



Case No: RG18C00301

IN THE FAMILY COURT
SITTING AT READING

Reading County Court

160-163 Friar Street

Reading

RG1 1HE

Date: 20th November 2019

Before :

Her Honour Judge Katharine Marshall

Between :

Reading Borough Council

Applicant

- and -

Mother

1st Respondent

- and -

Father

2nd Respondent

- and -

PGM

3rd Respondent

- and -

Z (through her Children's Guardian)

4th Respondent

- and -

The Secretary of State for the Home

Department

Intervener

JUDGMENT AT FINAL HEARING

Judith Charlton (instructed by the Joint Legal Team) for the Local Authority

Chris Barnes (instructed by Goodman Ray sols) for the Respondent Parents

Ian Robertson (of Griffith Robertson Solicitors) for the PGM

Anne Davies (of Reeds Solicitors) for the child

Hearing dates: 15th, 27th-30th August 2019

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

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Her Honour Judge Katharine Marshall :

1. This is the final hearing in care proceedings concerning a child, Z. Z is 10 years old and was born in [country X]. Her parents are M and F, who remain partners in a customary marriage, living in [country X].
2. Z arrived in the UK on 31 August 2015. She was brought here by her paternal grandmother (PGM) with the intention that Z would live with her and her husband (PGF), who is an EU National. Z's entry to the UK was effected on the basis of an EU visa. PGM had obtained a birth certificate for Z from the authorities in [country X] having falsely stated that she was Z's mother. While living in the UK, Z referred to her PGM as 'Mum'.
3. Prior to her arrival in the UK, Z had experienced what might be considered a disrupted upbringing, although perhaps not that unusual in [country X]. M returned to work when Z was 3 months old and, in her absence, Z was cared for by relatives, although sometime later M says she ceased working because she was only able to see Z at weekends. When Z was about 3 years old, M returned to work and the family arranged for the paternal great-grandmother (PGGM), who had brought up Z's father, to take over care of Z. The parents were not in stable jobs and realised they did not have the financial resources to care for Z themselves at this time.
4. Z remained in the care of PGGM for nearly two years, assisted financially by PGM. During this time, she only saw her parents during long weekends and school holidays. Very sadly, PGGM died unexpectedly, which was likely an upsetting experience and significant loss to Z who was still only 4 years old at the time. Z then spent two years at a boarding school, again the funding being provided by PGM as the parents were not able to do so, nor were they in a position to look after Z themselves.
5. Z did not cope well with boarding, and so the decision was made that it would be better for Z to be cared for by her PGM, which would mean Z moving to live in the UK. There is some dispute as to whether this was explicitly agreed by Z's mother, but Z arrived here and has remained living here without any apparent objection on the part of her parents, returning to [country X] on a reasonably frequent basis to see them and her other relatives. During her last visit, the parents say Z had made it clear that she did not want to return to the UK, and so this arrangement was due to end in March/April 2018 and tickets had been purchased for her return to [country X]. Had the LA not become involved, it is their position that Z would have been back in their care.
6. Z's history and her true relationship with her primary carer might not have come to light but for Z presenting with an injury to her face [in early] 2018 that caused Z's school to contact Children's Services. Z had what Dr Ward, consultant paediatrician appointed by the court to advise on Z's injury, subsequently described in her report as "*extensive and unusual facial bruising around her left eye, with patterned bruising to the cheek and a sub-conjunctival haemorrhage, likely caused by significant blunt force trauma to the face*". At no stage has Z ever alleged that this injury was inflicted on her by anyone. However, there was concern that she was unable to give a clear and consistent account about what had happened. An Emergency Protection Order was obtained once it became apparent that PGM did not have parental responsibility

for Z, and Z was immediately removed from the care of PGM. The initial report filed by the LA indicates that at that time the LA was of the view that Z had suffered “repeated physical abuse” while in the care of PGP’s. She has remained in foster care since the commencement of these proceedings. While in foster care, Z has become increasingly distant from her family and her culture, resistant to contact with PGM and inconsistent in her expressed wishes and feelings about her future. It is accepted by the social work professionals that the foster placement in which Z was living for most of the proceedings was not meeting her needs. Z is currently in a more appropriate placement.

7. In the light of Dr Ward’s expert evidence as to likely causation, it is not now the LA’s case that this injury was inflicted by PGM, but it seeks a threshold finding that (using the numbering in the threshold document)

5(f) On 27th February 2018 (the final document incorrectly states 2019) Z was seen by her school to have facial bruising and a subconjunctival haemorrhage which she had suffered in the care of PGM. PGM had not protected Z from suffering this bruising. After hearing a “bump” PGM did not check on Z and she failed to assess the injury and consider the need for medical attention, thus neglecting Z’s needs.”

8. Having considered the history in relation to Z, the LA also seeks findings that

5(g) Z was emotionally isolated in the care of her grandmother in that Z was responsible for her own morning and bedtime routines and was not provided with emotional support and nurturing by way of for example; being provided with breakfast and support before school and by her grandmother saying goodnight and providing an opportunity for Z to talk about her day.

And that

5(i) Z was treated harshly and punitively by her grandmother who used excessive physical chastisement for example;

(i) On or around 16th June 2016 PGM smacked Z around ‘20 times’

(ii) On or around 16th / 17th June 2016 PGM hit Z around 20 times with a broom handle

(iii) PGM smacked Z on the bottom with a slipper as a form of punishment

(iv) In January 2018 PGM hit Z with a stiletto shoe

9. The LA seeks findings against the parents that

5(h) The parents failed to protect Z from the suffering / the risk of harm in her grandmother’s care in that

(i) they knew that PGM had used physical chastisement against F and that PGM was domineering and controlling and shouted a lot, but they still allowed their daughter to be cared for by her and

(ii) on return visits to see her parents Z would cling to her mother and cry and beg not to be sent back to her grandmother's care but the parents did not question the reasons for Z's distress and sent her back with her grandmother.

10. The background to Z's early care is the basis of further findings relied on by the LA, that
 - a) Z's parents were unable to care for her. They say that this was because they could not afford to.
 - b) Z has received inconsistent care in that she was cared for by a number of different family members in [country X] from the age of 3 months until she came to the UK with PGM. Prior to coming to the UK she spent 2 years in a boarding school because there was no one to care for her.
 - c) PGM presented herself to the Registry of Births and Deaths as Z's mother in order to obtain a false birth certificate for her. Z was then brought to the UK as the daughter of PGM. Z's parents were complicit in this deception.
 - d) Once in the UK PGM presented herself as the mother of Z and PGF as her father.
 - e) Z was confused about her identity and required to lie to assist the deception. She called her grandmother and step grandfather mother and father. She was aware that she had parents in [country X].
11. These are the findings upon which the LA relies to meet the legal threshold required by s.31(2) Children Act 1989. The court must be satisfied that threshold is met before it can consider the LA's application for a final care order for Z. A finding is required that at the relevant time, [in early] 2018, Z was suffering or was likely to suffer significant harm attributable to the care given to her, or likely to be given her if the order were not made, not being what it would be reasonable to expect a parent to give her. In this case, threshold is not accepted as having been met by the PGM, or the parents as it applies to them, and the particular findings sought by the LA are disputed not only as to the factual basis, but also whether the facts alleged are sufficient to support a threshold finding.
12. The LA's care plan for Z is long-term foster care. It is the LA's case that this type of placement would best meet Z's welfare needs throughout her childhood. It does not consider that Z should return to the care of PGM or her parents and believes this to be consistent with Z's wishes and feelings. The LA has filed final evidence and care plans explaining how it reaches this conclusion, particularly in view of the positive parenting assessment of Z's parents carried out in [country X] by an ISW. That conclusion is, as are the proposed care plans, disputed by Z's parents, PGM and her Paternal Uncle (PU), who wishes to be further assessed as a carer for Z should the court determine that Z should not return to the care of her parents.

13. PGM does not put forward a case seeking Z's return to her care. She recognises this is unrealistic at this time given Z is not expressing any desire to meet with her, let alone return to live with her. PGM supports the parents and PU in their applications.
14. Z is represented by her CG, Tania Dawson, who has filed her final analysis, which appears in the bundle at E199. She is the second CG appointed in this case, having taken over from the previous CG in January 2019. Her recommendations are at E216. She supports the LA's application and care plan and is of the view that it would not be in Z's best interest to return to the care of either PGM or her parents. She would be concerned as to the potential lack of court involvement in decision making if any further assessment of PU is undertaken following the making of a final care order.
15. These proceedings have been protracted for Z. Having commenced as long ago as February 2018, they are only now at a final hearing with the possibility of yet further assessment of family members to be considered. The need for expert paediatric opinion, the location of the parents in [country X] and the extensive steps taken to try to obtain visas for them to be assessed in the UK have all contributed to delay, as well as limited judicial availability. I have firmly in mind the presumption contained in s.1 of the CA 1989 that delay is not generally in the best interests of children and for Z who has experienced much disruption in her life and recently the breakdown of her foster placement, waiting 20 months for a decision as to where her future lies given the nature of the available options, is not acceptable.
16. The remaining issues in the case at this final hearing are
 - i) Whether the required threshold is met, and if so on what basis
 - ii) Whether Z's welfare would be best met by remaining in long-term foster care, or by moving to live with her parents in [country X]
 - iii) Whether any further assessment of PU should be undertaken, and if so whether that should be within proceedings, or as part of the LA's duties under a final care order.
17. For this hearing, I have read the documents filed in the court bundle and provided at this hearing. I heard directly in evidence from the following witnesses:
 - i) Alex Mthobi (ISW) who carried out a parenting assessment of Z's parents
 - ii) Katherine Steel (SW) Z's current social worker
 - iii) PGM
 - iv) PGF
 - v) M
 - vi) CG

The parents were limited to participating at this final hearing via video link, as it has not proved possible to get appropriate immigration permission which would have enabled them to attend in person. There were considerable difficulties with the video

link and in the end it was not possible for me to hear directly from F, or indeed PU who it turned out had travelled before the start of the hearing without notifying the court of that intention. PU had been granted party status to pursue his application for further assessment which was to be considered within the final hearing and it was understood he would be attending in person. As a result, not only were M and F sharing the same video link, but also PU.

18. I have been further assisted by the very helpful closing submissions provided on behalf of the LA, PGM, parents and CG.
19. I start with the LA's threshold findings and the need to resolve the disputed facts
20. I set out in summary the legal principles that apply and which I keep in mind as I consider the relevant evidence. In relation to considering the facts:
 - a) The burden of proof rests with the LA, and the standard of proof is the simple balance of probabilities. If the evidence relied on by the local authority in relation to the findings sought is sufficient to meet this standard, this court will treat the facts as established and all future decisions concerning the child's future will be based on those findings. Equally, if the local authority fails to prove these matters, the court will disregard them completely.
 - b) Allegations which are not admitted are not to be taken as established facts unless and until the court finds them proved. Where a parent or witnesses provide a counter explanation for an event it is not for them to satisfy the court that their account is right, rather it is for the LA to show that this is incorrect and that matters are instead as they have alleged. The more serious the allegation the greater the need for evidential cogency, but that does not of course change the standard of proof.
 - c) Findings of fact must be based on evidence or inferences to be reasonably drawn from the evidence. Speculation must be avoided, especially where there is a gap in the evidence. Where a fact or matter needs to be proved, the best evidence should be provided by those who seek to prove it. While hearsay evidence is admissible the court must consider, given the surrounding circumstances and reasons why a witness is not present to give direct evidence in relation to a matter, how much weight to give to that evidence.
 - d) The court must consider all of the evidence, and each piece of evidence must be considered in the context of the other evidence. Appropriate attention must be paid to the views of experts but their opinions also need to be considered in the context of the other evidence.
 - e) Judges are guided by many things, including inherent probabilities and improbabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other, and their overall impression of the characters and motivations of the witnesses.
- a) The evidence of the parents and carers is of the utmost importance. In this case that includes PGM and PGF as well as M and F. The court must form a clear assessment of their credibility and reliability; they must have opportunity to take

part in the hearing, the court being likely to place considerable weight on their evidence. I take into account that in these proceedings I have not been able to hear directly from F and the reasons for that, but I do have his written statement.

- f) I remind myself that witnesses may tell lies in the course of an investigation or when giving evidence. A witness may lie for many reasons, some more cogent than others. The fact that a witness has lied about some matters does not necessarily mean that he or she has lied about everything (R v Lucas [1981] QB 720). There is clear evidence in this case that the PGM has a history of not being open, honest and truthful. In such circumstances, the court will need to consider carefully how her evidence on the relevant issues should be treated.
21. In this case, the parents and PGM ask the court to scrutinise most carefully the LA's case on threshold in the light of the legal principles that apply. I remind myself that the LA must not only establish harm being suffered or likely to be suffered, but that such harm is significant, and attributable to the care given to the child or likely to be given if the order were not made, not being what it would be reasonable to expect a parent to give. I remind myself that the court must consider matters as they were at the relevant time, being early 2018 when the LA applied for an Emergency Protection Order.
22. I have been referred to the useful guidance provided in the judgment of Lady Hale in *Re B (Children)* [2013] UKSC 9 at §193 when considering whether the legal threshold is met:

'193. I agree entirely that it is the statute and the statute alone that the courts have to apply, and that judicial explanation or expansion is at best an imperfect guide. I agree also that parents, children and families are so infinitely various that the law must be flexible enough to cater for frailties as yet unimagined even by the most experienced family judge. Nevertheless, where the threshold is in dispute, courts might find it helpful to bear the following in mind:

(1) The court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life, but to be satisfied that the statutory threshold has been crossed.

(2) When deciding whether the threshold is crossed the court should identify, as precisely as possible, the nature of the harm which the child is suffering or is likely to suffer. This is particularly important where the child has not yet suffered any, or any significant, harm and where the harm which is feared is the impairment of intellectual, emotional, social or behavioural development.

(3) Significant harm is harm which is "considerable, noteworthy or important". The court should identify why and in what respects the harm is significant. Again, this may be particularly important where the harm in question is the impairment of intellectual, emotional, social or behavioural development which has not yet happened.

(4) The harm has to be attributable to a lack, or likely lack, of reasonable parental care, not simply to the characters and personalities of both the child and her parents. So once again, the court should identify the respects in which parental care is falling, or is likely to fall, short of what it would be reasonable to expect.

(5) Finally, where harm has not yet been suffered, the court must consider the degree of likelihood that it will be suffered in the future. This will entail considering the degree of likelihood that the parents' future behaviour will amount to a lack of reasonable parental care. It will also entail considering the relationship between the significance of the harmed feared and the likelihood that it will occur. Simply to state

that there is a "risk" is not enough. The court has to be satisfied, by relevant and sufficient evidence, that the harm is likely: see In re J [2013] 2 WLR 649.'

23. I also bear in mind the words of Hedley J (as explicitly endorsed by the Supreme Court in *Re B*) in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050 that:

'It follows inexorably from that, that society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance [semble: province] of the state to spare children all the consequences of defective parenting.'

24. I am asked to take into account that such considerations are particularly important when the court is, as in this instance, concerned with parenting and care received in another country, and from care givers whose backgrounds and cultures may be very different from those in the UK. There are wide and legitimate global variations in parenting, family care, and systems of child protection. Care must be taken not to look solely through an anglo-centric lens when considering the issues of harm and attribution.

25. I have also been reminded of the cautionary words of the former President in *Re A (A Child)* [2015] EWFC 11:¹

12. The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts. Here, as we shall see, the local authority conspicuously failed to do so.'

26. I do not intend to set out the evidence in full. It is available in the documents filed and a recording has been made of the oral evidence. I will confine myself to referring in this judgment to that which I have found most relevant to the issues under consideration.

27. I start by considering the evidence that relates to the first two findings at 5(a) and (b) of the LA's threshold. The evidence about Z's early upbringing comes from the family. Although there have been varied, and at times confusing, accounts provided I find it points to T being in her mother's care for the first three months, and up to the age of three cared for by various relatives to enable M to work. During this time, Z would have maintained a relationship with her parents, but they have conceded that

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they were struggling to find the money to care for themselves and Z, and both needed to work which necessitated them being away from home at times, F for long periods. They found it difficult to secure stable employment. It was therefore decided that PGGM who had previously cared for F. should take on the care of Z. Following PGGM's death, at the age of 4, she was sent to a boarding school. During this time, I understand the PGM was seeking to make alternative arrangements for Z to join her in the UK, but this was a slow and difficult process.

28. Apart from the time she was with her PGGM, it is reasonable to infer that the arrangements for Z's care meant that she was unlikely to develop a consistent and secure attachment to a primary care giver, the absence of which is known to adversely affect emotional development. The unfortunate loss of PGGM from her life would have been a significant disrupted attachment for Z. Placement in boarding school was felt to best meet her needs by the family, although it later became apparent that it was not. I find this would likely have had a disruptive and negative impact on Z's emotional development.
29. The evidence suggests that none of these arrangements, including allowing senior family members to make and implement decisions around Z's care at a time when the parents were unable to properly care for her, would be considered unusual in [country X]. I make no criticism of these parents for lack of financial means, or stable employment. [Country X] is a developing country with limited opportunities for employment. As a result, F has previously sought work in [another country], although he is committed now to remaining in [country X].
30. Further, these were arrangements made by a family whose intentions I am satisfied were to provide Z with the best care available, given the circumstances. PGM's statement referred to an informal family conference held in 2013 after PGGM died, where the family looked to her as an elder in the family to take over care of Z. Although this account is not wholly accepted, the evidence supports a conclusion that Z's parents were aware of the plan for Z to move to the UK and either agreed with it, as it seems F did, or did not voice an objection even if not wholly in agreement, which was M's evidence. I accept that there may well have been cultural constraints operating and the PGM in her evidence said she had emphasised to the family the educational opportunities this would afford Z. The extent to which the parents felt under pressure to consent to Z being brought to the UK is difficult to evaluate, but the evidence points to this being thought to be the best solution to the problem of how to care for Z when her parents were not in a position to do so, or any family members other than PGM. Had matters been otherwise, it is difficult to understand why Z would have remained in an expensive boarding school, where she was unhappy and PGM had concerns about the level of care she was receiving as she set out in her statement.
31. There is no evidence that Z was 'abandoned' by her parents, a threshold finding I note the LA did not pursue, or that she was unwanted. Indeed, their allowing her to move to the UK with PGM with all the opportunities that would afford Z, should probably be considered a child-focused decision. By the time these proceedings commenced, Z was being provided with stable and consistent parenting from PGP's in the UK and had been since 2015. She remained in contact with her parents, visiting them at least yearly.

32. While the cumulative result of the Z's early years care was more likely than not emotionally harmful for Z and the impact of that should not be ignored in terms of her welfare needs, I find the LA has failed to establish that further harm was continuing to be experienced at the relevant time, or that any of this harm could be said to be attributable to a lack of reasonable parental care in this case.
33. I turn next to the findings sought as set out in the threshold at 5(c) – (e). The circumstances of how Z came to the UK seem to be largely agreed. PGM gave evidence that while in [country X] she obtained a birth certificate that falsely stated that she was Z's birth mother and then travel documents and a visa on the basis that Z was her daughter. I note that in her first statement filed in May 2018 she confirmed that the parents were aware that she had obtained a birth certificate as Z's mother, something that she said was not unusual in [country X]. In evidence, she said otherwise. The parents deny knowing that she had done so. They confirmed they had not provided any documents to the PGM to enable her to obtain travel documents or a visa for Z or provided or signed anything to signify their agreement to Z leaving [country X] and being in PGM's care. M's evidence was that she rather hoped the lack of such documents would mean PGM would be unable to remove Z to the UK. PGM having successfully secured Z's travel to and entry into UK, it seems they have not questioned how she was able to do so.
34. The LA submits that the evidence brings into question whether they knew not just the plan, but how it was to be achieved. F would have had some knowledge of the required procedures having himself made an unsuccessful application for UK entry. At the very least, the parents were "turning a blind eye" to the administrative measures used to get Z into the UK.
35. There are a number of possibilities as to why PGM has amended her evidence on this issue from that first provided. However, she has now admitted that she provided false information. There is no evidence the parents took any steps in relation to the obtaining of this certificate. I find the evidence is not sufficient to support a finding that the parents were complicit in the obtaining of this certificate, or in the way it was used to obtain Z's travel documents and visa.
36. The obvious purpose for PGM having taken such steps was to facilitate Z's entry into the UK which would be much easier to achieve if Z was her daughter. I note PGM said it took some two years to get Z's visa, which was eventually an EU visa based on PGF's nationality. There is no evidence of PGM making it clear on arrival in the UK to any agency or Z's school that she was, in fact, Z's grandmother and not her mother, instead clearly misrepresenting the family relationship to professionals.
37. That PGM was engaged in a deliberate deception about her relationship to Z is clearly evidenced by the events during the s.47 investigation in 2016. Z told the social worker that her real parents were in [country X] and that PGM was her grandmother. When this was put to PGM she maintained that Z was "confused" and that the adults she referred to as her parents were actually her elder siblings. PGM not only confirmed that she was Z's mother but produced the false birth certificate in support of her assertion as a result of which this line of inquiry ended. It was not until early 2018, when the LA stated an intention to complete DNA testing that PGM admitted that she was not Z's mother.

38. However, there is no evidence that Z herself was confused about the identity of her parents or her relationship to PGM, even though she was observed to consistently refer to PGM and PGF as her parents. On the contrary, it seems she was quite clear about her family relationships. During the s.47 investigation in 2016 which followed Z's allegation that she had been hit with a stick, Z appears to have been quite open about her background in her discussion with the social worker, even providing the names of her parents and explaining that she had asked PGM if she could call her "mummy" to be like everyone else. After Z gave such a truthful account, it was PGM who convinced the social work professionals that Z was incorrect and confused about matters. Although PGM's deceitful approach during the investigation had the potential to be confusing and emotionally damaging for Z and dissuaded social work professionals from enquiring further into Z's true circumstances and whether her welfare was being fully met, there is no evidence of any consequential impact on Z at the time or later. There is no evidence that Z was asked to lie, in fact she continued to give a truthful account at a follow up meeting. Reports at the time suggest Z was happy in the care of her PGP's and there were no welfare issues arising. Z continued to have contact with her parents and to visit them and has remained clear as to her relationship to her parents and PGP's and how she came to be in UK, as demonstrated by what she told professionals in 2018.
39. Obviously, the court cannot condone the deceitful actions of PGM, but I have to take into account that the clear motivation was to secure stable family care for Z and better opportunities for her future. There was no benefit to the PGM in taking such steps, rather there was risk on her part. When considered as a threshold finding, not only is there an absence of evidence of significant harm to Z as a result, but it also fails the attribution test.
40. I turn next to the findings sought about the incident in early 2018. It is this injury that led to the commencement of proceedings and Z's removal into care. The LA's initial case relied on a finding that this injury was likely to have been inflicted, although there was no evidence that Z has ever said that it was caused by anyone. Following the expert opinion of Dr Ward to the effect that it could have been caused by a fall off the bed onto carpet, one of the possible explanations given, the LA amended its case to allege failure to protect and neglect. It follows that it is therefore accepted by the LA that the injury was the result of an accident. The LA has failed to provide any evidence in support of its assertion that PGM failed to protect Z from suffering this bruising, and I note that Z herself said PGM had told her to stop jumping on the bed before it happened.
41. Of greater concern to the LA was the PGM's lack of action. The LA relies on PGM's own evidence that she heard a loud bang like something hitting the floor and called out to Z who said she fell over. PGM asked if she was OK. As Z said she was, she didn't go into Z's room and check. She went in later that evening to turn off the light and did not notice anything of concern. She accepted that in retrospect she should have checked on Z. As a result, she was not aware Z was injured until the next day, and so failed to assess that injury or consider the need for medical attention. Although this was PGM's account in evidence, some of the more contemporaneous evidence suggests there was rather less clarity at the time about when the injury occurred, or whether PGM was aware earlier. However, I note it is the professional opinion of Dr Ward that this action as described by PGM represented "significant

neglect” and “parenting failure” on her part. When she became aware of the injury, PGM went into school and took Z to the Doctors. There is no evidence that Z needed any treatment, or that the failure to obtain medical advice earlier had any adverse impact on Z’s health or well-being. I find that this was, as a matter of fact, a neglect of Z’s needs on this occasion but there is no evidence that this caused Z harm. Nor is there any evidence that the PGM would be likely to act similarly in future giving rise to a risk of future harm.

42. It is submitted that if this threshold finding had been originally pleaded only as neglect at the time proceedings were commenced, an Emergency Protection Order would not have been sought. That may well be the case. I note the LA was also concerned at the fact that no adult had parental responsibility and there was a need to establish the true nature of Z’s relation to PGM. However, I have my doubts that these concerns would have been sufficient to justify immediate separation of Z from PGP’s while such enquiries continued.
43. I move on to allegation 5(g). The evidence suggests that Z was managing many aspects of her own care, including bathing and changing and her morning and bedtime routines, largely without input from her carers. As a result, she was quite independent for her age. If so, it seems she was also doing a good job, in view of the very positive observations about Z’s cleanliness and presentation made by the paediatrician. I have considered the information set out in the Special Guardianship Assessment about Z’s care and note the comments at C118 that her daily routine appeared to be quite lonely and the responsibility was on Z to go to PGP’s as her caregivers, for example to say goodnight, rather than them tucking her in, with a kiss and a cuddle. It is said that this would have ‘better met Z’s clear need to feel loved and cared for’.
44. However, caution is required before concluding on this evidence that Z was emotionally isolated in the care of PGM. The LA has singled out one aspect of Z’s care without considering the wider picture. Earlier investigation in 2016 concluded that Z was clearly loved and supported and in almost all other respects her needs were being met. When spoken to alone by a social worker, Z confirmed that she was ‘happy’ in her PGM’s care. The social worker recorded ‘*There is evidence of care and affection in the family relationships and the adults have positive aspirations for Z and convey to her that she is loved and cared for. There has been positive engagement and cooperation with this assessment.*’ Similarly the school reported a good relationship. At C45 Z’s Headteacher recorded “*Mother (PGM) has appeared caring and affectionate towards Z during various interactions that I have witnessed*”. Early contact notes showed an extremely warm relationship between Z and her grandparents. This is important evidence that cannot be ignored. There is nothing to suggest that the positives in Z’s emotional care seen in 2016 were no longer present in 2018 beyond the fact that Z did not seem unduly concerned to be separated from PGM. However, I put little weight on this in the light of Z’s age and early experiences of disrupted care.
45. While I find it more likely than not that, for Z, managing her own care in the morning and at bedtime was unlikely to best meet her emotional needs which would be a relevant welfare consideration, surveying the wider picture this evidence is far from establishing that PGM’s care caused significant emotional harm to Z or that it fell outside the generous ambit of reasonable parenting.

46. I turn next to consider allegation 5(i) as this too concerns the care provided by PGM. The LA asks the court to find that Z was treated harshly and punitively by PGM who used excessive physical chastisement. The LA seeks three findings about specific incidents of physical chastisement, and one more general finding.
47. In fact, the first two allegations at para 5(i) and (ii) appear to refer to the same incident in 2016 which was investigated, but not pursued by LA or police. This appears to be largely because Z appeared to have no injuries despite alleging that she had been hit around 20 times with a stick, saying only that her back hurt. She did not appear to be showing any discomfort. Although there were concerns that within the family physical punishment was considered acceptable, PGM's signed an agreement that they would not do so and during a follow up visit, Z said she could not remember her original disclosure and confirmed she was no longer being hit.
48. The only evidence in support of this allegation is hearsay reporting of what Z said to others. I have considered the records from that time. At F29-30 is a note made of the relevant conversations on 16 June, and a similar form for the conversations recorded on 17 June is at F33-34. Z's initial account was given to teaching staff, but it is recorded that she later repeated the same account to the social worker and police. I have not heard directly from any of those witnesses to whom Z spoke, but I note that in this case, what Z may have said is not in dispute, rather the truth of it. There was no ABE interview or record of the precise terms of all the conversations had with Z. I note those who investigated in 2016 were unable to substantiate T's allegations. The police closed their investigation in 2016 as there was 'no evidence'. This court has no further relevant information than was available then.
49. The allegation at 5(i)(iv) that Z was hit with a stiletto shoe has the briefest of recordings available and is based upon unidentified third hand hearsay, investigated and dismissed at the time. No other evidence regarding this was called by the LA.
50. The PGM admits that she is a strict parent, she may shout and threaten beatings, and gave evidence that in the past she used physical punishments, including hitting her own children with a stick, but not to the extent that it would leave a mark. She explained that such a style of parenting is more accepted in [country X] than here. She and M both thought Z had likely experienced being hit with a stick while at boarding school.
51. Earlier in these proceedings, PGM told the parenting assessor that she had never smacked any of her own children, which was obviously untrue. However, PGM maintains that she never used physical punishments on Z, only threatened to. At F39 in the bundle, there is a note of a parents evening, which took place in November 2016, where Z's stealing and PGM's response to this was discussed. Z was present and is recorded as saying "when I do something wrong, Mummy (PGM) smacks me, I don't want to get smacked", following which PGM apologised to Z saying "I want you to be a good person". PGM could not explain why she would have said this if what Z was saying about smacking was not true.
52. Since Z has been in foster care, she has spoken about having been hit. When she first came into care in 2018, Z asked if the foster carer would slap her as she didn't like being slapped. However, when asked who had slapped her, she said 'no-one'. In November 2018, Z is said to have told the foster carer that she didn't want to live with

PGM as she didn't want her to hurt her again and talked of being hit in the face with a shoe. Comments made by Z after she had been taken into care require particular caution given that initially the LA was proceeding on the basis that PGM had perpetrated a significant act of violence against Z. Similarly, I am unable to place much weight on the fact that some time after she had been removed Z began to say she did not want to return to the care of PGM. This change in her wishes and feelings appears to have arisen while in a foster care placement that the evidence suggests provided her with a very different lived experience and was not meeting her need to remain engaged with her family and her own culture. It caused CG to express some concern that these allegations were reported only after a dispute between PGM and the foster carer. Having considered the chronology, I decline to rely on them.

53. PGF evidence on this issue of physical chastisement of Z was not consistent with what he is reported to have said previously. I accept the need for caution as English is not his first language, however it is clear that he does not consider smacking to be wrong if it is used to correct poor behaviour. His denial that he had mentioned use of a slipper to the teacher was unconvincing in the light of all the other evidence, and I gained the impression he wanted to avoid saying anything that would undermine PGM's position.
54. Having considered the weight of the evidence available, I find myself unable to make any of the specific findings sought at para 5(i), (ii) and (iv).
55. I have considered the more general finding at 5(i)(iii). The allegation that Z was smacked with a slipper again includes, but is not solely reliant on, the evidence of what Z has said to others. I note Z's accounts of being hit are always in the context of being punished. Her observed demeanour suggests she was anxious and fearful about being the prospect, and it caused her to be upset. She has made it clear that she does not like being hit or slapped, which suggests she has experienced this. However, at other times, Z was observed to be happy, carefree, cheerful and confident living with her PGP's. During the medical investigation in February 2018, Z appeared happy and was not making any complaint about being in PGM's care.
56. I have no difficulty in finding that Z has been subject to physical chastisement by PGM, including the use of a shoe or slipper at times. The evidence to justify such a finding is clear and compelling. The evidence about the note made following a parents evening was not disputed as to its accuracy and PGM could not explain why she would have apologised if she had never smacked Z. The PGM lied to the parenting assessor about past physical chastisement of her own children. The PGM's evidence that she has never hit Z as a form of punishment I find unconvincing and not true. I am satisfied that the records of the conversation PGF had with teaching staff in 2016 is likely an accurate account of what was said at the time, likely to have been truthful, and should be preferred to his oral evidence on this issue now.
57. However, there is no evidence that Z has ever been caused any physical injury attributable to having been physically chastised, which would indicate an unacceptable level of punishment. Further, there is no evidence of physical punishment using a slipper continuing at the relevant time in 2018.
58. After very careful consideration, I find the LA has failed to prove that any physical chastisement of Z that may have been continuing at the relevant time was outside the

range of what would be considered reasonable physical chastisement, and although I am satisfied Z was upset and fearful of such punishment, is insufficient to found a threshold finding that Z has suffered significant emotional harm as a result, nor would it meet the attribution test.

59. Finally, I turn to consider the allegations levelled against the parents in para 5(h). In the light of the failure of the LA to establish that Z was suffering, or at risk of suffering harm in PGM's care, any allegation of failure to protect from such harm must fall away.
60. Having carefully considered the findings sought by the LA and found that the evidence falls short of establishing any of them as threshold findings, I record that in this case threshold is not met. As a result, it is not open to this court to make the care order sought by the LA and I need not go on to consider welfare issues.
61. After such protracted proceedings, it is unusual for the court to find itself in such a position. As a result, I have spent some time going back over my deliberations to check that I have not fallen into error in my application of the law or failed to take into account important relevant pieces of evidence. I am satisfied that I have not.
62. I have considered how it might be that a care case could remain before the court for so long without it being realised that the evidence was not there to establish the required threshold. It seems this is because what first brought Z into proceedings was the concern that her facial injury was not accidental, even in the absence of any allegation by Z. The school were concerned about the injury itself and that Z had given different explanations as to how and when it occurred. The consultant paediatrician who examined Z was "of the opinion that this is a non-accidental injury unless a believable explanation is forthcoming". A whole raft of further concerns attached to the case once it was realised that there had been deceit perpetrated about PGM's relationship to Z and her having obtained false documents to bring Z to the UK, without full consideration as to how or if they provided relevant evidence to support threshold. They might have done, but in this particular case, when scrutinised carefully, they do not. It is likely that without the main allegation of non-accidental injury, none of those peripheral matters would have led to care proceedings being issued.
63. Once Dr Ward's report was received, the LA 'downgraded' its main allegation to neglect, but without sufficient analysis as to how sustainable that was as a threshold finding in the light of all of the evidence, including that of a positive nature about PGM's care of Z. The finally produced threshold document that brings in Z's early life experience and the parents' responsibility is an attempt to bolster a case that has lost its essential core. I understand how and why this has occurred, I do not criticise this LA for being concerned about Z's emotional well-being from a social work perspective. The issue in this case is that it does not meet the legal threshold.
64. The impact on Z of these proceedings has been significant. She no longer has a relationship with her PGM. Although Z said she would like to see her PGF, I am not sure if this has happened. Her contact with parents has suffered, having diminished significantly during the time she was in her original foster care placement. She has not made any trip back to see them as it is likely she would have done had she stayed in PGP's care. I was reminded when reading the papers of Z's excitement when she thought visas had been secured and she would be seeing her parents. The parents'

case is that Z would have returned to live with them 18 months ago but for these proceedings. She has lost a great deal of her language and has not had her cultural needs met in placement over a considerable period. Recently she suffered a most unfortunate and likely damaging incident while on holiday with her foster carers, which resulted in her moving placement, something which perhaps should have happened earlier.

65. On behalf of the parents, it is suggested that they have been treated less favourably by this LA than other parents, even those outside the jurisdiction. They have not been able to participate in any way in the LAC review process, have not been kept informed, including about Z's placement changes, and there has been little communication over the course of 18 months of proceedings and none prior to the filing of the LA's final evidence. There has also been no direct communication between the parents and the CG's. The CG accepted in evidence that the parents' treatment had been less favourable. The LA also accepted that there were difficulties in having effective communication with the parents as they were outside the UK. The SW, in her evidence, accepted that, despite her best efforts, the LA was not in effective communication with the parents and thus, to that extent, the parents were treated differently from parents who reside within the UK.
66. I understand that the communication problems largely stem from the fact that the parents need to use Whatsapp as their primary source of communication. It is clear that they are able to respond instantaneously via this media, as well as set up audio and video calls. Unfortunately, it seems neither the LA nor CAFCASS currently have applications such as Whatsapp available for use by social workers and CAFCASS in the course of their employment. It is difficult to understand why that should still be the case in 2019, and I urge them to consider ensuring they have access in future to the most used and useful forms of social media, such as Whatsapp and Facebook. Following receipt of the judgment the LA has indicated that it is seeking to take steps to address this issue.
67. As this case cannot progress further to consider the LA's application for a care order, the LA must now consider how best to proceed in consultation with Z's parents. I anticipate that the parents will give their consent to Z remaining in care while plans are put in place, in consultation with the parents. Alternatively, it may be that in the immediate future the parents may wish PU to take over care of Z. Either way, this LA has a responsibility to assist in restoring Z's relationship with her family and promoting her return to their care. Z's need for therapeutic support as a result of her experiences ought to be assessed and the LA will want to consider how they might now assist in that regard. I invite the parties to consider whether these proceedings might remain open for some short while in case other orders that do not require the s.31 threshold to be met may be required, and to allow for legal advice to continue to be provided in the light of this judgment until proper plans can be formulated.

Post script

68. Following the formal handing down of this judgment the care proceedings were dismissed. After receiving the judgment the LA, in coordination with Z's family, made arrangements for Z to return to [country X]. Between 20th November 2019 and the date of her return Z was accommodated under section 20 (there being no basis for the previous ICO to continue) with the agreement of her parents. This was to allow

her to complete her school term in the UK and to be prepared for her return to [country X]. During this period the LA supported Z to have increased contact with PU, to re-establish contact with her PGPs, and to have more frequent video-call contact with her parents. Z travelled to [country X] following the end of the school term and has now returned to the care of her parents.

69. I approved the publication of an anonymised version of my judgment, no party objected to this course, but considered that in the particular circumstances of the case it would be appropriate for publication to occur no sooner than 6-months following the conclusion of the proceedings to reduce the risk of identification of Z and to ensure that her return to the care of her parents was not disrupted in any way by the publication of the judgment.