

MRS JUSTICE THEIS DBE

Approved Judgment

Neutral Citation Number: [2013] EWHC 1433 (Fam)

LA v MF & Others (No 2) (Welfare)

Case No: IL11C00774

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/05/2013

**Before:**

**MRS JUSTICE THEIS DBE**

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**Between:**

LA

MF

CY

RN

N  
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**Mr John Church** (instructed by A **Local Authority**) for the **Applicant**  
**Mr Marcus Scott-Manderson Q. C. & Ms Marie-Claire Sparrow** (instructed by Pritchard, Joyce & Hinds) for the **1st Respondent**

**Mr Rex Howling Q. C.** (instructed by Goodman Ray) for the **2nd Respondent**  
**Ms Deirdre Fottrell** (instructed by Creighton & Partners) for the **4th – 7th Respondents**

Hearing dates: 7th – 10th 13<sup>th</sup> and 24th May 2013  
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**Judgment**

This judgment was handed down in private on 24th May 2013. It consists of 20 pages and has been signed and dated by the judge. The judgment is being distributed on the strict understanding that in any report no person other than the advocates and their solicitor may be identified by name or location and that in particular the anonymity of the Respondents and members of their family must be strictly preserved.

**Mrs Justice Theis DBE :**

1. This matter concerns care proceedings relating to four girls DN born 20 October 2001, GN born 8 October 2006, GRN born 21 October 2008 and CMN born 25 December 2009. The three youngest are the children of RN and MF, hereafter referred to as the mother and father.
2. The eldest DN was originally thought to be the father's child, but DNA tests have proved otherwise. There is limited information available as to the identity of her parents; more recently, an issue has arisen regarding her true age.
3. The Local Authority (LA) seeks care orders for all four children, together with placement orders. Their care plan for DN is to place her in a long term foster placement, which will involve a move from her current carers. It is planned she will continue to have contact with the younger three children. The plans for the younger three children are for them to be placed together. CMN will join her sisters in the summer; they will all remain placed with the carers who have cared for GN and GRN since November 2011 when they were placed with foster carers. It is proposed that contact with their mother will continue, but be reduced from the current frequency of three times a week to four times a year for extended periods to take place in the community.
4. Neither the mother or father dispute the LA's plans for DN, and they are supported by the Children's Guardian, Ms Smith.
5. The mother seeks the return of the younger three children to her care, either here or in France. If they can't be returned to her care she proposes an alternative family placement with Mme Tu, her aunt who lives in France. At an earlier stage in the proceedings she also suggested Mme Mb, but did not pursue that option at this hearing. If that is not possible, she wants the children placed in care in France, where she considers they would be placed with a more culturally appropriate foster carer. She opposes the applications for a placement order. Her position is supported by the father.
6. The Children's Guardian, Ms Smith, supports the plans proposed by the LA.
7. Before turning to the background of the cases there are a few general comments I would wish to make.

(1) There has been considerable delay in this case. The children were placed in the care of the LA in November 2011 when the parents were arrested and charged with offences of assault and child cruelty. The parents subsequently challenged the jurisdiction of the court to make orders, as they submitted the habitual residence of the children was in France. That issue was raised six months into the proceedings and, despite the inevitable delay, needed to be determined. That issue

was determined after the children had been with foster carers for a year. It is essential the court is alive to issues of jurisdiction, enquiring of this issue in cases where it may be relevant at an early stage in the proceedings and making effective directions for it to be determined without delay. That did not happen in this case.

(2) This hearing was to consider welfare, with a time estimate of four days. At the start of the first day the father's counsel had to withdraw from the proceedings, followed later that morning by his solicitors. After enquiries made by the court a new legal team was effectively on board by 3.30 that afternoon. The court is enormously grateful to Ms Hollmann of Goodman Ray and Mr Howling QC for taking this case on at such short notice. They have provided the father with extremely effective representation. The court is particularly grateful when it is very aware of the huge pressures on legal representatives who undertake publicly funded family work. Their response to the request demonstrates the enormous commitment and dedication of those who undertake this work, which is often not properly recognised. If they had not so efficiently responded to the request there was a real risk there would have been further delay for these young children, who have already waited over 18 months for a decision about their future.

## **Background**

8. The detailed background is set out in the judgment I gave following the five day jurisdiction hearing I heard in November 2012 and should be read together with this judgment. I do not propose to repeat the detail of the background, but will only summarise the salient issues.
9. Both parents originate from Cameroon. The father came to England in 1996 and claimed asylum, all rights of appeals were exhausted in 1998. The father married a French national, SL, on 3 April 1998. They subsequently separated and divorced although the father was unable to give any detail.
10. The father returned to Cameroon and met the mother. During that five month trip he met the Second Respondent, CY, and, according to the father, DN was conceived. He said he returned to England before DN's birth in Cameroon on 20 October 2001. This account given by the father has subsequently been put into doubt. DNA tests undertaken during these proceedings have shown that the father is not related to DN and information given by DN since she has been in care to the allocated social worker Ms Green suggests her date of birth is in fact 2 years earlier, in 1999.
11. In February 2006 the father returned to Cameroon and married the mother. On 8 October GN was born in the Cameroon.
12. The father returned to England and applied for housing in November 2006. In the application form he refers to three other older children, two of whom the mother in her evidence at the hearing in November said she had never heard of.
13. The mother and GN joined the father here in January 2008 pursuant to an EEA Family Permit to join a spouse. The mother applied for further leave to remain in May 2008, which was issued on 10 July 2009 and is valid until 10 July 2014.

14. GRN was born here on 21 October 2008. A further housing application was made early in 2009. On 2 April 2009 an application was made for an EEA family permit for DN. This was refused, and no appeal was lodged.
15. In August 2009 DN came to England, via France. The French Consulate in London granted a 'Certificate of entry in the register of France Citizens established outside France and of residence'. DN was enrolled at SH Primary School in September 2009, she subsequently moved in November 2009 to RB Primary School. The father made housing applications to LA, according to the forms, due to his redundancy and having to move accommodation. Again these forms referred to older children.
16. CMN was born on 25 December 2009. In January 2010 GN started at RB School. The father made a further application for housing in early 2010.
17. In about March or June 2010 the parties separated. The reasons for that separation were not entirely clear. The mother went to stay with friends, leaving the children in the care of the father. She returned to stay at the family home for four days each week, the evidence in the November hearing was unclear as to whether she stayed for those four days or visited daily during that period.
18. According to the mother she was unable to get any financial support here and began looking at what the position would be if she moved to France. The father signed a document on 1 April 2011 that authorised DN to travel to all countries of the European Union.
19. On 21 July 2011 DN and GN broke up from RB School.
20. On 22 July 2011 the mother and all four children travel to France by Eurostar. The mother applied for support in France. She was given hotel accommodation between 22 and 19 August, before they were given 3 bedroom accommodation in France on 19 August. DN and GN did not return to RB School and were enrolled at schools in France together with GRN. The mother received a French identity card in September.
21. The education authorities here made enquiries as to the whereabouts of DN and GN, as they did not return, as expected, at the start of the autumn term. The father informed the school that the children were looking after their mother who was very ill. He refused to give any address where they were staying. The headteacher at RB School made a referral to social services.
22. According to the mother, she spoke to the father in early October and they agreed, as DN had not settled in France, she would return her to England.
23. On 7 October 2011 the mother returned with all four children. Once here it was agreed that GN would stay with DN as it was not thought fair to leave DN on her own. The mother said she only agreed if GN was happy. The mother returned to France on 9 October 2011 with GRN and CMN.
24. On 10 October 2011 DN and GN returned to RB School. According to the parents GN did not settle and it was agreed the mother would return to collect her at half term.
25. On 20 October 2011 the mother, GRN and CMN returned to England.

26. On 24 October 2011 the father obtains a tenancy of Flat in SW9. All four children are named as authorised occupants and the tenancy agreement confirming these details is signed by the father.
27. On 28 or 29 October the father assaults DN. She alleges he injured her head with his car keys. The mother, father and all four children were at home at the time as they were packing for the move to new accommodation. In her subsequent police interview the mother admits leaving all the children alone for about 30 minutes while she went out to get some chips. At some point that day the father booked a ticket for the mother and three younger children to return to France on 1 November.
28. On 30 or 31 October the family moved to the new accommodation.
29. On 1 November 2011 the father attended RB School with all four children; he said it was to return some books. The headteacher spoke to him about her concerns regarding the children not attending school. He agreed DN could stay. DN had a cap on. When she was asked to remove it later that day she disclosed the wounds on her head had been caused by the father using a car key. The headteacher made a referral to social services.
30. All the children were placed in police protection and the parents arrested and interviewed. Both parents had legal representation. The father gave a no comment interview following a prepared statement. In that statement he said he lived on his own with the four children. He said DN's mother was in the Cameroon and he did not live with the mother of the younger three children; he said *'she moved out of London when I lost my job but she was unable to get benefits so left the children with me'*. The father denied harming DN. The mother responded to the interview questions. Her account in interview was that she thought the injuries had been caused by the father as he was cutting DN's hair.
31. DN and CMN were placed in different foster placements and GN and GRN were placed together. They have remained in those foster placements; the LA plan is for CMN to join GN and GRN this summer.
32. On 3 November 2011 the father was charged with assault and both parents with child cruelty. They agreed to the children being voluntarily accommodated.
33. The LA conducted a core assessment between 10 November and 9 December 2011. According to that assessment the father informed the social worker that he had been the main carer of the children for the previous two years. This was confirmed by the mother, who agreed she did not live with them but visited frequently. The mother denied that either she or DN had been emotionally or physically abused by the father.
34. The LA issued these proceedings on 22 December 2011, as the parents withdrew their consent to voluntary accommodation. The matter was transferred from the FPC to the PRFD and directions given for a six day fact finding hearing in June 2012.
35. On 16 April 2012 both the mother and father were convicted following a five day hearing at the Crown Court. The father of assault and child cruelty and the mother of child cruelty. On 16 May 2012 the mother was sentenced to 9 months imprisonment suspended for 2 years, 12 months supervision and 100 hours unpaid work. The father was sentenced to 3 years.

36. The matter was restored back to HHJ Cox and on 31 May, the issue of jurisdiction was raised, the matter was transferred to the High Court for that issue to be determined.
37. I heard the matter for five days in November and gave judgment on 28 November 2012. I determined this court did have jurisdiction, as the children were habitually resident here at the time these proceedings were commenced. I also concluded the threshold criteria were met and gave directions for this welfare hearing.
38. The mother appealed my decision on jurisdiction. She was given permission to appeal by Ward LJ, but the appeal was dismissed when considered by the full court on 23 April 2013.
39. Following the hearing in November the father has remained in prison. Information provided at this hearing clarified that he would be eligible for home detention curfew on 5 June 2013 (subject to assessment of his home address). His early release date is 17 September 2013 and his licence would expire in April 2015. He did not file any statement, as directed, dealing with his response to the findings I made in November. However, Mr Howling QC was able to outline his position on the second day of this hearing and filed a position statement and statement from the father later that day.
40. The mother has remained living in the property at SJC. She has continued to have regular contact with the children three times per week. It is accepted that the quality of the contact is very good. She has always taken up the contact and makes it enjoyable for the children by preparing food and activities for them. Her management of the end of contact is reported to be child focussed and ensures the children are not distressed. She has filed three statements since the November hearing. The first following my direction at the end of the November hearing setting out her response to the judgment, the second in April and the third during the course of this hearing.
41. The mother was recently assessed by Dr Blumenthal (Consultant Clinical Psychologist). He provided a main report and an addendum. In addition she has recently been receiving support from a clinical psychologist for the Dispensaire Francais, a clinic which offers medical treatment to French speakers who are in the United Kingdom.
42. I heard the oral evidence of the allocated social worker Ms Green, Dr Blumenthal, the mother, Mme Tu, the father and the Children's Guardian.

### **The evidence**

43. Ms Green has been the allocated social worker since 22 May 2012. She has been actively involved in the case; regularly visiting the children, she has observed contact and travelled to France to undertake the assessment of Mme T. Her detailed statements set out her involvement.
44. She describes in her statement information given to her by DN in March 2013 regarding her background. She gave a different surname, a different date of birth and gave details of two brothers. She described her school in Cameroon. The statement records DN stating that her identity information was forged in order for her to gain entry to the UK, she was given a different date of birth by the father as she did not

speak English and this would help her gain additional education. DN says she was told to call the parents 'dad' and 'mum'. Following this information the LA has instructed a private investigator to make enquiries in Cameroon regarding DN. Unfortunately that has, to date, not revealed any tangible information. Ms Green acknowledged from DN's perspective clarity regarding her age was needed, sooner rather than later as she is due to leave primary school this summer. If she was born in 1999 rather than 2001 that has implications for the arrangements for her secondary school education, which need to be planned in advance of the start of the next academic year.

45. In her oral evidence she was clear this was not a case where the mother could not provide the day to day practical care for the children, the concerns centred on her ability to protect the children from harm; *'can she safeguard the children, that is the issue'*. She acknowledged GN and GRN have said they want to live with their mother, but the extreme neglect of DN at a time when she was in the mother's care remains a great concern to her. There were a number of features of the mother's behaviour which caused her concern in this respect. For example, the positive step that the mother had taken to make arrangements to seek support for her and the children in France, yet despite doing that she still returned the children (DN and GN) to be cared for by the father. Ms Green's evidence was given before the further acknowledgement by the mother, during her oral evidence in this hearing, of events in the family home (e.g. the assault of her and DN by the father). She accepted the mother had made some acknowledgement of the harm that had been caused to the children (for example, by wanting to say sorry to DN), which she regarded as positive, but she described it as a *'very late shift'* by the mother. She was criticised for not doing anything to assist the mother. She responded that until very recently the mother had consistently denied there was any harm or domestic abuse in the home, other than her acknowledgment of the conviction. She was awaiting the outcome of the assessment being undertaken by Dr Blumenthal and was aware that the mother was travelling to and from France, where she had support. In relation to contact, she was kept updated on events at contact through the detailed contact recordings. She accepted they were positive, the mother's attendance was good, they showed emotional warmth between the mother and children and she took on board advice.
46. Ms Green did not accept that the mother was isolated; in her view she had in many respects been quite resourceful. When she separated from the father she stayed with friends. She was able to make the necessary arrangements to plan for the trip to France in July 2011 and effectively navigate applying for assistance there. She remained in communication with the father, and made arrangements to return back to this jurisdiction. Ms Green said she had seen the mother at the LAC reviews and did not consider any further assessment by the LA was necessary, due to the history of the case and Dr Blumenthal's conclusions.
47. She was asked about her assessment of Mme T she agreed the viability assessment undertaken over the telephone by Mme S was, on balance, positive and required further investigation. She said much of the information she worked on came from the mother's legal representatives. She was concerned that that Mme Tu had not followed up the enquiries made under Art 55 (Council Regulation (EC) No 2201/2003) when Mme Tu had been away. She said she spent three days in France in October 2012, saw Mme Tu three times, discussed matters in detail with her, each time with an interpreter and had the assistance of an interpreter when she made enquires with

social services. She outlined all the enquiries she had made and said she was 'confident of the material' she based her conclusions on.

48. She agreed she had not seen the father since his sentence in May 2012, other than at court hearings. She agreed that work needed to be undertaken with the children about their father and look at indirect contact, by way of cards and pictures. She agreed this work should commence before the father is released.
49. The father raised concerns regarding medical treatment for GRN and CMN Ms Green was going to check the updated position, as this had only been raised during this hearing.
50. The mother's detailed written evidence, in two lengthy statements, prior to the start of this hearing was clear. Although she accepted the fact of the conviction and my findings there was, in reality, little acknowledgment of what lay behind them, or any light cast on what the circumstances were. For example, in her statement dated 30 April 2013, a week before this hearing, she said '*Since GN has been in the care of the Local Authority I have found out that she has said she was beaten by the 3<sup>rd</sup> Respondent. I am extremely shocked by this information as she did not say anything to me and I knew nothing about it. I am extremely sorry and upset that GN also suffered at the hands of the 3<sup>rd</sup> Respondent and wish I had done more to protect my children and DN.*' A little later in that statement she says '*..I said the 3<sup>rd</sup> Respondent was a good father based on how he was with the children when I was present....throughout the course of these proceedings I have come to realise that the 3<sup>rd</sup> Respondent is not a good father*'. Since November she has said she was affected in the November hearing by having to give evidence in front of the father. Arrangements were made during this hearing so that she could not see the father when she was giving her evidence.
51. Following receipt of the report from the Children's Guardian, Ms Smith, on the eve of this hearing, the mother filed a further statement on the second day, before giving her oral evidence. In that statement she said as follows '*When I returned to England at the end of October 2011 to collect GN and return her to France, GN reported to me that the 3<sup>rd</sup> Respondent had tapped her on the shoulder and showed me how he had tapped her shoulder. As soon as I saw the 3<sup>rd</sup> Respondent I asked him why he tapped her but the 3<sup>rd</sup> Respondent didn't answer. I told him not to hit any of my children.*' It was said the reference by Ms Smith in her report to GN saying that she had been hit by the father and had told the mother had prompted this recollection by the mother of these events.
52. In her oral evidence the mother went somewhat further, giving more information about her and the children's relationship with the father. She described controlling and verbally abusive behaviour towards her, happening on a daily basis. He would lose his temper with her, particularly when the children were making a noise. There were occasions when he would remove GN from her during the night when she was a baby, as she was crying and making a noise. The mother was trying to console her, but the father would take GN and put her in another room. The mother became very distressed when giving this evidence.
53. She said the father frequently lost his temper with the children when they made a noise, shouting at them to sit down and to sit still in a way that obviously frightened them. It was not until some way into her oral evidence, during cross examination on behalf of the LA, that she described, for the first time, an incident when both she and

DN were assaulted by the father. It followed a visit to DN's school, the father was demanding to know why she was behaving in a certain way at school; he pursued her up the stairs. The mother said she followed as she was concerned what he was going to do. She followed them into the bedroom and he slapped DN's face, DN fell back against the wardrobe. The mother thought he was going to hit DN again, she put herself in the way and he struck her on the face. She said this took place before she left the home in 2010.

54. She accepted the evidence she had given in November that DN had not been singled out as wrong. She described how the father would tell her she had no rights over DN, that it was for him to decide matters about her.
55. She referred in her oral evidence, for the first time, to details of what support had been provided by the Cameroonian community here. Although very difficult to get a clear picture, it appears when the father was sentenced someone called GT assisted the father with the practical consequences that flowed from the father being incarcerated. The mother said they regarded the father's behaviour as '*bad*', she said she was given some money and opportunities to work. In particular doing hairdressing. Her evidence was far from clear how the rent and the other expenses on the property were being paid. It appears Mr GT assisted in some way. What was not clear was how much, if any, of this was at the direction of the father, or not. It appears Mr GT attended outside court on the first day of this hearing, the mother thought to try and see the father and see how he is. She said they (the Cameroonian community) will '*ask the father to change his behaviour*'. She gave details of the owner of a shop giving her food to prepare for the children at contact, but it remained unclear how this person fitted into the support being given and at whose direction and expense.
56. The mother was cross examined on behalf of the Children's Guardian about the impact on the children of her leaving them in the care of their father when she left in 2010. She seemed unable to grasp the risk that left the children in, due to the way she had described the father behaved towards them. She seemed unable to give a detailed account of the incident when she and DN were hit by the father in a way that appeared credible. She displayed no emotion bearing in mind, on her account she was being physically hit for the first time. She said it didn't hurt and DN didn't cry, even though the father had slapped her across the face and she had fallen back towards the wardrobe. Following this incident she had not asked DN whether she had ever been hit before or since. When asked why she had not asked DN if the father had hit her after she left, when she knew he had hit her before, she said *DN is RN's responsibility. I had more strength with my children.* However, she agreed if the father was hitting DN it would have been, at the very least, frightening for the other children. In relation to the children living with Mme T she was asked whether the plan is for the children to live with her until they came back to her, she replied '*Up until I can prove to the court I am capable and give me permission..*'
57. The father gave evidence. For the first time he accepted he had slapped DN, but did not accept he had assaulted the mother, '*I don't remember slapping mother*'. He made some limited concession that his behaviour towards the mother was frightening for her. In relation to the children he accepted he threatened them as a way of controlling their behaviour. He did not accept he had ever made them take up the punishment position described by DN and GN (kneeling holding their arms out stretched for periods of time), but accepted he had threatened them that he would get them to do that. He was unable to identify the woman on a photo brought to court by the mother.

All he could say was it was a cousin but he had forgotten her name. He was unhelpfully vague about the Cameroonian community, although accepted GT was a friend of his but said he had not visited him. He apologised for what he had done and at one stage in his evidence showed some visual emotion. In cross examination by the LA, he seemed unable to accept that slapping DN's face could hurt her, or that it could mean he was angry. He was asked about the person who DN said was her father; his answers was vague and thoroughly unhelpful.

58. Mme Tu is the mother's maternal aunt and great aunt to the younger three children. Her statement was not served until just before the hearing. It had been directed to be filed many months ago. The LA assessment it was responding to had been translated and sent to her. In her written statement Mme T challenged many of the factual matters described by Ms Green in her assessment. In her oral evidence she described her family who live with her and what she said occurred during the assessment by Ms Green. She denied any suggestion that her family are known to social services, or that there had been any difficulties with the historical attendance of her children at school or any difficulties with housing. She described the importance of family (*'family is sacred'*) but seemed unable to give any detail of regular contact with the mother. She had only met the children once and agreed she had made no attempt to contact them directly, or indirectly, since they have been in care. Both in her written and oral evidence she could foresee no real difficulty for the children in being cared for by her and making the transition to living in France.
59. Dr Blumenthal provided a main written report and an addendum following his interview with the mother on 14 February 2013. The mother denied any violence in the relationship towards her; *'MF denied there was every any violence in the relationship, telling me that he never hit her...she said it was enough for her that he raised his tone. She told me it was for this reason that she left the matrimonial home'*. She also denied the father hit the children or that she suspected him of doing so; *'she said that she never suspected he was harming DN because he never hit her ( MF)'; 'she responded that she did not know about this [GN allegation of being smacked] and said that if this had taken place GN would have told her'*. He was able to hear some of the mother's oral evidence prior to giving his own evidence. It was a critical part of her evidence, during cross examination by the LA. In oral evidence he moderated his written evidence where he said the risk of re-offending was low, to being low to medium. What became the most important consideration for him was what he termed *'the changing narrative account'*. He said that is what made the risk management so difficult, risks needs to be considered in their context and in this case there was great concern regarding deception. He said it would be a *'very difficult task for social services to do [manage the risk] because of the changing narrative account; never sure what is true or false.....a changing narrative account creates major difficulty understanding past and future.'* He said he was not recommending 'active management' as *'It would be very difficult in reality to supervise the situation, one of issues is changing stories, what happened and why.'* He acknowledged there were many positive features, but he got stuck on the issue of deception *'how can you actively manage with a high level of deception?'* If the mother *'turned a blind eye as to the abuse of her own children, changes complexion of the case, not one off event focussed on DN.'*
60. In relation to social isolation he was looking at the development of an informal network, which he did not think was present. He agreed the fact that she had taken up counselling was positive but he did not regard it as part of the risk management strategy due to the length of time it takes to alter modes of behaviour. He said he

would like to have been more positive but *'the negative sits in the way'*. These difficulties were in his view *'fundamental'*. He agreed when he saw the mother on 14 February 2013 she denied any assaults on her or the children other than the extent of the criminal conviction. He said what was so unusual in this case was that any hypothesis he had was stretched to breaking point; it had no credibility. He said it was the *'narrative inconsistency leads me to be stumped when trying to offer an explanation why it all occurred'*. He said the relevance of social friendships is that if she had a history of forming friendships and maintaining them they provide reassurance of a proper containing environment for development of children and containment of risks. He said he was not sure the deception by the mother was part of a journey *'I have considered that. I don't feel re-assured in [mother's] evidence this morning whether this was progress to more truthful story'*. He agreed that with the mother's account now of a number of episodes of abuse the risk increases.

61. Ms Smith was present throughout the hearing and was able to hear all the oral evidence. In her oral evidence she said it had not changed her recommendation, it had increased her concerns if the children were returned to the care of their mother. In relation to the mother's evidence, she said whilst she heard the mother expressing remorse and regret for what had happened, she did not see any signs of empathy with the position the children had been in. The focus always came back to her position, with only limited mention of the children. She said she had not seen the mother since March 2012, other than at court. She had last seen contact in December 2012; the recent contact she was planning to see had been cancelled through no fault of the mother. She saw the children on a number of occasions on their own, as recently as the last few weeks.
62. In relation to Mme T she said she had got authority to go to France, in the event she was not satisfied with the assessment undertaken by the LA. However having considered the assessment undertaken by Ms Green she said she did not consider there was a need for her to go to France. In her view the assessment undertaken was *'robust'*. She had wanted to have the opportunity to speak to Mme T after she filed her statement, but that was not possible as it was served so close to the hearing. Having heard Mme T's evidence she considers she has underestimated how the children would cope with a move to her. Ms Smith considers the children to be emotionally fragile, particularly GN.
63. It is her view that the current carers would prefer to have an adoptive placement as they want the children to become permanent members of their family. However, they are concerned not to put themselves in the way of the family. If the decision is for them not to return to their family her assessment is they would prefer to have the permanence that comes with adoption. She accepted they have not had the benefit of any legal advice about this yet.
64. She was closely questioned on behalf of the mother about whether she had given sufficient weight to the cultural considerations in this case. She said she had but it *'comes back to where are the children. Many cultures do not penalise violence to children but that does not make it acceptable behaviour'*. She denied she had underweighted the cultural considerations *'mother has access to support during [this] process but if taken this long how long take before confident all information – fearful for the children'*. It was suggested to her that this is a submissive mother and dominant father, she said *'If issue now so submissive unable to remove children how could we confidently put [the children] back with someone submissive. This is the*

*difficulty I have. If she so submissive what happens next time the father or someone else appears; how will the children be protected?’* She did not accept the suggestion the support available would be higher in France as the mother brought the children back to the father’s care knowing they would be at risk of harm.

## **The Law**

65. I have had the benefit of extremely helpful and detailed written submissions on behalf of all the parties, for which I am very grateful.
66. There is little, if any, dispute between the parties regarding the relevant legal framework. In considering the application for a care order each child’s welfare is the courts paramount consideration, having regard to the matters set out in the welfare checklist section 1 (3) Children Act 1989 (CA 1989). In assessing the parent’s evidence I remind myself that the fact they have not told the truth about one aspect does not necessarily undermine all their evidence.
67. The court must have regard to Art 8 ECHR. The right to family life is engaged in this case, the court must be carefully consider whether any interference in that right is proportionate and justified. I am rightly reminded by Mr Scott-Manderson Q.C. on behalf of the mother of the draconian nature of the orders being sought. Munby J (as he then was) in *Re B (A Child)* [2004] EWHC 411 (Fam) [2004] 2 FLR 142 said at para 101: *“it must never be forgotten that, with the state’s abandonment of the right to impose capital sentences, orders of the kind which judges of this Division are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make. It is a terrible thing to say to any parent – particularly, perhaps, to a mother – that he or she is to lose their child for ever. When a family judge makes a freeing or an adoption order in relation to a twenty-year old mother’s baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 years, and the baby for what may be upwards of 80 years. We must be vigilant to guard against the risks.”* In *Re B (Care: Interference with family Life)* [2003] 2 FLR 923 Thorpe LJ said that a judge must not sanction an interference with family life *“unless he is satisfied that it is both necessary and proportionate and that no other less radical form of order would achieve the desired end of prompting the welfare of children.”* Hale LJ (as she then was) in *Re C and B (care order: Future Harm)* [2001] 1 FLR 611 stated *“the principle must be that the Local Authority works to support and eventually reunite the family unless the risks are so high that the child’s welfare requires alternative care’* In assessing the evidence and balancing the relevant considerations I will have these words at the forefront of my mind in addition to the Art 8 rights of all the Respondents.
68. In the event the court makes a care order the LA application for a placement order is governed by the provisions of the Adoption and Children Act 2002 (ACA 2002). Each child’s lifelong welfare is the courts paramount consideration having regard to the matters set out in s 1 (4) ACA 2002. I can only make a placement order if I am satisfied that the parent’s consent should be dispensed with. In accordance with s 52(1) ACA 2002 I cannot do that unless I am satisfied the welfare of the child

requires the consent to be dispensed with. In determining that the court must have regard to the considerations set out in s 1 ACA 2002.

69. In this case the LA is satisfied that the younger three children ought to be placed for adoption. They plan to place them with the current carers for GN and GRN. Those carers have not yet had the opportunity to receive legal advice as to the precise type of order they seek. In *Re P (adoption; Parental Consent) [2008] 2 FCR 185* the Court of Appeal considered whether a local authority should be granted a placement order in a case where there was dual planning, when the ultimate outcome could be long term care. In this case it could be a Special Guardianship Order. The Court in *Re P* concluded that a dual plan does not in and of itself prevent the Court from making a placement order provided that the Court applied the statutory provisions (that the decision under s.52(1) was taken within the framework of s.1(1) of the ACA and applied the relevant considerations set out in determining whether the child's welfare 'throughout his life' required that the order be made). The test for dispensing with consent is a welfare focused test. Wall LJ stated at para 116 *'The guidance is, we think, simple enough. The judge must, of course, be aware of the importance to the child of the decision being taken. There is perhaps no more important decision for a child that to be adopted by strangers. However the word 'requires' in s.52(1)(b) is a perfectly ordinary English word. Judges approaching the question of dispensation under the section must, it seems to us, ask themselves the question to which s.52(1)(b) of the 2002 gives rise, and answer it by reference to s.1 of the same act and in particular by a careful consideration of all the matters identified in s.(1)(4).*

### **Discussion and findings DN**

70. There is no issue about the LA plans for DN. In the light of her circumstances her welfare clearly demands someone has parental responsibility for her. That can only be done through a care order. She would be at considerable risk of harm without someone to make decisions about her future care. She does not want to return to the care of the mother and father. They have both been convicted of causing her harm in the criminal proceedings and I have found they have caused her significant harm in these proceedings.
71. In my judgment they have both acted in a cruel way to her. I am satisfied they both could have done more in providing information about her true origins. They have shown no empathy at all with the circumstances she now finds herself in, through no fault of her own. It is more likely than not the father knows the truth about her background and circumstances. For reasons which are unclear he has deliberately chosen not to give any relevant information to assist locate her birth family. He makes no detailed reference to this in his written statements and was unconvincingly vague in his oral evidence. The mother's position is equally difficult to understand. This has been an issue for sometime, at least since the statement from Ms Green dated 18 April. The mother, despite wanting to say sorry to DN, has taken no concrete steps to try and discover what the true position is. In her evidence she too was vague and unhelpful when asked for details about DN's origins.
72. I accept the submissions of the Children's Guardian that DN's welfare demands the issues relating to her age are resolved sooner rather than later. It is fundamental to her identity and, more immediately, her education. I will continue interim care orders in relation to DN and invite the LA and Children's Guardian to agree directions to enable this issue to be determined by me.

73. It is not too late for the mother and father to provide information, which in my judgment they have been withholding, to assist on this issue which is so fundamental to DN's welfare.

### **Discussions and findings GN GRN, CMN**

74. The mother's practical day to day care is not in issue. The contact records clearly demonstrate her commitment to the children, they make compelling reading. She has attended regularly for all contacts offered. Her management of the children ensures they don't get upset at the end of contact; she has taken all the steps she can to make it enjoyable for them. There is clearly a good attachment between the mother and the children. GN and GRN have said they want to live with her. All this is clearly powerful evidence that has to be carefully put in the balance.

75. Against this is a consistent thread of evidence about the mother's ability to protect the children. A recurring feature of all the professional witnesses in their written and oral evidence is the gravitational force of the evidence about the mother's failure to protect in the past, and the consequent risk in the future. The question I have to ask is what is the evidential foundation of these concerns and do they outweigh the strong positive factors?

76. In my judgment the evidential foundation for the failure to protect in the past is clearly established and the consequent risk in the future is strong and compelling for the following reasons.

(1) Unfortunately the mother remains a witness the court cannot rely on to give a credible account of events. In assessing her evidence I have carefully considered whether the changing account of her and the children's relationship with the father is as a result of other factors, such as being so under the control of the father it has impacted on her ability to reveal what has happened; or, by giving a full account she thought or feared it would make her position worse; or, due to the cultural considerations, she has felt unable to reveal the details of their relationship. I, of course, accept it is not unusual for those who have been subjected to domestic abuse to find it difficult to talk about what has happened to them. But even making all due allowance for these factors I come back to her account being inherently unreliable.

(2) On her own case she now accepts DN and GN were assaulted by the father, as was she. That is obviously a significant development, but it raised more questions than answers. What is so inherently improbable about her account is why it has taken her over 18 months to recollect these events, which, on her own account, must have been memorable, as they were the only times this had occurred. I simply do not accept that it was only prompted by reading Ms Smith's report on the eve of this hearing, when she sets out details of what GN told her about the assaults by her father. Even as she gave her oral evidence her account of these significant events were given in a way that lacked any real detail.

(3) This mother has had the support of an experienced and consistent legal team for over a year. She has been separated from the father for a considerable period of time, and recently has been receiving support through Dispensaire Francais. Despite having this support and distance from the physical presence

from the father she has not felt able to provide details of events when she and the children clearly experienced physical and emotional harm. Her explanation of only remembering significant events, such as her daughter informing her that she had been 'tapped' by the father, following the reading of Ms Smith's report, is simply not credible. Particularly as similar issues were raised in Ms Green's statement, which the mother responded to in considerable detail in her statement, making no mention of this significant event. Her evidence becomes even more inherently unreliable when she recalls, for the first time, in her oral evidence the assault on her and DN by the father.

(4) The consequence of this is that I do not accept that the mother has given a full and truthful account of her relationship with the father, and his and her relationship with the children. These relationships resulted in the children, even on the mother's account, suffering significant emotional and, in the case of DN and GN, physical harm. It is, in my judgment, more likely than not that the mother's account has seriously minimised events. This assessment is supported by the way she played down the events she described (e.g DN not being hurt following being slapped in the face by the father, the mother not being hurt following being slapped by the father). I consider it more likely than not that she has significantly minimised the reality of what went on. It is more likely than not that this was a house controlled by the father through frequent threats and fear and, on occasion, physical assaults to both the mother and the children.

(5) This assessment is supported by the father's evidence. Up until his most recent written statement and oral evidence he has denied any harm to these children. The limited admissions in his evidence, in my judgment, minimise the reality of what went on in the family home and his conduct to the mother and children. He, in my judgment, has not been truthful and has shown a chilling disregard for the welfare of all the children. He has failed to offer any credible explanation to assist in establishing a credible account of DN's background, when he is the only one who holds the key to providing that information. That was graphically illustrated when he was unwilling to provide any information about the photograph produced during the hearing. His account that he did not know who it was other than a vague account of it being a relation he could not name was wholly unconvincing. His limited admissions about his behaviour to the mother and children came across as inherently unreliable.

(6) I agree with Dr Blumenthal and Ms Smith that one of the deeply concerning aspects of the mother's evidence is her lack of empathy. Whilst I have factored in the undoubted pressure in giving oral evidence, and the difficulties inherent in assessing the position through an interpreter, this lack of empathy for the children was, in my judgment, a feature in much of her oral evidence. For example, her failure to ask DN whether she had been assaulted by the father after the mother left in 2010; her description of DN not crying after she had been slapped by her father and her statement that it would not have hurt her; her failure to grasp in her oral evidence what the risk was to the children after she left, bearing in mind what she had described about the father losing his temper if the children made a noise; her failure to ask GN any more detail about what she said the father had done when he 'tapped' her and what had caused him to do that; her failure to enquire more when she had observed DN crying. Without this ability to empathise the children would, in my judgment, be at risk of significant harm if returned to her care as the mother simply does not have the internal cues to take steps to protect

the children. This is something not related to the mother's relationship with the father or with another violent partner.

(7) I accept Dr Blumenthal's evidence that it would not be possible for the risk to be managed in the future. This is because of what he termed the '*deception*'; there is still not a credible account of what has gone on in the past; without that it is very difficult to manage future risk. Dr Blumenthal revised his assessment of the risk of recidivism upwards in his oral evidence, which I accept.

(8) The deception, coupled with that increased risk and inability to empathise with the children means that to restore the children to their mother's care would put them at an unacceptable risk due to her failure to be able protect them from future significant harm.

77. I have carefully considered whether steps could be put in place, to assist the mother to manage that risk at an acceptable level, in a timeframe that is not contrary to the children's welfare. However, I do not consider that is achievable in any timeframe that will meet the needs of the children for the following reasons:

(1) There remains uncertainty about the mother's social isolation, which is unlikely to change. The mother's evidence was vague and unhelpful. For the first time during her oral evidence it emerged that the Cameroonian community were assisting her. It was very difficult to get a clear picture as to how that support came about and whether it was, and remains, at the direction, and possibly control, of the father. There was some evidence to suggest that it was. The mother was unable to say how the rent and bills on the property had been paid. It was notable that the person who was organising it was a close friend of the fathers who had attended outside court on the first day of this hearing to try and see the father, not to provide any support to the mother. This inability to give full details is perhaps indicative of the difficulties in this case in trying to find out what the true position is.

(2) Although the mother says she has separated from the father she has taken limited steps to follow that through. Divorce proceedings were issued in France but not continued with. She remains in a property in the father's name which he may need to give details of if he applies for home detention curfew in less than two weeks time.

(3) The mother has only just begun to get help by way of counselling. Whilst that is a good development, the evidence from Dr Blumenthal and Ms Smith is that it can take years to bring about any sustainable change.

(4) The provision of support in the form of assistance from social services here or in France would be unlikely to make any real difference. It is notable that whilst the mother had been resourceful enough to move to France and seek help there, it is very concerning that, despite being in receipt of that support and having the physical distance between her and the father, she still returned the DN to his care and left GN with him too.

(5) I do not accept the suggestion that the LA have failed to properly assess the mother. The fact is until her oral evidence in this hearing she had consistently denied there was domestic abuse in her relationship with the father and denied any

physical harm to the children. This was her position to the expert instructed on her behalf.

78. In my judgment the risk of future harm is very high as the mother does not have the capacity to provide the children with the necessary protection and there are no steps that can be taken in the timeframe of these children to manage that risk to an acceptable level.
79. In the light of my finding I have to consider whether the powerful positive factors outlined above can outweigh this factor. In my judgment they can't. I accept GN and GRN have said they want to live with their mother, and she could meet their day to day practical care. The court should strive, where the children's welfare demands, to re-unite children with their birth family, but that can't be at the expense of putting them at an unacceptable risk of future harm which cannot be managed to an acceptable level to protect the children. In this case, if they returned to their mother's care they would all be put at such risk and so, acknowledging that this is against the wishes of GN and GRN, the balance comes down firmly against them returning to live with her.

### **Mme T**

80. The mother, supported by the father, puts forward her aunt Mme T to care for the children in France if she is unable to care for them. I have the benefit of having a viability assessment, a full assessment undertaken by Ms Green, Mme T's written statement and her oral evidence.
81. Whilst, all things being equal, it is clearly better for children to be cared for within the wider birth family than in a placement away from the birth family this obviously has to be carefully considered in the circumstances of each case. In this case, despite the positive conclusions of the viability assessment I agree with the recommendation of Ms Green in her assessment and Ms Smith in her oral evidence that placement with Mme T would not meet the welfare needs of the children for the following reasons:
- (1) Whilst Mme T has the great advantage of being a member of the mother's wider family the children do not know her. Her commitment to care for the children is not supported by her actions, other than the preparation of a statement and attending to give evidence. Whilst this in itself would not be a concern, it is in the context of this case. Mme T has taken no steps to make contact with the children, to try and establish contact with them, even indirectly, for over eighteen months. It raises concerns about the extent of her understanding of why the children were removed from their parents care.
  - (2) When she discovered she had missed the appointment in January she took no steps to try and make a new appointment with the relevant officials in France.
  - (3) There is no evidence to corroborate the matters she sets out in her recent statement challenging the assessment of Ms Green. For example, any written record to confirm what she said are the views expressed by Mme M.
  - (4) There was no incentive or motive for Ms Green to make up the evidence she gave of her various meetings with Mme T and her family. Ms Green's descriptions of Mme T's change in attitude when she informed her she had a telephone appointment with the French equivalent of social services and her

avoidance technique of introducing photos all had the ring of truth about them. Where there was a conflict in the evidence between Ms Green and Mme T I preferred the evidence of Ms Green.

(5) Mme T showed very limited insight of the effect on the children of a move to live with her. She suggested in her evidence they would settle very quickly and did not envisage any difficulties. Ms Smith's evidence is that the children would find such a transition much more difficult, particularly GN who she described as being emotionally very fragile.

(6) I have carefully considered whether there should be any further delay, to enable further enquires of Mme T to be undertaken by the French authorities, as was intended to have taken place in January. I have reached the conclusion that such a delay would be detrimental to the children and would be unlikely to make any material difference to my conclusion which is mainly based on Mme T's lack of insight into the needs of these particular children.

(7) A final concern I have about the proposal to place the children with Mme Tu is in my judgment the mother sees it as a stepping stone for eventual re-unification of the children in her care, rather than a long term placement.

82. In my judgment GN, GRN and CMN's welfare can only be met by there being a care order. Only that order will secure their emotional, development and educational needs bearing in mind their young age. I have weighed in the balance that such a placement is against the wishes of GN and GRN, and will mean none of the children will be placed with their immediate or wider birth family. I also acknowledge it is unlikely any placement will directly meet their cultural and identity needs in full. However they will, importantly, not be at risk of future harm being caused to them by not being properly protected from harm due to the inability of their carers to provide such protection.

### **Placement in France**

83. Having reached that conclusion I then have to consider whether, as the mother submits, they would be better placed in care in France. There has not, in fact, been an Art 56 (Council Regulation (EC) No 2201/2003) request to the French Central Authority. But even if they had, and they were prepared to accept it, this court still has to undertake a welfare assessment and consider what placement should meet the welfare needs of these children (see *Re AB (BIIR: Care Proceedings) [2012] EWCA Civ 978* Sir Stephen Sedley at paragraphs 5 and 8)

84. I am satisfied that such a placement would not meet the welfare needs of these children. Whilst it would have the advantage of placing these children in a jurisdiction that shared some of the cultural characteristics of the birth family, in particular the French language, the reality is for these children they do not speak French as their first language. Both GN and GRN are extremely well settled with their current carers and CMN is likely to join them in the summer. The continuity and stability of placement for GN and GRN and placement of the siblings together are important welfare considerations for these children. A further move to a placement in France would not meet the welfare needs of these children.

### **Placement Order**

85. An unusual feature of this case is although the current foster carers for GN and GRN have said they would care for children, in the event the court determined the children should not return to their parents, they have not had the opportunity to have legal advice about the type of order to secure that placement. The evidence from Ms Green and Ms Smith is they consider adoption is the preference for these carers, but they are anxious not to put themselves forward whilst there remains an issue as to whether the children return to their parents care.
86. In considering this aspect I need to consider what the proposals are for parental contact. The LA and the carers are committed to continuing direct contact between the children and their mother and will keep the matter under regular review. The proposal is to reduce the current level to contact to four times a year for an extended period and for that to take place in a community setting, albeit still supervised. The mother seeks a higher frequency of contact, but I am satisfied the frequency proposed meets the balance of enabling the children to see their mother but not undermining the stability of their long term placement.
87. In relation to contact with the father the LA accept work is needed with the children and, subject to that, they will keep the issue regarding father's contact under review.
88. It is proposed that the children will continue to have contact with DN.
89. In considering whether the placement order should be made I have taken into account the following matters. For the reasons outlined above the children cannot return to the care of their mother and cannot be placed with the wider family. GN and GRN are placed in a secure and stable placement where they have made good progress and are well settled. They have said they wish to remain living there if they can't return to the care of their mother. The plan is for them to be joined there by CMN, so the siblings will be placed together long term. It is proposed they should have direct contact with their mother four times a year and have continuing direct contact with DN. The position regarding the father's contact is going to be assessed and managed by the LA. All the professional evidence recommends the children being placed with the current carers long term and they are committed to providing long term care for the children. Both the LA and Children's Guardian agree adoption is the best outcome for these children, I accept their evidence and rationale for that view. There is, in my judgment, no advantage to the children in delaying a final decision; I am clearly of the view any further delay is likely to be prejudicial to their welfare. They have been waiting over 18 months for a decision about their future care, in those circumstances there should only be consideration of any further delay in circumstances where there are powerful welfare reasons for doing so. There is not in this case. The suggestion that the proposed carers may wish to apply for special guardianship rather than adoption is not such a reason, making a placement order does not prevent that. I am satisfied that the lifelong welfare needs of these children require a placement order to be made and in those circumstances the parent's consent is dispensed with pursuant to s 52 (1) b) ACA 2002.
90. I will here oral submissions when I hand down this judgment as to the need for any order regarding contact.
91. I want the LA to have available the final care plans, which include the position regarding contact, available for the hearing.

92. During the hearing the father raised concerns regarding medical treatment for GN and CMN. The LA will no doubt update the court when this judgment is handed down.
93. I have been informed that there is an Independent Reviewing Officer appointed in this case, Ms Desiree Ansin Brown, who will ensure the care plan for the children is kept under regular review.