



Neutral Citation Number: [2021] EWFC 93

Case No: ZC152/20 AND SE75/21

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2021

Before:

MRS JUSTICE THEIS

Between:

Mr & Mrs A	<u>Applicants</u>
- and -	
Ms X	<u>1st Respondent</u>
- and -	
Mr Y	<u>2nd Respondent</u>
- and -	
Sheffield CC	<u>3rd Respondent</u>
- and -	
M	
(By Her Children's Guardian Pat Benavithis)	<u>4th Respondent</u>
- and -	
G	
(By Her Children's Guardian Nicola Toomes)	<u>5th Respondent</u>

Mr Tom Wilson (instructed by **Goodman Ray**) for the **Applicants**
Mr Alex Taylor (instructed by **Sheffield CC**) for the **3rd Respondent**
Ms Frances Heaton Q.C & Ms Olivia Weir (instructed by **MKB Solicitors**) for the **4th Respondent**
Ms Elizabeth Isaacs QC & Ms Caroline Ford (instructed by **Best Solicitors**) for the **5th Respondent**
The 2nd & 3rd Respondents were not in Attendance

Hearing dates: 22nd - 29th September 2021

Judgment: 25th October 2021

MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

Introduction and summary

1. The court is concerned with two sisters G, 10 years, and M, 8 years. Both children have been the subject of proceedings during much of their lives, with the inevitable uncertainty that causes for each of them and those who care for them, about plans for

their future care. It is hoped the orders I am going to make today will bring an end to that uncertainty, with the focus now being on securing their stability and ensuring their future welfare needs are met.

2. Although brought up together, G and M have been in separate placements since July 2020. Prior to July 2020 they were placed for adoption with Mr and Mrs A in September 2019, having been made the subject of placement orders in March 2019.
3. G remains placed with foster carers, M returned to live with Mr and Mrs A in May 2021.
4. The long term plan going forward is for them to remain in separate placements, albeit in the context of recognising the importance and significance of ongoing sibling contact, whatever form that may take.
5. The court is primarily concerned with two applications, the application by Mr and Mrs A to adopt M and by the local authority to revoke the placement order in relation to G. The birth parents were served and notified of these proceedings, they have taken no active part other than the birth mother attending a directions hearing in December 2020.
6. Apart from Mr and Mrs A and the local authority, the only other parties are the children, represented by separate Children's Guardians, Miss Toomes for G and Miss Benavithis for M.
7. By the time this hearing started on 22 September 2021 there was no issue between the parties about an adoption order being made for M, or the revocation of the placement order in relation to G. The main issue that remained was whether the court should make a contact order under s 51A ACA 2002, leave having been given for G to make such an application at an earlier hearing.
8. The court heard oral evidence from Dr Vaidya (Consultant Child and Adolescent Psychiatrist) and Dr Willemsen (Clinical Psychologist), the two experts instructed in the case, the allocated social workers for G and M, and Mrs A. The IRO, Ms Jones, attended the hearing but having provided further information, was not required to give evidence. It was extremely helpful that arrangements could be put in place for both Dr Vaidya and Dr Willemsen to hear each other give oral evidence.
9. Despite the very difficult history to this case, during this hearing, and in the lead up to it, there has been an admirable constructive and collaborative approach by all the parties. Whilst some of the differences in the past between the parties have been difficult, I am satisfied that what this hearing has done is provide a more solid and secure foundation to support the future care arrangements for these two children, who have been through so much in their short lives. All of those involved in these proceedings, as well as the court, hope the structure now agreed upon will provide a secure base from which those involved in each child's care, together with those providing expert advice, will be able, together, to reach decisions that will help support both children in what lays ahead for each of them.
10. By the time the oral evidence had concluded there were no significant issues between the parties. Ms Isaacs QC, on behalf of Ms Toomes, G's Children's Guardian, informed the court on 27 September at the conclusion of the oral evidence that, in the light of the

revised plan put forward by the local authority, especially around supporting sibling contact, and the oral evidence, in particular from Mrs A, a contact order under s 51A ACA 2002 was no longer sought on behalf of G. The sibling contact plan for G and M is set out in Annex A to this judgment. That plan has been incorporated in G's care plan and M's adoption support plan.

11. The sibling contact plan at Annex A is both creative and child focussed. The parties are to be commended in being able to agree its terms, harnessing in an effective way the valuable information from the detailed and comprehensive expert reports and oral evidence in a way that looks beyond these proceedings concluding. It means that valuable analysis and expert insight is not lost. The plan constructively utilises what has been termed the '*institutional memory*' of the history of care these children have had from these proceedings, to ensure decisions going forward are informed by that information, and the multi-disciplinary approach that is required in considering the difficult issue of sibling contact and how it is managed and supported. The local authority, in particular, are to be commended in agreeing to fund the continued involvement of Dr Willemsen to attend the six- weekly meetings set out in the sibling contact plan for the next six months to ensure, together with Dr Vaidya, that continuity, knowledge and expertise is not lost for these two young children and those who care for them.
12. The only issue that emerged, late in the day, was the consequences of the local authority giving notice under s 35(2) ACA 2002 on 14 December 2020 in relation to M's placement. In particular, whether her placement for adoption still subsists. I stayed that notice on 15 December 2020. The local authority now no longer seek to advance that such notice was effective, accepting, in effect, that the decision to serve that notice was irrational. They were right to do that. For the reasons set out below, I have concluded that notice was not effective as M was not returned to the local authority by Mr and Mrs A or by order of the court in accordance with s 35(5) ACA 2002.
13. It is against that background the court is being asked to make orders that it is intended will have lifelong consequences for both children. For M to secure and anchor her placement with Mr and Mrs A through an adoption order and for G to discharge the placement order made in March 2019 and secure her placement with long term foster carers under the care order which will be revived in favour of the local authority.
14. The court and the parties have greatly benefited from the experts in this case; each expert provided valuable insight to help guide the parties and the court on the difficult and sensitive issues that arise on managing contact between the children. That expert evidence has helped mould and refine the amendments to the adoption support plan for M and the care plan for G, which will incorporate the sibling contact plan set out at Annex A. Those amendments have provided the parties and the court with the necessary confidence in the structure going forward. In essence, the sibling contact plan involves meetings every six weeks, with dates having been fixed for the next six months, details of who is expected to attend (including Dr Vaidya and a commitment by the local authority to fund the attendance of Dr Willemsen at these meetings for the next six months), what issues are going to be discussed and how information to inform those meetings is going to be gathered.
15. With this structure in place the parties have come together on the way forward. Everyone recognises the importance of the relationship between G and M, based on

their shared experience to date, how their continuing relationship is a reality for them and will be part of their future plans. Due to their circumstances it is a complex issue that will require careful consideration and balancing of risks at each stage, with the need for the group making the decisions to have the institutional memory, expertise and courage, if required, to make difficult decisions, rather than seek to avoid them if they are too difficult, and thereby risk drift.

16. The benefit of this hearing having taken place and the plan going forward is that many of those involved in contributing to the decisions will do so with a detailed knowledge of the background, having had the benefit of listening to the oral evidence and the importance for each of the children of their respective need to know about the other and to maintain their relationship in a way that is commensurate with their best interests.
17. It is difficult to comprehend what Mr and Mrs A have had to manage. To say they have had a long and difficult journey in fulfilling their wish to be able to have children of their own does not begin to recognise the reality of what they must have been through. During these proceedings they have demonstrated unwavering commitment, dedication and devotion to both of these children. On one view they recognised the reality of the situation before the professionals, as they had lived and experienced the children's behaviour and dynamics first hand. Despite a void of effective support from the local authority prior to July 2020, and the total resistance to their position immediately afterwards, they have remained resolute in following what they considered was best for these two young children.
18. Events have demonstrated they were right to do so, and their position has largely been supported by the expert evidence, and now by the local authority. That coming together bodes well for the future of these children, who everyone recognises have an important role to play in the other's life. There is an agreed pathway setting out how important decisions are made going forward as to how the reality of their relationship is recognised, promoted and supported in a way that meets their respective welfare needs. The key message from the evidence is the need for a flexible approach, taking the wider long term view whilst ensuring drift in decision making is avoided and having the courage to make difficult decisions relating to maintaining the children's relationship.
19. For the reasons set out below, I will make an adoption order in favour of Mr and Mrs A in relation to M confident that such an order will meet her lifelong welfare needs and Mr and Mrs A will take all necessary steps to safeguard M's relationship with her sister, G. Mrs A's oral evidence, on behalf of both Mr and Mrs A, was both powerful and compelling. Their dedication to meeting both these children's needs remains at the heart of any decisions they make. I am confident they will not lose sight of that and have the commitment and dedication that will ensure there is no drift.
20. I will also revoke the placement order in relation to G, as it is clear the placement order will not safeguard G's future welfare needs. The court has been updated since the conclusion of the oral evidence. The early signs are the very recent transition by her to the new placement has gone well and Mr Radford's update sets out the steps he has taken, which demonstrate the importance of good communication between those who have these children's interests at the centre of what they do and confirms the commitment Mr Radford, G's allocated social worker, gave during his oral evidence.

21. This has undoubtedly been a difficult case for the local authority to manage, bearing in mind the complexity of the children's needs. The difficulties there were in the relationship between Mr and Mrs A and the local authority in 2020 are no longer present, which can only benefit the children and those who care for them. The updated information from Mr Radford, who had the benefit of hearing the oral evidence in the case, demonstrates his experience and sensitivity to the issues.
22. Whilst it is not been necessary, for the purposes of this judgment, to track through events leading up to the breakdown of the placement in July 2020 I can only echo the observations made by Jackson LJ in the Court of Appeal judgment at paragraph 56 (1) of the '*...vital importance of early specialist support for adoptive placements before they reach the point of breakdown. Knowledge of the insights contained in the psychological assessments that were commissioned after the children were removed would surely have helped the As and the social workers, and through them the children, and given their joint adoptive placement a better chance when it needed it*'. That has proved more so by the recent assessments and the recognition now by the local authority of the need and value of having those involved in decisions about the children having historical knowledge of the case. For whatever reason in 2020 the local authority appeared to have pulled up the drawbridge on the possibility of keeping an open mind about the placement options for these children. Fortunately, that blinkered, trenchant position and attitude has changed. The local authority are now to be commended for this fresh, more constructive approach, which has been evident during this hearing through the assistance Mr Taylor has given and the eloquent evidence from Mr Radford and Ms Newcombe, aptly summed up by Mrs A when she said '*The relationship now is a great working relationship and we trust them*'. It is essential this approach, based on mutual trust and respect, continues in order to meet the future needs of these two young children.
23. Whilst recognising the pressures that are on the local authority, it remains critical for both these young children that the change of position by the local authority and the recognition of the need to retain the depth of understanding about the history of this case does not evaporate now the spotlight of the court has moved away. I hope the involvement and engagement with the IRO in these proceedings will ensure that doesn't happen. The court can be confident that Mr and Mrs A will keep a watchful eye on these issues, with both children's interests at the forefront of their minds.

Relevant Background

24. G and M's birth parents are Ms X and Mr Y. Although they have been given notice of these proceedings they have taken no active part, other than Ms X attending an early directions hearing.
25. G and M have four half siblings, the eldest is their brother Z who currently lives with the paternal grandparents, who G and M lived with prior to their removal from their birth family. G and M have not met and are not aware of their other three half siblings.
26. Both G and M experienced very unsettled early lives, with repeated change of carer. What is known about is that during their early years they were exposed to their parents' substance misuse, domestic abuse, volatile and anti-social behaviour and criminal activity. The home conditions were very poor. There was a period in 2014 when they

were in refuge accommodation with Ms X, but the concerns continued with reports of them being left unsupervised.

27. In 2015 they moved with Ms X to live with her new partner. The children were exposed once again to domestic abuse, poor home conditions and continued neglectful parenting and the consequences of Ms X's poor mental health. From subsequent accounts by the children they have reported that during this time they were subjected to humiliating and aggressive forms of discipline, being forced by Ms X to lie for her and witnessing Ms X attack someone with a knife. The chronology prepared by Ms Newcombe dated 12 April 2021 vividly sets out the extensive neglect and physical and emotional harm both children suffered.
28. The local authority commenced care proceedings in early 2018. G and M were made the subject of interim care orders and removed from the care of their maternal great grandmother in March 2018, their brother Z remained placed with his paternal grandmother. On 6 March 2019 the children were made the subject of placement orders, they were then age 8 and 7.
29. Both children were placed with Mr and Mrs A on 2 September 2019 as prospective adopters. They lived with them for 11 months until both children were accommodated by the local authority on 22 July 2020. From an early stage the children's behaviour was very difficult to manage and included G deliberately injuring M, including to her genitals, G's significant levels of self-harm and her destructive behaviour particularly to things that were of value to M. Dr Vaidya described each child's experiences to date as *'a story of a very young girl exposed to significant trauma, loss and multiple placement moves in a short span of time'*. Dr Willemsen reported that whilst he could not fully understand the reasons for their behaviour he considered *'...the children suffered developmental trauma as a result of which they developed insecure attachments organisations. Their trauma is not caused by particular or regular traumatic events but by a continued exposure to maltreatment and family violence, or a disruption in attachment to their primary caregiver(s)'*.
30. Mr and Mrs A sought support and assistance to manage the children's behaviour. Those requests were not responded to by the local authority in the way they should have been. In early July 2020 Mr and Mrs A suggested the children needed to be separated for their own protection, but the local authority resisted this without undertaking a sibling assessment. Before that could happen matters reached a crisis point and on 22 July 2020 both children moved at the request of Mr and Mrs A and were placed in separate foster homes. The communications set out in paragraph 6 of the judgment of the Court of Appeal on 19 November 2020 (<https://www.bailii.org/ew/cases/EWCA/Civ/2020/1591.html>) vividly illustrate how difficult the position had become for Mr and Mrs A and both children.
31. On 14 August 2020 Mr and Mrs A asked for M to be returned to their care, that request was refused and on 7 September 2020 they made an application for an adoption order in relation to M. On 25 September 2020 they applied for an order under the Human Rights Act ('HRA 1998') seeking an order for M's immediate return to their care.
32. The HRA 1998 application was heard on 9 October 2020 and on 21 October 2020, Mostyn J dismissed the application and struck out the adoption application, accepting the local authority position that the email from Mr and Mrs A on 21 July 2020 had

brought the placement to an end under s 35 (1) ACA 2002, and with it the parental responsibility of Mr and Mrs A. As a consequence, the refusal by the local authority to return the children was not unlawful and Mr and Mrs A had no standing to make the adoption application they did on 7 September 2020.

33. Permission to appeal that decision was granted on 4 November 2020 and the appeal was allowed on 19 November 2020 on the basis that Mr and Mrs A did not give notice to end the placement under s 35 (1) ACA 2002, although the refusal by the local authority to return M to Mr and Mrs A's care was lawful as it amounted to a determination restricting their parental responsibility under s 25 (4) ACA 2002. The local authority did not give notice under s 35 (2), tacit or otherwise, before the adoption applications was issued in respect of M. In consequence, the children remain placed for adoption when the application was issued and Mr and Mrs A were entitled to make the adoption application in relation to M.
34. Following that appeal the case was allocated to this court and I have conducted all hearings since then. A number of directions hearings took place to determine the remit and type of expert assessment. This resulted in Dr Hessel Willemsen, Clinical Psychologist, being instructed to undertake a detailed psychological assessment of Mr and Mrs A and both children, as well as Dr Vaidya, Consultant Child and Adolescent Psychiatrist, who undertook assessment of both children. Although it had originally been intended that there would be an ISW assessment of the children's relationship, in the light of the expert assessments it was decided that was no longer necessary.
35. With the agreement of the parties M returned to Mr and Mrs A's care on 4 May 2021 and remains there. G continued to be placed with the foster carer she was placed with in July 2020 although has recently moved to a foster carer who it is intended will be her long term foster carer.
36. There was contact between the children from July 2020 to April 2021 when it was decided that there would be a suspension of contact as M was returning to the care of Mr and Mrs A and her treatment for ADHD was going to start and it was felt important for there to be limited variables in M's day to day life, so the effects of the medication could be accurately monitored. As demonstrated by the very helpful summary at paragraph 18 of Ms Isaacs QC's closing submissions there then followed a number of months when there appeared to be a lacuna in decision making about this important issue, with the result that no direct contact has taken place between the children since then. This recent history vividly illustrates the critical importance and value of the plan set out in Annex A, to provide the necessary structure for decisions to be made.
37. This hearing commenced on 22 September and the court heard evidence from Dr Willemsen, Dr Vaidya, Mr Radford, Ms Newcombe and Mrs A.

The evidence

38. In his thoughtful and perceptive oral evidence Dr Willemsen set out the difficult issues that arise in this case. On the one hand recognising the importance of the children's relationship to each other and the need for it to be maintained as part of the reality of their lives, and on the other recognising the different consequences and risks for each of them of such contact taking place. As he observed these are two children who have different sets of needs, need separate placements *'yet they are very important to each*

other'. It needs a *'very sensitive group of people to think about them, need to be in touch with what trauma the children have had'*. He regards it important that drift in making decisions is avoided. His view was that the professional group needs to be of the quality and breadth that can grasp the nettle and make difficult decisions which did not happen in the build up to events in July 2020 when, as he put it, *'Mr and Mrs A were ringing the bell and no one was opening the door because it was too hard'*. He described the response from the professionals at that time as being *'dismal'*. He agreed Mr and Mrs A have a commitment to G *'they bonded and care deeply for G because she was with them and G is M's sister'*.

39. Dr Willemsen stressed the need for those making decisions about the children in this case to be supported as it would be hard for anyone not to be affected by the level of deprivation and violence which he considers can be *'overwhelming'*. This is to avoid the system of support around the children becoming avoidant, as not making difficult decisions is sometimes easier.
40. Dr Willemsen was asked about what the term settled means in the context of when the children's contact could progress, as he had indicated his worry that the issue of when the children are settled could become a reason for not making difficult decisions. He said it was important to look at this issue in a holistic, not linear way. It needs a nuanced approach to avoid drift in decisions, particularly difficult ones, being made. Consideration needs to be given to the need for experienced supervision of contact when it starts, possibly starting with video contact first. He considers the level of distress seen in the children is because these children, due to their life experience, held the stress usually held by parents. He considers this *'a very complex case because of the psychology of the two children, the children are so stuck together it needs really good thinking'*.
41. Dr Willemsen stressed the need to include within the group of those making decisions professionals who had working knowledge of the history of the case. His concern is the combination of a lack of understanding about the background with the difficult decisions that need to be made could lead to vagueness and then drift, which would not be in either child's interests. He considered there needed to be an external framework that would not have the rigidity of a court order but would be sufficiently equipped to make the difficult decisions. He stressed the importance of the relationship between the children for each child, not based just on the research evidence about the importance of the sibling relationship but includes, in this case, the *'survival of the sibling relationship to nurture and develop'*.
42. In his oral evidence Dr Vaidya agreed with much of what Dr Willemsen had said. He had overseen the treatment for M with the medication for her ADHD, and will continue to have a role in relation to G, as she remains a looked after child. As he said an important part of his role is he had *'been on the journey'* these children had been on. He stressed the need to maintain the relationship between the children. When asked what he considered were important features of what to look for when considering whether the children were settled he considered it is important to look to see if there is someone who is the child's anchor, someone who the child holds in their mind. He said the more anchors the child has the more secure the child will feel. There are, in his view, a number of purposes to contact including the sibling connections, affirmation of shared life experiences, being able to hold each other in their minds despite being separated and provides a link to their shared past. He described the bond between the

children as being based on past experience of a shared life; it is one of the many facets of their relationship which includes that they are living separately for a reason. Whilst there is a strong relationship it also involves elements of control and submission. He confirmed he supported contact between the children but it needs to be balanced with flexibility and avoiding drift, as appears to have happened since April. There was no structure to the decision making as to why contact had not taken place, as no identified professional or group was identified with the task of managing this issue.

43. Looking forward he agreed the importance of good communication, not only between the professionals but also in keeping Mr and Mrs A updated. He stressed the point of the need for any structure going forward having what he termed '*institutional memory*' about the case.
44. Mr Radford's evidence was informative about the social work structure for G. He is an experienced social worker with over 20 years' experience with the local authority. Ms Ndlovou is an agency social worker who had been allocated to G since May 2021. Mr Radford had been involved since July to support Ms Ndlovou. He had not met G, although had seen her at an event he had attended. Ms Ndlovou has been off work since 13 September and there was no date for her return. Mr Radford had the benefit of hearing the oral evidence from Drs Willemsen and Vaidya. Mr Radford confirmed he was responsible for the transition plan for G's imminent move and provided the details of how that move was going to be managed and supported.
45. Having heard the evidence of the experts he said he was struck by the different journeys the children had experienced and the importance of the need to understand that. He confirmed that having heard the expert evidence he had liaised with his manager and the decision had been taken that he would become G's allocated social worker. This recognised the importance of consistency for G and M and those involved in decisions about them. It was later confirmed this was the case and steps had been taken to ensure Mr Radford had sufficient time to be involved in this case. His evidence was clear about the need and value to have the continued input from both Drs Willemsen and Vaidya in the decisions about contact between the two children, at least for the first six months. As he observed, that would ensure '*keeping all the tools on the table*'.
46. Ms Newcombe will remain M's allocated social worker until the adoption order is made; following that order an adoption support social worker will be allocated by the local authority. The court was informed the following day that Hannah Glew had been allocated. When asked what life story work had been done, she said there is a life story book but they are waiting for photos of the birth family. She agreed the importance of preparing the later life letter, which she would do following her final visit with M and Mr and Mrs A. Ms Newcombe agreed she would attend the first meeting in accordance with the sibling contact plan for the children, as there was value in the consistency that would bring. As she observed '*the girls have been through so much trauma, it is key to get this right now, their relationship is so important, it has to be done in the right way at the right time*'. She agreed the importance of there being '*an enhanced handover*' between her and the adoption support social worker who is allocated.
47. In her composed and powerful oral evidence, Mrs A described the importance of both G and M to her and Mr A. She stressed that the children are very important to each other, they need each other and how G is very much a living presence in their home, illustrated by describing how they marked and celebrated G's recent birthday. As she

said '*M knows she can think and talk about G*'. When asked whether they would not keep contact between G and M as a priority, she responded '*we should not let that slide*' referring to the times when they have repeatedly pressed for issues relating to the children in the past. As she said '*our agency told us to stop banging on the door but we didn't stop because we knew what was right, to think we would stop fighting now would not happen. We just want them to be happy and stand the best chance in their lives.*' When asked about what impact the adoption order may have she said she did not think it would, as everyone had been working on the basis M would be adopted and it was acknowledged it would be an open adoption with the prospect of continuing contact with the birth family.

48. When asked for her view about the decision that Drs Willemsen and Vaidya would have a continuing involvement in the contact review meetings, she said '*We are delighted they will be involved. We just wanted someone independent and they took such care and attention, we are heartened and grateful they are involved, they understand the girls*'. Mrs A supported the idea of starting with video contact and stressed the need for the direct contact to be supervised by two social workers, if possible the allocated social workers for each child. As Mrs A observed from M's perspective the last time she said anything G went away, so that dynamic will be in play and needs to be considered as possibly acting as a deterrent for M to say anything.
49. When asked about how the last year had been Mrs A candidly described it as having been '*totally horrific*', referred to the inadequate preparation and planning there had been prior to the placement of the children with them. Then when things started to unravel they felt everyone was working against them, including a lack of consultation with them about decisions when they still retained parental responsibility. She acknowledged that the relationship now with the local authority is '*a great working relationship and we trust them*'.
50. Turning to the question of whether there should be a defined order for contact order she said '*we will support contact and will do it, we don't have to be forced – we are already onboard*'. In response to questions from Ms Isaacs QC, leading counsel for G's Children's Guardian, Ms Toomes, she said she understood why she was concerned about contact and continued '*the local authority team now in place we have faith in – it is not going to slip off our radar*'. She agreed there needed to be flexibility '*as long as it did not include [contact] stopping*'.

The children

51. The comprehensive evidence the court has sets out the complexity of each child's background and their experiences, the impact that has had and the consequences for each of them in the future.
52. G has been in her current placement since July 2020, she wishes to stay there and is going to have to navigate the consequences of the recent move to long term carers that took place just after the conclusion of the evidence in this hearing.
53. Dr Vaidya's assessment of G led him to conclude that if her behaviours continue, she is likely to fulfil the criteria for a Conduct Disorder. He does not consider there is any neurodevelopmental basis for G's behaviour, stating that he can only assume her behaviours '*...lie in her experiences of trauma, neglect, witness to severe domestic*

violence as well as being subject to it and parental substance misuse. Dr Willemsen concluded that G's severely insecure attachment organisation is avoidant and she has *'significant difficulty expressing her frustration, distress and hurt to those who care for her; she cannot trust that they will look after her'* further commenting that *'her envy for others is strong and leads to powerful rejecting reactions from those around her'*. He considered *'It could be thought that G's needs are such that any family may feel too intimate, too threatening for her, and that therefore she is better suited for fostering..'* It is agreed it is critical G has long-term, weekly psychotherapy which should start when each of the children are permanently placed. She needs firm boundaries and, as Dr Willemsen describes, *'somewhat fearless carers who are not frightened to challenge her'*.

54. M has been back with Mr and Mrs A since May and her attachment difficulties have played out, as described by Dr Willemsen as follows *'...the ambivalent/anxiously attached child will continue to try making the link but does not manage to firmly internalise the primary carer due to absent or inconsistent responses from the primary carer. This behaviour is clearly manifest in M who continues to ask if she can stay with Mr and Mrs A but remains uncertain; in part her behaviour is related to the current trauma of having been removed from Mr and Mrs A, only to be placed with them again, but it is also evidence of her continued and historical uncertainty about those who care for her'*.
55. Dr Vaidya's assessment of M led him to conclude that she was subject to a *'genetic inheritance from her mother with regards to her impulsivity, hyperactivity and poor concentration'* considering she *'shows behaviours consistent with a diagnosis of Hyperkinetic Disorder (ADHD)'*. Dr Vaidya recommended medication, together with Trauma Focussed Cognitive Behavioural Therapy to help manage the likely consequences of the medication. Both Drs Vaidya and Willemsen agree it is impossible to know the cause of M's behaviour, that it may be both a genetic inheritance and a contribution that is environmentally determined by their history of care and experiences. They agree M requires psychotherapy. In terms of her wider emotional needs it is recognised she will need support in developing her identity independent of G.
56. M commenced her treatment with ADHD medication shortly after returning to Mr and Mrs A's care which has resulted in a positive change in her behaviour.

Mr and Mrs A

57. Mr and Mrs A's decision to pursue adoption was against the background of discovering they were unable to conceive a child naturally followed by seven years of successful IVF treatment and two unsuccessful surrogacy arrangements. In their written evidence they described being thrilled at the reality of being parents following the matching process.
58. The breakdown of the adoptive placement in July 2020 must have been an extraordinarily difficult time for them, as it was undoubtedly for each of the children as well. The contemporaneous records record Mr and Mrs A were doing all they could in very difficult circumstances. As Jackson LJ observed in his judgment Mr and Mrs A *'responded in an exemplary way but the situation would have challenged any parents'*.

They did everything they could to meet both children's needs and to provide a home for them both. Put simply, they could not have done more.

59. Although the situation now is that they have applied to adopt M they have remained resolute and consistent in their commitment to both children. In their first statement in September 2020 they confirmed their commitment by wanting '*...to be part of a positive outcome for the girls, and to help them build a relationship between themselves that can be positive. We truly do not believe, through our lived experience, that a positive relationship will ever be achieved with them living in the same home. They both deserve to be safe. They both deserve to be happy.*'
60. Mr and Mrs A have remained wholly committed to G, even though she has indicated she does not wish to see them, by continuing to be updated about her, sending gifts and cards, talking openly about her in the home and marking her significant events (such as her recent birthday). Recently, Mr A received (unprompted) a birthday card from G.
61. Their commitment is demonstrated by the determination shown by them since early 2020 urging the local authority to undertake a comprehensive assessment of each child's individual needs. These proceedings were commenced to ensure this took place as they opposed what they considered was the local authority's ill thought out plan in November 2020 to reunite the children in one placement. They have overcome unnecessary procedural hurdles erected by the local authority both in the High Court and the Court of Appeal, including seeking to serve notice on G's placement, without warning, via counsel for the local authority's skeleton argument and filing evidence which sought to place responsibility on Mr and Mrs A for the breakdown of the working relationship between Mrs and Mrs A and the local authority.
62. Through all this Mr and Mrs A's commitment to the children has not wavered. They have remained focussed in seeking to ensure both children receive the care and support they each need and it is largely through their dedication and persistence that the children will benefit from the structure that is now in place.

Legal framework

63. In relation to G the application to revoke the placement order pursuant to s 24 ACA 2002 is made by the local authority and is not opposed by any other party. In deciding whether to grant the application the court is required to look at all the circumstances and only make the order if that meets G's welfare needs, having regard to s 1 ACA 2002.
64. Turning to the application to adopt M there are two issues.
65. First, whether M's placement to adopt subsists. The local authority served notice in relation to both children on 14 December 2020 pursuant to s 35 (2) ACA 2002. It was agreed in relation to G the effect of that notice was that G ceased to be placed for adoption at that date.
66. In relation to M the competing positions of the parties was recited in the order dated 15 December 2020. At that time the local authority position was that its notice in respect of M was effective, M had ceased to be placed for adoption and Mr and Mrs A no longer held parental responsibility for her. On behalf of Mr and Mrs A, Mr Wilson maintained

that was not the effect as the notice had been given after the application to adopt had been made and did not meet the requirements set out in s 35(5) ACA 2002. The issue was not determined at that hearing and a stay was put on the notice until the conclusion of the proceedings.

67. Section 35 (5) ACA 2002 provides as follows:

(5) *Where—*

(a) *an adoption agency gives notice under subsection (2) in respect of a child,*

(b) *before the notice was given, an application—*

(i) *for an adoption order (including a Scottish or Northern Irish adoption order),*

...

was made in respect of the child, and

(c) *the application...has not been disposed of,*

prospective adopters are not required by virtue of the notice to return the child to the agency unless the court so orders. (emphasis added)

68. The issue is - does the giving of the notice pursuant to s 35(2) ACA 2002 end the placement? Jackson LJ stated in the Court of Appeal at [35] '*Once notice has been given and the child has been returned, the placement for adoption comes to an end and the prospective adopters no longer hold parental responsibility.*' (emphasis added)

69. Second, if the notice was not effective there is no issue the preliminaries to adoption are met in this case pursuant to ss 47, 49 and 50 ACA 2002.

70. S 42(2) ACA 2002 requires M to have had her home with the applicants during the 10 weeks preceding the application. No party takes issue that this requirement has not been met, even though M did not physically have her home with Mr and Mrs A during the relevant period.

71. It has been recognised in many cases that whether M has her home with Mr and Mrs A is a question of fact, the phrase should be given a wide and purposive construction and is not restricted to cases where people live together under the same roof (*Re A (A Child: Surrogacy: Section 54 Criteria)* [2021] 1 FLR 357).

72. The relevant principles were set out by Cobb J in *Re TY (Preliminaries to Intercountry Adoption)* [2020] 1 FLR 739 at [24] and in so far as they are relevant are helpfully summarised by Mr Wilson as follows:

a. A child can have his/her home with a parent notwithstanding that for extended periods the child and the parent may be in different homes, and indeed the child may be away at boarding school; important to an assessment of 'having a home' is whether the child and applicant have an 'integrated' relationship, whether the parent and child see themselves in that relationship, and the 'concern and care' shown by the parent for the child (Re X (A Child: Adoption No 2) [2014] EWHC 4813 (Fam), at [34] and [36]).

b. It is legitimate to consider the purpose of the requirement to have his home, which is to test the strength of the applicant's commitment to the child, and whether the 'match' between the child and the applicant is secure (Re SL (Adoption: Home in Jurisdiction) [2005] 1 FLR 118, at [22]).

c. It will be relevant to consider whether the 'parent' has 'arranged and provided' the home for the child, even if not physically with the child for the whole material time (Re Z (Foreign Surrogacy: Allocation of Work: Guidelines on Parental Order Reports) [2016] 2 FLR 8035, at [57]).

d. There is a human rights aspect to consider. "Family life" for the purposes of Article 8 ECHR can be established between a child and their adoptive parents (Wagner and JMWL v Luxembourg (Application 76240/01) [2007] ECHR 1213, at [121]). If de facto family life is established, then there is a positive obligation to construe statutes in a way as to enable them to comply with the convention (Re A and B (Parental order) [2016] 2 FLR 446, at [47]).

Submissions

73. In his typically cogent and persuasive written submissions, Mr Wilson submits the notice given by the local authority on 14 December 2020 did not operate to end M's placement for adoption with Mr and Mrs A. This is for a number of reasons. First, it post-dated the application to adopt. If it had the effect the local authority originally sought to suggest it could prevent the court then seized of the application being able to determine the application. Second, it would undermine the intention behind s 35 (5) as it would terminate the placement for adoption mid-way through proceedings in which the prospective adoption is being considered. It would transform the case from an agency to a non-agency adoption, which could delay or event prevent the court being in a position to make the adoption order. Third, the concluding words of s 35 (5) confirm the prospective adopters are not required by virtue of the notice to return the child to the agency 'unless the court so orders'. The effect of that is the service of the notice on its own without the return of the child or court order means the placement for adoption is not terminated by the service of the notice alone.
74. Mr Wilson acknowledges the circumstances in this case are unusual in that M was being accommodated by the local authority at the time that the notice was served but, as the Court of Appeal had concluded, this was accommodation pursuant to s 22 C Children Act 1989 (CA 1989) and she remained placed for adoption.
75. This analysis is supported by the other parties, notably including the local authority. In case the court was not able to support his analysis Mr Wilson and Mr Taylor have submitted agreed grounds that would found an agreed application for judicial review to set aside the notice, as the local authority accept the decision was irrational. This is what took place in *Prospective Adopters v Herefordshire District council* [2018] EWFC 76 where the local authority purported to withdraw the s 35 (2) notice in circumstances where there is no mechanism or procedure in the 2002 Act to do that. To make sure the issue was beyond doubt Keehan J granted permission to the prospective adopters to issue a claim for judicial review and quashed the local authority's decision. It should be noted in that case no application to adopt had been made, so s 35(5) was not considered.
76. Mr Taylor, on behalf of the local authority, joins with and supports the submissions made by Mr Wilson. The constructive and collaborative approach taken by Mr Taylor on behalf of the local authority has been of enormous assistance and has been reflected

by the oral evidence that has been given by the two allocated social workers. They rightly expressed real regret about the very difficult circumstances Mr and Mrs A have had to endure over the last two years.

77. On behalf of G, Ms Isaacs QC emphasises the importance in this case of the need for the adoption and revocation of the placement application to be heard together. At an earlier stage in the proceedings, the local authority had invited the court to deal with the revocation application as there was then no opposition to the application. That was resisted by Ms Isaacs on the basis that the planning and proposals for both girls were considered as part of a linked exercise. She submits that in a case such as this, where post adoption sibling contact is of such critical importance that is and should be the correct approach. This is particularly as pursuant to s 1 (7) ACA 2002 in considering whether to revoke the placement order the welfare of G throughout her life must be the court's paramount consideration. As she observed, the applications relating to G and M are inextricably linked, continuing in her written submissions to state '*the implications for each of their legal ties being severed by adoption and the potential impact of that on each child emotionally/psychologically and the extent to which that could impact upon contact is a significant and key consideration for the court. Similarly the care planning for G and the therapeutic or other support that she is provided with will have implications for contact between her and M, any risks of instability that could arise from contact and the court's considerations when determining the adoption application and the welfare analysis for M...*'. As was observed by Jackson LJ in the Court of Appeal judgment in this case '*It is important that the children's situation is not distorted by the fact that only one of them will be subject to proceedings...*'.
78. Ms Isaacs submits it has only been through the applications being heard together that the court has been able to scrutinise the local authority's care plan, as part of the exercise in evaluating the factors in the enhanced welfare checklist in s 1 (4) ACA 2002 in cases where revocation of a placement order is being proposed. It has been through the court's detailed scrutiny of the care plan for G alongside scrutiny of the adoption support plan for M, has been critical in achieving the unified approach that has now been taken in the interests of both children. In the context of an application for leave to apply to revoke a placement order Baker LJ observed in *Re C (Children) (Revocation of Placement Orders) [2020] EWCA Civ 1598* that there is no case law providing guidance on how a court should approach an application to revoke a placement order once leave has been given.
79. In her written submissions Ms Heaton QC reflects that the hearing has provided an opportunity for all parties to focus and identify that which is necessary to ensure the best outcome for each child '*through discussion, reflective and proactive communication*' with the aim of producing sustainable decision-making.

Discussion and decision

80. Despite the enormously difficult and traumatic background to this case it is a positive step that the issues the court now has to determine, although important, are narrow and limited in scope.

81. The first issue relates to the notice served by the local authority to terminate M's placement for adoption on 14 December 2020. It is no longer relevant to consider in any detail the merits of the decision to do that in relation to M having regard to the stage the proceedings had reached then; when expert assessments were being embarked upon and this court was only just seised of the case. Put neutrally, from what this court has seen, it was a wholly unhelpful step that was neither necessary, or child focussed. The local authority now, rightly, accept that the decision to serve that notice in relation to M was irrational and they do not seek to support it.
82. The question is whether serving that notice on 14 December 2020 had the effect of terminating the placement for adoption for M in circumstances where an adoption application had been issued in respect of M on 7 September 2020. Although at the time of the notice, M was not living with Mr and Mrs A, in December 2020 the Court of Appeal decision confirmed she was still placed for adoption with Mr and Mrs A and was being accommodated pursuant to s 22 C CA 1989.
83. In those circumstances, submits Mr Wilson, following service of the notice under s 35 (2) ACA 2002 on 14 December there was no obligation on Mr and Mrs A to 'return' the child unless, under s 35 (5) ACA 2002, the '*court so orders*'. The court did not so order, consequently their status as prospective adopters has not ended and continues to date.
84. I agree with Mr Wilson's analysis that the only way in which a placement for adoption may be terminated *after* an application for an adoption order has been made are either
 - (1) Where prospective adopters give notice and return the child, pursuant to s 35 (1) ACA 2002, or
 - (2) Where the local authority serves notice in respect of the placement pursuant to s 35(2) ACA and the court so orders, pursuant to s 35(5) ACA 2002.
85. In this case the fact that at the time of the notice the child was accommodated pursuant to s 22 C CA 1989 makes no difference, as she remained placed for adoption and no one has suggested that Mr and Mrs A had returned the child. All the evidence points the other way, they sought a respite placement on 22 July 2020, requested her return to their care on 14 August 2020, issued their adoption application on 7 September 2020 and a subsequent application seeking her return under the HRA 1998.
86. Consequently, I am satisfied M's placement for adoption has subsisted since 14 December 2020 notwithstanding the notice served by the local authority pursuant to s 35(2) ACA 2002.
87. The second issue relates to one of the requirements for M's adoption. There is no issue that M is eligible to be adopted (she is placed for adoption by an adoption agency, is the subject of a placement order, is under 18 years, and is not married) and Mr and Mrs A are eligible to adopt her (they are over 21 years and domiciled here).
88. Section 42 (2) ACA 2002 requires M to have had her home with Mr and Mrs A in the 10 weeks preceding the application to adopt. M lived with Mr and Mrs A from 2 September 2019 until 22 July 2020. M regarded Mr and Mrs A as her parents during this time. The Court of Appeal accepted the only evidence as to the circumstances in

which M left Mr and Mrs A's care on 22 July was as a result of Mr and Mrs A's request for temporary accommodation as a respite placement. This reflects Mr and Mrs A's exercise of their parental responsibility in temporarily delegating M's care to the local authority in a way that they have arranged and provided a home for M. It is of note M's belongings remained with Mr and Mrs A at their home. M had twice weekly contact with Mr and Mrs A between 22 July and 30 September 2020, they were regularly updated and were consulted about her care. The contact notes record M's wishes during this period as wanting to return 'home'.

89. All this points to the reality of the position that the court can conclude on the evidence in this case that in the 10 weeks prior to the adoption application M had her home with Mr and Mrs A. She was physically in their home until 22 July 2020, from then arrangements about where she lived still continued to be under the direction of Mr and Mrs A, who had sought a respite placement, M's belongings remained with them, they continued in regular and close contact with each other, M still regarded her home as being with Mr and Mrs A and their parent/child relationship remained from both their perspectives intact. This view is supported by the fact that family life had been established in accordance with Article 8 and there is a positive obligation to construe statutes in a way as to enable them to comply with the Convention.
90. The preliminary requirements for the court to make an adoption order are met. In considering whether the court should make an adoption order the court is required to determine whether making such an order will meet M's lifelong welfare needs in accordance with s 1 ACA 2002, having regard to the checklist set out in s 1 (4).
91. All the professional evidence supports such an order being made. Dr Willemsen described Mr and Mrs A as '*conciliating and warm people*' and as having a '*visible*' bond with M. He concluded '*Mr and Mrs A have the emotional resilience to look after M and help her through any therapeutic intervention*'. M's wishes have remained consistent, she wishes to be adopted. She remains deeply anxious and insecure about whether she will remain living with Mr and Mrs A, constantly seeking reassurance that she will be staying with them as described by Mr and Mrs A in their statements and in the Annex A report. Dr Vaidya was clear that whilst she has made positive progress the stability and security of her placement and sense of belonging with Mr and Mrs A is key. Whilst he recognised the risks of sibling contact he explained if issues around her '*permanency, identity and individuality are resolved and if her development continues as current, I anticipate M to grow up to be a lovely, responsible and successful young person – just like anyone else*'.
92. The impact of an adoption order on M's relationship with G is a relevant consideration. It will change their legal status in relation to each other, although Mr and Mrs A have made clear making such an order does not affect the children's lived reality; they are sisters and always will be. Dr Willemsen was asked specifically to comment on the impact of an adoption order on each of the children; he did not consider the making of an adoption order or a special guardianship order will compromise '*their sense of being sisters, of being siblings – of belonging to each other*'. His analysis describes the benefits of an adoption order for M, she is '*invested in that*' and he considers there is a risk to M's relationship with G if that doesn't happen, as she may think it was G who prevented that. As regards the impact of an adoption order in favour of M on G, he considers the impact of that is already a reality for G as M has a family and G does not.

93. Although the question of post adoption contact was an issue at the start of this hearing as to whether an order should be made or not, it no longer is. Following the oral evidence the parties have been able to agree a structure that keeps the issue of sibling contact being considered in its own right, with planned meetings to underpin the decision making and the communication of such decisions. It provides the structure and much needed flexibility that was not going to be possible through an order, before even considering whether such an order should or could be made.
94. The importance of continuing contact between M and G is recognised by all, in particular Mr and Mrs A. Their ongoing commitment to both children remains embedded in their family life, as they observed in their statement the children will *'never not be siblings...whatever order the Court makes. M and G will always be sisters'*. They have described their commitment to contact with the wider birth family. In this particular case the making of an adoption order will not sever M's de facto link with her wider birth family.
95. The process by which those who need to can consider the relevant information and reach decisions about when and how ongoing contact should take place are now mapped out in the adoption support plan and the care plan. It is recognised there remain uncertainties going forward for both children, including within their respective placements and contact with the birth family. There will need to be a collaborative and supportive approach, as any step taken is not without risks and uncertainties for both children and those who care for them.
96. The revocation of G's placement order is not opposed. The evidence is clear that her needs are such that an adoptive placement will not meet her welfare needs. Both G and those who care for her are likely to need significant ongoing support to manage her placement needs. That is more likely to be met by the continuing obligations on the local authority under a care order and as a result her welfare needs are best met by that order being restored on the revocation of the placement order.
97. I accept Ms Isaacs' analysis that in cases such as this, although relatively rare, the court should keep a keen eye on the care plan that would be the relevant framework for the child if the placement order is revoked. In particular, in cases where issues such as sibling contact may be relevant. As has been emphasised by the court in many cases, and is supported by the research, the sibling relationship is the enduring relationship that should be preserved where it is in the interests of the child to do so, The particular facts in this case have demonstrated the need for that particular aspect to have been put under close scrutiny, everyone was informed by the oral evidence that was given in this case. Each witness gave reflective, thoughtful and carefully reasoned evidence.
98. Pulling the evidential threads together, I am satisfied that M's lifelong welfare needs can only be met by this court making an adoption order. That is the order that accords with her wishes, it will provide the security and stability she yearns for and the evidence demonstrates that it will provide a secure foundation for her to continue to maintain her relationship with G, in whatever form that takes, in a way that meets her welfare needs. It is clear the plans that are now in place will ensure the issue of contact is considered and managed in a way that meets the particular needs of this case and each of these two children's welfare needs.

99. G's welfare needs will be met by the revocation of the placement order and her welfare needs being overseen and met with the support and guidance of the local authority under a care order. The scrutiny that her care plan has been put under has helped inform the court in undertaking the welfare analysis it is required to do under s 1 ACA 2002 having regard to her lifelong welfare needs. The revised care plan that now incorporates the sibling contact plan out-lined below will ensure the important relationship she has with M is kept under careful review and informed decisions made that will avoid the inherent risks of any drift that would be inimical to her lifelong welfare needs.

Annex A

[Redacted]