

IN THE FAMILY COURT

Before:

**His Honour Judge Sharpe
(sitting as a Judge of the High Court)**

B E T W E E N:

A LOCAL AUTHORITY

Applicant

-and-

A Mother

1st Respondent

A Father

2nd Respondent

DM

3rd Respondent

A Child

(Through her Children's Guardian)

4th Respondent

RE KM (A CHILD)(WELFARE)

Ms Markham KC and Ms Targett-Parker for the Applicant

Ms Wheeler KC and Ms Gasparro for the 1st Respondent

Ms King KC and Mr Davies for the 2nd Respondent

Mr Setright KC and Mr Langford for the 3rd Respondent

Ms Henke KC and Ms Koucheksarai for the 4th Respondent

Hearing dates: 15 - 18 May 2023

Approved Judgment

His Honour Judge Sharpe

[In this judgment the names of family members have been replaced with initials. The name of the country of origin of the child, a southeast Asian state which is not a contracting state to the 1980 or 1996 Hague Conventions, has been substituted with "Country A" and the names of places within the country of origin have similarly been replaced with appropriate anonymisation]

Introduction

1.

The primary purposes of a judgment in legal proceedings are to define the issues which require determination, to set out the decisions which have been made and then to explain the reasons upon which those decisions have been based. Often that process requires the determination of disputed factual issues through the sifting of evidence and the application of legal principles to the factual findings made. Those functions, important as they are, are not the main focus of this judgment. As will be explained later the judicial decisions which need to be made now are straight forward because the essential facts are not in dispute and the law is clear.

2.

The real value of this judgment is not in the legal analysis which follows but to acknowledge the power of family ties in their different forms. What has been demonstrated in abundance in this case is the love that exists in two different forms of family life. The first is by parents who have so much in common with their child but very little that meaningfully connects them to her child at this point in her life. The second is between an old man and a young woman who are completely different in many ways but whose ties to each other have held fast even as the life they had known was collapsing around them. In each case there is a common connection: that of unwavering commitment of two parents towards their child and of a child towards her Dad.

3.

Law can be used to make people conform in their millions to behavioural norms, it can create frameworks and structures which enable societies to flourish and progress, it can protect, punish and control. Yet for all its powers and benefits, its longevity and variety, the law cannot transform a family tie into the lodestone of a child's life. Family life is far more than the legal framework which underpins the various rights and responsibilities which exist between its members. The law has never created an attachment nor kindled a relationship. It can create a right which might provide the foundation for a loving relationship and even the means by which that right can be exercised but it cannot cause that relationship to flourish because that is the prerogative of love alone.

4.

What law can do and what the Family Court attempts to do every day is to prioritise the welfare of children but in so doing to safeguard, promote or enable the relationships which those children have with those to whom they are attached, whether that connection be actual or potential, based upon genetic heritage, shared family experience or a personal psychological attachment. Contrary to misconceptions fuelled from ill-informed commentators on the internet, the law in England Wales prioritises a child's relationships and the Family Court and all those professionals working within it work hard to ensure that wherever possible, consistent with the promotion of a child's welfare, family relationships are recognised for all that they offer a child and all that they might come to mean in the future. This case is a clear example of just that.

The background to the final hearing

5.

These proceedings are about a young woman whom I shall refer to as KM. KM will soon be seventeen years old and hence to refer to her as a child with all its connotations of immaturity and dependency would be to do KM a disservice. KM is of an age where she is close to attaining her legal independence and is already displaying a maturity and autonomy which deserve respect but which are also critical facets in her developing sense of herself as an individual. The issue which has been at the heart of this final hearing has been not what should happen to KM post proceedings but how best to work with KM to enable her to shape her own future from the difficult and complicated history of her past.

6.

That history need not be set out here. It was sufficiently documented in an earlier judgment (see *Re KM (A Child)(Jurisdiction: Habitual Residence)* [2022] EWFC 132) and does not require repeating. Insofar as further information has been shed upon matters relating to KM's history they will be referred to where necessary later in this judgment.

7.

The above judgment was delivered in relation to the issue of the proper jurisdiction in which issues pertaining to KM should be determined, whether here in this jurisdiction or that of Country A, which it was not disputed had been KM's home throughout her life until very shortly before the inception of these proceedings. The conclusion I reached was then the subject of a challenge by the parents who sought permission to appeal that decision. The matter was, as Mr Setright KC put it, "professionally argued on the papers" but the single Judge, Moylan LJ, dismissed the application. Although that finally concluded the argument as to jurisdiction I was clear in my judgment that it fixed only the place where the arguments over welfare would be heard, it did not rule out the possibility of KM being returned to Country A if that outcome was in fact what was in her best interests.

8.

The need then was to get the proceedings to a point whereby those welfare options could be properly considered through the prism of solid social work evidence. The obvious difficulty was that KM's parents, her mother (AS) and her father (KS), initially unidentified and therefore unlocated but now properly represented by leading and junior counsel instructed by specialist metropolitan solicitors, were understood to be very clear in their wish to be reunited with KM and for her to resume her place in their family. However AS and KS are rooted in Country A and have always been. It is and has always been everything to them. Their life, their home and their family are all in Country A and so any assessment of them needed to be undertaken where they were and not in a wholly temporary and completely alien situation which would have resulted from their presence here.

9.

The importance of that assessment was heightened further by the fact that KM had long expressed a clear and unwavering view that she would not contemplate the possibility of returning, let alone being returned, to Country A and was wholly opposed to such an outcome. Such a view suggested that hard decisions would have to be made as to KM's welfare. On the one hand there could be a return to loving parents willing and able to care for her and wishing to reintegrate their child into her family but which from KM's point of view would amount to a forced repatriation to an alien environment from which she had had no point of contact for many years and to which she could not relate. The alternative was the probability of the remainder of her childhood being spent in foster care and then enduring life as a formerly looked after child in a foreign country in which she had spent little time other than as a care child and which offered no natural family nor cultural heritage.

10.

The necessity for a parental assessment meant that proceedings which had already taken a very long time to reach even the point at which welfare outcomes could be considered were now the subject of further elongation whilst the necessary arrangements were put in place to enable an independent social worker, Ms Snow, to visit Country A to meet the parents with the assistance of officials there, particularly a social work team and interpreters, and undertake a proper assessment of them as potential carers for KM.

11.

After much slippage and delay and with considerable assistance from Country A, both in the form of the Embassy staff in London and officials in its capital city, Ms Snow was able to not only visit Country A and to meet with KM's parents but to spend time with them in their home and to form a proper understanding and appreciation of them as people and as parents. In so doing Ms Snow was able to offer further information, this time direct from KM's parents, as to how and why KM had moved from their care to DM, the person whom KM has come to regard as 'Dad' and who, initially with his then wife, was the prime mover in the near exclusion of AS and KS from their daughter's life.

12.

Whilst it has been helpful to receive direct accounts from each of the parents about what happened with regard to KM all those years ago, the real value of Ms Snow's report was in gaining a proper appreciation not just of the parents' past actions but their present situation and, most particularly, their current wishes and feelings regarding their daughter, their feelings towards her, their understanding of her and how they now view the situation whereby KM feels so emotionally and culturally distanced from them that she is unwilling to contemplate any immediate reunification.

13.

From Ms Snow's report it was possible to form a much clearer view of AS and KS. AS is a woman now in her mid-50s and KS is in his late 60s. They have lived all their lives in Country A and have never travelled beyond it. The life they lead is one of relative simplicity, reflecting not only their lack of education but their economic situation and the need to work hard to support themselves and, in times past, their family as KM has two older now adult siblings in addition to an older brother who sadly died in early adulthood. The family home is described by Ms Snow as 'basic, clean and nicely presented', it does not have many of what would pass in KM's experience as essentials such as general electrical appliances or internet connectivity and bathroom facilities are available only in an adjacent home owned by a family member. The home is situated in a small village which offers considerable community support.

14.

The parents place great store by their Muslim faith. They are devout in their adherence to the daily cycle of prayer and follow the tenets of their religion in abstaining from alcohol or any form of chemical substance. However the parents understand and accept that their faith is not shared by KM, that she was not brought up in it by DM and now does not regard herself as Muslim. Through their engagement with Ms Snow they have come to understand that KM's current views and values may be considered antithetical to traditional Muslim beliefs. Their response was to regard the happiness and wellbeing of KM as being of more importance than any differences she may hold from their own values which, if I may say, speaks volumes for their tolerance, compassion and ability to prioritise their daughter's needs.

15.

It is also clear to me in reading this report that the parents draw strength from each other and that relationship. The parents' marriage was arranged on their behalf after KS had seen AS, albeit without being introduced, and decided that she was someone whom he would wish to know better. The courtship was brief but from such a superficially unpromising start resulted a bond which deepened to one of love and partnership and has been a source of strength and support to them both throughout their adult lives. It has borne them through not only the general hardship they endure in terms of the hard physical work they do for the limited financial reward they receive but also through the tragedy of the death of one of their children as well as their detachment from KM, their youngest child. AS and KS have remained united and committed to each other. Through their children and now grandchild, AS and KS have created a wider family which was described by Ms Snow as 'very considerate and affectionate', 'easy and warm' and 'with lots of laughter.'

16.

Both parents were clear about their love for their youngest daughter and their desire to not only be in more frequent communication with her but to actually see her and to spend time with her in Country A if and when she chooses to visit. The parents believe they could offer KM much in terms of a reconnection with her birth family and support if or when she starts to fill in the gaps in her life. However they equally well understand that none of these things can or should happen until KM chooses to make herself available to them and was open to that degree of engagement. The parents understand that as much as they want to see KM it cannot happen until it is what KM wants and that any attempt to do so before she is ready would only leave KM unhappy, angry and more likely to bring about that which they most fear, namely for KM to turn her back upon them and for them to lose her again but this time on an even more permanent basis.

17.

The importance of the parents' stance cannot be over-emphasised. For much of the proceedings it was understood that the parents sought an outcome which would result not only in reunification with their daughter but reunification in Country A. At the same time KM has been clear throughout these proceedings that she was unwilling to contemplate either of those things happening. Ms Snow's engagement with the parents has enabled all concerned to be better informed and to gain a proper appreciation of what these parents actually want. Whether it has been the case that their views have been unchanged throughout these proceedings but, literally, lost in translation, or whether as a consequence of having the opportunity to reflect upon the reality of the adamant views of an older teenager, it is clear to me from the evidence I have read that what these parents want is not a specific arrangement as to where, by whom and when KM is looked after but rather to maximise her emotional happiness and sense of wellbeing which means not seeking to impose anything upon her but allowing her to have the time and space to take the steps that she wishes to take, if any at all, in terms of reconnecting with her birth family. AS herself put it far better than I:

I would be so afraid that [KM] would be angry if we tried to force her. We do not want to force her to do anything or to make her unhappy. We just want to be a part of her life and for her to not forget us. We love her and just want to communicate with her.

18.

For my part I could not but be impressed by the patience, tolerance and commitment which AS and KS have demonstrated throughout the winding path of these proceedings and now be equally impressed by their insightful and child-centric view of what would best for their daughter. It is the hallmark of loving parents.

19.

In my first judgment in these proceedings in relation to the arrangement whereby KM came to be cared for by DM and his then wife I wrote the following:

..the reason for the arrangement being made appears to have been a combination of the relative poverty in which her parents found themselves coupled with ill-health on the part of [AS] and a fear for KM's welfare if either were to significantly impact upon their family. There is no evidence that KM was an unloved or abandoned child in the eyes of her parents and I have no difficulty in accepting that the driver for this arrangement on the part of her mother was a concern to ensure that KM was spared hardships all too familiar to them but instead enjoyed opportunities which they probably believed were beyond what they could ever provide.

20.

The above passage suggested the motivation for KM's departure from her family was as much about the potential benefits which others could offer as a desire to avoid the possibility of dangerous ill-health. Since then some further information has come to light which may be relevant to that matter. In Ms Snow's report it is noted that AA lost her mother to an illness which appeared to have been related to breathing difficulties, possibly asthmatic in origin. AS herself was suffering from such difficulties at the time the arrangement was made for KM to be cared for by DM. Years later AS and KS lost an adult child when he suffered breathing issues related to his employment. It may be difficult for those who have only even known free, high quality medical care available on demand to fully appreciate the concerns of those who are aware not only of the risks of ill-health but also their real lack of protection if illness should occur.

21.

It is clear that AS was not just aware of what her daughter could not have if she remained in their village but was thinking as much about the very real possibility that an illness with which she was too familiar might impact upon them directly and potentially even fatally. Seen from that perspective the decision to allow KM to be cared for elsewhere is properly to be regarded as an act of devotion to the immediate welfare of a child and underlines the commitment they have demonstrated throughout these proceedings.

22.

That loving commitment is witnessed in the parents' appreciation of what KM has been saying to professionals, particularly her Guardian. There should be no doubt that KM's views are as far removed from the stereotype of the stropky, selfish, narcissistic teenage girl as could be possible. KM is a devoted and loving daughter, she has sacrificed her lifestyle, her homeland, her friends, her education and all that she has known in order to ensure that her Dad could receive the help that he needed and, as importantly, that she could continue to be able to spend time with him, both as a reflection of her love for him and because of her deep attachment to him. KM's 'Dad' is, of course, DM.

23.

To make this point is not to denigrate KS at all but to reflect the reality that KM has a solid, deep and secure attachment to DM created out of the life they have shared for all the time that she can remember.

24.

In my view it is important to understand KM's perspective. Until his move into residential care DM was KM's only constant, full-time carer. All she has known throughout her life is being looked after by

her Dad until, by reason of his developing dementia, she found herself looking after him. Whether in receiving or giving that loving care the bond with DM has only grown in strength. If anything the developing difficulties being experienced by DM means that the time she now spends with him only makes KM more aware of his mortality, of the limited time that they will have in the future and so raises rather than lowers his importance to her. This is evidenced by her assiduous attendance at the contact she enjoys with DM, assisted as she is by DM's adopted daughter, another KM. The two KMs have a bond as devoted daughters of DM and for the younger KM the other KM offers her a connection to her Dad which only serves to assist her at this time. The knowledge that her parents love her, would have liked her to return to them and wish to become a part of her life in the future, whilst intended to reassure KM has, to a considerable extent, acted as a concern that her connection with DM will be diminished and that she will be encouraged to be distracted from him and involuntarily pivoted towards AS and KS. That is an obvious point of conflict for KM.

25.

I have no doubt about the positive nature of the father / daughter relationship which KM enjoys with DM but it is also clear that KM is open to a future exploration of her relationship with AS and KS, she said as much to the Guardian as well as to Ms Snow. The issue for KM is being allowed to do that in her own way and at her own pace. At the present time that way is through the receipt of some indirect contact in the form of letters, the primary purpose of which is for KM to receive information she wishes to know about some aspects of her earlier life. Reciprocity is not where KM is at at this point in time, she wants to receive but does not feel able to share in return. That is her right. There is an obvious danger in attempting to force the pace or place expectations, which will undoubtedly be viewed by KM as demands, upon her to offer something in return. From KM's perspective her parents are not in position to expect or require her to do anything. Their current absence from her life, she may well feel, is the consequence of their decision many years ago to allow her to be given to others. She has built a separate life because of their absence and they cannot now simply walk back in and attempt to either wind back the clock or pick up as though the intervening years never happened. Fortunately for KM neither AS nor KS want to do either and are clear as to the need for patience without any guarantee of reward.

26.

The final pane of this triptych is the position of DM. Although DM is geographically closer to these proceedings than the parents he is now permanently removed from any direct involvement by reason of his diagnosis of Alzheimer's Disease. Fortunately for both it appears to be the case that DM is able to recognise KM on her visits even if he tires quickly. He is now a man in his Eighties and his strength and vigour are waning. The picture painted as to his actions in firstly securing the care of KM when she was a baby and then cementing that care in the courts of Country A may suggest a degree of duplicity and manipulation on his part. However even though I now have a clearer understanding of the perspective of AS and KS as to what happened back in 2006 in Country A I have not had the opportunity to hear directly or even indirectly from DM as to what was in his mind when he first intervened in KM's life. Now that this cannot happen and there is no other evidence available to me as to what was intended by his actions it is not appropriate to tarnish him with any suggestion of poor conduct. Instead the parents can take solace from the fact that KM is not just alive and well but a young woman of admirable personal qualities, she is intelligent, well-educated and has clear prospects of leading a life in which she can fulfil her potential. Not all children have such prospects and her parents themselves may contrast the life that KM has led to date and all that she may do in the future with the limited choices they were faced with at her age. Far more than the material benefits which DM has provided to KM are the qualities in her which he has inculcated by his care for

her down the years. KM is loyal, loving, caring, capable and reliable. She is developing self-sufficiency and showing herself to be capable of formulating a sense of individuality and of identity from all of the experiences of her life to date. There is much that DM has done for KM in the intervening years and the proof of all of that is the daughterly devotion KM has for an ailing father. Not all Dads have daughters who reflect and magnify the love they first received.

The positions at final hearing

27.

Following receipt of the report of Ms Snow many of the anticipated issues and arguments fell away as it became clear that the parents were not seeking the return of their daughter to their care. I should make it clear in this judgment that the conclusion of this thorough, professional and above all sensitive assessment was that despite the parents' obvious good qualities, their appreciation of their daughter's needs and their willingness to take any necessary steps to facilitate a return to Country A for KM the gap which existed between what KM's wishes and feelings were and what the parents could offer to her in terms of their lifestyle and their ability to meet her specific needs simply could not be bridged. It was more of a chasm than a gap.

28.

It followed that the parents, no doubt with the benefit of good advice, were able to adjust their position to focusing upon the importance of contact given the reality that KM would be staying in this country under a care order. It has always been the case that in the event that a return to Country A was not in KM's best interests then she would need to be made the subject of a care order in the absence of family members in this country with whom she could live.

29.

The Local Authority, the Guardian and KM herself, having seen attempts at caring for KM by members of DM's family during the course of these proceedings fail for various reasons, were clear that a care order was a requirement in the absence of any person in this jurisdiction able and willing to exercise parental responsibility for KM in the remaining period of her dependency.

30.

The Official Solicitor, representing DM, was equally clear that given his inability to care for KM his best interests were met by KM being cared for in this country in accordance with her wishes and feelings and being able to spend time with him, again a powerful aspect of her view, which entirely accorded with what he would wish for. Therefore a care order was the only possible outcome.

Discussion

31.

There is no need for a recitation of the law in respect to the making of care orders because it is neither disputed on the facts nor contentious in principle. For the benefit of the parents I make only the following comments:

a.

I cannot make a care order unless satisfied that the factual evidence before allows me to do so on the basis that significant harm has already happened or would occur unless I made the order.

b.

Even if I decide that one of those two situations exist I should not make any order unless doing so is better than not doing so.

c.

If an order is required it should be the one which involves the least interference with individual rights and therefore the greatest autonomy of the child and parents.

d.

If a care order is considered to be the necessary order then in addition to ensuring that the factual grounds are established I have a duty to consider those aspects of the proposed care plan which deal with the care arrangements and the issue of contact.

32.

Dealing with those in turn.

33.

I am satisfied that threshold is met on the basis of the agreed Threshold Document I have been provided with. For the benefit of AS, KS and DM threshold is crossed not on the basis of any fault or failing on any of their parts but on the sole ground that KM is beyond parental control. For the benefit of KM she should be aware that whilst that ground is most often applied in situations where a child is behaving in such a manner as to risk either their life or some else's **that is most definitely not the case here.** KM is in the unfortunate position that there is no one in this jurisdiction who can exercise parental responsibility on her behalf and those who do have that authority are too far away and subject to limitations of language, time zones and communication difficulties to assist. In finding the threshold crossed on the evidence before me there is no blame attributed to anyone.

34.

A care order is necessary for the very reason set out above. There is no alternative option which can be made to work. Family members are not available and even if they were KM has a real need for focused assistance and access to services which only a Local Authority can provide. Being subject to a care order is welfare-positive for this person, it is not a necessary consequence of detriments which require managing.

35.

The real point of discussion was not the legal basis upon which KM would be cared for but how contact between her and her parents could best be facilitated.

36.

The statutory legal position is set out in the following sections of the [Children Act 1989](#).

[Section 34\(11\), Children Act 1989](#), which says as follows:

Parental contact etc with children in care

34(11) Before making, varying or discharging an order under this section or making a care order with respect to any child the court shall -

(a)

consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b)

invite the parties to the proceedings to comment on those arrangements.

Part 2 of Schedule 2 of [the Act](#) sets out the following provisions at paragraph 15:

15 Promotion and maintenance of contact between child and family

(1)

Where a child is being looked after by a local authority, the authority shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and -

(a)

his parents;

(b)

any person who is not a parent of his but who has parental responsibility for him; and

(c)

any relative, friend or other person connected with him.

(2)

Where a child is being looked after by a local authority -

(a)

the authority shall take such steps as are reasonably practicable to secure that:

(i)

his parents; and

(ii)

any person who is not a parent of his but who has parental responsibility for him,

are kept informed of where he is being accommodated; and

(b)

every such person shall secure that the authority are kept informed of his or her address.

(3)

[not relevant]

(4)

Nothing in this paragraph requires a local authority to inform any person of the whereabouts of a child if -

(a)

the child is in the care of the authority; and

(b)

the authority has reasonable cause to believe that informing the person would prejudice the child's welfare.

37.

All parties recognised that a critical outcome for KM from these proceedings was not just the securing of her welfare through the making of a care order but ensuring that the groundwork is in place in respect of future contact between KM and her birth family. Although there will be consequential benefits to KM by the making of such an order which will extend beyond her attaining the age of 18 the order itself will have only just over a year to run before automatically expiring. The real prize and therefore the challenge of the proceedings was to ensure that a framework would be created which

could ensure, as far as possible given KM's only nascent interest in engagement with her parents, that a future relationship between daughter and parents had the best possible chance of flourishing. As a result ensuring that the contact arrangements were appropriate was at the heart of the discussions.

38.

Setting up contact arrangements is not normally an unduly complicated matter, courts do it every day and the task is made infinitely easier with experienced social workers and Guardians informing the deliberations. Not so in this case. No one was difficult, unreasonable or insensitive but the issue of how to kindle a non-existent parental - child relationship in the face of current reluctance, it would be unfair to say opposition, by an older child can be difficult and when added in the factors of geography, language, culture and time zones matters become more complicated still. To all of that had to be added a layer of logistics given that the parents are unable, from their home in their village, to simply communicate with KM as and when she would wish but need to be brought by professionals local to them to a place far from their home where they can access professional services as well as internet connectivity and interpretation services to enable even an email to be sent.

39.

To all of that had to be added a degree of resentment and disquiet by the parents and certainly their legal teams as to what they perceived as the Local Authority's exclusion of the parents from meaningful engagement in these proceedings as befits those who are the parents of the child concerned, who have or are to be regarded as having parental responsibility and who therefore under the laws of this jurisdiction, have clear rights of participation, engagement, communication and inclusion in decision-making pertaining to their child.

40.

I do not consider it necessary to adjudicate upon the rights or wrongs of the actions of the Local Authority in how the parents have been included or not within the statutory processes with which the Local Authority is required to comply. It is sufficient to note that both the Guardian and Ms Snow felt that communication with the parents was not as it could have been. More trenchant criticisms were regularly levelled during successive court hearings by the parents' advocates.

41.

What is clear to me is this:

a.

The parents are ready, willing and able to meet any and all requests of their daughter in terms of what she seeks from them by way of information or communication.

b.

The parents understandably wish to make up for lost time, both prior to and during these proceedings and set about building a relationship with the daughter whom they love.

c.

KM is not opposed to parental communication; she merely wishes to enjoy it at her pace rather than endure it at theirs.

d.

That communication and any subsequent development of it must not be at the expense of her relationship with her Dad but to accept that at this time and for the foreseeable future KM's priority is DM and the time she can spend with him.

e.

There is an obvious benefit to KM in being able to develop a relationship with parents and siblings with whom she shares so much and from whom she can learn so much about herself and their lives which can only add to her own ability to reflect upon her own life, her place in the world and how she sees herself as she steps into adulthood.

f.

KM as a person of and from Country A has much to benefit by recognising the benefits of being familiar with the culture, heritage, language and history of her origins and that there is no one better to enable her to understand that experience than her family who are rooted in all of that.

g.

The Local Authority's duty to promote reasonable contact must allow not only for the above to take place where it can do so but must ensure that it takes no actions to undermine that from happening.

h.

That duty therefore carries positive obligations upon the Local Authority to assist the parents to ensure that they can properly understand and engage effectively with KM if, without such assistance, their efforts would be unworkable or be mismatched with what KM wants.

42.

Having considered the care plan with specific reference to the arrangements for contact I am satisfied that it meets KM's needs in all matters set out above. I posed the question during submissions as to whether an order under [s.34\(3\) of the Act](#) was required rather than the matter being left to the Local Authority under its care plan. I am satisfied that an order would be the wrong outcome for this case for the following reasons:

a.

Such an order is made for the benefit of a parent and therefore aimed at the Local Authority. Whilst there may be a residual belief that this Local Authority would be more inclined to do what it is directed to do rather than under its own discretion I am satisfied that the Local Authority is clear not only as to what it shall now do but how it shall now do it. One of the difficulties for the Local Authority was being unable to penetrate the layers of distance, language and culture between itself and the parents during the proceedings. Those obstacles have now been removed or circumvented and all are clear as to what is going to happen, when and how. The care plan is the result of such actions.

b.

An order brings certainty but inflexibility. Whilst the former is welcomed the latter is to be avoided. In any event there can be no certainty as to anything at this point in time because it is all dependent upon the wishes and feelings of KM and they cannot be boxed nor she made compliant. That route will lead only to her withdrawal from any prospect of future development of a relationship with her parents.

c.

An order is never targeted at a child and therefore the prize the parents seek, of direct engagement with KM simply could not be achieved by the making of an order. What KM must be allowed to develop is a willingness to engage, it cannot be inculcated into her because only she can grow that feeling of engagement.

d.

An order would have a limited life. In just over a year it would go. This process may well take far longer to come to fruition, whatever state 'fruition' may mean. It will be a work possibly measured in years and will form part of KM's engagement with the Local Authority as a formerly looked after child when she is an adult and has otherwise stepped away from any form of care.

43.

For all of those reasons the only order to be made to conclude these proceedings is a care order. I accordingly make such an order.

44.

The making of this order does not conclude all matters.

45.

It has been properly raised that KM's right to stay in this jurisdiction needs to be resolved. At the present time KM has no indefinite leave to remain in this country. In due course that must be resolved so as to enable her, assuming that she wishes to do so, to remain indefinitely insofar as the law will allow her to have that option. I recognise that it is not within the gift of the Family Court to determine questions of immigration, residence or rights to remain for a child the subject of proceedings. However because of rather than despite that lack of standing in respect of such matters it is necessary to comment upon this issue. KM is a national of Country A and who travels upon a passport issued by that state. She has no claim to citizenship of this country and came here only because DM, who is and has always been a citizen with a right of residence, was sent back here by those looking out for his welfare in Country A. As previously set out KM travelled with DM because he is, to her, her 'Dad' whom she simply cannot recall nor contemplate not being able to be with. Her right to remain in this country is critical therefore to enable her to maintain that relationship, even if it can now only be enjoyed and experienced in much more limited ways. At the same time it is necessary not only for KM to feel secure in her day-to-day living here because there may, hopefully, come a time when she wishes to travel to Country A and possibly even to do so to meet with her family there. In order to do so KM will want to be sure that a departure from this country will not mean she then cannot return. Whilst that is her concern it could inhibit any desire she might have to fully reconnect with her family as it will raise the concern that in so doing she is, once again, losing something important to her. It is imperative therefore that as part of the future prospects of KM enjoying a relationship with her family in Country A she has security of entitlement to remain in this country and to go and come as any other accepted resident.

46.

There is a further side issue of KM's nationality. She is a citizen of Country A. That country does not permit dual nationality and therefore at some point she may need to make decisions about how she sees herself and whether her personal view of where she belongs is reflected in her nationality. That is an issue for the future but should not go unmentioned here.

Conclusions

47.

This judgment brings to a close these elongated, complex and at times procedurally tortuous proceedings. There are however some brief matters which properly should be included at the end.

48.

I would like to place on record my thanks to all the legal professionals who have contributed to these proceedings. The parties have had the benefit of legal expertise of the highest quality and I hope, in

particular, that AS and KS's participation in the legal process has not left them feeling dissatisfied with this experience, even if they have not secured the cherished return of their daughter to their care. Ms King KC was keen to ensure that due regard was given to all that Ms Kirby KC had achieved on behalf of the father prior to being professionally committed elsewhere for this final hearing. I am happy to do so. All the lawyers together with the Guardian and the social workers are to be thanked for their consistent application and unremitting hard work in driving the litigation towards a conclusion.

49.

I cannot over-emphasise the assistance which has been provided by the Embassy of Country A throughout these proceedings. At every stage the Embassy has been a patient observer at the many hearings which have taken place, never intruding but always willing to assist any party. I have never experienced such dedicated professionalism from any other Embassy or Consulate in my judicial experience. KM, AS and KS have had a quality of service from their country which has been without peer and which has ensured their needs have been met at all times. I remain grateful to the Embassy and its staff.

50.

After this judgment was handed down the mother, through Ms Wheeler KC, wished to thank DM, via his legal representatives, for all that he has done for KM and to express her sadness that he was now ill. The mother's generosity was matched only by her sincerity and spoke volumes for the quality and kindness of spirit which both of the parents have manifested directly to Ms Snow and, indirectly, to this court.

51.

Finally, I should like to express a hope that the time will come when KM, probably an adult and quite possibly years older than she presently is, will find herself able to board a flight and return to Country A. If so I hope she will not stop in the city with which she was once very familiar but will travel onwards to a place about which she will have little, if any, memory and there meet with her family and continue a journey of re-engagement which she will have been travelling on for some years. That re-engagement will hopefully not be through any desire to obliterate the intervening years since she was last in that place but instead to take full advantage of all that her Dad was able to do for her and all that he enabled her to become and be ready then to discover all that her family can offer her in fully understanding her own unique place in the world. If that comes to pass then KM will have brought together all that her entire family, by which I mean AS, KS and DM, have together been able to offer to her.

52.

That is my judgment.

18.5.23