Local Authority

7. The Local authority invite the court to make final Care Orders with a care plan of long-term foster care. They have applied to the Home Office for visas for both Children. In oral evidence they indicated that the current foster carer has given notice on the placement, there is a possibility that CD may be able to remain in placement but they are searching for alternative joint or separate placements. Although the notice is due to expire at the end of the proceedings they consider it will likely be extended pending finding an alternative placement(s).
8. In relation to arrangements for contact with their older siblings the care plan is for this to be every Wednesday in the community save with the sibling who is overseas which is to be by telephone. The Local Authority will draft a written agreement to underpin that, particularly arising from concerns there may be a narrative that the Children are to blame for the Mother's incarceration.
9. In relation to the Mother, CD has indicated he would like direct contact and the Local Authority are making enquiries with her prison about face to face contact twice a month and weekly telephone contact which they consider should continue even if face to face contact starts. CE would like to have telephone contact (although she told the Guardian she would like to see Mother face to face). If in fact CE's view is that she would like to see the Mother face to face the Local Authority would adopt the same course as for CD.
10. In relation to the Father the plan is for weekly direct supervised contact at a contact centre pending a risk assessment of contact in the community.
11. Family therapy has not commenced upon the advice of CAMHS but they are providing advice to Children's Social Care and the Children's schools about the development of better communication between the Children and their family.

12. The Local Authority filed amended care plans in the course of the hearing reflecting the above position and would agree to recitals confirming that indirect contact with the Mother in prison will continue at the same frequency in the event of direct contact being arranged, they will consult with CAMHS in relation to preparatory work and implementation of contact with the Mother in prison (but not the principle), they will consider up to twice a week contact between CD and CE if they are placed separately although this is dependent on the location of their placements. They will also prepare a written agreement to underpin contact with the adult siblings.

Mother

13. The Mother supports the Father's position.

Father

14. The Father seeks the return of the Children to his care and will be the sole carer. He wishes to engage in family therapy but considers that can take place with the Children in his care. In the event final care orders are made the Father seeks increased time with the Children in the community. There are no longer bail conditions in place.

Children's Guardian

15. The Guardian supports the Local Authority's position.

Evidence Summary

16. I have had the benefit of an extensive trial bundle, in particular:

- a) Ms Hughes, Independent Social Worker (ISW), parenting assessments dated 15 September 2023 [E36], 25 September 2023 [E77], 20 October 2023 [E80] and 22 December 2023 [E112];
- b) Mr Luyombya, Social Worker, final statement dated 5 February 2024 [C194];
- c) Together and apart assessment prepared by Ms Munyoro, the former social worker, dated 19 September 2023 [E62];
- d) Letter from the Home Office dated 2 April 2024 [C229];
- e) Immigration advice in respect of CD and CE [E136] and addendum [E143];
- f) Final care plans [D18a];
- g) Updated final care plans;
- h) Mother's final statement dated 22 March 2024 [C31];
- i) Father's final statement dated 18 March 2024 [C220];
- j) Letter from CE to the judge in criminal proceedings [C227];
- k) Letter from CD to the judge in criminal proceedings [C228];
- l) Guardian's final analysis dated 8 March 2024 [E125];

- m) Letter from CAMHS dated 1 October 2024; and
- n) Updated foster care logs.

17. I heard oral evidence from Ms Hughes, Mr Luyombya, the Mother, Father and Guardian.

Law

18. I remind myself that the burden of proving the need for a Care Order rests with the Local Authority on the balance of probabilities.

Threshold

19. I must consider if the Local Authority has proved that the threshold test set out in section 31(2) Children Act 1989 is met. It provides:

(2) A court may only make a care order or supervision order if it is satisfied –

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

20. I remind myself that the relevant date for the purposes of making the assessment is the date on which the Local Authority initiated the procedure (*Re M (Care Order: Threshold Conditions)* [1994] 2 FLR 577) but subsequent events and behaviour are capable of providing relevant evidence about the position before the relevant date (*Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050).

Welfare

21. So far as the law on welfare issues is concerned my paramount concern is the Children's welfare. In assessing whether to make an order I must take account of the matters set out in section 1(3) Children Act 1989 (welfare checklist). I must then have regard to the realistic options put forward taking a holistic and balanced as opposed to linear approach to them consistent with the guidance given in *Re B-S (Children)* [2013] EWCA Civ 1146.

22. In reaching a final decision I must start from the position that the least interventionist alternative is to be preferred applying section 1(5) of the Children Act; I must not make an order unless I consider that doing so would be better for the child than making no order.

23. I remind myself I must also have regard to Article 6 and 8 ECHR rights. Pursuant to *Re B (Care: Interference with Family Life)* [2003] 2 FLR 813 I must not make a Care Order unless I am satisfied it is both necessary and proportionate and no other less radical form of order would achieve the need to promote the welfare of the child.

24. If I make a Care Order I must consider the permanence provisions of the care plan pursuant to section 31(3A) Children Act 1989 and the contact provisions pursuant to section 34(11) Children Act 1989.

Threshold

25. I made the following findings in my judgment dated 8 November 2023:

a) Allegation 1.1: On 18 February 2023 the Mother assaulted CD by beating him on the feet with a cane approximately 86 times over the course of 1 hour and 5 minutes.

b) Allegation 1.2: On 18 February 2023 the Mother instructed CE to fetch “strong nice sticks” to beat CD.

c) Allegation 1.3: The Mother continued the assault despite CD weeping, crying and screaming and pleas for her to stop.

d) Allegation 2: On 18 February 2023 the Mother assaulted CE by beating her with a cane over a period of approximately 1.5 hours.

e) Allegation 4: In 2021-22 the Mother assaulted CE by beating her 48 times as a result of her not meeting expectations at school.

f) Allegation 7: On 5 or 12 March 2022 the Mother made the Children eat spoonfuls of paprika and has threatened to apply pepper to their eyes, mouth and ears.

g) Allegation 8: The Mother threatened the Children with a kitchen knife including threatening to kill them on an unknown date.

h) Allegation 10: On multiple occasions before 2018 (the date when the Children moved from Nigeria) the Father assaulted the Children by beating them on the hands, legs and feet with a cane.

i) Allegation 11: In September 2022 or January 2023 and in relation to CE’s social media use the Father beat CE to her legs and feet with a cane whilst making her kneel down.

j) Allegation 13: The Father subjected the Children to stress positions in the form of being made to hang upside down from a shelf and in an inverted V with their heads on the floor. This was intended by the Father to be a painful punishment and the Children crying soon after being put in that position evidences it was in fact painful. On occasions, if the Children moved from the positions, the Father would beat them with a cane.

k) Allegation 14: The Children have each suffered emotional harm by being assaulted and witnessing their siblings being assaulted.

26. I am satisfied those findings meet the threshold criteria.

Welfare checklist

27. I now turn now to the considerations under section 1(3) Children Act 1989.

Wishes and feelings

28. The reported up to date wishes of the Children from the Guardian's visit on 25 September 2024 are, from his position statement:

e. CE stated that she 'thinks' she wants to go home. She described her father as 'sweet'. She was very clear that her definition of home would involve being cared for by her father in the UK. CD's position is identical. The children stated that under no circumstances do they wish to return to Nigeria. Neither keeps contact with any family members in Nigeria.

h. The children's first wish is to be cared for by their father in the UK. If this is not possible then they would want their sisters to care for them in the UK. If this is not possible they would wish to remain in their foster care placement.

29. As regards contact the Guardian reported that they would engage in family therapy, and if they remained in foster care said they would like to have extended contact with their Father in the community and to have contact with their Mother.

30. The Social Worker's evidence is also that they told him they did not want to return to Nigeria.

31. The Social Worker agreed that "to a greater extent" during proceedings the Children had expressed a wish to return home but when he spoke to them separately from each other on 26 September 2024 whilst CD's first choice was a return to Father (his second being remaining in care) CE's first choice was remaining in care and her second choice a return to Father.

32. If a Care Order was made then In relation to placement CE has said she would prefer to be placed with CD but "doesn't mind" (in the words of the Social Worker) and if separated would like to be nearby to CD. In relation to CD the Social Worker said he had expressed that he did not mind separation.

Physical, emotional, educational needs and age, sex and background

33. In the final ISW report Ms Hughes reported:

[E115]

xi. Both parents accept that their children are difficult children to manage. The children's difficulties are as a result of the parenting that the children have received, which includes emotional and physical neglect, physical and emotional harm.

34. The final social work evidence (from February this year) recorded the Children continuing to attend their usual schools, contact continuing but with some missed sessions and, in December 2023 at least, concern about the Father questioning CD about marks on CE's arm [C207].

35. There was said to have been a significant improvement in CD's attitude to school, there having been a concern he was "regressing in his education since becoming a Looked After Child" [C208]. The most recent evidence from the foster care log for 9-22 September 2024 is:

CD needs to do more to develop his maturity. His resistance to being supported prevents him from learning and growing. He seems to be happy getting by with what he learns from his family.

Communicate with others – he avoids this

Use his initiative

Work on grooming, hygiene, time keeping all needs attention

36. Although I am told he has recently exceeded academic expectations it is clear there are still some concerns for him in foster care.

37. The Children's placement history is that they were originally placed with Carer A on 15 March 2023, then Carer B on 31 March 2023, Carer C on 17 April 2023 with a return to Carer B on 21 December 2023. Carer B has now given notice to terminate the placement.

38. In the Father's statement from earlier this year he expressed concern about a deterioration he had seen in his Children since they entered foster care and CE in particular had been badly affected.

39. The Social Worker's most recent statement recorded there were ongoing concerns about CE truanting from lessons and being inattentive at school and home [C209]. Within the foster care logs there are very serious concerns expressed by Carer B about CE's mental health: 16 June 2024

“suicidal thoughts and schooling (truanting) grave concern” [J310], “she was suicidal and didn’t know why” [J312] with the carer saying she could not meet CE’s needs; 30 June 2024 Carer B repeated her concerns saying again that CE required psychological intervention “sooner rather than later” [J338]; the same again on 12 July 2024 [J361]. On 5 or 6 September 2024 CE took an ibuprofen overdose and was taken to hospital. The Social Worker agreed in cross-examination that for CE “life in foster care is bleak and worsening” at least over the last 3 months. CE is currently engaging with CAMHS on a weekly basis with a “childhood trauma profile”, “in a state of overwhelm” and presenting as “conflicted, confused and trying to make sense of her identity”. She is said to have a history of reporting suicidal ideation and engaging in self-harming “from age 5 to date”.

40. The more recent foster care logs indicate ongoing and serious concerns for CE with self-harm (26 August 2024 by cutting, being “tired of living”), suicidal ideation (on 12 September 2024) with some evidence of preparatory acts in tying a scarf around a lightbulb in her room (on 14 September 2024), depression (26 August 2024) and cannabis use (in the log for 9-22 September 2024).

41. CD is open to CAMHS but does not yet wish to meet with them.

42. In a letter dated 1 October 2024 CAMHS indicated they are not intending to provide family therapy because CE is continuing to share accounts of harm from her family, including the Father, in the sessions with them but they will “continue to support the network to develop therapeutic conversations and relationships”. When the Social Worker was recalled to give evidence in relation to this he said that the ISW’s recommendation for family therapy “will happen” but as to when the Local Authority will be guided by CAMHS.

43. A 6 week search for an alternative placement has not yet identified suitable placement(s).

44. The Guardian considers the Children “are being blamed for their mother’s predicament” which “appears to have had a significant impact on CE who has displayed self harming behaviour”. Neither has been assessed as competent to separately instruct a solicitor.

45. The Children are currently in the same placement. The together and apart assessment indicated they have always lived together and “have a strong bond and a lived experience that connects them” and a “natural bond which is loving and caring” [E74]. The recommendation was for the siblings to be placed together [E75] and it was noted that:

[E73]

- CE and CD have always resided together along with their parents. They recognize themselves as a sibling group and can describe each other's individual likes and dislikes.

- CD and CE have a shared identity

46. In March the Guardian commented on the Children having "difficulties compared to other children of a similar age with social skills, routine and boundaries" as reported by the foster carer [E131/19] and that CE had expressed suicidal ideation with self-harm [E131/20]. He felt it was clear they were "feeling the burden of their parents' predicament, and this is impeding their own progress and ability to settle in and concentrate on their own lives" [E131/22]. His conclusion in March this year was that the Children required better than a good enough level of care [E130/16]. There was no suggestion in oral evidence that his view had changed.

47. The immigration advice received by the Local Authority is that the Children are entitled to remain in the UK as the Mother's dependents (under her graduate visa) but if a full Care Order was made "the Home Office would usually expect an application to be made for them to remain in the UK under a different visa category" [E138]. The Mother is likely to be subject to automatic deportation provisions at the conclusion of her sentence and the Children's right to remain is dependent on her right to remain. If no application is made for them to remain on an alternative basis they will become overstayers "without any legal status in the UK" upon the termination of the Mother's visa, either when it comes to an end on 15 March 2026 or earlier if curtailed by the Home Office [E138-E139].

48. The Local Authority were advised to make an immigration application to the Home Office based on the Children's status as children in care [E139]. I understand the application has been submitted but not yet determined. There is no timescale for a decision.

Likely effect of change in circumstances

49. In her letter dated 25 September 2023 the ISW said it concerned her "that life in care for two Black teenagers is not a good alternative as it is likely to impact significantly on their stability and security as well as on their education." [E79].

50. When the Social Worker gave evidence he was asked what the impact of a possible sibling separation in care would have on CE, particularly if CD remained with Carer B. He thought there would be "some impact". It was put to him that if the Children were told they were not returning to Father's care, the Local Authority were not yet sure where they were going to be placed and cannot say if it will be together that would be devastating for CE in particular. He agreed "it is likely to be". If

placed separately then the Local Authority will look to place the Children close to each other and twice weekly contact will be arranged. I acknowledge the prospect for close placements is unknown given a 6 week search for placements has not generated any matches. As the Guardian observed, foster care lacks certainty (his oral evidence and [E132]) and there is a risk of a temporary placement whilst searching for a permanent placement. The Guardian also agreed a change of placement is not ideal for CD given the stage of his education.

51. For both Children he thought there would be a sense of loss if not placed with the Father although there is a level of ambivalence from CE; there would be a sense of loss moving from the current placement and if CD remains in the placement and CE moves he agreed “there is a risk of her thinking she has done something to blame”.

52. He agreed that if CE’s new placement is out of the area she would have to change schools which would be a challenge, there is a risk of needing to develop a relationship with a new CAMHS therapist although he observed she “engaged well from the start and there is no reason, if that had to be changed...she could not engage well with a new counsellor”.

53. More generally the Local Authority submitted that the CAMHS work for CE has started and would hopefully improve CE’s presentation as may certainty about her placement at the conclusion of this hearing.

54. It is important to note that remaining in foster care is not consistent with CD’s wishes and he has absconded from a placement previously; there has to be some risk of a repeat given his age.

55. By contrast, placement with the Father would be consistent with the Children’s broadly held wishes and separation would be unlikely. Under that scenario the Father could pursue an application for the Children to remain in the UK under the alternative provision (born in the UK and continuous residence for 7 years [E141]) but would only be able to make the application after 7 January 2025 (the Children having come to the UK on 7 January 2018). However, there is no evidence of how the Father would seek to manage the Children’s relationship with their Mother before or after her release from prison and whether or not she is immediately deported (ie direct and/or indirect contact). Nor, as considered below, is there any plan in the event the Children have a right to remain but the Father does not when the Mother is deported.

Capability of Father

56. In the first ISW parenting assessment it was recommended that the Children return to their parents’ care. It was said the quality of direct contact was “a good standard”, the parents were “very

open about their new learning on parenting” (i.e. it involved more than merely meeting basic needs) and their relationship was strong [E37-E38]. Family therapy was recommended for “both parents and the children to adapt to the changes in the parenting style” brought about by undertaking the Triple P course and another, culturally appropriate, course but “the amount of time [the Father] spends in the future should the children return to the parents’ care should be negotiated” [E38].

57. In her follow up letter, having then understood the parents had been charged in relation to offences of child abuse, she said:

[E79]

If only one parent is given a custodial sentence, the other parent would be able to care for them during the time that one parent is absent from the home.

58. No further action is being taken against the Father by the police and bail conditions have terminated. In his most recent statement the Father had said he would be “spending more time in the UK” [C223/11].

59. The final ISW assessment recorded the Father accepting the findings that the court made and says that it is significant the parents have accepted the methods of chastisement used in the past was not acceptable and they “have indicated that they would monitor the other if they were to punish the children in unacceptable ways in the future” [E114]. Of course that is not possible in circumstances where the Mother is detained. The ISW considered it significant that the Father’s motivation for the abuse was “for correction purposes and was not meant maliciously, which fits culturally into the intention behind the use of punishments” [E114]. However, she recorded she was worried the parents did not have a “full understanding of the emotional harm that was caused to the children”, although in the case of the Father this was better [E116]. She concluded, contrary to her earlier view, the Children’s needs could not be met “within the couple relationship” and that reparative work needs to be undertaken in the form of family therapy [E116]. When asked about this in cross-examination she said:

I think the Children are very damaged and whether he can manage them whilst they are damaged is another question, I don’t know whether his parenting would be able to match up to that task which is why I thought family therapy would help.

60. Later in cross-examination, when the Father’s lack of acceptance of the findings in full was put to her she said that was “concerning” and it would have to form part of the reparation work. She

agreed full acceptance would be a critical part of meeting the Children's emotional needs. At the end of her cross-examination she said that there was a huge concern that the Children may be reluctant to report physical or emotional abuse if returned to the Father's care and their guilt about the Mother being in prison "would add to them not reporting concerns", she agreed that would absolutely form part of the reparation work with a clear message from the parents that that the Children had done nothing wrong. She agreed "we're not at that stage yet".

61. In her oral evidence she questioned the Father's honesty on the basis that initially he told her he did not know what the law in England was in relation to chastisement but in her final interview of him he said that he had in fact known (recorded at [E123]).

62. The Father's leave to remain in the UK is linked to the Mother's under her graduate visa [C229] with no recourse to public funds. The Social Worker identifies the risk of a return to Nigeria (if placed in the Father's care and the Father is then forced to leave by reason of the Mother's visa being terminated). He says that the Children "could face a backlash from their extended family and community for what has happened to their parents" [C207] although the Father's evidence is that no pressure was put on the Children by the extended family in relation to the criminal trial [C222/7]. The Guardian reported similar concerns but the Children had denied it [E131/21].

63. The Father's oral evidence was that he had no plan to return to Nigeria even if the Mother was deported and he had applied for work that might in due course enable him to be sponsored to remain in the UK on his own account. I give him credit for taking the initiative but note that there is no evidence on the likely prospects of this course of action, no documentary evidence to corroborate his evidence that a fellow employee at the same company had been sponsored and no application has yet been made.

64. Although he is a businessman in Nigeria running a real estate business he told me that he has arranged his affairs such that he does not have to be there and will not have to travel there until the Children attain their majority; he said he only travelled to Nigeria for 3 weeks in the last 18 months. Given that his Nigerian business, he says, employees 25-30 people I think it is unrealistic to think he would never need to travel there at all in the next 4 years but accept his evidence it would be likely to be infrequent based on the immediate past. He struggled to accept the possibility he might be deported and if, by then, the Children had secured the right to remain by other means (perhaps by having been born here and lived here continuously for 7 years as set out in the immigration evidence) his only suggestion for who would look after them was it would be "one of

the other siblings” but none of them have been positively assessed. Nor, he conceded, had he discussed this with them.

65. Although he told the ISW that he has “started to develop real estate in the UK” [E122] there is no documentary evidence of this either. His oral evidence was that he had also secured work with a parcel company through an agency; there was no documentary evidence of this. He said that he would live in his current 3 bedroom rented flat which is in his sole name; there is no documentary evidence of this. He said if the Mother was deported to Nigeria and he was not he would not visit her in Nigeria until the Children are 18 (4 years from now).

66. The Social Worker recorded that “contact is mostly positive, and parents interact well with the children” [C210].

67. The conclusion was:

[C214]

CD and CE have suffered significant harm through abuse and neglect while under the care of the Father. Should CD and CE return to the care of their father without any remedial work being undertaken, the Local Authority has considerable concern that they would experience the same abuse and trauma they have suffered in their father’s care.

68. The Social Workers’ oral evidence concurred, reparative work is required before any rehabilitation to the Father was considered.

69. The Social Worker’s oral evidence was that a risk assessment will be undertaken of the Father’s contact moving to the community as, he agreed, it is harder to monitor contact in the community; in addition he noted the risk arising from the findings I have made against the Father. The Father does not accept all the findings. When he gave evidence he agreed it was his view the Children had exaggerated their allegations (which was not my finding) and does not accept findings (d) (Mother assaulting CE with a cane for 1.5 hours), (e) (Mother beating CE 48 times) or (g) (Mother threatening the Children with a knife).

70. The Guardian’s understanding is the Father “spends a considerable period of time working abroad. No information has been provided in terms of the practical arrangements that would be in place to enable him to remain in the UK as their carer” and in relation to his immigration status even aside from the linkage to the Mother there is “clearly an issue of risk [of any separate application being affected by] the serious findings made against the Father” in these proceedings.

71. The Guardian identifies that the Father has not completed any therapeutic work post fact-finding and commented as follows:

[E129]

14. We spoke about reparation work and family therapy referred to by Ms Hughes as important regardless of the final outcome. I asked whether they had apologised to the children. Both parents said they had and felt they had shown sufficient remorse for their actions. However the father was also quick to point out that the children had apologised to them and he felt it was right that they should. They both maintain that the allegations against them were exaggerated and encouraged by [a sibling] despite the findings made by the court.

72. When I asked the Guardian what the Father would need to demonstrate for a discharge of any final Care Order to be considered he said:

A further psychological assessment, parenting assessment, at this stage it is a lack of insight [into the harm suffered by the Children in the care of the parents] that is entrenched. There would need to be clear evidence of significant change in that regard.

Potentially that would be evidenced by family therapy but I'm not sure it would be enough on its own depending on the quality of that evidence.

Capability of Mother

73. The Mother would not be eligible for release before October 2025 but in any event, as above, the immigration advice received by the Local Authority is that at the conclusion of the Mother's sentence of imprisonment she is likely to be automatically deported [E138].

74. In her letter dated 20 October 2023 the ISW makes the following comment in relation to the recording of the beating which formed the basis of finding (a):

[E80]

Whilst being beaten is entirely unacceptable in the UK, as indicated in my initial report dated 18th September 2023, there is a cultural element to this form of punishment. I consider however that the length of time that this punishment continues and the repeated nature of it is beyond that which I have experienced in similar cases.

75. She recommended a psychiatric assessment of the Mother and no return to the joint care of the parents until "more information is known about the mother's mental health" [E81].

76. In her final assessment the ISW commented that the length of time the Mother used to punish CD in relation to finding (a) was not culturally specific even though hitting children with implements was. The length of time over which it took place (1 hour and 5 minutes) was also “not culturally specific” and the finding of a threat with a knife (finding (g)) was “not culture specific” [E114]. She concluded she could not recommend either child returning to the care of the Mother as sole or joint carer “until her own emotional needs” were met and she was “more able to respond to the children’s emotional needs”.

Any harm suffered or at risk of suffering

77. I have to weigh the likely harm in foster care having regard to the matters set out above (particularly the Children’s needs and the likely effects of an order) against the harm on return to father set out above.

Capability of others

78. No family member has been positively assessed to care for the Children.

Range of powers

79. The Guardian’s conclusion was that:

[E133]

Neither a Supervision Order or a Care [Order] at home would provide the level of safety and support they would require if they returned home. Given the pressure CD and CE have been under and their recent wishes to address their allegations they have made I would have concerns that CD and CE may not come forward and notify professionals if they are subject to abuse again and [another sibling] will not be in the home either to provide this protection for them.

80. When the Social Worker gave evidence he confirmed that if Care Orders were made then rehabilitation to the Father would be considered as part of each looked after child review.

81. When the ISW gave oral evidence she acknowledged that the Children’s presentation will be a problem in the Father’s care but also there are “challenges in foster care” but she thought that an “experienced carer is more likely to be able to do so than the Father, he’d be learning new skills and adapting new skills”.

Holistic balancing exercise

82. I come now to consider the balancing exercise that is required by *B-S*. I say at the outset that neither of the realistic options before the court are good options. They both have significant disadvantages. In short there is, desperately sadly, no good outcome. What I am really looking for is the least bad option for them.

Realistic Option 1: Care Order with long term foster care

Factors in favour	Factors against
Safe care with Local Authority oversight meeting the Children's better than good enough care needs	Contrary to wishes and feelings, particularly CD and accompanying risk of him absconding
CE continuing with CAMHS therapy	Outside the family and may not reflect the Children's cultural heritage, a sense of loss likely to be felt by the Children
Local Authority have made a visa application for the Children	Children's presentation present challenges to the foster carer
	Remaining looked after
	Potential for placements to break down
	Likelihood of separate placements (although it may be in close proximity and may be mitigated by contact arrangements)
	Certainty of separation when CD attains 18
	Risk of a temporary placement whilst permanent alternative placements are sought
	If CE's new placement is out of area there is a risk of a change of CAMHS therapist

Realistic Option 2: Return to Father's care

Factors in favour	Factors against
Consistent with wishes and feelings	Father has not accepted all of the findings and still considers the Children have exaggerated the allegations they made
Within family	Father has not cared for the Children on his own
Placement together	Risk of lack of reporting of further physical or emotional harm
CE could continue with CAMHS therapy although Father's plan is not known	Reparation work not started
	Father adapting to new parenting skills

	The Children have not lived with the Father as sole carer so it is untested
	Father not equipped to meet Children's heightened needs
	The wider family in the UK has not been positively assessed and the Father has not yet broached the possibility with them that they may assist him in caring for the Children
Father has made some effort to think about how to resolve his immigration status	Father's immigration status is unclear and no application yet made
The Father can make an application for a visa for the Children from 7 January 2025	Father has work obligations in Nigeria
	No plan from the Father as to how he would manage contact with the Mother

Comparison of Options

83. A minority spent in care is not a good outcome generally nor specifically for these Children. For both it would be contrary to their wishes and would introduce huge uncertainty in terms of placement (together or separate which might be close or far apart) which leads to further uncertainty (schooling, therapy, the relationship between CD and CE and contact with the Father and Mother).

84. Placement with the Father, whilst removing the uncertainty of placement and separation from each other, brings its own uncertainty (what happens if the Mother and Father are deported?).

85. The biggest difference between the two options is the safety of the Children: foster care will be safe, there will be no risk (save to some extent in contact) of the Children being made to feel guilty for their actions, no risk of repeat treatment from the Father and Mother, reduced risk of deportation to Nigeria with which they have had no connection for almost 7 years and is contrary to their wishes, no risk of harm from the Father arising from a lack of sufficient parenting skills and lack of acknowledgment of the harm caused by the parents or the truth of the findings made.

86. In so far as it is possible I feel the pain the parents feel about their Children, especially CE, being so unwell, upset and distressed in foster care and I have no doubt they love them dearly and genuinely want the best for them and genuinely feel that can be provided in the Father's care. However, I cannot and do not lose sight of the fact that the origin of this pain is in their actions and the consequence of that, without reparative work that has not begun, is an inability to safely care for

the Children meeting their current needs. I am therefore drawn to the conclusion that it is both necessary and proportionate to make final Care Orders and approve the care plans now presented by the Local Authority.

Conclusion

87. In light of the above analysis I make final Care Orders pursuant to section 31 Children Act 1989 and approve the care plans.