



Neutral Citation Number: [2021] EWHC 70 (Fam)

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/08/2021

Before :

MRS JUSTICE KNOWLES

Re Z (Care Proceedings: Special Guardianship: Competing Placements)

Miss Thind for the local authority
Miss Hayter for the mother
Miss Bradley for the father
Miss Kaur for Z (by his Children's Guardian)
Miss Kabweru-Namulemu for PQ
Mr Jack for the paternal aunt and uncle

Hearing dates: 19-22 July 2021

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I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was delivered in private. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date for hand-down is deemed to be on 09 August 2021.

Mrs Justice Knowles:Introduction

1. Within public law proceedings, I am concerned with a little boy called Z who is now 3 ½ years old. Z is the subject of an interim care order, that order having been made on 24 June 2020. He presently lives with his maternal grandparents. Though there are several applications before me, the key issue in this case is where Z should live as neither of his parents can care for him. Should he move to the home where his half-sister, Y, lives with her father, PQ, or should he move to the home of his paternal aunt and uncle? Both PQ and his paternal aunt and uncle each seek Z's placement with them pursuant to a special guardianship order.
2. Z's mother is presently in prison and is due to be released in May 2022. She remains married to PQ though they finally separated in 2018. PQ is the father of Y and, in law, is presumed to be the father of Z. Z's biological father does not have parental responsibility for Z but his paternity was established by a DNA test ordered within private law proceedings which took place from 2019 onwards. Z's sister, Y, is neither a party to the proceedings nor the subject of any Children Act proceedings herself.
3. The mother, the father, PQ, the paternal aunt and uncle and Z were all represented at the hearing, and I am grateful to all the legal representatives for their assistance in this finely balanced case. I am particularly grateful to Miss Kabweru-Namulemu who acted pro bono for PQ.

Background

4. What follows is a summary of the events leading to these proceedings.
5. Z's family have been known to social care since September 2018. There have been long-standing concerns about the mother's mental health arising from anxiety coupled with class A drug misuse. She married PQ in December 2009 and Y was born the following year. They are not divorced though PQ recently submitted a petition for divorce on 24 June 2021. Z's father has a long history of mental ill-health and drug misuse (class A and B). It is fair to say that the chronicity and severity of his difficulties profoundly impact on his capacity to parent and keep Z safe from harm when acutely unwell or under the influence of substances.
6. The mother and father began a relationship in about December 2016 when the mother was still living with PQ and Y. On birth, Z lived with the mother, PQ, and Y until December 2017. The mother, Y and Z then moved into their own accommodation and the mother's relationship with Z's father continued save that he did not cohabit with her and the children. Their relationship began to disintegrate and, in mid-2018, the local authority became involved because the mother was fearful of the father's behaviour. From January to September 2018, Y only spent approximately two nights

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each week with her mother and Z, living the rest of the week with PQ. In March 2019, she moved to live with PQ full-time though she continued to have contact with her mother. Despite the breakdown of the mother's relationship with PQ, he continued to offer her help and support throughout this time and indeed throughout the time leading to what I will call the precipitating incident which triggered the initiation of care proceedings with respect to Z.

7. The mother and the father finally separated in early 2019. The mother alleged that the father had been domestically abusive, had sexually assaulted her, and had threatened to harm both her and Z. The father issued private law proceedings in January 2019, seeking contact with Z. I note that, during those proceedings, the father had three short periods of supervised contact with Z and that the eventual plan was for his parents to supervise that contact. Given both parents' mental health problems, a psychiatric assessment by Dr Mayer was directed and the local authority was ordered to undertake a section 37 investigation together with a risk assessment of the father.
8. On 2 July 2019, a report from Cellmark Diagnostics established that the father was Z's biological father. There is no father named on Z's birth certificate and, although applied for (presumably on the basis that the presumption that PQ was Z's father had been rebutted by the outcome of DNA testing), a declaration of parentage in favour of the father was never properly drawn in any court order. An order dated 14 August 2019 stated that the father was the biological father of Z but this is not the same as a formal declaration of parentage.
9. The incident which precipitated these care proceedings occurred on 7 May 2020. On that day, PQ and Y had spent time with the mother and Z, leaving the mother's home at about 6 pm. At about 10 pm that evening, the mother telephoned PQ to say that she thought she had hurt Z. PQ returned to the mother's home and found the mother in a distressed state and Z lying on the sofa obviously very drowsy. He took the mother and Z to hospital at about midnight, having become concerned by what the mother was saying and by what he saw in her home. It subsequently emerged from the mother's account that the mother said she had felt suicidal, had lit a disposable barbecue in the downstairs hall cupboard, had taken Z into the cupboard with her, and closed the door. She wrote a suicide note and gave Z sedatives. She taped doors in the downstairs area to ensure no draughts would interfere with her plan to poison Z and herself, and she also disabled the carbon monoxide alarm. When Z started to cry after about 30 minutes in the cupboard, the mother let him out and called PQ.
10. Medical investigation established that both the mother and Z had carbon monoxide poisoning, and both were detained in hospital overnight. Z also had linear petechial marks to his neck, and I note that the mother has been unable to account for how he came to have these injuries. On 8 May 2020, the mother was arrested and charged with Z's attempted murder and remanded into custody. Meanwhile, Z was discharged to the care of the maternal grandparents.
11. Prior to 7 May 2020, no professional involved with the family had any concerns about the mother's ability to meet Z's needs and to protect him. What caused the mother to act as she did on 7 May 2020 remains shrouded in some obscurity. The mother pleaded guilty to the attempted murder of Z on 8 June 2020 and was sentenced to a term of four years imprisonment on 6 November 2020.

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12. The local authority issued care proceedings and were granted an interim care order on 24 June 2020. The viability assessment of the maternal grandparents noted that they had been involved with Z since birth and had formed a close bond with him. They continue to care for him with support from PQ but they cannot offer him a long-term home. Z sees PQ and Y most days and stays with them overnight at weekends.
13. Both parents have been the subject of specialist assessments. In May 2020, a risk assessment of the father recommended that his contact with Z should continue to be fully supervised by social workers. That assessment highlighted the following: a) the father admitted sending threatening messages to the mother and to professionals because he missed Z and because he believed the mother and professionals were stopping him from having contact with Z; b) the father had repeated mental health relapses and took antipsychotic medication on a daily basis; c) the father admitted both combining crack cocaine, heroin, and methadone and struggling to give up drugs despite being known to Addaction, an organisation working with drug users; and d) the father was deemed to represent a medium risk of future harm to Z.
14. Dr Mayer, a consultant psychiatrist, undertook an updating assessment of the father in December 2020. The assessment made clear that the father had a deep love for Z and would in no way knowingly and rationally seek to cause him any form of harm. The father has a diagnosis of paranoid schizophrenia and has problems with emotional regulation together with antisocial personality traits. His underlying mental illness and substance misuse contributed to his presentation. His main drugs of abuse have been cannabis, amphetamine, cocaine or crack cocaine, and heroin. His engagement with substance misuse services was inconsistent and he had recently stopped his methadone treatment. The risk of physical harm - as distinct from emotional harm - presented by the father was low but could not be discounted. He could behave in an aggressive manner given the opportunity and more so if he were psychotic and/or under the influence of stimulant drugs. Those risks would be present if the father were to have supervised or unsupervised contact with Z, the target of his aggression likely being a supervisor of contact rather than Z himself.
15. Dr Mayer highlighted the father's significant history of making serious, disturbing, and worrying threats against others, primarily by way of social media and text messaging. It was clear that he was unable to apply a rational and balanced approach to his circumstances especially when he felt unjustly treated and persecuted by various authority figures. The father's worrying behaviours had markedly increased in both volume, seriousness, and rhetoric in recent months to a level and of a nature which caused serious alarm and worry to many of those in receipt of his messages. The father had no real insight into the effect of this behaviour on others. Whilst to date, the father had not acted upon these messages, it was professionally very difficult to assess when he might do so. He represented a wholly unacceptable, unsafe, and unmanageable level of physical and emotional harm to Z within direct contact, even allowing for a high level of professional supervision and risk management planning. There were no reasonable or responsible forms of safety planning or other mechanisms which could be put in place to properly and safely mitigate against the risks presented by the father.

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16. Dr Mayer recommended that the father could have virtual video contact with Z which might progress in circumstances where a) the father was compliant with his prescribed medication; b) the father was meaningfully engaged with mental health services; c) the father was addressing his substance misuse problems; and d) where the father had not resorted to any form of malicious, abusive, or threatening communications for a period of at least three months. I note that the father was convicted on 30 March 2021 of conveying a threatening message to court staff in September 2020 and was sentenced to 12 weeks imprisonment suspended for 12 months, together with 25 days of offence-related work.
17. The father has had very limited contact with Z during the proceedings since the local authority has been granted a succession of orders giving it permission to refuse direct contact between the father and Z. By my order dated 21 December 2020, arrangements were made for the father to have weekly short video contact with Z supervised by the paternal grandparents. That contact has taken place regularly.
18. Within the private law proceedings, the mother was also assessed by Dr Mayer whose report is dated 13 March 2020. He found no evidence of acute mental illness or psychotic symptomatology, and noted that the mother had a history of anxiety going back to her teenage years. She was under considerable stress during her relationship with the father, particularly in 2018, and developed paranoid ideas about him. Her anxiety had reached clinical significance and was sufficient to support a diagnosis of generalised anxiety disorder. The mother had also suffered with depression after the births of her children and, although this had improved, she remained fragile at the time of her interview with Dr Mayer. When depressed, anxious, and paranoid, Dr Mayer concluded that the mother would have struggled to meet Z's needs but, at the time of her assessment, she was able to provide an adequate standard of care. Further stress could contribute to a deterioration in her functioning especially if there were ongoing problems with father and if she was worried about the risk he might pose to Z. A deterioration in her mood could prompt further thoughts of self-harm which might impact upon Z. Dr Mayer recommended that the mother be treated with antidepressant medication and psychological intervention along cognitive behavioural lines. Though the mother had misused drugs in the past, Dr Mayer noted that she did not intend to use drugs again and was not currently using them at the time of his assessment.
19. Within the criminal proceedings, two psychiatric reports prepared by Dr Poole, consultant psychiatrist, made no formal psychiatric recommendation with respect to the sentence. He concluded that, at the time of the offence, the mother was not suffering from any major mental illness that would seriously have impaired her decision-making. Nevertheless, he considered her to be an emotionally vulnerable and traumatised woman in the specific context of her relationship with the father. She had a lengthy history of anxiety and a tendency to overthink issues. This was driven by her enduring feelings of a sense of foreboding, doom, and fear which caused her to panic. These feelings would be amplified at times of stress in her life. This was highly relevant to the circumstances in which the precipitating incident in May 2020 occurred given the mother's fear of the father's contact with Z.
20. The local authority undertook its own risk assessment of the mother dated February 2021. It concluded that the precipitating incident in May 2020 was a deeply worrying and seriously high-risk event which could have had tragic consequences for Z. At

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least until such time as the mother had successfully completed rigorous offence focused work and also successfully addressed her own unresolved and entrenched psychological issues, the mother must be deemed to represent a high risk of causing serious harm to Z. Contact between the mother and Z whilst she was in prison would continue to be subject to ongoing risk assessment by the local authority and the prison service. On release, the mother was likely to be subject to stringent licence conditions inhibiting her contact with Z and possibly with other children.

21. In December 2020, I approved the local authority's proposal that the mother should have fortnightly video contact with Z (also involving Y) once a fortnight together with monthly indirect contact via letters and drawings. Because of difficulties in the prison estate, that contact did not take place regularly and stopped for a period of time after the mother moved from one prison to another in spring 2021.
22. PQ was joined as a respondent to the proceedings on 24 June 2020 though I note that he represented himself until very recently. He was the subject of a positive viability assessment dated September 2020. Therein, it was noted that PQ had presented as a protective figure for Y and Z and had a close, loving, and established relationship with Z. PQ confirmed that he continued to have telephone contact with the mother most days whilst she was in prison but did not plan to visit. He regarded their relationship as having ended and planned to divorce the mother.
23. The paternal aunt and uncle were joined as intervenors to the proceedings on 8 March 2021. A positive viability assessment of them was filed in July 2020. They had met Z when he was only six months old shortly before the mother and father separated and had had no contact with him subsequently. On becoming aware that a long-term placement would be needed for Z, the paternal aunt and uncle decided to offer themselves as long-term carers. They were concerned about the father's unpredictable behaviour and explained that, about 18 months earlier, the father had posted a death wish on Facebook about their daughters. He had refused to apologise for this behaviour and, as a result, the paternal aunt and uncle had blocked him from contact with them via phone and social media. They distanced themselves from the father and formulated a family safety plan to protect their three daughters from the father's unpredictable and erratic behaviour. In December 2020, the paternal aunt joined her parents' contact with Z, and he also met with her family at Christmas time.
24. Both the paternal aunt and uncle and PQ were the subjects of full special guardianship assessments by the local authority, filed in February 2021. Both assessments were positive, but the local authority concluded, on balance, that Z should be placed with PQ because this would enable him to live with his sister, Y, and cement his already established relationship with PQ. Alongside the making of a special guardianship order in favour of PQ, the local authority recommended a supervision order for a period of 12 months and a child arrangements order with respect to contact between Z and his paternal family. In its final statement of evidence dated 12 February 2021 the local authority stated that *"two of the overall deciding, if not also highly compelling, factors within such exercise is that of [Z] being able to live with his sister, [Y], with whom he already has a deeply established and close relationship with and as a reflection of [Z] also already having in place an extremely established and close relationship with [PQ]. As such, this does of course mean that the effect on [Z] of any change in his welfare placement circumstances is highly limited in having regards to and in balancing all relevant factors"*.

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25. The proceedings had been timetabled to an IRH on 8 March 2021. Shortly before that hearing, the children's Guardian made an application for the instruction of an independent social worker to prepare an addendum report focussed on the following matters: (a) PQ's understanding of the risks to Z and his ability to protect Z now and in the future; (b) consideration of Z's future contact with his mother and PQ's ability to prevent unsafe contact or communication; (c) the impact on Z of being placed or of not being placed with Y and what support may be necessary in either scenario; and (d) PQ's ability to support Z's understanding of his circumstances as he grew older.
26. At the hearing on 8 March 2021, I refused the application for an independent social work assessment and directed that the local authority should prepare an assessment addressing the matters set out in a schedule to my order. The purpose of the local authority's assessment was to provide the court with a holistic evaluation and analysis of the respective abilities of PQ and the paternal aunt and uncle to care for Z throughout his minority. The issues to be addressed were as follows:
- a) what were the proposed carers attitudes to and understanding of the risk presented to Z by contact with his mother and with his father, now and throughout his minority;
 - b) what was the ability of the proposed carers to manage those risks and what supports were required to enable them to do so now and in the future;
 - c) what were the proposed carers understanding of the identity issues that arose for Z and would continue to surface for him throughout his minority;
 - d) what were the proposed carers strengths and weaknesses in terms of meeting the child's identity needs presently and in the future;
 - e) what was the ability of the proposed carers to protect Z from any risks arising from his parents with respect to their mental health or otherwise;
 - f) the impact on Z of being placed/not being placed with Y and what support may be necessary in either scenario;
 - g) the ability of the proposed carers to support Z's understanding of his circumstances as he grew up.
27. At that hearing, it was evident that the matter should be listed for a final hearing given that the mother and PQ strongly advocated for Z's placement with PQ and that the father supported placement with the paternal aunt and uncle.
28. In late May 2021, the local authority filed its analysis of the competing placements for Z, described by the social worker as "*one of the most difficult and finely balanced tasks which I have had to undertake over the whole course of my professional career*". Its analysis accepted that Z had a close and meaningful relationship with Y which would likely endure beyond his current relationships and that PQ was a very significant attachment figure for Z. However, the local authority concluded that

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placement with the paternal aunt and uncle represented the overall best long-term plan for Z because they were the most capable and assured option when it came to meeting Z's needs for emotional security, stability, safe contact, and healthy identity needs. They were assessed to have the necessary strength of character to deal with any future risks which either parent might present. Given the change in its plan, the local authority sought to place Z with the paternal aunt and uncle following a period of transition and invited me to adjourn the final hearing to allow for that placement to be tested. The mother and PQ opposed the transition plan, and, on 21 June 2021, I refused the local authority's application but did provide for additional contact to the paternal aunt and uncle each Thursday and on alternate Saturdays or Sundays. I gave both PQ and the paternal aunt and uncle permission to apply for special guardianship orders in respect of Z and confirmed the timetabling of final evidence for this hearing.

29. Regrettably, I record that the prison service recently caused much confusion with respect to the contact that should have been taking place between the mother and Z. My December 2020 order clearly set out that there should be video contact once a fortnight and indirect contact by way of an exchange of cards/letters and photos. Telephone contact was not permitted though this was not explicit in my order. Unfortunately, contact did not take place once the mother moved to a new prison in about March 2021. During the hearing, I was provided with some emails and documents which might shed some light on the change to the mother's contact with Z. Some of this material was available when the mother and PQ gave their oral evidence and so they were asked questions about its content. However, a document entitled "*final decision on child contact*" dated 6 May 2021 was received after the oral evidence had concluded. I have disregarded its contents in coming to my decision.
30. In April 2021, the prison service contacted the social worker to ask for details of the mother's contact with Z and Y. On 22 April 2021, the social worker confirmed that contact was taking place in accordance with my December 2020 order and the prison asked him to provide a copy of that order. The social worker indicated he would do so and explained that the local authority shared parental responsibility for Z and agreed with the contact mandated by the court order. However, on 7 May 2021, the prison service informed the mother and PQ by letter that both Y's and Z's contact was not subject to any restriction and could take place via correspondence, telephone calls and video calls (direct visits being prohibited, no doubt by reason of the Covid-19 pandemic). The letter stated that, to inform its decision on contact, the prison service had carried out a multiagency risk assessment informed by contributions from the police, the local authority, and the National Probation Service. I record that, since 22 April 2021, no further contact had taken place between the prison service and the local authority to inform this decision on contact. The mother's evidence to me made plain that she was surprised by the lack of restriction and queried this with prison staff who confirmed the arrangements set out in the letter dated 7 May 2021.
31. Though no telephone calls were permitted between the mother and Z by my order, the mother had telephone contact to him on five occasions from 12 May to 12 June 2021 which was facilitated by PQ. There was an additional phone contact between the mother and Z facilitated by the maternal grandfather on 6 June 2021. Following a telephone call to PQ by the children's Guardian on 17 June 2021, it became apparent to PQ that telephone calls between the mother and Z should not have been taking place and he emailed the social worker that day to clarify the arrangements for contact

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between the mother and Z. On receiving the social worker's reply, PQ emailed the social worker on 18 June 2021 to apologise for having permitted telephone calls between the mother and Z and explained that he had done so because he believed the prison had given written approval for this to happen. PQ pointed out that all the telephone calls had been supervised by him and stated that he would not permit any similar error to ever take place again whilst Z was in his care.

Positions of the Parties

32. What follows is a short summary of each party's position at the conclusion of the hearing.
33. No party argued that the threshold criteria in section 31(2) of the Children Act 1989 were not satisfied. Neither the mother nor the father sought the return of Z to their care, bravely recognising that each was simply unable to parent him safely. All the parties were agreed that, whether I favoured PQ or the paternal aunt and uncle as special guardians for Z, I should adjourn the making of any final order until such time as the local authority had updated its respective special guardianship support plans and considered how any supervision order it might invite the court to make would work in practice. In the meantime, Z could be placed under the auspices of an interim care order pending the making of final orders (including, if appropriate, orders relating to parental contact and orders excluding both the parents from the vicinity of Z's placement).
34. All the parties also agreed or did not oppose the making of a declaration of parentage and a parental responsibility order in favour of the father with respect to Z, reflective of his status as Z's biological parent.
35. The local authority, supported by the father, the children's Guardian and the paternal aunt and uncle, invited me to make an interim care order which would facilitate the following:
 - a) The transition of Z into the care of the paternal aunt and uncle allowing for a short period of about twelve weeks thereafter to test the placement;
 - b) Work being undertaken with Z and Y to prepare them for Z's move from his home with the maternal grandparents;
 - c) Work being undertaken with the adult extended family to help them support both Z and Y during this transition period and to ensure that contact worked successfully;
 - d) the devising of appropriate plans for on-going life story work with Z;
 - e) and the holding of a family group conference to resolve contact arrangements within the extended family.

The local authority invited me to adjourn any final determination for a period of about three months.
36. Supported by the mother, PQ invited me to place Z with him and to adjourn the matter for a short period of time (less than three months) so that the work identified at (c)-(e)

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above might take place. Placement of Z with PQ could be accomplished relatively swiftly given their already well-established relationship.

The Legal Framework

37. As it is not in dispute that the threshold pursuant to s.31(2) of the Children Act 1989 is met, I do not propose to set out the law in this regard.
38. It is not necessary for the purposes of this judgment to embark upon an extensive analysis of the nature of a special guardianship order. Instead, I confine myself to the following observations. First, there are significant differences between a special guardianship order and a child arrangements order, notably the special guardians can exercise parental responsibility to the “*exclusion*” of any other person with parental responsibility: section 14C(1)(b), Children Act 1989. Second, a special guardianship order provides, and is intended to provide, a greater degree of permanence. This is demonstrated both by the additional substantive procedural requirements before a special guardianship order can be made and by the fact that the court’s permission is required before a parent can apply to discharge a special guardianship order: section 14D(3). When giving the judgment of the court in Birmingham City Council v R [2007] Fam 41, Wall LJ stated at [78]:

“... Special guardianship is an issue of very great importance to everyone concerned with it, not least, of course, the child who is its subject. It is plainly not something to be embarked upon lightly or capriciously, not least because the status it gives the special guardian effectively prevents the exercise of parental responsibility on the part of the child’s natural parents, and terminates the parental responsibility given to a local authority under a care order (whether interim or final). In this respect, it is substantially different from a residence order which, whilst it also brings a previously subsisting care order in relation to the same child to an end, does not confer on any person who holds the order exclusivity in the exercise of parental responsibility which accompanies a special guardianship order.”

39. Where a court is considering whether to make an order such as a special guardianship order, it shall “*have regard in particular*” to the matters that appear at s.1(3) of the Children Act 1989. Regard to the welfare checklist is helpful because paying attention to it tends to ensure that all important considerations are taken into account. This is particularly apposite in any difficult or finely balanced case as Baroness Hale observed in Re G (Children) [2006] UKHL 2305 at [40]. Furthermore, the neutral content of the welfare checklist is a reminder that the assessment of welfare is not driven by presumptions. As McFarlane LJ (as he then was) said in Re W (A Child) [2016] EWCA Civ 793 at [71]:

“The repeated reference to a ‘right’ for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such ‘right’ or presumption exists. The only ‘right’ is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged.”

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40. The open-ended nature of the checklist allows the court to take account of other matters that may bear upon the individual decision. For example, the lifelong significance of the decision might reasonably prompt the court to have regard to the matters appearing in the checklist in the Adoption and Children Act 2002 at s.1(4)(f), namely the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including (i) the likelihood of any such relationship continuing and the value to the child of its doing so, (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs, and (iii) wishes and feelings of any of the child's relatives, or of any such person, regarding the child. Above all, what is required is real analysis that descends into as much detail as the decision demands. McFarlane LJ said in Re G (A Child) [2013] EWCA Civ 793 at [71] that:

“What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side-by-side, against the competing option or options.”

41. Art 8 of the European Convention on Human Rights provides that:

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

42. Special guardianship orders are made in accordance with law and with the legitimate aim of promoting the welfare of the child. The proportionality evaluation requires the court to address whether the proposed interference with Art 8 rights is necessary in the first place and, if so, whether it goes any further than it must to achieve its purpose. In CM v Blackburn with Darwen BC [2014] EWCA Civ 1479, Ryder LJ described the proportionality evaluation in this way [36]:

“The whole purpose of the proportionality evaluation is to respect the rights that are engaged and crosscheck the welfare evaluation i.e. the decision is not just whether A is better than B, it is also whether A can be justified as an interference with the rights of those involved. That is of critical importance to the way in which evidence is collated and presented and the way in which the court analyses and evaluates it.”

Both children and adults will have rights pursuant to Art 8(1). Where there are competing outcomes, the choice of one outcome over another will commonly entail some degree of interference with those rights. It is well established under European and domestic law where there is a conflict between the welfare of the child and the rights of an adult, the child's interests will predominate. What is necessary is to identify the nature of rights that are engaged and the extent of the proposed interference. This crosscheck prevents the choice of an unnecessary interference or one that is disproportionate to the problem.

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43. The court must also have regard to the general principle that any delay in determining issues is likely to prejudice the welfare of the child. However, the child's welfare is paramount and if, contrary to the general principle, delay promotes the welfare of the child, then delay will be the right course to pursue. As the Court of Appeal noted in Re P-S (Children) [2018] EWCA Civ 1400 at [69]:

"... There can be - there must be - no question of abbreviating what is necessary in terms of fair process, and necessary to achieve the proper evaluation and furthering of the child's welfare, by concern about the possible impact of such necessary delay upon the Court's performance statistics. In relation to SGOs, as elsewhere, justice must never be sacrificed upon the altar of speed."

The Hearing

44. Having considered the contents of an extensive bundle, I heard oral evidence from the allocated social worker, a probation officer with knowledge of the mother in custody, the mother, PQ, the paternal aunt and the children's Guardian. No party invited me to hear oral evidence from the father and I did not consider it necessary to do so myself. With the agreement of the parties, I conducted this hearing via remote means.
45. **The social worker** is very experienced and was allocated Z's case in August 2020. He contributed to the special guardianship assessment reports of both PQ and the paternal aunt and uncle and conducted the assessment consequent on the order dated 8 March 2021. His evidence was measured, balanced and realistic. He confirmed that the eventual decision to favour the paternal aunt and uncle over PQ as carers for Z had not been reached lightly and was finely balanced. Though no stand-alone sibling assessment had been conducted by the local authority, the social worker confirmed that the relationship between Y and Z had been a significant factor in his thinking as was apparent from his analysis document. He accepted that there would be some short-term upset if Z were to live with the paternal aunt and uncle as he would invariably see less of his sister. However, he considered that any distress could be minimised by a) frequent contact between Y and Z; b) work with Z as to why he would not be living with his sister; c) work with Y as to why Z would be moving from the care of the maternal grandparents; and d) a carer who understood the key importance of the relationship between the siblings and who had insight into the need to sustain and progress the relationship between them.
46. The social worker told me that what tipped the balance in favour of a placement with the paternal aunt and uncle was his assessment that they were the most capable and assured option to meet Z's long-term needs for stability, safety, and security. He assessed them to be open, flexible, and independently minded about contact and Z's identity needs. He differentiated between the paternal aunt's connection to the father and the connection of PQ to the mother by describing the former as being much less emotionally encumbered.
47. The social worker acknowledged that there were positive factors with respect to the care that PQ had provided to Y and Z. However, he identified the risk to Z being located in the enduring and dependent nature of PQ's relationship with the mother. He told me that PQ tended to pacify the mother rather than challenge her and he could not be confident that PQ could work openly with the local authority if this entailed being critical of the mother. He identified a reluctance on the part of PQ to provide Y and Z

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with a narrative that in any way challenged the mother's and noted that Y had been told by PQ that her mother was unwell and recovering in hospital. PQ had been offered help to formulate an honest narrative for Y but, to date, had not availed himself of this offer. The social worker was troubled by the fact that, in his assessment, both the maternal grandparents and PQ held the father to be responsible for the mother's current circumstances. He did not think that those views and attitudes could be ameliorated or addressed by the provision of support or other resources.

48. **The probation officer** did not know the mother well. She told me that the mother had begun art therapy about 6/7 weeks ago. She thought the mother had been making good progress as, in a meeting she held with the mother on 1 July 2021, the mother had been remorseful about what she had done to Z and was keen to engage in therapy. According to the probation officer, the mother understood that she had "*a long way to go*" in terms of addressing her offending behaviour. The probation officer noted that the mother's attitude on 1 July 2021 had been in marked contrast to her behaviour on 25 May 2021 when she met with the social worker. During the latter meeting, the mother was asked by the probation officer how she came to be in custody, to which she made no response apart from to say that "*others*" had told her to plead guilty.
49. For the avoidance of doubt, I have discounted the probation officer's critical remarks about PQ which were based on her interpretation of a statement he filed in the immediate aftermath of the precipitating event on 7 May 2020. His statement struck me as entirely appropriate and understandable in the aftermath of a deeply shocking incident in which Z's life was endangered by his mother's behaviour.
50. **The mother** gave evidence from the prison to which she had recently been moved in order that she might participate in this hearing. That move had unhappily disrupted the therapeutic work in which the mother is presently engaged, and it was unclear when the mother might return to her former prison and continue her therapy. In assessing her evidence, I made allowances for the unsettling effects of this move upon the mother. For the most part, the mother gave her evidence in a straightforward and open manner though she appeared to become tense when asked questions about her relationship with PQ by the local authority.
51. The mother was asked if she accepted that she could not care for the children. She spoke of not being able to predict if she would be able to play a caring role in the future whilst accepting that she could not care for either Z or Y at the moment. That evidence was consistent with the conversation she had with the children's Guardian on 18 June 2021 when she wanted to know what she would need to do in order to care for the children in future. She supported PQ as a carer for Z and told me that, on her release, she would not attempt to interfere with his decision-making. She acknowledged that PQ had been her rock and mainstay for many years; that he was even now part of her family despite their separation; that he had never failed her; and that she looked to him for support. She accepted there was no prospect of a reconciliation between her and PQ and said that she would not seek to defend his divorce petition. Though they had spoken regularly on the telephone during her time in prison, she felt that her dependence upon him over the past couple of weeks was lessening. The mother accepted she was in the early stages of renegotiating her relationship with PQ.

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52. Her plans on release were embryonic though she was keen to emphasise that she wanted to move elsewhere and distance herself from the area in which the children would be living. Realistically, the mother accepted the need for both Y and Z to have life story work based on an honest account of what happened in May 2020. She told me that Y did not know that she was imprisoned and that she had spoken to PQ about this, but neither of them had come to a definite conclusion as to how Y might be helped to understand what had happened.
53. **PQ's** evidence was characterised by loyalty to the mother and a belated realisation and acceptance that he had not been as forthcoming as he should have been about their relationship after the mother's imprisonment. He struck me as a very private person who did not share his thoughts easily with others and tended to avoid conflict or challenge to others whenever he could.
54. His loyalty to the mother was plain in his struggle to contemplate telling Y the truth about her mother's whereabouts and what she had done to Z. He acknowledged the false account he had given Y could erode her trust in him and he admitted not availing timeously himself of the social worker's offer of help. When asked about why he had not told the mother that his view of the paternal family had recently improved, PQ candidly admitted that he avoided subject matters that caused the mother's stress and conflict. Though he was at pains to tell me that he would promote contact with the paternal family if Z were placed with him, I was struck by his immediate rejection of the helpful suggestion from the paternal aunt that Y could spend time with Z at the paternal aunt and uncle's home. I was also not reassured by his evidence that he preferred to keep photos of the father in a photo album rather than have any on display in his home even though he told me he was willing to have photos on the walls as well.
55. PQ was anxious to downplay the strength of the relationship between himself and the maternal grandparents by saying they were not his main source of support. Though he acknowledged a good relationship with the social worker, he accepted withholding information about the children's telephone contact with their mother in May-June 2021. He appeared anxious to blame the prison for permitting the same to occur rather than accepting full responsibility himself.
56. PQ confirmed that he had visited the mother twice whilst she was in prison. This was at variance with what he said to the social worker in September 2020, namely that he had not visited the mother at that time and had no plans to do so in future.
57. **The paternal aunt's** evidence was straightforward, honest, and impressive. She was very clear about the risk presented by each of Z's parents and had reflected on the challenges that might lie ahead if Z were to live with her and her husband. She was generous in acknowledging the significant role played by the maternal grandparents and by PQ and was anxious to build on this in future by promoting contact between both sides of Z's extended family. She told me that the success of Z's contact with her family was attributable to Z being well prepared by the paternal grandparents and PQ. She was also straightforward in declaring that Z's current presentation was a testament to the love and support he had received from his maternal family.
58. She told me that she and her husband had had difficult discussions with their own children as to the risks presented by her brother, Z's father. The paternal family had

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implemented a safety plan to safeguard the children from any risk and she told me, with evident regret, about the family arrangements which facilitated the paternal grandparents' support of the father, but which meant that she and her parents were not able to have straightforward and easy contact. She genuinely welcomed professional support, particularly with respect to providing Z with an honest narrative about his life story, and she was practical and realistic in acknowledging that the transition for Z to her home would not be without difficulty.

59. **The children's Guardian** was appointed some way into the proceedings in February 2021 but had evidently worked hard to build relationships with both the paternal and maternal family. Her evidence was thoughtful and insightful. She was concerned that PQ was resistant to accepting the paternal family and, in that respect, he was far behind the paternal aunt and uncle who were able to recognise and accept PQ's importance in Z's life and understood his fear of being displaced by them. She was troubled by PQ's lack of openness in respect of both his and the children's telephone contact with the mother. In her view, transparency was a fundamental cornerstone of any safety plan not only in respect of Z's future safety but also in terms of the role modelling offered both to Z and Y about their relationship with the mother and to Z about his relationship with his father. She told me that PQ avoided discussions with the mother that might upset her and, when she saw PQ on 25 May 2021, he failed to mention the telephone calls that were taking place between the children and their mother though he discussed the mother's contact with the children, reporting that the last video call to the mother had been a couple of months previously.
60. The children's Guardian acknowledged that it was positive that the mother was engaging with therapeutic work but was clear that the mother was at the beginning of a very long process in terms of rehabilitation. She considered that it would only be with the passage of time that professionals could assess whether the relationship between the mother and PQ had undergone significant change. She was concerned about the ability of PQ to support honest long-term life story work for Z and noted that such work would be ongoing during Z's minority. She was unconvinced that PQ had the ability and motivation to assist both Y and Z to navigate the future together when each would have different needs with respect to their relationship with the mother.
61. By contrast, the children's Guardian described the paternal aunt as a "*lioness*" when it came to the welfare of the children and Z. She described the paternal aunt as naturally and sincerely articulating protection and child-centred decision-making. She had no doubt that the paternal aunt and uncle presented as empathic and supportive of Z's relationship with his whole maternal family. She recognised that, whilst Z might experience loss and a degree of emotional disturbance on moving to live with the paternal family, his aunt and uncle would be able to reassure him because they had a strong sense of his right to a significant relationship with his maternal family.

Discussion and Analysis*Threshold*

62. The contents of this judgment, coupled with the agreement of the parties, amply satisfy the section 31(2) threshold test. I approve the agreed version of the facts upon

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which the threshold is satisfied and direct that it be appended to my final order in this case.

The Welfare Checklist

63. I record that, in addition to the welfare checklist set out in section 1(3) of the Children Act 1989, I have taken account of the matters set out in section 1(4)(f) of the welfare checklist set out in the Adoption and Children Act 2002 which concerns the relationship between the child and his relatives and any other person in respect of whom the court considers the relationship to be relevant. I regard the relationship that Z has with PQ to be relevant within the meaning of both the Children Act 1989 checklist and s. 1(4)(f) of the Adoption and Children Act 2002 checklist.
64. Z is a little boy of some 3 ½ years who is too young to articulate his wishes and feelings. I have assumed that he would wish to develop and strengthen his relationship with Y and to have loving contact with both his maternal and paternal families.
65. Z suffered carbon monoxide poisoning and injuries to his face together with significant emotional distress when his mother sedated him and attempted to murder him alongside an attempt at taking her own life. He has made an excellent recovery from that ordeal. Z's physical development is age-appropriate, and he sleeps and eats well. He has a need to be protected from the risk of significant physical harm presented by his mother. Z attends nursery where he is making friendships and where he is settled.
66. The evidence demonstrates that Z is a happy little boy who is developing in his social confidence. Since May 2020, he has been fortunate to have unconditional love and care within his maternal family and he has a happy and apparently uncomplicated relationship with Y. PQ is also a significant attachment figure for Z. Z has also recently begun to deepen his relationship with his paternal aunt and uncle through contact. Z's emotional needs are for security and stability within a loving home where he can reach his full developmental potential. Those needs, however, are complicated by a life story which will be difficult and painful for him to understand and live with. His carers will need to tell him his story in a compassionate and age-appropriate manner and may require professional assistance in so doing. Z also has a need for contact with his mother and father to support a positive sense of identity, but that contact must not undermine the security of his placement. Both his parents are risks to his emotional well-being and security because of their own difficulties.
67. Prior to May 2020, Z experienced considerable instability: he spent time living in two domestic abuse refuges; he lived with the mother, Y and PQ; he lived with the mother at the homes of her close friends; he lived alone with the mother; and he was left by the mother with the maternal grandparents for extended periods of time. He now needs a placement in which he can reside for the remainder of his minority. Z cannot remain living with his maternal grandparents and thus must inevitably move to a new home. A move to the home in which Y lives and is cared for by PQ would cause the least disruption to Z as PQ has been a significant figure in Z's life since his birth. Z's home with PQ would also be practically and emotionally supported by the maternal grandparents. In contrast, were Z to move to live with his paternal aunt and uncle, this would represent a significant change for him. Though Z is happy and relaxed with his paternal aunt and uncle, his relationship with them is less well-established and they

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have not been significant figures in his life until recently. Additionally, Z would not be living with Y, and this is likely to represent a loss for him. However, the effect on Z of such a move may be ameliorated not only by the high quality, sensitive and protective care offered by his paternal aunt and uncle but also by frequent and good quality contact to Y, PQ and his maternal grandparents.

68. It is important to recognise that the relationship between Y and Z is not entirely straightforward. Though both children spent some time living together prior to May 2020, they have also lived apart for most of Z's life. Each has a very different attachment experience with their mother, and this is likely to impact upon their relationship with their mother and with each other as they grow older. Z must also develop and negotiate a relationship with a profoundly unwell father which Y does not have to do. Z's emotional needs are thus likely to be very different to those of his sister and he needs a placement in which those different needs can be met without compromise to his healthy emotional development. Z's response to both the knowledge of how his mother behaved towards him and his father's mental ill-health and drug misuse is presently unknown as is Y's response to learning what her mother has done to her younger brother. Evidently, each child requires loving support to deal with these emotional challenges and will react differently because of their ages and respective experiences to date.
69. There are no additional characteristics of Z which are relevant to my assessment. I have already recognised the serious physical harm which Z suffered in the care of his mother and note that he is at risk of suffering serious emotional harm in consequence. He is also at risk of suffering serious emotional harm by reason of his father's behaviour when aroused by reason of either mental illness or drug misuse.
70. Neither of Z's parents can offer him a safe and secure home. The mother is at the start of a lengthy process of addressing her offending behaviour alongside her entrenched emotional/psychological problems. There is no way of knowing how successful this work will be before either her release or her licence conditions end. It also remains to be seen whether the mother does indeed distance herself from the local area where Z might live with PQ. Doing so would require the mother to physically cut herself off from all she has known and from all sources of familial and friendship support. I remain unconvinced that her proposal to move elsewhere on release and to sustain that move is a realistic one. Finally, I note that the mother may continue to harbour a desire to care for the children in future and that she did not exclude the possibility of so doing when she gave evidence at this hearing. Her perception of her future role in the children's lives represents a risk to the stability of any future placement.
71. I accept the professional evidence that the father's presentation is more settled of late. Nevertheless, his unpredictability remains a serious issue. However, I note he has not sought to disrupt Z's placement with the maternal grandparents or his contact with PQ. His remote contact is working well supported by the paternal grandparents.
72. There are two placement options for Z: care by PQ or care by his paternal aunt and uncle. Before I consider the capabilities of either option, it is important to identify the particular characteristics and capabilities over and above the provision of good quality day to day care which any prospective carer for Z should possess in order to meet his needs in the short, medium, and long-term. The evidence highlights that the following characteristics are necessary:

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- a) an ability to promote Z's identity and knowledge of his life story;
 - b) a carer best placed to hold parental responsibility in the face of challenging family dynamics;
 - c) a carer most likely to maximise the support offered by services and to work openly with the local authority; and
 - d) a carer most able to meet Z's emotional needs.
73. Both PQ and the paternal aunt and uncle are capable of meeting Z's physical and educational needs. However, the position with respect to Z's requirement for a safe home and for his emotional needs to be met is different.
74. Z is aware that PQ is not his father, and he knows that he is his father's son. PQ has been and continues to be a father figure for Z. However, PQ's ability to promote contact with the paternal family is uncertain. His evidence about the photos of the father being available to Z in an album indicated a tendency to compartmentalise the father's role in Z's life and I note that his instinctive response was to reject the opportunity for Y and Z to spend time together in the paternal aunt and uncle's home. Though he told me that he did not share the views of the maternal grandparents that the father was to blame for the mother's predicament and denied ever suggesting this to them, the maternal grandparents – who know him well - told the children's guardian that PQ shared their beliefs. Whilst I consider it likely that PQ would abide by any order I might make with respect to contact, I think it more likely than not that, were Z to live with him, he would struggle to promote contact beyond the ambit of any order such as the paternal aunt and uncle attending sports days, taking Z on holiday, Christmas and birthday arrangements, and alterations to contact as a result of unforeseen events. PQ's difficulties in this regard stem from his deeply embedded loyalty to the mother.
75. Additionally, PQ struggles with the need to be fully open and honest about the mother's conduct. He has provided Y with a false narrative about where her mother presently lives and what is happening to her, and, until his oral evidence, he has not availed himself of assistance to help him communicate an honest account to his daughter. Though he belatedly acknowledged the need for assistance and honesty with the children's life stories, I am not confident that he is best placed to promote a truthful and emotionally attuned narrative which will meet Z's identity needs. To do so would require him to be more advanced in his emotional separation from the mother and I have concluded that, despite the divorce petition, he remains emotionally enmeshed with and deeply loyal to her.
76. The paternal aunt and uncle's evidence was unequivocal about the need to promote Z's contact with both sides of his family and, in particular, with his sister. The paternal aunt made it plain that she would wish for contact to take place over and above that set out in any court order and was wholly positive about the maternal family and their importance to Z. Additionally, the paternal aunt and uncle showed an understanding of the difficulties faced by both parents and did not seek to minimise the seriousness of the risk that each presented to Z. They also accepted the need for Z to be given an honest and age-appropriate narrative about why he could no longer live with his maternal grandparents and what had happened to his mother and father. They

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welcomed professional assistance in that regard. Though related to the father, the paternal aunt and uncle had taken steps to distance themselves from his unpredictable behaviour, stemming from drug use and mental ill-health, and had discussed his difficulties with their own children and put in place a safety plan.

77. Any future carer for Z will, by virtue of a special guardianship order, be exercising parental responsibility in difficult circumstances where the family dynamics are complex and challenging. That task will be more straightforward for the paternal aunt and uncle who have no existing relationship with the mother and whose relationship with the father is controlled and distanced. Their relationship with the maternal grandparents and with PQ is relatively new. Those features are unlikely to influence or compromise their decision-making in the autonomous exercise of their parental responsibility for Z.
78. Irrespective of his relationship with the mother, PQ has a long-standing and enduring relationship with the maternal family. It is unlikely that his divorce from the mother will cause any substantial shift in the relationship dynamic with the maternal grandparents for some time and I observe that he has been a substantial support to them whilst they have been caring for Z. I note that the maternal grandparents recently informed the children's Guardian of their deeply held belief that the father was responsible for the mother's present situation. Further, the significant association between the mother and PQ has yet to alter meaningfully as he himself acknowledged. Likewise, the mother is only just beginning to address the risk she poses and her progress in that regard is unknown. PQ has acknowledged avoiding discussions with the mother which may upset her, and it is unclear to me how he would manage any disagreements with her about Z's future care. I cannot exclude such disagreements given the mother's apparent desire to play some sort of caring role in future. I was troubled when PQ challenged counsel for the children's guardian when she used the word "*relationship*" in asking him why he had not been more forthcoming about his connection with the mother. His irritable response "*I'm not sure what you mean by relationship*" struck me as a quibbling and defensive reply in the face of a perfectly straightforward question. It spoke volumes about PQ's unease in being questioned about his relationship with the mother. In my view, his emotional enmeshment with the mother has the potential to impact and compromise PQ's exercise of parental responsibility for Z.
79. All the parties agreed that, when Z's placement is confirmed, the court should make orders excluding both parents from the immediate vicinity of the address for a period of time. I observe that such a safeguard is, as the social worker confirmed in his evidence, only as good as those who need to monitor it, principally Z's carers. Though PQ told me in his oral evidence that he would be prepared to phone the police and inform the local authority if the mother were to breach any exclusion order I might make, I have some doubt whether he would in fact do so particularly if this might lead to the mother being recalled to prison. He told the social worker that, were the mother to come to his home following Z's placement with him, he would reason with her before ringing the police.
80. Whatever my decision on placement, Z's carers will be involved with the local authority whether or not I decide to make a supervision order alongside a special guardianship order. Professional help is necessary for the adult family members to assist them in supporting Z's transition to his new home (wherever that will be); to

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prepare Z and Y for his move; to devise appropriate “*later life story work*” for Z and Y; to facilitate a family group conference; and to provide an ongoing evaluation of the risks associated with parental contact to make good the special guardianship support plan. It is crucial that any carer is receptive to and willing to work openly and honestly with the local authority.

81. I have no reason to believe that the paternal aunt and uncle will not collaborate with the local authority. The paternal aunt understood the need for support with life story work and the role of the local authority in evaluating the risks presented by parental contact. Regrettably, I am far less certain that PQ will work transparently with the local authority. Though the evidence was clear that the prison service fundamentally erred in permitting telephone contact between Z and the mother in May/June 2021 and in claiming the same had been agreed with the local authority when it had not, it was also plain that PQ failed to be open and honest with the local authority about both the telephone contact between the mother and the children and his contact with the mother. Whilst I accept the letter from the prison authorising telephone contact between the mother and the children was misleading to both the mother and PQ, PQ has been a respondent to the proceedings since June 2020 and would have been well aware of my December 2020 order with respect to contact between Z and his mother. That order would have been reinforced at LAC reviews and any confusion in PQ’s mind could easily have been resolved by a telephone call to the social worker. On the contrary, PQ continued to suggest that contact was taking place in accordance with the court order, failing to inform the children’s Guardian on 25 May 2021 that the children were speaking to their mother on the telephone. After meeting with the children’s Guardian on 17 June 2021, PQ emailed the social worker seeking clarification as to the contact arrangements with the mother. When the social worker confirmed that contact should be taking place in accordance with my order, PQ emailed him to inform that the mother had been having telephone contact with Z as he believed this had been approved by the prison. He apologised and said this would not happen again. The problem was that PQ withheld information about contact from the local authority instead of being transparent and honest about what was happening at the time it was happening.
82. Furthermore, PQ gave a rather misleading impression as to his own contact with the mother. In April 2021 he told the social worker that he was having very limited contact with the mother which was focused solely on the children and that there had been about five calls in the last two months since she had been transferred to a new prison. PQ disputed that he had called as often as described by the social worker but told me that he could not remember the number of calls the mother made to him whilst she was settling into her new prison. I observe that, in February 2021, PQ had stated he had been receiving telephone calls from the mother most days. Call logs obtained from the prison indicated more frequent contact between PQ and the mother during which he had become so frustrated at times that he had put the phone down on her. It was not until he gave his oral evidence that he revealed that she had wanted to discuss matters other than those related to the children. Again, this demonstrates an unwillingness on the part of PQ to be forthcoming about his relationship with the mother. That lack of transparency has implications for the risks associated with the mother to which Z might be exposed were he to live with PQ.

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83. Finally, I acknowledge that the maternal grandparents and PQ have met the majority of Z's emotional needs since May 2020. I am less persuaded that PQ would be able to meet Z's emotional needs in future. His inability to be open and honest with Y about her mother does not bode well and his ambivalence about promoting contact with the paternal family raises a question mark over his ability to promote Z's emotional needs. I observe that PQ has only just begun to address his own deep association with the mother: both he and the mother accepted that their close relationship would need to alter. Given PQ's evident difficulties in being forthcoming about what he regards as private matters, I remain unconvinced that the provision of support and therapeutic assistance from the local authority will achieve the requisite distance between PQ and the mother prior to her release from custody. For the avoidance of doubt, I do not ascribe much significance to the delayed petition for divorce as I accept that financial constraints and PQ's confusion about his status as Z's father may have played their part in any delay applying for divorce. In contrast, the paternal aunt and uncle have been child focused and entirely supportive of the importance to Z of PQ, Y, and the maternal family.
84. Lastly, the court has available to it a range of orders to regulate the relationships between Z and his family wherever he may be placed. These include orders for a defined baseline quantum of contact together with orders excluding either parent from the vicinity of Z's future placement to minimise any risk and to ensure that he settles.

My Welfare Assessment

85. There are two realistic options for Z's future care: placement with PQ or placement with the paternal aunt and uncle. Z is a fortunate little boy in that he has a loving and committed extended maternal and paternal family, each of whom can offer a long-term home for him. Each of his prospective carers are loving and capable people who wish to do right by this little boy. My assessment necessarily involves rejecting one option for Z whilst endorsing another, but I am clear that, though finely balanced, my decision is in Z's welfare interests and is proportionate.
86. The advantages of placement with PQ are as follows. Z has a well-established and loving relationship with him and has known him since birth: PQ has been a father figure to Z. Undoubtedly, PQ has made an important contribution to Z being a settled and happy child. Importantly, Z would live with his sister, Y, with whom he has a happy relationship despite the difference in their ages. Z would continue to have regular and frequent contact with his maternal grandparents who have cared for him since May 2020 and who would be an important support for PQ. Z would also continue to attend his present nursery school where he has settled and has made friends. PQ can also provide good quality basic care.
87. The disadvantages of a placement with PQ are these. PQ has been unable to promote a truthful narrative to his own child about the mother and has been resistant to the offer of professional help to assist him in this regard. I have serious doubts about his ability to meet Z's need for an age-appropriate yet honest account of what happened to him in his mother's care and why he cannot live with either of his parents. The task facing PQ in this regard is rendered even more significant and complex because he would be managing and balancing the separate and differing needs of both children for a narrative. He is unlikely to be meaningfully assisted by the maternal grandparents in this task since they have their own version of the mother's behaviour which is highly

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critical of the father. Though he belatedly recognised in his oral evidence the need for some professional assistance with this task, I have concerns that he will find - as he has done in the past - working transparently with the local authority extremely difficult.

88. Though PQ acknowledged the need to renegotiate his relationship with the mother, this is only in its early stages. It is a relationship which has been unusually deep and supportive despite the mother's difficult and almost lethal behaviour to one of her own children. That renegotiation will be complicated by the fact that he continues to share parental responsibility with the mother for Y yet, if I were to make a special guardianship order in his favour, he would be in the driving seat when it came to exercising parental responsibility for Z. The exercise of parental responsibility for Z will be even more challenging when the mother is released from prison in May 2022. I do not know the extent to which the therapeutic and offence-focussed work will ameliorate the risk she poses to her children but, at the moment, she remains a significant risk to Z and, indeed, Y. I have already expressed some doubt about the realism of her plan to move away from the area in which the children live and, irrespective of any licence conditions which would only control her physical contact with the children, whether she will be able to distance herself emotionally from them. I note her lingering desire to play a caring role in the lives of both children. Thus, I cannot discount the possibility that PQ would be exercising parental responsibility for Z with the mother on the doorstep, both physically and emotionally. Though PQ has been child focused in his support for the maternal grandparents since May 2020, that is very different to being responsible for Z in the manner envisaged by a special guardianship order.
89. I also have concerns about PQ's ability to promote good quality regular and frequent contact with the paternal family, including the father. This requires more than mere adherence to the terms of a court order. Though he was at pains to assure me that he would do so were Z to live with him, he was unenthusiastic about the paternal aunt's suggestion that Y and Z might have contact in her home. I have concluded that his alignment and loyalty to the mother is a barrier to his acceptance of the paternal family as integral to Z's well-being. Finally, I observe that contact with the mother may also present PQ with significant challenges. Though her licence conditions may constrain the mother from direct contact with Z, it does not necessarily follow that her contact with Y would be so inhibited. The evidence of the children's Guardian was that Y derived some reassurance when she saw her mother and was happier when she had had contact with her. Thus, Y may wish and have a need to see her mother which may have to be accommodated in circumstances where Z cannot himself have contact with the mother. Given PQ's difficulties in providing an honest narrative to Y and his reticence in accepting professional help, I have real doubt that he will meet challenges of this sort in a manner supportive of Z's well-being.
90. Turning to the paternal aunt and uncle, the advantages of a placement with them are as follows. Both are clearly capable of meeting Z's physical and educational needs. Though their relationship with Z is relatively recent, he has responded positively to them and to the increased time he has spent in their home. He has visited without any resistance and showed no emotional distress or concerning change in his behaviour. Indeed, the evidence of the family support worker contained in an email dated 3 March 2021 was that contact between Z, his paternal grandparents and the paternal

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aunt was “*always very relaxed, full of laughter and squealing, always lots of activities and talking and are an absolute delight to witness*”. I have no doubt that Z’s relationship will deepen and strengthen the more contact he has with the paternal aunt and uncle. Both are child focused and attuned to Z’s emotional needs, particularly his need for regular and frequent direct contact with his sister, PQ, and the maternal grandparents. Both recognise the need to provide Z with an honest narrative about what has happened and are open to professional involvement in that regard. The paternal aunt and uncle have a realistic and protective stance with respect to Z’s contact with his father and have demonstrated that they can be robust in managing this, having taken protective action in respect of the father’s conduct towards their own children. Finally, they have a sympathetic but realistic view of the risks presented by the mother. Given their more distant connection with her, they are well placed to exercise parental responsibility in consultation with her without compromising Z’s welfare. The same applies to their ability to do so with respect to the father.

91. There are disadvantages to placement with paternal aunt and uncle, the most significant of which is that Z would not live with Y. Sibling relationships are often the longest relationships people have during a lifetime and, as I stated in Re D (Care Proceedings: 1996 Hague Convention: Article 9 Request) [2021] EWHC 1970 (Fam) at [77], those relationships:

“...have embedded within them a person’s identity and life-story, stretching back into the past as well as forwards into the future. The existence of a sibling relationship is crucial for healthy emotional and identity development though it can be attenuated by time, distance, conflict, and legal separation...”

However, there is a conflict between Z and Y when it comes to the choice of carer who might best meet Z’s needs in the short, medium, and long-term. I must prioritise his need for an adult carer over his need to live with his sister if I determine that his welfare would be compromised by placement with PQ. If Z were placed with the paternal aunt and uncle, I have no doubt that they would encourage and foster contact between him and his sister and would promote a positive image of the maternal family. Z would find himself in a situation not dissimilar to that faced by many children where parents have separated, and siblings and half-siblings live apart in different homes yet have regular contact with each other. Z’s relationship with Y will not be severed as would be the case were Z to be adopted but it would undoubtedly be different.

92. Z’s relationship with PQ – an important attachment figure for him - would be altered were he to live with the paternal aunt and uncle. However, any change is likely to be ameliorated by regular and frequent contact and PQ will remain an important person in Z’s life, though not playing the daily role as supplemental carer which he presently does.
93. Finally, Z would need to move to a different nursery school in due course, though I note that the paternal aunt and uncle would be willing to maintain him in his present nursery whilst he settled in their care. Such a move would disrupt Z and he would lose the relationships he has built in his present nursery. Balanced against that disruption, there is no reason to think that Z could not settle in a new nursery and make friends.

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94. Standing back and taking a holistic view of the options realistically available to me, I am satisfied that Z's welfare requires his placement with the paternal aunt and uncle pursuant to a special guardianship order. In coming to that conclusion, I have balanced the positives and negatives of each placement and also conducted a proportionality crosscheck against my welfare evaluation in order to determine whether placement with the paternal aunt and uncle can be justified as a proportionate interference with the Art 8 rights of Z. In so doing, I have also taken account of the Art 8 rights of Y and PQ who have a clearly established and substantive family life with Z. Nevertheless, my decision represents a proportionate interference with all those rights because Z's welfare will be promoted in the care of the paternal aunt and uncle in circumstances where I have real doubt that PQ can meet all Z's needs for care, irrespective of any assistance offered to him by either the extended family or by the local authority.
95. I recognise that my decision on placement will be deeply upsetting for PQ, Y, the mother, and the maternal grandparents. Their love and support will continue to be vital to Z as he grows older, and I invite them to do right by Z and support his placement with the paternal aunt and uncle.

Declaration of Parentage and Parental Responsibility Order.

96. The father is not named on Z's birth certificate and seeks a declaration of parentage pursuant to section 55A of the Family Law Act 1986. This is not opposed by the mother and the local authority and children's Guardian support the application. There is no dispute that the father is indeed Z's biological father, the same having been confirmed by DNA testing. Even though Z will never live with his father, that fact should not prevent a court from making a declaration of parentage since paternity is a matter of public record and should be an accurate representation of the facts. The declaration sought will offer some reassurance to Z that his birth certificate correctly identifies his paternity. I am satisfied I should make the declaration sought by the father.
97. Following the making of a declaration of parentage and the consequential re-registration of Z's birth, the father will not automatically obtain parental responsibility. Though the mother does not formally oppose the making of a parental responsibility order, she invites the Court to approach the matter with some caution.
98. The law is clear. The father applies out of a wish to be recognised and acknowledged as an important figure in his son's life. The criteria set out in the lead authority of Re H (Minors) (Local Authority: Parental Rights) (No 3) [1991] Fam 151 are amply satisfied. The application is indicative of the father's attachment, commitment and motivation towards his son and it is in Z's best interests that the fact of his parentage should be recognised with the grant of parental responsibility to his father. The father has shown his commitment to Z by his attendance at contact, his support for Z's current placement and for the local authority's final care plan. In Re C and V [1998] 1 FLR 392, Ward LJ stated at 397:

"... A child needs for its self-esteem to grow up, wherever it can, having a favourable positive image of an absent parent: and it is important that, wherever possible, the law should confer on a concerned father that stamp of approval because he has shown himself willing and anxious to pick up the responsibility of fatherhood..."

Approved Judgment

I am satisfied that I should make a parental responsibility order in favour of the father.

Conclusion

99. Having made a welfare determination with respect to Z's placement, I am satisfied that I should adjourn the making of final orders for a short period of time to allow for the formulation of revised special guardianship and supervision order support plans. Z's placement with his paternal aunt and uncle will be achieved within the framework of the existing interim care order. The work identified in paragraph 35 above should be undertaken prior to this court's further consideration of final orders.
100. That is my decision.