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Case numbers omitted

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 March 2016
Handed down in public: 5 April 2016

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

In the matter of Y (Children) (No 3)

Mrs Jane Crowley QC and Miss Rhian Livesley (instructed by the local authority) for local authority B

Miss Jane Cross QC and Miss Alison J Woodward (instructed by Stephenson Solicitors LLP) for MY1 (the mother of Y1, Y2 and grandmother of Y3, Y4)

Mr Karl Rowley QC and Miss Elliw Roberts (instructed by Linder Myers Solicitors LLP) for MY2 (mother of Y3, Y4)

FY2 (father of Y3 and Y4) appeared in person

Miss Julia Cheetham QC and Miss Elizabeth Morton (instructed by Temperley Taylor) for GY (the children's guardian of Y1, Y2, Y3, Y4)

Hearing dates: 5-8, 12-16, 27 October 2015

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment (delivered in private on 7 March 2016) was handed down in open court on 5 April 2016

Sir James Munby, President of the Family Division :

1. This is the judgment following a finding of fact hearing in a case in which I have already given two judgments, the first on 30 July 2015 and the second on 4 August 2015: *Re X (Children), Re Y (Children)* [2015] EWHC 2265 (Fam); *Re X (Children), Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

Background

2. I set out the background and the history of the litigation down to that point in my first judgment: *Re X (Children), Re Y (Children)* [2015] EWHC 2265 (Fam), paras 18-27. I need not set it all out again and take my earlier judgment as read.
3. For present purposes I need only quote two short passages. The first (para 18) was as follows:

“These two linked cases involve four children: Y1, a girl born in February 2004, Y2, a boy born in July 2006, Y3, a boy born in July 2011, and Y4, a boy born in November 2013. I shall refer to the mother of Y1 and Y2 as MY1. Their father is dead. I shall refer to the mother of Y3 and Y4 as MY2 and their father as FY2. The children are related, because FY2 is an older son of MY1”

I went on (para 19):

“On 27 March 2015 MY1, FY2, MY2 and the four children left this country and flew to Turkey. On 1 April 2015, they were detained by the Turkish authorities close to the border with that part of Syria controlled by ISIS. On 3 April 2015, Newton J, on the application of a local authority which I shall refer to as local authority B, made an order making Y1 and Y2 wards of a court and a separate order likewise warding Y3 and Y4. The three adults and the children returned to this country in the early hours of 15 April 2015. The three adults were arrested and remained in custody until 18 April 2015. In accordance with the orders made by Newton J, the children were placed in two separate foster placements.”

4. I shall refer to MY1, FY2, MY2 and the four children, together with FY2’s brother M, who accompanied them to Turkey, as the “Y group”. In circumstances I shall describe below, the Y group were joined in Turkey by W, who had travelled to Turkey with B (I shall refer to this as the “W/B group”).
5. The children remained in foster care until I returned them to their parents’ care in August 2015: *Re X Children, Re Y (Children) (No 2)* [2015] EWHC 2358 (Fam).

Threshold

6. In an order dated 22 May 2015, Peter Jackson J described the question for determination at the finding of fact hearing as being:

“whether in April 2015 it was the children’s respective parent’s intentions to go to a war zone in Syria controlled by Islamic State with the children and for them to remain there on a permanent basis.”

7. In due course, and in accordance with orders made by Peter Jackson J, the local authority’s case was set out in a Scott Schedule, which I summarised as follows in my first judgment (para 24):

“The Scott Schedule is a long and detailed document. It seeks five findings: (1) The adults made plans and travelled to and across Turkey with the intention of entering an ISIS controlled war zone with their respective children and so putting them at risk of physical and emotional harm. (2) They made complex travel arrangements in an effort to conceal their intention to enter Syria. (3) They lied about their travel plans in order to conceal their intention to enter the ISIS controlled Syrian war zone. (4) They made practical arrangements prior to their departure demonstrating their intention to leave their homes permanently and enter / move to Syria. (5) None of them has provided a plausible explanation for their travel plans and arrangements.”

I continued (para 25): “In essence, the answer to all this was that the family had gone to Turkey for a holiday and that there was never any intention to enter Syria.”

8. The final version of the Scott Schedule emerged during the finding of fact hearing (see below). In response to a question from me as to whether the local authority was in a position to prove that the area of Syria adjacent to the border where the family was detained was controlled by ISIS, the local authority indicated that it was not able to do so, and amended the Scott Schedule accordingly.
9. The local authority now seeks the following eight findings as set out in the final version of the Scott Schedule:

“Finding 1: The [adults], or some of them, made plans and travelled to and across Turkey, with other adult family members, with the intention of entering an active war zone, namely Syria, with their respective children and so putting them at risk of physical and emotional harm.

Finding 2: The adults made complex travel and other arrangements in an effort to conceal their intention to enter Syria in the company of two other men.

Finding 3: The adults lied about their travel plans in order to conceal their intention to enter the Syrian active war zone.

Finding 4: The adults made practical arrangements prior to their departure ... demonstrating their intention to leave their homes permanently and enter / move to Syria.

Finding 5: None of the adults has provided a plausible explanation for their travel plans and arrangements.

Finding 6: The planning and execution of the journeys of both groups involved, ie the Y and W/B groups, were undertaken in manners consistent with online guidance given to prospective migrants to Syria.

Finding 7: If Finding 1 is proved, the plan was ideologically driven. The absence of any explanation for making plans and travelling to and across Turkey, with other adult family members, with the intention of entering an active war zone, namely Syria, combined with the [adults'] untruthfulness about the true purpose of their journey through Turkey, makes it likely that there was an ideological motivation.

Finding 8: Whatever the parents' travel intentions, the journey undertaken by them, which resulted in their interception and detention, caused the children to experience emotional harm through fear and distress. In particular, if the journey was indeed an innocent holiday, such harm was avoidable, arising from reckless decision making which failed to prioritise the children's wellbeing."

The basis upon which those findings are sought is elaborated in the Scott Schedule, a document running to 65 pages. (References hereafter to the Scott Schedule are in the form S/2/e, where the number refers to the relevant finding sought and the letter to the particulars given in relation to that finding.)

10. In its final written submissions, the local authority makes clear that

"its case on radicalisation is largely dependent upon whether or not the court accepts its initial case that the family was in fact in the process of crossing, or about to cross the Turkish/Syrian border into Syria."

Very significantly, however, as it seems to me, the local authority accepts that

"Whether [the ideological influence motivating the family] was to join ISIS, or some other religious, political, or other organisation involved in the conflict in Syria, or indeed for another, ideologically driven purpose, [it] cannot say."

11. The evidential implications of this will become clearer in due course, but the key point is this. The local authority does not seek to establish, in truth, as we shall see, the local authority cannot establish, some pre-existing ideological mindset as the evidential foundation for its case that the family intended to go to Syria. It does not rely upon motive to establish intention; on the contrary, it relies upon intention to establish motive. How, then, does it seek to prove intention? That is the central issue in the case.

The hearing

12. The finding of fact hearing began on 4 October 2015. The evidence finished on 16 October 2015. I heard final submissions on 27 October 2015. The local authority was represented by Miss Jane Crowley QC and Miss Rhian Livesley, MY1 by Miss Jane Cross QC and Miss Alison J Woodward, MY2 by Mr Karl Rowley QC and Miss Elliw Roberts and the children by Miss Julia Cheetham QC and Miss Elizabeth Morton. FY2 appeared in person. He was, throughout, courteous and reasonable in his manner and presentation, including when giving evidence or addressing the court.
13. In major part the local authority's evidence, both written and oral, came from the police. That evidence went to four broad topics: evidence as to what was found when various properties were searched; evidence of what was said by the various adults in interviews; evidence as to 'tradecraft'; and evidence as to what was discovered from analysis of various mobile phones. In the course of this I watched the video recordings of parts of the interviews given by M. I heard oral evidence from (in this order) MY1, MY2 and FY2. None of M, W or B was present in court; none of them gave evidence. The hearing of the evidence concluded on 16 October 2015. Immediately following this hearing I commenced the finding of fact hearing in the related case of *Re X*, in which I handed down judgment on 16 December 2015: *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam). I had intended to hand down judgment in this case before the beginning of term on 11 January 2016. Unhappily that proved impossible because of the unavoidable diversion of a very large part of my time to having to attend to the extremely time-consuming Form E saga that had erupted unexpectedly on 16 December 2015. I am very sorry, and can only apologise for the consequential delay.
14. On 4 March 2016 I sent the following communication to the parties:

“I am sorry that the judgment is still not quite ready for circulation.

However, I can, and therefore should, communicate my decision to the parties.

The local authority has NOT persuaded me of the central core of its case against any of the adults. I do NOT make any of the Disputed Findings 1, 2, 3, 4, 7 and 8. Insofar as any elements of Findings 5 or 6 are made out, they do not suffice either to make good any of Findings 1, 2, 3, 4, 7 and 8 or otherwise to establish 'threshold'.

The parties will obviously need to consider the implications of my decision.”

The law

15. There is no doubt or dispute about the law. I can take it in large measure from what I said in *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam), paras 20-24.

16. The principles are conveniently set out in the judgment of Baker J in *Re L and M (Children)* [2013] EWHC 1569 (Fam), to which I was taken. So far as material for present purposes what Baker J said (and I respectfully agree) was this:

“First, the burden of proof lies at all times with the local authority.

Secondly, the standard of proof is the balance of probabilities.

Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation ...¹

Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.

Fifthly, ... Whilst appropriate attention must be paid to the opinion of ... experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.

Sixth, ... The court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers, where appropriate, to the expertise of others.

Seventh, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.

Eighth, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720).”

¹ See, the Court of Appeal in *Re A (a child) (fact-finding: speculation)* [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26. As I said in *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam), para 110, “suspicion is not enough, nor is surmise, speculation or assertion. At the end of the day the question is whether in relation to each discrete part of its case, the local authority has established on a balance of probabilities, applying that concept with common sense, the proposition for which it contends.”

In the present case, this last point is of particular importance.

17. To this admirable summary I add four further points.
18. First, that the legal concept of proof on a balance of probabilities “must be applied with common sense”, as Lord Brandon of Oakbrook said in *The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948, 956.
19. Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.”

20. Thirdly, that the fact, if fact it be, that the respondents (here, the parents) fail to prove on a balance of probabilities an affirmative case that they have chosen to set up by way of defence, does not of itself establish the local authority’s case. As His Honour Judge Clifford Bellamy recently said in *Re FM (A Child: fractures: bone density)* [2015] EWFC B26, para 122, and I respectfully agree:

“It is the local authority that seeks a finding that FM’s injuries are non-accidental. It is for the local authority to prove its case. It is not for the mother to disprove it. In particular it is not for the mother to disprove it by proving how the injuries were in fact sustained. Neither is it for the court to determine how the injuries were sustained. The court’s task is to determine whether the local authority has proved its case on the balance of probability. Where, as here, there is a degree of medical uncertainty and credible evidence of a possible alternative explanation to that contended for by the local authority, the question for the court is not ‘has that possible alternative explanation been proved’ but rather it should ask itself, ‘in the light of that possible alternative explanation can the court be satisfied that the local authority has proved its case on the simple balance of probability’.”

21. The issue and the forensic context in that case differ from what confront me in the present case, but the point identified by Judge Bellamy is quite general, as exemplified, for example, by what Lord Brandon said in *The Popi M*, 951:

“... the burden of proving, on a balance of probabilities, that the ship was lost by perils of the sea, is and remains throughout on the shipowners. Although it is open to underwriters to suggest and seek to prove some other cause of loss, against which the ship was not insured, there is no obligation on them to do so. Moreover, if they chose to do so, there is no obligation on them to prove, even on a balance of probabilities, the truth of their alternative case.”

22. Fourth, that cases of this kind can raise the particular problem to which I drew attention in *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam), para 96:

“the mother’s qualities as a parent are not, of themselves, any assurance that she would not have acted in the way alleged by the local authority. I cannot blind myself to the reality that not every parent is necessarily as steeped in the values and belief-systems of a post-Enlightenment Europe as we might like to imagine. People may be otherwise very good parents (in the sense in which society generally would use the phrase) while yet being driven by fanaticism, whether religious or political, to expose their children to what most would think to be plain, obvious and very great significant harm. There are, after all, well-attested cases of seemingly good parents exposing their children to ISIS-related materials or even taking their children to ISIS-controlled Syria.”

23. There is one final matter of importance. The case against each of the three adults (MY1, FY2 and MY2) has to be considered separately, albeit in the light of all the evidence. The local authority recognises that I will need to consider whether they all had the same extent of knowledge at all times. Its case is that, by the time they were apprehended, indeed, by the time they had reached and decided to remain in the second hotel (see below), it is likely to have become obvious to each of them that this was not a normal holiday excursion.

Some common ground

24. Before proceeding to explain in more detail how the local authority puts its case, it is convenient to elaborate the brief account I gave in paragraph 3 above by setting out some matters which, except as noted, are common ground.
25. On 27 March 2015 the Y group, including FY2’s brother M, flew from this country to Turkey, first to Antalya and then, on 28 March 2015, from Antalya to Adana. They flew on one-way tickets. Although separate return tickets had also been booked subsequently (according to the local authority as an afterthought to satisfy the ‘tradecraft’ requirement for return tickets), the return booking did not include luggage [S/2/a]. At Adana they moved into hotel accommodation which had been pre-booked for 7 nights.

26. On the morning of 31 March 2015 they were joined at the hotel by W. The Y group's case is that this was an unexpected surprise; the local authority, pointing to evidence derived from analysis of their mobile phones (including what it says were conversations between MY2 and W), say it was pre-planned and co-ordinated [S/1/k, S/2/d,e]. Very shortly after W had arrived, and having spent only three nights there, the Y group (including M) left the hotel, together with W. They took all their luggage with them and travelled by minibus taxi to a place which, according to the local authority, was Reyhanli, a town near the Syrian border.² They stayed one night in a hotel there.
27. The next day, 1 April 2015, taking all their luggage with them, they (the Y group, including M, and W) travelled in two taxis, according to the local authority towards the Syrian border, according to the family to do some sight-seeing before returning to their hotel in Adana [S/1/s]. They got out of the taxis on a dirt road taking only some hand luggage. Shortly afterwards they were intercepted by the Turkish military authorities and taken to various military or police facilities, ending up (as contemporaneous news footage proves) at a police station and then at a hospital both in Reyhanli. According to the local authority, as its case is pleaded in the Scott Schedule, the place where they were first taken was Antakya, in a remote area of Hatay province which includes the Bab-al-Hawa crossing point into Syria [S/1/u,v]. They remained in the custody of the Turkish authorities until returned to this country on 15 April 2015.

The local authority's case

28. The local authority's case is set out at great length and in considerable detail in the Scott Schedule, running as I have said to 65 pages, and in a written closing submission, running to 63 pages, supplemented by an analysis of the mobile phone evidence, running to a further 17 pages. Mr Rowley complained with justification that this analysis was not produced until late on 25 October 2015, *after* all the evidence had been heard; it should, he said, have been put in opening, not least given the fact that FY2 was acting in person. It is both impossible and unnecessary to summarise all this material, although I have naturally had it all very much in mind. I need to stand back and identify the key points.
29. The local authority's case has eight strands, which can be summarised as follows:
- i) In 2013, while being treated as an in-patient for mental illness with psychotic symptoms, M had made comments expressing support for al-Qaeda and saying that he wanted to become a terrorist [S/1/w].
 - ii) The Y group had reason to re-locate away from where they were living because of harassment from members of the extended family [S/1/x]. More generally, the local authority submits that the family had little to benefit from remaining in this country and positive reasons for getting away from the locality in which they lived; that going to Pakistan was not an option given

² According to the local authority, on 30 March 2015 the W/B group arrived in Turkey at Dalaman airport on a flight booked as part of a holiday package to Marmaris. But instead of going to Marmaris, they took a taxi to Adana, an overnight journey of some 10 hours, arriving there on the morning of 31 March 2015. W joined the Y group. B returned immediately to this country via Istanbul.

FY2's strong antipathy to that country; and that having gained awareness of W's intention to go to Syria it is likely that they decided to join him.

- iii) When searched, two properties, one the home of FY2 and MY2 and the other rented in the name of M, appeared untidy, emptied and showing no signs of being lived in [S/4/b,c]. MY1's home, when searched, had no electricity, the front door key had been posted through the letterbox, none of her clothing was there and the house appeared to have been abandoned [S/4/d]. The local authority asserts that the state of each of the properties when the family left this country reflects a "degree of abandonment." It points to such matters as the absence of any of MY1's clothes or personal effects in her house and the fact that the house occupied by FY2 and MY2 (and latterly also by MY1 and M and all four children) had been left with perishable food on the worktops, beds unmade and floors "littered" with "rubbish".
- iv) FY2 had scrapped his car shortly before departing to Turkey [S/4/h].
- v) Notes were found at MY1's home when it was searched which show pre-planning for the journey to Syria, with details of how to respond to questions if asked [S/4/e]. The local authority asserts that these notes, apparently in two different hands, were authored by W and B (as the local authority points out, the notes indubitably relate to their travel plans since they refer to Marmaris) and demonstrate "recognised tradecraft techniques", for example, enabling them to learn plausible answers to the kind of questions that might be asked by suspicious officials. Tradecraft is also evident, the local authority asserts, in W and B's acquisition of new mobile phones and SIM card (and thus with clean histories) as evidenced by the discarded packaging and a vodaphone receipt found at the same property.
- vi) The search of FY2 and MY2's home revealed a document entitled "Muslims Will Not Compromise on the Khilafah" [S/7/a].
- vii) Interrogation of FY2's hard drive found at M's home revealed these images (i) one relating to Syria Winter Crisis Appeal, (ii) one referring to Peshmerga and (iii) one showing four men being hanged from a crane [S/7/b]. The local authority concedes that the material discovered on the hard drive was considered by the police not to be necessarily supportive of extremism likely to lead to terrorism but to be relevant to 'mindset'. Interestingly, and consistent with the material I have described, the mindset was described as being pro-Palestine and demonstrating an active interest in both political and religious aspects of modern Islam. The local authority also points to the fact that in his oral evidence FY2 referred to something he had written being published on a particular website which, it is said, includes contributors who express extremist views.
- viii) The family's explanations that this was a holiday are not credible, nor are their explanations as to why they left their hotel in Adana, as to their surprise when W arrived in Adana and as to the other matters relied upon by the local authority [S/5/a-d].

30. In relation to the last, and central matter, the local authority's case was further elaborated as follows in the Scott Schedule, the local authority asserting that:
- i) Adana and the area between Adana and the Syrian border "is not a popular holiday / tourist destination" [S/1/h]. Nor is Reyhanli [S/1/p], an area where there were many Syrian refugees [S/1/r].
 - ii) B's journey with W to Adana was "cover for W's travel, to conceal the latter's intention to join the family group in going to Syria" [S/1/j,n].
 - iii) W had misled his parents and brother as to where he was going and left a will in his bedroom at his parents' house [S/2/d,n, S/3/c], suggesting, the local authority submits, that he had thoughts about his own mortality.
 - iv) B lied to his wife about his trip to Turkey [S/3/d].
 - v) MY1 told her sister that the family were going to Scotland [S/3/a].
 - vi) The return tickets, which did not include luggage, were obtained so as to provide the family with an explanation for their travel if detained by the authorities [S/2/a].
 - vii) The adults, including W, were in possession of multiple telephone and Sim cards, some of which had been recently acquired [S/2/g, S/4/a,d]. By the time the equipment was examined, following their return from Turkey, some of the calls and messages had been deleted, the intention being, says the local authority, to destroy evidence (a) that W was expected to join them in Adana and (b) that they intended to cross the Syrian border [S/2/h,i,m, S/4/a].
 - viii) The cash carried by them was in sterling, not Turkish lira [S/2/l]. MY1 had in excess of £2,000 in cash on her return to this country [S/4/g]. According to the local authority, the total cash, just short of £3,000, amounted to almost all their savings and was excessive for a holiday,
 - ix) The journey from Adana to Reyhanli involved passing through a police check point [S/1/l], where they were joined by "a policeman" who travelled with them in the minibus to the second hotel.
 - x) According to the Turkish authorities, they had been detained while trying to cross the border illegally with the intention of going to Syria [S/1/t].
 - xi) On leaving the taxis they carried substantially more hand luggage than they required for a short sightseeing walkabout, including changes of clothing, toiletries, food etc; it was, says the local authority, what they intended to carry across the border [S/2/j].
 - xii) They were dressed and equipped in readiness to get across rough terrain, wearing sturdy shoes, walking boots and strong trainers [S/2/k]. All this, the local authority submits, is consistent with tradecraft advice for border crossings.

31. Before proceeding further, it is right to record that, although the local authority has been supplied by the Foreign and Commonwealth Office with all the material available to it (some derived from the Turkish authorities) concerning the circumstances of the family's detention in Turkey, there has been no response from the Turkish authorities to the enquiries made of them by or on behalf of the local authority.
32. The local authority's case was further elaborated in its written closing submissions. I deal first with its submissions in relation to two key factual issues: (i) where was the second hotel? (ii) where were the family when they were detained by the Turkish military authorities? It will be appreciated that the answers to these questions do not, of themselves, answer the key question of whether members of the family knew where they were, let alone the core question of whether their intention was to cross into Syria.
33. In relation to the first of these two issues, the local authority relies upon a number of matters as demonstrating that the second hotel was in Reyhanli: amongst others, the fact that this is what was said by M when interviewed after his return to this country; the fact that some, though not all, of the accounts given by the family as to the travel time from Adana are consistent with their destination being Reyhanli; the fact, according to the local authority, that descriptions by the family of the place they stayed (in particular, of a park where they went) are congruent with objective descriptions of Reyhanli; and the fact that it was to Reyhanli that the family were taken after being detained by the Turkish authorities.
34. In relation to the second issue, the local authority relies upon a number of matters as demonstrating that the family were detained very close to the border at or near a place called Ogulpinar: amongst others, the fact that, according to the Turkish authorities, they were detained in a "restricted" zone in Hatay province; the fact that the identity of the force which, according to the Turkish military authorities, detained them was 2nd Border Regiment (Hatay) 2nd Border Battalion Ogulpinar; the fact that, after being taken to one or perhaps two military posts, they were taken to Reyhanli police station and then to Reyhanli hospital; the fact that MY2's account when interviewed on her return to this country includes a description of the soldier who detained her pointing to the border and pointing to 'Turkey over there' and 'Syria over there', and of being told that she was in a forbidden zone; and M's account when interviewed on his return to this country of what the taxi driver had said when dropping them off (words to the effect that going to the left is safe, going straight ahead or to the right the area is controlled by Shia and "you will be dead", "your family will get killed").
35. In relation to the core question of the family's intention in going to Turkey, and whether, as it asserts, their plan was to cross into Syria, the local authority relies, in addition to all the matters set out in the Scott Schedule to which I have already referred, upon the following amongst other matters: the family's choice of destination (Adana, the local authority suggests, was an unlikely holiday destination and in truth the most convenient destination to muster with W before travelling on to Syria); the limited sightseeing they actually undertook in Adana (the local authority suggests they were merely treading water until W came to join them); FY2's "bizarre" account of how they undertook the "extraordinary" journey from Adana, not knowing where they were going or where they would be staying and having put themselves entirely in

the hands of an unknown taxi driver; the fact that the decision to leave Adana was, according to the local authority, that of FY2 and came as a surprise to both MY1 and MY2 (it was dictated, says the local authority, by W's arrival); the fact that the family's account that W's arrival, occurring just as they were about to leave Adana, was an unexpected coincidence, is implausible, indeed pushes "credulity to its extremity"; the behaviour of W and B in Turkey (not booking in to the hotel in Marmaris, their overnight journey by taxi, B's immediate return to the United Kingdom); the fact that during their overnight journey W and B apparently made no effort to contact the Y group, while MY2 attempted to contact W (evidence, the local authority submits, that W's arrival was anticipated); the changing, inconsistent and untruthful explanations given by the adults as to why they did not immediately leave the second hotel as soon as its manifest unsuitability (MY2 described it as "horrible") became apparent; the inability of the family to recall any meaningful details about what they saw in Reyhanli; the implausibility that the family should then trust different taxi drivers to take them on a sightseeing tour to some unknown place (the local authority submits that this is even less credible than their account of the journey from Adana and much more consistent with them entrusting themselves to a person who they knew had been sent to take care of the arrangements and provide them with a safe passage to the border); the inconsistency between the various accounts given by the adults as to what they were doing in the countryside just before they were detained (which, the local authority submits, suggests that the accounts are fabricated; and the fact, according to MY1, that the taxi drivers were paid when they were dropped off (why if they were just going for a short sightseeing walk?).

36. The local authority's submissions include a careful analysis of its case against each of the three adults. In relation to MY1, it is said that her lies and inconsistencies, both as to events in this country and in Turkey, undermine her essential credibility and indicate knowledge of or collusion in the plan to go to Syria; her evidence, it is submitted, has been moulded to fit the evidence from FY2 and MY2. In relation to MY2, it is said that the evident nature of her relationship with FY2 makes it inconceivable that she did not know what he was planning. There is, as the local authority points out, no suggestion that she is dominated by her husband. It is said that she was untruthful about what the family did in Adana and in her denial of having access to Kik messenger. FY2 is said to be the head of the family, to have made all the arrangements both in this country and in Turkey and to have been aware of W's travel plans. His denial of knowing either the name of the second hotel or where it was, simply beggars belief, submits the local authority, not least having regard to his intelligence, what it describes as his meticulous nature, and his obvious capacity to undertake research. He was, says the local authority, evasive in his responses in the Scott Schedule in relation to the telephone calls to W.
37. As Miss Crowley and Miss Livesley correctly acknowledge in their analysis of the mobile phone evidence, the data is voluminous and complicated. Much of the analysis was based upon the work of a civilian employee of the police, CW, who gave evidence and was cross-examined, on some points to good effect. Much of it is, in truth, of peripheral importance and limited significance in coming to any conclusions in relation to the core issues in the case. One part of this mass of information which is plainly of significance is the data relating to the calls made to W over the night of 30-31 March 2015 when, as now appears, he and B were travelling across Turkey from Dalaman to Adana. The local authority's case was that between 22:28:56 on 30 March

2105 and 09:14:55 on 31 March 2015 fourteen attempted calls were made to W from a phone belonging to MY2, although in the event only five of these calls were actually put to her during cross-examination. Whatever its case earlier on, by the time it came to make its final submissions the local authority was not, as I understand it, seeking to establish that there had been any actual conversations (answers which CW had given during cross-examination by FY2 having undermined the assertion), nor, as Miss Crowley made clear, was it seeking to prove that there had been more than five calls. Reliance was also placed on three calls, attempted to be made (and in two cases, it is said, actually made) to B from the same phone at different times on 31 March 2015. The local authority's case, in its closing submissions, is that the likely caller in each case, if not MY2, was FY2; indeed, that FY2 was the most likely caller, as the organiser of the journey and more likely than MY2 to be making contact with the others.

38. I have already recorded Mr Rowley's complaint about the very late stage at which the analysis of the mobile phone evidence was introduced into the proceedings. No doubt this contributed in part to the adjustment in the local authority's case already referred to. Not surprisingly, FY2 made much of what CW had said in the witness box. In his cross-examination of her he had also extracted the admission that some elements of her work had been "slipshod".
39. In the conclusion to their written closing submissions, Miss Crowley and Miss Livesley, recognise that there are a number of possible conclusions that I might reach upon the evidence as to the respective knowledge and participation of each of the adults in the event that I am satisfied as to the local authority's principal submission that there *was* a plan to take the family to Syria. Their final submission is rather low-key:

"It is neither possible nor necessary to achieve certainty as to what was going on with this family in Turkey, or the reasons for it, but having regard to the totality of the evidence it is possible to conclude that the most rational explanation for what in places seem to be irrational pieces of parental behaviour, is that the [adults] were taken by arrangement to the area close to the Syrian border for the purpose of crossing it, and not to view sheep and cows who were in plentiful supply in other, less dangerous, parts of Turkey."

The responses to the local authority's case

40. The various responses to the local authority's case, as set out in the other parties' written final submissions, are again of a length which precludes anything other more than summary of the key submissions.
41. I start with MY2. Mr Rowley and Miss Roberts in their final submissions point out that MY2 is a caring and attentive parent. It is, they submit, inherently improbable that she would imperil her sons unless there was some powerful ideological driver operating upon her. But, they say, none has been established and the local authority's case as to her and her husband's reasons for migrating to Syria is, they assert, "incoherent". They submit that, taking all the evidence in the round, it is more

plausible that this was a family holiday which went wrong rather than, as they put it, some inexplicable attempt to travel to a war zone by an exceptionally capable and loving mother. The local authority's case involves, they say, one of the most serious and most improbable allegations which can be made against a parent.

42. At the heart of their case, Mr Rowley and Miss Roberts comment critically upon how the local authority puts its case in relation to Finding 7. They submit that the likelihood of the parents intending to travel to Syria (as opposed to making idiosyncratic choices as to holiday location or being the dupes of taxi drivers or the other adults in the group – M, W and B) can only be assessed by reference to the evidence of motivation. But, by removing ISIS from the findings it seeks, the local authority, they say, has eliminated any meaningful context for the journey which it says the parents were undertaking: there is no ideological reason for it. MY2 and her husband are devout Muslims, but that is all. There is *no* evidence that they support ISIS or any of the other fundamentalist regimes in Syria, or for that matter elsewhere. Mr Rowley and Miss Roberts ask rhetorically, what is the nature of the ideology which the local authority identifies? The lack of coherence in the local authority's case is exemplified, they suggest, by its reliance upon the materials recovered from the family's computer. The notion that they simply wanted to relocate to a war zone is absurd.
43. Mr Rowley and Miss Roberts address, one by one, each of the eight Findings sought by the local authority. I need not follow them into the detail. In conclusion, they submit that the local authority has failed to discharge the burden of proof resting upon it. It cannot, on the available evidence, present a coherent, plausible scenario for MY2 wanting to abandon her life in this country and live in Syria which is more probable than her account of a holiday which went badly awry through no fault of her own. The evidence against W and B is suspicious but leaves too many lacunae in respect of what their plans (possibly also involving M) actually were and does not support the local authority's central contention.
44. In relation to Finding 8, their submissions are caustic: if the children suffered emotional harm in consequence of their experiences of, and after, being detained by the Turkish authorities, it was considerably less than that which they experienced as a result of being separated from their parents upon their return to this country. The decision-making of the family which culminated in their detention by the Turkish authorities was, at worst, naïve, not reckless. They did not know they were travelling into a restricted zone, so what happened to them was not reasonably foreseeable. Moreover, and in any event, even if Finding 8 were to be made out, it would not, they submit, suffice to establish 'threshold'. Many parents, they suggest, take holidays which involve decisions with outcomes which they subsequently regret, but these do not attract local authority involvement. Many Jewish families, as they point out, take their children to visit parts of Israel which may be subject to periodic attack by anti-Israel elements, but child protection proceedings are not instituted upon their return.
45. I should, they submit, dismiss the local authority's application.
46. On behalf of MY1, Miss Cross and Miss Woodward make similar submissions. They direct attention to what they say is the logical incoherence of the local authority's arguments encapsulated in Findings 1 and 7. Finding 7 is dependent upon Finding 1.

Finding 7, they submit, when properly analysed, is based on circular reasoning. It involves three components, which they set out, leading to the inference that the journey was ideologically driven: deconstructed, however, ideological motivation is required to prove the second component (the intention to enter Syria) but the second component is required to prove ideological motivation. The local authority's argument, fundamental to its case, is, they say, completely circular and inherently illogical.

47. In the course of their detailed response to the specifics of the local authority's case, which, again, there is no need for me to rehearse in remorseless detail, Miss Cross and Miss Woodward submit that MY1 was, in every sense, a 'passenger'. She provided funding for the holiday but there is, they submit, no evidence that she was otherwise involved in its planning, let alone that she knew anything at all about whatever plans W and B may have had. There is no evidence of any intention on her part to relocate, and the local authority's case that the family properties had been abandoned is neither made out nor, indeed, supported by the photographs I was shown. The photographs, they submit, show a property that is untidy, unkempt and in need of decoration, but not abandoned. Nor is there any evidence of any radical beliefs or other ideological driver for her behaviour. Just what ideology drove her to try to enter a war zone in Syria? Their submission is stark: none is asserted by the local authority and none is evidenced anywhere in the evidence or the papers. MY1's admitted disillusionment with the particular place where she lives in this country provides no motivation, ideological or otherwise, to re-locate to Syria. MY1 admits that she lied about her holiday plans to her sister, but this was no more than a 'white lie' to lessen the worry for her elderly mother. On the totality of the evidence, they submit, the most likely of all the suggested scenarios is of an innocent holiday that went horribly wrong.
48. Miss Cross and Miss Woodward submit that the local authority can establish neither the location of the second hotel nor the place where the family was intercepted by the Turkish military authorities – and this, they say, is a fundamental flaw in its case.
49. In relation to Finding 8, they submit that although the local authority *may* be able to establish that MY1 was foolish and naïve, there is no basis for asserting that she was reckless. In common with Mr Rowley and Miss Roberts, they submit that the concept of 'reckless holiday making' as a platform for State intervention raises what they characterise as "a real public policy issue" demanding careful consideration. Can the State legitimately intervene, and if so at what point on the scale, in cases where parents subject their children to holidays or journeys which result from decision-making which may be perceived to be reckless? Adding to Mr Rowley's examples, they ask, what of aid workers who take their families with them to areas that are hostile?
50. In his final written submissions FY2 drew attention to the fact that none of M, W and B was called to give evidence by the local authority, so that much about them and about W and B's plans has never been explored in adequate detail. He submits that detailed examination of what was actually established in evidence demonstrates just how thin the local authority's case based on 'tradecraft' really is: in many important respects, he says, the family did *not* follow the recommended tradecraft. He devotes much space to an analysis of the local authority's witnesses which is critical in both senses of the word. By contrast, much of his response to the detail of the local

authority's case is general and does not condescend to particularity. He submits that, after rightly abandoning the ISIS allegation, what remains of the local authority's case is very unreasonable at best and to a large extent nonsensical. He asserts emphatically that this was a family holiday. He denies any actual or attempted telephone contact with W before his arrival at the hotel in Adana and says that the first he knew of W's presence in Turkey was when the hotel receptionist rang.

51. On behalf of the children's guardian, Miss Cheetham and Miss Morton made submissions appropriately directed to assisting the court in its analysis of the evidence rather than propounding any particular conclusions. Their analysis is balanced and objective, drawing out a variety of points, some supportive of the local authority's case, others supportive of the family's case. Again, I do not follow them into the detail. They say that FY2 and MY2 are "loving, caring and protective" and submit that it is "inherently unlikely that they would do anything that might place their children at risk of death or serious injury." They conclude their submissions with this observation:

"in this case the court is dealing with parents [MY2 and FY2] who are particularly devoted and offer a high standard of care to their children and ... there is virtually no evidence before the court to suggest a motivation for these parents to expose their children to the risk of serious physical harm or death by undertaking the journey to Syria."

52. They identify as a "significant factor" the limited evidence to suggest any unusual ideology on the part of any of the adults. They express scepticism as to the significance of what was found on the hard drive. As against that, they suggest that the journey to Adana was "an unusual one for a family with young children"; that entrusting of the whole family to unknown taxi drivers would appear reckless; that accepting the family's case in relation to events after they left the hotel in Adana on 31 March 2015 requires me to accept a number of assertions (which they carefully enumerate) that they imply are more or less improbable; but that if I do not accept those assertions then I must consider *why* it is that the various adults (whose cases they say I should consider individually) may not have been frank. They suggest it is highly unlikely that W's meeting with the family in Adana was entirely coincidental and point to the various telephone calls. They submit that the adults have sought to minimise the effect on the children of what they experienced in Turkey.
53. In relation to the police interviews of M they point to various reasons why it might be thought that his evidence is not to be disregarded simply because of his mental illness. In relation to 'tradecraft' they submit that many of the so called indicators of 'tradecraft' are equally consistent with a tourist travelling through Turkey.

Discussion

54. It is convenient to consider first the events in this country relied upon by the local authority (paragraphs 29(i)-(vii)) before turning to address the central core of the local authority's case (paragraphs 29(viii), 30).

Discussion: events in this country

55. In my judgment, none of these matters, whether taken in isolation or together, takes the local authority anywhere in its case against MY1, FY2 and MY2 or any of them. I take the seven pleaded matters in turn. I can deal with them quite shortly.
56. (i) M's comments about al Qaeda: This was hardly explored either in evidence or in submissions. Its significance in relation to MY1, FY2 and MY2 is at best tangential and its evidential weight negligible. (ii) Reason to re-locate: There is no doubt that there were difficulties and animosities within the wider family and that the family saw themselves as the victims of harassment by various members of the wider family. Absent any cogent evidence of ideological motivation (and there is none), the idea that these concerns would have persuaded the family to re-locate to Syria is fanciful. (iii) Abandonment of the properties: As Miss Cross and Miss Woodward said, the photographs show properties that are untidy, unkempt and in need of decoration. They do not, in my judgment, show properties that have been abandoned. Nor, on a fair reading of all the evidence, is abandonment of any of the properties established. (iv) FY2's car: FY2 provided an innocent explanation for something which, at the end of the day, was little relied upon by the local authority. (v) The notes found at MY1's house: On the local authority's own case these are referable, and therefore it is reasonable to infer, attributable, to W and B. There is nothing beyond suspicion or surmise to link them to MY1, FY2 or MY2.³ (vi) "Muslims Will Not Compromise on the Khilafah": This is not evidence of extremist ideology. (vii) FY2's hard drive: On the local authority's own case this goes at most to 'mindset' and not to extremism likely to lead to terrorism. The content of this material, moreover, is not indicative of interest in the kind of ideology associated with al-Qaeda or ISIS.
57. What is quite clear, in my judgment, and this is crucial, is that the local authority has wholly failed to make good any case that any of MY1, FY2 or MY2 was adherent to, a supporter of, or subject to any ideological belief system that could possibly explain a desire to re-locate to Syria. There is simply *no* evidence worth the name indicative of, let alone probative of, such a finding. There is, in my judgment, no evidence to support the assertion that these loving and devoted parents, as Miss Cheetham and Miss Morton rightly describe them (and the same, in my judgment goes for MY1), would be motivated to expose their children to the realities of life in Syria. Indeed, the local authority, as we have seen, hardly attempted to make good its case on this point except on the basis that *if* it was proved that the family intended to go to Syria then an extremist motivation could be inferred. The simple fact, as I find, is that the local authority is wholly unable to establish some pre-existing mindset as the evidential foundation for its case that the family intended to go to Syria.

³ The local authority submits that these notes are consistent with tradecraft and provide evidence that W is likely to have entered Turkey with a cover story to conceal his true intentions of entering Syria. But how does this link up with or make good a case against the family? The local authority seeks to make the link by submitting that the family was awaiting W's arrival in Adana before continuing to Reyhanli. As I explain in paragraph 63(iii) below, W's arrival in Adana cannot have been a coincidence; someone must have known that he would be arriving. However, even assuming that W's intention was to travel to Syria, where is the evidence that this intention was known to anyone in the family? The local authority submits that this is an inference I can and should draw, and that, having got to this point in the analysis, I can and should find that the family (or at least some of its members) had the same intention. This, however, in my judgment, is to go further than either the evidence or the analysis justifies. Surmise or suspicion, even strong suspicion, is not enough.

58. In relation to ‘tradecraft’ generally (I deal with some specific points below) I agree with the point so aptly made by Miss Cheetham and Miss Morton (paragraph 53 above).

Discussion: Turkey

59. It is convenient at the outset to determine two factual issues: (i) where was the second hotel? (ii) where were the family when they were detained by the Turkish military authorities? I can take this shortly. In my judgment, the local authority has established on a balance of probabilities, and essentially for the reasons given by Miss Crowley and Miss Livesley, that the second hotel was in Reyhanli. None of the family admits this, but it is noticeable that they do not proffer, even by way of submission, any suggestion of some other possible location.
60. I am also satisfied, on a balance of probabilities, that the place where the family was detained by the Turkish military authorities was within a zone of military control, near the border with Syria and, given the evidence of both M and MY2 in their police interviews, probably within sight of the border. It is impossible to be more precise as to exactly *where* or *how near the border* they were when they were detained, though in the final analysis, little if anything turns on the precise answer to either question. The name of the unit which detained them is suggestive, but without more detailed information as to how the Turkish army deploys its troops no more than suggestive. The key point, in my judgment, is the admitted fact that they were detained by the Turkish authorities within what, given all the circumstances, must have been some kind of restricted even if not a prohibited border area. How close to the border that means they were is something on which it is impossible to be precise without more detailed information than I have as to how the Turkish authorities organise border security and as to the ‘depth’ of the military zone.⁴
61. Having thus cleared the ground I come at last to the central issue in the case. What did the family think it was doing, what was it intending to do, when detained by the Turkish military authorities? Specifically, was the family crossing or attempting to cross the border?
62. At this point, I am faced with what in my judgment are three centrally important realities.
- i) In the first place there is the compelling argument, deployed as we have seen both by Mr Rowley and Miss Roberts and by Miss Cross and Miss Woodward: *Given the absence of any ideological driver*, it is improbable – in my judgment, inexplicable – that any of these parents should ever have wished to put their children in the kind of very serious danger that re-location to Syria would inevitably entail. On this argument, the local authority’s case is, as they

⁴ I have not overlooked the facts, strongly relied on by the local authority, that, according to information supplied by the Turkish to the United Kingdom authorities, the family was “deemed to be crossing the border illegally, providing the power of detention”, and that an official Turkish press release quoted a Turkish military source as saying that the family had been arrested “while trying to cross illegally directly from Turkey to Syria.” The difficulty, however, is that without more detailed information than I have as to the relevant Turkish arrangements, both military and legal, none of this provides a clear answer to the question of just how close to the border they were when detained.

put it, incoherent (paragraph 41). The children's guardian, as we have seen, recognises the force of the point (paragraph 51).

- ii) Next, there is the separate but related argument that the local authority's case is, as illustrated by what is said to be the inter-relationship between Findings 1 and 7 (paragraphs 10-11), illogical, incoherent, and essentially circular (paragraphs 42, 46).
- iii) As against all that, there is the fact that the family's explanations for how they came to be in Reyhanli and then on the border do, for all the reasons deployed by Miss Crowley and Miss Livesley, at best push credulity to its extremity and in truth, in my judgment, involve significant lying (paragraphs 30, 35).

Where, then, does the ultimate truth lie? The short answer is that I do not know.

63. I am not persuaded that I have received a reliable and truthful account from any of the adults as to what they were doing after they left the hotel in Adana. I can illustrate the point by referring to three key parts of the narrative:

- i) Much of the journey from Adana to Reyhanli (as I find it to have been) was along modern roads, yet they deny seeing any road signs or other signs indicating where they were going or where they had arrived at. MY1 may be largely illiterate, but both FY2 and MY2 are literate and intelligent people, and in the case of FY2 highly educated. Their account seems almost incredible.
- ii) The whole of their various and far from consistent accounts of why they left Adana, why, on leaving Adana, they entrusted themselves to an unknown taxi driver to take them to an unknown destination, why they did not immediately leave the hotel in Reyhanli when they discovered how bad it was, why, the following day, they entrusted themselves to different taxi drivers to take them to another unknown area, and why they paid the taxis while leaving much of their luggage with the taxi drivers, is likewise almost incredible.
- iii) Their case that W's arrival in Adana was unexpected and, in effect, a complete coincidence simply beggars belief. It cannot have been a coincidence. Surely at least one of them knew he would be arriving?

I am driven to the conclusion that in significant part their evidence was not merely unreliable; it was untruthful – and that goes for all three of the adults.

64. The local authority, as we have seen, seeks to bolster its case by reliance upon the analysis of the mobile phones. That evidence, however, was neither as clear cut as might first appear nor was it all put either to FY2 or MY2 in cross-examination.⁵ The local authority likewise seeks to bolster its case by asserting that the way in which the family behaved after leaving Adana, and particularly in relation to what they took with them and the way they were dressed when they left the taxis near the border,

⁵ The local authority points to evidence showing that a particular phone or SIM card was used to communicate by text message from the plane on which the family returned to this country but was no longer in their possession when searched by the police on the airport apron immediately after disembarking. This is a loose end for which there is no satisfactory explanation, but in any event I do not see where it takes the local authority.

accords with and is explained by ‘tradecraft’. I am not persuaded. The family assert that they had no idea they were being taken into a military zone, pointing to what they assert was the absence of any warning signs or fencing. That evidence, of course, is worth only what the general credibility of those giving it justifies.

65. All this brings me back to the question: insofar as they were telling lies, why were they doing so? The answer is that I do not know, but it is, in my judgment, a distinct possibility that lying behind the lies was a combination of fear, well-founded or not, as to the inferences that might (would) be drawn if they once admitted having travelled to Reyhanli and then even further east and a feeling that, having come up with a story, however improbable, it was better stick to it.⁶
66. The truth of course *may* be that the local authority’s case is right, but it has not persuaded me, even on a balance of probabilities, that it is. The strength of the argument as I have summarised it in paragraph 62(i) is compelling, even ignoring (which of course one cannot) the argument summarised in paragraph 62(ii); in the teeth of that argument – that reality – neither the local authority’s arguments nor the family’s lies and evasions suffice to make good the local authority’s case.
67. I turn finally to address the local authority’s case in relation to Finding 8. Essentially for the reasons give both by Mr Rowley and Miss Roberts and by Miss Cross and Miss Woodward, the local authority has failed to persuade me that what the family did was reckless. And even if they were, I am far from persuaded that it caused the children or any of them to suffer significant harm of a type or in circumstances justifying State intervention.

Afterword

68. This judgment was handed down in private on 7 March 2016. The local authority conceded that in the light of my findings the proceedings should be dismissed. I ordered a short stay, to enable the local authority to decide whether it wished to pursue an appeal. On 9 March 2016 the local authority indicated that it did not. The stay was removed. The proceedings accordingly came to an end.
69. I now (5 April 2016) hand the judgment down in public, having, to such extent as I think appropriate, responded to the local authority’s request for clarification of some passages in the judgment as originally handed down.

⁶ The local authority asks rhetorically why, given my finding as to where in fact the family had travelled and my finding that it was a “distinct possibility” that the family was fearful as to “the inferences that might (would) be drawn if they once admitted” that fact, I was unable to draw those inferences. The short point is that neither law nor logic nor common sense carries one to where the local authority would have me go. That someone may fear the authorities might draw an inference is not, of itself, any reason why a judge should do so.