IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of her 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.

Case No:**[2022] EWFC 44**

IN THE FAMILY COURT AT COVENTRY
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF SIBLING A AND SIBLING B

Date: 3rd May 2022

Before :

Her Honour Judge Walker

- -

Between :

COVENTRY CITY COUNCIL

Applicant

- and -

A MOTHER (1)
A FATHER (2)
B (by his Children's Guardian) (3)

Respondents

PROSPECTIVE ADOPTERS

Applicants

- and -

WARWICKSHIRE COUNTY COUNCIL (4)
A (5) (by her Children's Guardian)
PATERNAL GREAT AUNT (6)

Respondents

- -

- -

Mr Reynolds for **Coventry City Council**
Mrs Hume for **Warwickshire County Council**
Ms Vickers for the **First Respondent**
Ms Amonoo-Acquah for the **Second Respondent** (until the morning of Day 3).
thereafter **"F"** appeared in person
Mr Duncan for **The Prospective Adopters**
Miss McIntosh for the **Sixth Respondent** (appearing Pro Bono)
Miss Ferguson for the **Children's Guardian**

Hearing dates: 25th, 26th, 27th and 28th April 2022

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JUDGMENT

1. I am concerned with the welfare of two children, "A" (who is three and a half years old) and "B" (who is rapidly approaching his second birthday). Their mother is "M" and their father is "F". These are consolidated proceedings in which both children are represented by their Children's Guardian, "CG". I will explain the other parties in the context of the history of the proceedings to date.

2. 'A' was subject to care proceedings from birth. "F" has seven older children including "X" . "M" has an older child called "Y". Both of those children were living with their parents when they began their relationship with each other in 2018. The local authority became involved with the family and concerns centred around domestic abuse, physical chastisement, poor behaviour management, not engaging with health appointments, neglect and lack of compliance with safety plans. In October 2018, there was an investigation into allegations of sexual abuse by "F" against his child, "Z".

3. At two days of age, "A" was placed with local authority foster carers who are now the prospective adopters "Mr and Mrs PA". Assessments conducted at the time concluded that none of the children could be returned to the care of either "M" or "F". On the 4th March 2020, this court made a final care order in respect of "A" in favour of Warwickshire County Council.

4. "Y" now lives with his step-mother by virtue of a child arrangements order. He is loving and caring by nature. "X" is subject to a care order and lives in a residential unit. He is described as a bright and engaging young person, who has an inquisitive nature.

5. Coventry City Council have been involved in "B's" life since they became aware of the fact that "M" was pregnant again. "PGA" paternal great aunt was put forward as a potential carer from the very beginning and a viability assessment concluded that she would be able to care for the baby once born. "PGA" had been considered, albeit very late in the day (in fact it was on the third day of the hearing itself), within the proceedings in respect of "A". At the final hearing in March 2020, it had been agreed that "PGA" would be assessed

under the terms of the final care order. "PGA" is clear in her recollection that there was a hope and expectation that "A" would move to her home within six weeks of her having come forward. However, the world changed for everyone when the COVID pandemic disrupted every aspect of life, such that the plan was not put into effect. In addition, on the 24th April 2020, "Mr and Mrs PA" gave Warwickshire County Council notice of their intention to adopt "A". In November 2020, the "Mr and Mrs PA' made an application to adopt "A".

6. Before "B" was born, Coventry City Council returned to an independent social worker who had assessed the parents within "A's" proceedings. She recommended that "M" and baby be placed in a residential setting. In fact, after "B" was born, he and "M" were placed together in a mother and baby foster placement. They have remained within that setting since that time, although there have been three different placements. It is highly unusual for a mother and baby foster placement to have continued for so long.

7. A second ISW was instructed to undertake parenting assessments of both "F" and "M". They were completed in February 2021. At the same time, both parents underwent a psychological assessment by Dr W. I have an updated Annex A report in respect of the "Mr and Mrs PA"

The position of the parties

8. "F" started the hearing by telling the court that he did not put himself forward as a carer for "B" I will return to his position in a moment. He would support "B" remaining with "M". The mother fervently wishes for "B" to remain in her care. If that were not possible, she would support "B" being cared for by "PGA" as first choice, with him being placed with "Mr and Mrs PA" as her fall-back position, whereas "F" would prefer for "B" to be placed with "Mr and Mrs PA" as the first choice after his mother. Coventry City Council seeks a care order in order for "B" to live with "PGA" , and it is accepted that there will need to be a period of transition to enable that to happen. Warwickshire County Council supports "A" being adopted by the "Mr and Mrs PA". This is opposed by "PGA" who wishes to be able to care for both children together.

9. All parties are agreed that, in the event that "A" were to move to the care of "PGA", that should take place under the auspices of the current care order. The SW at Warwickshire has asked for two weeks in order to file and serve an amended care plan. It is accepted that "A" could not move immediately to the care of her aunt, but that she would have to wait for a period of time in order to allow "B" to transition and settle, if "B" is to live with her also. The length of this period is uncertain. "A" would also require some preparatory work for about four weeks before she could move, but this could not start until the time frame was more certain.

10. "M" supports "A" moving to the care of "PGA". However, she accepted at the conclusion of the evidence that, if "B" remained with her, the court would be unlikely to move "A" to "PGA" alone. 'F" opposes it and believes that "A's" welfare throughout her life is best met by her remaining with the "Mr and Mrs PA" The Guardian's position is that she supports "B" being placed with "PGA" under a care order and an adoption order being made in respect of the "Mr and Mrs PA" for "A".

11. There is a complex plan for contact that looks at every 'eventuality' for the children. I think that it is fair to summarise that both the "Mr and Mrs PA" and "PGA" acknowledge the role that contact will have for the children with all those of significance to them. "M" questions why her contact with either child (if "B" is not living with her) needs to be supervised, given that she is currently free to leave the mother and baby foster placement for up to three hours per day. "F" opposes his current contact with "B" (which had been twice per week before the recent change in placement) being reduced, and would wish for that to continue. Whilst his contact with "A" has not been as consistent, he wants to be able to see her wherever she is living.

The hearing

12. This has been a fully attended hearing. I have read all of the documents contained in the court bundle, in addition to the updating material and position statements. I have heard the oral evidence of Coventry SW for "B" , Warwickshire SW for "A", "M", "F", "PGA", "Mr and Mrs PA" and CG.

13. On the morning of the third day, "F" came into the witness box. It was very apparent from his brief evidence that he considered that he had been dealt with unfairly by the local authority (Coventry) but also that he felt that his case had not been properly presented by his Counsel or solicitor. I understood that this was largely related to the concession that had been made on his behalf not to seek to put himself forward as a carer for "B", but also in a failure to file a statement he had made which detailed his criticisms of "PGA"

14. After a discussion, Ms Amoono-Acqua considered that she was professionally embarrassed from continuing to represent "F". "F" then made an application to adjourn this hearing in order for him to seek alternative representation. All the other parties opposed the application in strong terms.

15. I referred myself to a number of authorities in relation to this application. They are *Re L [2013] EWCA Civ 267, Solanki v Intercity Technology Ltd [2018] EWCA Civ 101, Re G-B (children) [2013] EWCA Civ 164, P, C and S v UK [2002] 2 FLR 631* and *Re B and T (Care Proceedings) [2001] 1 FLR 485.*

16. I reminded myself that my power to grant an adjournment stems from r4.1(3) of the Family Procedure Rules and that I must consider the wider objectives within Rule 1 of the same rules. The welfare of the children is not my paramount consideration, but it is a factor that I am entitled to consider.

17. In *Re L*, the Court of Appeal made it clear that in considering an application for an adjournment, I must consider on one hand the possible unfairness to the applicant and on the other hand unfairness to the respondent in granting the application, and in this case, that must include all of the respondents. If I granted the adjournment, there would be a significant inevitable delay, as a result of a new firm getting to grips with the evidence and then finding valuable and scarce time in the court diary. I must balance the rights of the children to a determination about their future, already delayed too long.

18. I took it from that which "F" had said that, in fact, his relationship with his legal team had broken down from the start of the hearing and I was not offered any explanation as to why he had not raised the issue on the first day. He saw how his case was being presented, and was aware that decisions were being taken

not to challenge some parts of the evidence (for example, the assessment of the second ISW). It was open to him to make his unhappiness clear at any time and he did not. The reality of the position is this. "M" and "B" have been in a mother and baby foster placement for nigh on two years. They have had to undergo three changes of placement. They are desperate for a decision to be made about "B's" future. It would be utterly unfair to them for the proceedings to be further delayed.

19. The same considerations apply to "A" and those involved in her proceedings. "Mr and Mrs PA" made their application as long ago as November 2020, and "F" is not seeking to care for her. He was able to tell me what his preference was in relation to her future. In reality, no professional person or assessment supports "F" caring for "B" , and so it would be wholly disproportionate to cause such a high degree of harm and delay to everyone else in the case in order for him to present a case that has a very small prospect of success, based on the written evidence. "F" has known that the assessment of him as a carer by the second ISW was negative since February 2021, and he has not sought to apply for a further assessment.

20. Having made that determination, I afforded "F" the opportunity to cross-examine the remaining witnesses and make submissions to me. I assisted him in questioning "PGA". In fairness to his amended position, it seems to me that I should consider the written evidence as to whether he is a realistic option for "B"

21. Mr Duncan has specifically asked me to consider approach of the court in terms of hearing these two applications together. Whilst that decision was originally taken by HHJ Watson, it is right that I have adopted the same view. In *Re R (A Child) [2021] EWCA Civ 875* the court held that foster carers or prospective adopters should not be joined to care proceedings save for in exceptional circumstances. Mr and Mrs PA are the Applicants in "A's" proceedings. In relation to "B", I determined at the pre-trial review that "Mr and Mrs PA" must remain party to "B's" proceedings because to exclude them would be to rob the court of the opportunity to conduct a holistic welfare evaluation in this unique case, given that one of the key issues is the impact on the sibling relationship. It was clearly essential to be able to consider all of those complex arguments 'in the round.' No party has objected to this approach.

<u>The Law</u>

22. Care proceedings involve two principal questions. First, are the threshold criteria for making a care order under section 31 of the Children Act 1989 satisfied? Secondly, if so, what order should the court make?

23. Section 31 (2) provides:
"A court may only make a care order or supervision order if it is satisfied
(a) that the child concerned is suffering, or is likely to suffer, significant harm; and
(b) that the harm**,** or likelihood of harm, is attributable to
(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonabl**e** to expect a parent to give to him; or
(ii) the child's being beyond parental control."

24. In this case, the threshold for the making of orders pursuant to Section 31 Children Act 1989 in respect of "B" is conceded by the parents in accordance with their response documents included in the bundle. "M" accepts that her relationship with "F" was abusive and that she has struggled with her own mental health. The father also accepts that he has been in abusive relationships with others as well as "M", that he has used cannabis frequently and that he failed to prevent "X" from accessing pornographic material when he was in the father's care, which led to him displaying sexualised behaviour. Of course, the threshold criteria were found to have been established a long time ago in respect of "A"

25. Therefore, my deliberations have focused on the welfare issues that are engaged. It is right to say that those welfare questions have been incredibly difficult and complex. I will attempt to summarise the 'realistic options' for each child as follows;

    "A"

    (1) Permanence with "Mr and Mrs PA", with the range of possible orders being an adoption order, a special guardianship order or a child arrangements order.
    (2) Permanence with "PGA" under a care order, with the hope that this order could be converted to a private law order in due course.
    To make it clear, neither of "A's" parents are seeking her return to their care

    "B"

    (1) Remaining in the care of his mother, under either a care or supervision order, or simply by virtue of a child arrangements order.
    (2) Being placed with his father under a care order.
    (3) Being placed with "PGA" under a care order.
    (4) Being placed with "Mr and Mrs PA" under a care order.

26. In addressing the various options, I must apply well-established legal principles. The local authority brings the case and the local authority must prove it. The standard of proof is the balance of probability. I bear in mind the rights of the children, the parents, "PGA" and the "Mr and Mrs PA" under Article 8 of ECHR to respect for family and private life. In that particular respect, I have to acknowledge that "A" and the "Mr and Mrs PA" have an established family life together. Any interference with those rights must be necessary, proportionate and in accordance with the law. In the event that there is a conflict between the rights of the children and any of the adults, it is the rights of the children that must prevail.

27. Under section 1(1) of the Children Act, "B's" welfare is my paramount consideration in the care proceedings. Under section 1(2), any delay in making decisions concerning his future is likely to prejudice his welfare. Section 1(3) provides a checklist of factors to be taken into account when determining where "B's" welfare lies, and what order should be made. I have considered each and every one of those factors when reaching the decisions that I have. Whilst I have applied s1(1) to "B's" future, to avoid duplication of the arguments, I have addressed those factors within the broad headings that relate to the extended checklist that applies to "A"

28. On the application for an adoption order, the court applies section 1 of the Adoption and Children Act 2002. My paramount consideration is "A's" welfare throughout her life: section 1(2). Again, I take into account the fact that delay

in coming to a decision is likely to prejudice a child's welfare. There is, again, a checklist of factors to be taken into account, in this case set out in section 1(4) of the 2002 Act.

29. Under section 47 of the 2002 Act, a court may not make an adoption order unless satisfied either that either the parent has consented to the child being placed for adoption, they have given advance consent to adoption and that consent has not been withdrawn or that his or her consent should be dispensed with. Under section 52(1)(b), the court may dispense with the parent's consent if the welfare of the child requires the consent to be dispensed with.

30. These provisions have been subjected to analysis in a number of important decisions by the higher courts, culminating in *Re B-S (Adoption: Application of s47(5) [2013] EWCA Civ 1146 and Re W (Care Proceedings: Function of Court and Local Authority) [2013] EWCA Civ 1227*. I have had those decisions firmly in mind at all points during this hearing.

31. In *Re B (A Child) [2013] UKSC 33,* the Supreme Court, reiterated that the test for severing a relationship between a parent and child is very strict so that, in the words of Baroness Hale of Richmond at paragraph 198, it should occur:
"only in exceptional circumstances and when motivated by overriding requirements pertaining to the child's welfare, in short, when nothing else will do. As Lord Neuberger observed at paragraph 77, making a child subject to a care order with a plan for adoption should be 'a last resort' where 'no other course was possible in her interests'.

32. This interpretation was repeated by the President (as he then was), Sir James Munby, in *Re B-S*. The statutory language in the 2002 Act imposes a stringent test. What must be shown is that the child's welfare 'requires' parental consent to adoption to be dispensed with. Within that judgment, the President identifies two essential things required where a court is being asked to approve a care plan for adoption and/or make a non-consensual placement order.
"First, there must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option."

33. The court must guard against undertaking a linear analysis of the options, and rather weigh the pros and cons of each of the options as part of a global, holistic analysis of what is in the welfare best interests of each child. In *Re Y (Care Proceedings: Proportionality Evaluation) [2014] EWCA Civ 1553,* Ryder LJ said;
"The process of deductive reasoning involves the identification of whether there are realistic options to be compared. If there are, a welfare evaluation is required. That is an exercise which compares the benefits and detriments of each realistic option, one against the other, by reference to s1(3) welfare factors. The court identifies the option that is in the best interests of the children and then undertakes a proportionality evaluation to ask itself the question whether the interference in family life involved by that best interests option is justified."

34. It is well established that the Court should be willing to tolerate diverse standards of parenting, as stated by Hedley J in *Re L (Care: Threshold Criteria)*

[2007] A FLR 2050.
"What about the Court's approach, in the light of all that, to the issue of significant harm? In order to understand this concept and the range of harm that it's intended to encompass, it is right to begin with issues of policy. Basically it is the tradition of the United Kingdom, recognised in law, that children are best brought up within natural families. Lord Templeman, in Re: KD (a minor ward) (termination of access) [1988] 1AC806, at page 812 said this:
"The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature."
There are those who may regard that last sentence as controversial but undoubtedly it represents the present state of the law in determining the starting point. It follows inexorably from that, that society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done."

35. I have been referred to a very similar set of circumstances in *Re M'P-P [2015] and also to ZH v HS & Other (Application to revoke Adoption Order: Procedure in Non-Agency Adoption Placement) [2019] EWHC 2190 (Fam)* which sets out in some clear detail the process to be followed in cases such as this where there has been a non-agency adoption application. .
    a. A 'Non-Agency Adoption' includes an application by a Local Authority Foster Parent proceeding (usually) without the support of the Local Authority. A non-agency adoption usually only occurs when the Local Authority do not agree with the foster carers' intention to adopt a child (although in some cases the Local Authority may agree but this may be the preferred course of action). In this case of course, the Local Authority are in clear support of the application.
    b. The prospective adopters are required to give at least 3 months' notice (and not more than 2 years prior to application) in writing, before they make a formal application for an Adoption Order. (If they have leave of the court to make this application early, leave must be granted prior to giving notice of intention to adopt).
    c. Under s.44(5) ACA 2002 once notice has been given the Local Authority must arrange for the investigation of the matter and must submit to the Court a report of the investigation, namely an Annex A Report. This is set out in FPR 14.11 and FPR PD14(C) details the content of an Annex A Report.

36. Mr Duncan has also reminded me of the decision of the Court of Appeal in *Re W [2016] EWCA Civ 793,* where the following principles were set out;

- When the child had been placed with prospective adopters for a significant period of time the welfare balance to be struck where a biological family member put themselves forward at a late stage had to reflect those circumstances. The court would require expert evidence as to the strength

of the attachment between the child and the adopters and the likely emotional and psychological consequences of ending it. In this instance the generalised evidence of the social worker and the guardian fell far short of what was required.

- The phrase 'nothing else will do' was no more than a useful distillation of the proportionality and necessity test set out in the European Convention and reflected the need to afford paramount consideration to the welfare of the child throughout her lifetime.
- The existence of a viable home with the child's biological grandparents should make that option a 'runner' but not an automatic 'winner'. There was no right or presumption for a child to be brought up by her natural family.

"[65] *Where an adoptive placement has been made and significant time has passed so that it can be seen that the looked for level of* ***secure, stable and robust attachment has been achieved, the welfare balance to be struck where a natural family claimant comes forward at this late stage to offer their young relative a home must inevitably reflect these changed circumstances****.* ***At the earlier time when a placement order is being considered, that side of the balance, which must now accommodate the weight to be afforded to the child's place within the adoptive family, simply does not exist.*** *The balance at the placement stage,* ***therefore, naturally tilts towards a family placement where the relatives have been assessed, as these grandparents have, as being able to provide good, long term care for a child within their family. At the placement order stage, the other side of the scales (against a family placement) are likely to be populated by factors such as the risk of harm and the need to protect the child.*** *The question of harm to the child occurring as a result of leaving their current placement will normally not arise as a factor at the pre-placement stage given that such a child is likely to be in temporary foster care and will have to move in any event either on to an adoptive placement or back to the natural family.*

[66] *In a case such as the present, where the relationship that the child has established with new carers is at the core* ***of one side of the balancing exercise, and where the question of what harm, if any, the child may suffer if that relationship is now broken must be considered.*** *The court will almost invariably require some expert evidence of the strength of the attachment that exists between the particular child and the particular carers and the likely emotional and psychological consequences of ending it. In that regard, the generalised evidence of the ISW and the Guardian, which did not involve any assessment of A and Mr and Mrs X, in my view fell short of what is required*

[67] *This court recently considered similar issues to those in the present case in the appeal of* ***Re M'P-P [2015] EWCA Civ 584.*** *In that case the issue was whether two children who had effectively lived for all their lives with a local authority foster care should be adopted by her or placed with a paternal aunt who was a total stranger to them. At paragraph 47 onwards in the judgment of McFarlane LJ, consideration is given to the balance, in a public law case, between a 'family' placement, on the one hand, and the 'status quo' that may, unusually, be established on the facts of a particular public law case on the other."*

37. Finally, Ms Vickers has attached a very useful schedule as to the legal differences between a special guardianship order and an adoption order. I adopt that schedule and append it to this judgment.

The impact of delay

38. "PGA" has been very critical of some of the actions of Warwickshire County Council in respect of her wish to care for "A" . It is clear that she holds them responsible for the fact that there has been a 'delay' of some eighteen months in "A's" future being determined that she considers has been prejudicial to her position. She has complained to the department itself but has also sought the support of her local councillors and her Member of Parliament. "PGA" told me that it is her intention, whatever my decision, to pursue a review of the actions of Warwickshire. It seems to me that it is important that I look at those events to see what, if any, weight I should attach to "PGA" criticisms.

39. As I have already noted, "PGA" only came forward as a possible carer on the third day of the final hearing in respect of "A". She said that she was contacted by "F" and asked to come to court as soon as she could. She spoke to Warwickshire SW and her team manager, as well as the Guardian, and it was her understanding that there would be a viability assessment of her. If that were positive, she believed that "A" would be moved to live with her whilst a full connected persons assessment was completed.

40. Of course, despite the level of initial confidence that professionals may have had in "PGA" (that confidence, in fact, being justified), the plan was inevitably contingent on there being a positive assessment. That assessment was delayed as a result of COVID, and that was no-one's fault. It was completed in eight weeks rather than the four that was promised. But the key factor that changed for "A" was that "Mr and Mrs PA" gave notice of their wish to adopt "A". That act, independent of the local authority, precluded Warwickshire from removing "A" from the care of the "Mr and Mrs PA", whatever may or may not have been said at the hearing in March.

41. "PGA" told me that it was only when I informed her on the second day of this hearing that the inevitable result of the "Mr and Mrs PA' having given notice was that it had acted as a bar to "A" being moved to her. This was somewhat surprising, as it was such a key event, it is hard to understand why no-one would have given "PGA" this information. But it was not immediately apparent to me that, having now been told about that impact, it had given her cause to reflect on her criticisms of the local authority. In fact, as I will come on to address, I was left with the view that "PGA" 'battle' with Warwickshire, alongside her feelings of unfair treatment, are a significant driver for her.

42. A statutory review took place on the 28th May 2021. That review properly noted that the plan had been to assess "PGA" with a view to placing "A" with her, but that as a result of the "Mr and Mrs PA" change of position, it was going to be necessary to assess them. I also note that, at the time, both "M" and "F" were indicating that their wish was for the "Mr and Mrs PA" to be able to adopt "A". "M" told me that she was being influenced by "F" at the time.

43. "PGA" was also not able to understand why it was that the local authority had been cautious about starting contact between herself and "A" in advance of a positive assessment, or the problems that COVID 19 caused for all contact for children in the care of all local authorities. The reality of the position was that parents who already had an existing relationship with their children were struggling to have any kind of face to face contact during the Summer of 2020,

let alone members of wider family. "PGA" said that she asked 62 times between March 2020 and April 2021 to be able to have contact with "A" and it was only at the end of that period that contact was finally arranged. When Warwickshire SW gave her evidence, she rightly accepted that contact should have started a lot sooner than it did. That was the only criticism that she was prepared to accept.

44. Having then undertaken an assessment of "Mr and Mrs PA" Warwickshire County Council had to take a view about what plan was in "A's" best interests. On the 5th August 2020, an employee of Warwickshire wrote to "PGA" to inform her that it was the authority's view that "A's" welfare was best met by her remaining in the care of the "Mr and Mrs PA". Warwickshire also offered to fund some initial legal advice (up to a maximum of £250) in order for "PGA" to understand what her options were. Whilst I did not delve into what she was or was not told by the solicitor she engaged, again, I was concerned that it was her evidence that she was not informed that she could have applied to discharge the care order or make an application for a special guardianship order at that stage.

45. A further statutory review was held on the 26th November 2020. Since that time, the court process has undoubtedly been protracted. That has not been the responsibility of Warwickshire County Council. It is a joint 'failure.' Looking at the history of events since March, save in the accepted delay in arranging contact, I am not persuaded that the actions of the authority have been deliberately prejudicial to "PGA" It is unfortunate for everyone, not least the children, that this decision has been so delayed.

<u>The capacity of each of the people who wish to care for B and A</u>

46. As I have already mentioned, "PGA" was subject to a viability assessment in respect of "A" in May 2020. Warwickshire SW was the author of that report. She then underwent a full assessment authored by DB in June 2020. PGA had been positively assessed to become a local authority foster carer in 2015. The assessment of her provided this description,
"PGA is very sensitive and advocates for the multicultural society in which we live. She is a real people person and an excellent communicator. PGA was also described as someone who has a calming influence and someone who is able to offer solutions to problems without getting stressed."

47. Her relationship with "F" has been fractured for many years, although it is clear that her wider family network is very important to her. PGA has no children of her own but has gained experience through fostering and also spending time with her nieces and nephews. She lives in a three bedroom privately rented house. She told me that she has fostered seven children in total, in three sibling groups, as either short-term or respite. She has not fostered since 2018, in part as she has been caring for her father, and in part because she has been keeping her home open for "B" and "A".

48. The full connected persons assessment concludes as follows,

"The local authority only became aware of PGA at the final hearing and therefore the judge agreed to end with the making of a care order in respect of

"A" with a view that if the connected persons assessment was negative of PGA the local authority could return to court for the making of a placement order, with a proposed care plan of adoption. Based on the information gathered within this full assessment I can confirm that I would be in support of "A" being placed in "PGA" care under her care order initially with a proposed plan of taking the matter back to court after a three month testing period for the making of a Special Guardianship Order. I have also been asked to comment on the placing of B with PGA which again I would be in support of. I feel it will be positive for the children to be brought up together and their sibling relationship allowed to flourish."

49. There is no doubt that PGA will be able to meet all of the basic needs of "B "and "A" in the event that they were to be placed with her. She has shown a willingness and capacity to engage with professionals and take on board advice.

50. The same is true in respect of "Mr and Mrs PA". The Annex A report in respect of their application is dated the 13th September 2021. Warwickshire SW was also the author of that report, in conjunction with a colleague, SA. The report was careful to consider the outcomes for each of the children. It reached the clear conclusion that adoption remained in "A's" welfare best interests.
"The Local Authority consider that adoption is in "A's" best interests following the completion of all assessments. The Local Authority acknowledge that adoption is a draconian decision and always the last option to consider however when giving consideration to the assessment of PGA and the assessment of "Mr and Mrs PA" it was recognised that "PGA" has no connection to "A", she does not know "A", the historical conflict within the family is likely to have an impact on "A" as she is growing up, "PGA" has no experience of parenting into adulthood, family dynamics are up and down and this has a potential to impact on family time between 'A' and her birth parents, 'A' will not be part of the whole family network due to the animosity and only"PGA's" immediate family. "F" also makes continuous allegations about "PGA" and family members which again will have an impact on "A" growing up and the placement is untested."
The same assessment recognised that the "Mr and Mrs PA" would be equally capable of meeting the needs of "B", despite not having an established relationship with him.

51. "Mr and Mrs PA" have been married since 2014. It is said that they *"radiate warmth and have caring natures."* They have six children and fourteen grandchildren between them and have been foster carers since 2010. A is thriving in their care, and they have a very strong attachment to her and she to them. They are utterly committed to her for the rest of her life, and regard her as one of their family.

52. Dr W was charged with conducting a psychological assessment of "M". The opinions and recommendations he reached have not been challenged. He said,
"3.3 "M" experienced a hugely traumatic childhood. She was raised in her early years by her mother who she described as being poorly attuned to her needs as a child. Her attachment experience was inadequate and she was subject to neglect. Her parents had separated when she was a young child and at the age of two '"M" was rescued by her father. She experienced her father as being more responsive. However he became involved in a new relationship and had another child. This led to a repetition of the neglect she had experienced in her early life. She described her father as 'selfish'. Her step-

mother was also cold and unresponsive. Whilst she was able to rely on her grandparents at times, she was also placed in a parentified position caring for her young half-sibling."

53. That neglect led to "M" being sexually assaulted by a 'friend 'of the family over a prolonged period of time. She has experienced the removal of her older children and engaged in abusive and destabilising relationships. She has found it difficult to be open about the challenges that she faces. Dr W goes on,
"We also know that this type of experience of early developmental trauma and intimate partner violence can lead to problems in forming and sustaining healthy relationships, regulating emotions and having a very poor sense of self.1 The evidence from the National Institute for Health and Care Excellence (NICE) on the treatment and management of personality disorders is clear that there is a comorbid relationship between personality disorder and the type of complex trauma that the mother has experienced. The genesis of the personality difficulties are typically grounded in a traumatic experience."

54. There was evidence that "M" presented with an avoidant attachment style, which sits alongside tremendously low self-esteem and self-concept. Dr W was clearly sympathetic, as the court continues to be, with the mother (and the father), who he described as *"amiable people"* who were hurt and traumatised adults as a result of their own childhood experiences. He considered that "M" would need to engage in thorough trauma-based therapy, with a highly qualified Cognitive Behavioural Therapist.

55. "The second ISW" parenting assessment is a comprehensive and impressive document. She identified a number of key areas of risk related to the mother's parenting capacity, which included;
    - "M" was preoccupied by meeting her own needs as a result of her unresolved trauma
    - She had shown herself to be vulnerable to partners, thereby exposing herself to domestic abuse
    - "M's" poor mental health exposed a child in her care to unreliable parental responses and poorly attuned parenting
    - "M" was (and remains) in considerable debt, leading to a lack of stability in her life. She remains without stable accommodation of her own.
    - There was a history of exposure of the children to risky adults
    - "M" had found it hard to comply and meet the expectations of professionals. She was also isolated in her community.

56. She concludes,
"Due to all the risks and concerns that have been highlighted within the risk matrix at JS1, the number of interventions, the motivation and time that they will take to complete. I am unable to recommend that "M" would be able to parent and safeguard "B" or any other child in her care. "M" is unable to offer attuned and nurturing parenting, is not equipped to meet the emotional, physical, and social needs of a child even with the support of services in place. "M" needs to complete the trauma therapy work as identified by Dr W on addressing her own complicated and traumatic childhood and early adulthood experiences before she would be able to implement any changes or learning from parenting or relationship programmes. These interventions are not within the timeframe of "B"."

57. When "M" first entered the mother and baby placement, she was required to sign a written agreement that she would not have any contact with "F", and that she would not disclose the address of the placement to him. However, only three weeks later, it became apparent that "F" had become aware of the address, and so she and "B" had to move. "F" reported that he and "M" remained in contact with each other until February 2021, and that they had met on two occasions after the safety plan had been signed. "M" also accepts that she had some contact with F, although she is clear that this stopped at the beginning of last year.

58. The Warwickshire SW updated the parenting assessment in October 2021. The conclusion was,
"In summary the Local Authority's concerns relate to parent's mental health needs and unresolved, complicating and traumatic childhood and early adulthood experiences, domestic violence, patterns of poor relationships and the volatile parental relationship, neglectful parenting, non-compliance and inability to work openly and honestly with professionals."

59. The Warwickshire SW was concerned that "M" made the decision to leave the foster placement after a disagreement with the carer, and that she failed to tell the carer that she had left "B" in his cot with a bottle of milk. "M" was also observed to raise her voice at "B" on occasion when under stress. Sometimes that stress can be caused by everyday management of tasks, such as laundry. She has been seen to manage her stress by 'vaping' for long periods of time, or concentrating on her 'phone. This has recently improved.

60. "M" has been working with an organisation called RoSA since she reported the sexual offences committed against her in 2016. They have offered her some counselling, which has focused largely on her experiences as a survivor of abuse. "M" told me that she received support on managing anxiety, help with her sleep and the development of her understanding of compassion. She spoke very movingly about how hard she found it moving into a foster placement and being able to open up to the willingness of the carers to support her, something that was tragically absent in her own upbringing. However, she has not yet been able to access the specific trauma-based therapy that Dr W considered was so necessary.

61. "M" told me that she has, very recently, made an application for assistance in making an application for housing and she is awaiting the appointment of a housing officer who can help her to do that. She understands that she would also qualify for emergency housing if need be, but that is likely to be in a Bed and Breakfast. However, she did accept that the task will be a difficult one, in part because she has previously been subject to an injunction for anti-social behaviour, and she remains in a significant degree of debt for rent arrears, and also mobile 'phone contracts. "M" has successfully completed the Freedom Programme.

62. I have read the foster carer logs with some care. It is very apparent that "M" loves "B" and that they have a strong bond. Within the supportive and nurturing environment of a foster placement, she is well able to meet "B's" needs, including his basic care.

63. However, the tragedy of this case is that "M" has never been assessed as having made sufficient progress to be able to leave a placement and parent in the

community. "M" was phenomenally brave when she gave her evidence and spoke powerfully about the challenges that she has faced in her own life. But I was left with a very clear impression that she remains a highly vulnerable young woman, who has virtually no positive support in her life. The environment of a mother and baby foster placement has mirrored the impact of a nurturing family which she has so desperately needed. But she and "B" cannot remain there forever. I have to look at her capacity to parent "B" safely out in the world.

64. I am afraid that on that issue, the evidence is overwhelming. Until "M" does the therapeutic work required, all the risks identified by the second ISW sadly remain. It is nothing short of tragic that this young woman, who is only 24 years old, and has experienced so much adversity in her life to date. Dr W commented that *""M" is able to recognise that her journey to recovery has only just begun…there is a risk that her 'desirability' is a barrier to her being able to move beyond a cognitive understanding of her difficulties."* It was clear in her evidence that she remains in a position of contemplating and wanting change but has not been able to achieve anything concrete as yet.

65. The fact that she has considerable debt, no home, limited support network and mental health difficulties is not her fault. They are the result of the treatment she has experienced at the hands of others. But those factors do make her vulnerable to exploitation. A small example of this is that she has been staying at her own mother's home during the course of this hearing, in reality, because this person is one of the few people who she can ask to provide her with a bed. And yet this lady has *"demons"* of her own in terms of her previous drug use, and has been far from a positive person in the life of "M". But she is all that she has. The reality for "B" is that he would be at risk in his mother's care as a result of "M's" vulnerability, and there is no support that could be offered by the local authority that could keep him safe.

66. I am afraid that the evidence is also clear that there would be a considerable risk that, in the event that she were living in the community with "B", she would struggle to keep "F" out of her life. Whilst I acknowledge that she has not been in contact with him since February 2021, "F" has continued his efforts to remain in her life. "M" has reported that he has used Snapchat, her Xbox account, Tik Tok and third parties to try and remain in touch with her. "F" does not accept that he is a risk, does not accept that he has his own work to do, and I do not believe that he would consider that it was incumbent upon him to stay away from his ex-girlfriend and his son for any reason at all. "M" also told me that she accepted that she and "F" not only share a child, but also a *"trauma bond."* I considered that their evidence demonstrated a clear risk that they would gravitate back towards each other.

67. Dr W noted that "F" had experienced an emotionally impoverished childhood. During the assessment, he provided a litany of stories about his relationships with female partners that led to the conception of several children, even after the briefest of relationships. Dr W goes on,
"3.22 "F" provided a very complicated narrative about events that had led to him being very much a victim of systemic failures. He was deeply aggrieved at being accused of being a perpetrator of domestic violence and placed the blame very much on the vexatious allegations of a neighbour. "F" also said that the suggestion that he was responsible for the 'limited' violence was wrong. For example he described incidents in which "M" would exaggerate and

manipulate so that she could claim she was a victim when she was, in his opinion, the perpetrator.

*"*3.26 *The psychological formulation of "F" points towards a comorbid picture of a likely developmental disorder (ADHD) and developmental trauma. Clinically it is well recognised that children who are victims of neglect and abuse are preoccupied with survival and their anxiety and fear means they often appear hypervigilant, impulsive and certainly not attentive to the core duties of a child or young person at school. The causal pathways to the comorbid are ambiguous and at best we can be reasonably confident the impact of adverse life events may have compounded an underlying developmental 'self-regulatory' difficulty. The chaos on "F's" psychological profile illustrates the personality characteristics of turbulence with histrionic thinking and behaviour."*

68. I have to say that this assessment correlated precisely with the man who I observed, albeit briefly, from the witness box. It was clear that "F" holds everyone else responsible for the loss of his children and has not developed any understanding or insight into his responsibility for the risk of harm that all professionals have identified. He is angry about the way that he has been treated and did not seem to accept that he was anything other than a competent parent.

69. The second ISW conducted a comprehensive assessment of "F" and reached the very clear conclusion that he was not in a position to be able to provide safe care to "B". She said,
"I am unable to recommend that "F" would be able to parent and safeguard "B" or any other child in his care. "F" is unable to offer attuned and nurturing parenting, is not equipped to meet the emotional, physical and social needs of a child even with the support of services in place. "F" needs to complete the counselling and therapeutic work on addressing his own complicated and traumatic childhood and early adult experiences before he would be able to implement any changes or learning from parenting or relationship programmes. These interventions are not within the timeframe for "B"."

70. "F" did not disclose any use of cannabis when he was working with CGL in the Autumn of last year, and yet hair strand testing in October was positive for the use of the drug for the four months before.

71. I do just pause here to note some degree of sympathy with "F's" view that, since these negative assessments, he has been side-lined by all the professionals. It was particularly unfortunate that the Guardian was not able to make contact with him in order to prepare her report. His contact with "B" has always been a positive experience, and he is committed to his son. He may not be in a position to be able to care for "B", but he does have things to offer him throughout his life. He was anxious that this message was understood by professionals working with his children moving forward and I agree. He was particularly fearful that a placement of either of the children with "PGA" might have the additional effect of further ostracising him, given the breakdown in their relationship. He should be able to participate in all life story work.

72. Having said that, I am afraid that the evidence is overwhelming that "B" would be at risk of significant emotional harm in the care of either of his parents at the current time.

The sibling relationship

73. ISW DP was instructed by the court to conduct a sibling assessment. His report is dated the 28th January 2022, but he considered that he would benefit from being able to observe some 'joint' contact, between "PGA", "B" and "A" and so he prepared an addendum having done so. That addendum is dated the 22nd March 2022. No party has sought to challenge his conclusions or observations. Unsurprisingly, ISW DP begins his first report with this remark, which echoes that which I have already acknowledged,
"3.1 In undertaking this assessment I have considered the needs of the children, their wishes and feelings and the views of professionals involved with the children. It is an extremely complicated situation, not helped by the substantial lapse in time that has occurred. I am mindful not to assess the overall capacity of either placement options as both the foster carers and "PGA" have been extensively assessed and deemed viable. The challenge therefore is to look at which outcome is in the best interests of the children.

3.2 There is the danger that the passage of time that has occurred essentially risks creating a self-fulfilling prophecy. That is to say that by "A" residing with her carers for in excess of 3 years she has been there so long that it becomes unthinkable to move her on. With that noted there is a viable family member who has been assessed and put herself forward swiftly some 18 months ago at a point where she was informed about "A's" existence.

3.3 It is therefore important to consider the impact on the short, medium, and long term arrangements for the children. "B" is still currently with his mother and so should he be removed from her care then there is a separation regardless for him. In the context of placement options it therefore becomes a case of where should "B" reside, conversely for "A" it is a case of should she be moved on."

74. ISW DP considered that, taking a short-term view, the 'safest' option for "A" was to remain with the "Mr and Mrs PA", but when one considered a medium to long-term view, the decision was less clear. He said,
"I have observed "A" enjoying contact time with "PGA" on a level that presents the capacity for a Secure Based Attachment. As she matures there is the potential that if she were not afforded the opportunity to live with "PGA" that this could negatively impact upon her identity. If "B" is residing there and that option had been available to her she may struggle to reconcile the decisions not to make that happen. It is also possible that she will be so settled that she does not question the decisions taken, but it is an unknown to consider."

75. Having observed two sessions of joint contact (on the 4th March 2022 and the 18th March 2022), ISW DP commented on that which he had seen.
"Overall the two contacts were very positive with "PGA" confidently managing both children, providing positive rules, guidance and boundaries. There was a clear routine to the beginning, middle and end of contact. Both children showed an awareness for the routine and appeared to respond well to this. In my opinion "A's" relationship with "PGA" has evolved significantly from the observation I made at the soft play. I would say that during the contacts "A" was showing a secure attachment to "PGA". This was very similar to the confidence and security she presented in her home with "Mr and Mrs PA". The security within the relationship was not undermined by the presence of "B" and "PGA" appeared to have the skill set to confidently manage both children, but also give

them positive one to one time."

76. He felt confident that "A" would be able to transition into the care of "PGA" if this were the decision of the court. There was evidence of an attachment between them, as well as an evolving relationship between "A" and "B". Whether "A" lived with "PGA" or the "Mr and Mrs PA", it would be important for her to be able to have good contact with the other. Of course, the question for this court is not whether "A" *"could"* transfer her attachment to "PGA", but whether she *"should"* have to do that in her overall best interests.

77. "Mr and Mrs PA" have continued to promote contact between "A" and "Y" (they had cared for "Y" for a brief period before he moved to his father). They also take responsibility for organising the contact that takes place between "X", "A" and "B". In all discussions with them, they have indicated a willingness to promote an 'open adoption' for "A", recognising the importance of her being able to continue to see her brothers and her parents, as well as "PGA". I have to say that I was enormously impressed with the evidence of "Mrs PA", and was left in no doubt her commitment to "A" having an on-going relationship with all of her wider family, no matter what order I were to make. In the event that A and B were to remain in separate placements, I am confident that they would still spend a lot of quality time with each other. "Mrs PA" clearly has all of the skills in her armoury to navigate the complexity of contact for "A", given her years of experience as a foster carer.

78. Indeed, "PGA" expressed the same intention to make contact arrangements work. Particularly, she recognised that "A" would need to continue to see "Mr and Mrs PA" and their family. "Mrs PA", "PGA", the Warwickshire SW and replacement social worker for the Coventry SW met on the 14th April in order to try and agree the contact plans for "A" and "B", wherever their future might lie in terms of placement. "PGA" has said that if "A" were to be placed with her, she would allow her to spend overnight and holiday periods with "Mr and Mrs PA", and they made a reciprocal offer. It is also right to note, however, that "PGA" has less experience in managing family contact, and, as I will come on to discuss in detail, I did not feel confident that she had a deep understanding of the task that faced her.

<u>Wishes and feelings of "A" and "B"</u>

79. Both children are too young to be able to make any expression of their wishes in respect of the complex issues that I must consider. But I am entitled to infer that they would want to be happy and settled and for their futures to be determined. Both have waited too long already. They love each other and would want to be able to continue to strengthen that bond. "B" has a relationship with both of his parents.

80. "A" has only ever known a home with "Mr and Mrs PA", and she would want to be able to continue her relationship with them, and their wider family. She attends ballet, swimming and nursery from their home. She enjoys trips to the family caravan in Lincolnshire. She has been fully accepted by all the members of the family. "A", unlike "B", is of an age to have some understanding of the plans for her. I asked "Mrs PA", who was the person in the court room who knows "A" best (alongside "Mr PA") how she might go about explaining to "A" that my decision was that she should move to the care of "PGA". "Mrs PA", despite clearly wanting to convey that message in a positive way and telling me

that she would make it clear that she and her husband would always love her, struggled to verbalise how it could be explained. I was left thinking if the adults would find it hard to justify, how "A" could possibly be expected to be able to understand. The only possible explanation would be that she was moving to enable her to live with her brother. Ms Vickers called that feature the *"magnetic factor"* in the case.

81. The Warwickshire SW was confident that "A" would be able to understand why she lived with "Mr and Mrs PA", when her brothers and sisters do not. "A" has a lot of half-siblings, as well as a full sibling in "B". "X" lives in care. "Y" lives with the partner of his father. "A" will have to come to understand the complexity of her family, but she is unlikely to suffer harm as a result of being in a placement on her own, or as a result of that being by way of either adoption or any other order. Both of the children will benefit from good quality life story work.

<u>Likely effect of having ceased to be a member of the original family and become an adopted person</u>

82. The Warwickshire SW and the Children's Guardian recognised the draconian nature of the order that they were both recommending for "A". In the event that I make the adoption order, that will have the effect of legally severing "A's" ties with her birth family. However, it is right to acknowledge that it will not have the effect of severing her emotional relationship with those people. The plans that I have already set out envisage that "A" will continue to have contact with her mother, her father, "X", "Y", "B" and "PGA". The Warwickshire SW also accepted that, in the event that "PGA" wished to invite wider members of her own family to her time with "A", there would be no issue with that.

83. But both the Warwickshire SW and "CG" were clear about the advantages that adoption would afford "A". As I have said on a number of occasions, "Mr and Mrs PA's" home is the only one that "A" has ever known. She has developed into a confident, well-adjusted and engaging little girl in their care. It was their opinion that her welfare could only be met by way of an adoption order, as this is the only order that truly affords "A" the status of a full member of the family.

84. The alternative permanency options (predominantly being a special guardianship order) would leave open the door for subsequent applications to vary or discharge, that would be contrary to "A's" interests. If she is adopted, "A" would be 'claimed' by the wider "PA" family, including benefitting from a clear agreement that, in the event that anything happened to either "Mr or Mrs PA" that left them unable to look after "A", their daughter "G" would be committed to caring for her.

85. Warwickshire County Council has always been clear that their support of the plan of adoption for "A" is predicated on the fact that, alongside the advantages of "A" being able to benefit from the stability and security of the "PA family", she will be able to maintain her relationships with her birth family through direct contact.

86. "B" has the benefit of a family placement, whether I approve him remaining with his mother or whether I decide that he should live with "PGA". If I determine that he cannot remain with his mother, he will have some short-term disruption as a result of having to transition to "PGA". All parties are agreed

that transition could take place over 10-14 days. I expressed my view to Coventry City Council that it would be my hope and expectation that "M" could be helped to support that move.

Child's needs and their age, sex, background and relevant characteristics

87. "M" has previously reported having some challenges with "B's" behaviour, which has included head-butting and kicking out. To think that "B" could move from his mother's full-time care (the only home he has knows) and that "A" could leave the care of "Mr and Mrs PA", without both children experiencing some emotional disturbance would be wholly unrealistic in my view. Even if that disturbance is limited to being upset after seeing "M", or "Mr and Mrs PA", that will pose a challenge to "PGA", who has never been the full-time carer for either of the children. Further, whilst the children do have an attachment to each other, they have never lived with each other, or with another child of similar age. All of those factors are complications which will weigh heavy on "PGA", however competent she has been assessed to be. As I noted, assessments can only go so far in being able to predict success. The reality of a situation can, sometimes, be very different from the proposal. ISW DP noted that it was possible that the children could accept each other easily, but there was also the possibility of rejection. He said,
"The question then has to arise as to whether this is too much of a gamble for "A" who is within a stable home environment. Both children are young and it would likely be that with competent carers they can develop a positive sibling relationship, but both will have to adapt from being the only child."

88. "B" and "A" are very close in age and will only be one school year apart. If they were to live together, there is no doubt that they would benefit from being able to share all of their experiences. That is the significant feature of a sibling relationship which makes it one of the most important and enduring of all family ties.

Risk of harm

89. "A's" whole world is her life with "Mr and Mrs PA". She has been fully accepted by them and their family, including their own six children and fourteen grandchildren. She has a positive and loving relationship with "K", the other child currently being fostered by "Mr and Mrs PA" and in respect of whom they are seeking special guardianship. To move "A" now, would be to remove her from everything that she has ever known.

90. It was accepted evidence that if "B" and "A" were to live with "PGA", "B" would have to move first. The Coventry SW said that she believed that it was likely that "B" would take between six-eight weeks to settle to the point that "A" might be able to join him. However, she was forced to accept that was a degree of inevitable uncertainty to this period and it could be longer if "B" required it. During that delay, "A" would have to be told that she was going to move, but she could not be given this information until about four weeks before she transitioned, whilst also starting some life story work

91. The reality of this plan for "A" is that she will be, as I put it during the hearing, *"waiting at the bus stop"* for her time to come to move to "PGA" for a wholly uncertain period of time. I accept the evidence of the Warwickshire SW and the Guardian that this is likely to cause some emotional disturbance to "A". Whilst that disturbance might be short-term, I was left with the impression that none of

the professionals were entirely confident about the nature or degree of the medium or long-term harm that might be caused, but there was a risk that "A" could be badly affected.

92. As I have already noted, "PGA" has never cared for children in a permanent placement. She has never cared for two children under four. "A" has always been the youngest child within her current home, and "B" has never had to share his carer with another child. At present, "PGA's" contact with "A" is limited to once per month direct, and once per month indirect. I have been provided with the notes of those contacts, which I have read with care, and one is struck by the amount of support that "A" has required from "Mrs PA" in order to engage in that contact. Despite "PGA" behaving very positively at all times, "A" has continued to seek out "Mrs PA" for support and reassurance. It is my view that those notes give a valuable insight into how upset "A" is likely to be by having to say 'goodbye' to her life with "Mr and Mrs PA", and to continue to see them if she moves to "PGA".

93. Despite having the best of intentions, there were aspects of "PGA's" evidence that I found profoundly disturbing. Whilst there may well be some justification in her description of herself as a *"positive person",* there was a significant element of unreality as to the extent of the challenge ahead of her, but more importantly, at the impact on "A" of a move. It was as if she did not think that there would be any difficulty at all in "A" leaving the care of "Mr and Mrs PA". It was not apparent to me that she had considered how hard she would find it to care for "A" if, for example, "A" was upset and asking for "Mrs PA". I was left with the impression that "PGA" was approaching her plans on the basis that the children would simply adapt.

94. During her evidence, "PGA" was very confident about her ability to meet the needs of the children and the success of the placement. It was my view that she spoke with a worrying degree of over-confidence. The scale of the task is nothing short of monumental, in terms of managing contact between "A" and "B" and their parents, with "Mr and Mrs PA", with "X" and "Y", in the context of all the disruption that both children will experience. The inevitable risk of this over-confidence is that "PGA" may be poorly prepared for the challenge, and that over-confidence might then lead to the placement facing challenges, as possibly failing. This would be nothing short of catastrophic for "A".

95. The Guardian told me that the risks posed to the children by way of "PGA's" over-optimism are two-fold. Firstly, that there is a risk that "PGA" will not cope as a single carer for two children under four with all the needs that they have, which might lead to a placement breakdown for one or both of the children. But secondly, that "PGA" may, having put herself forward in the way that she has, be reluctant to admit that she is struggling or to ask for help, which might lead to some of the children's' needs not unmet.

96. I was concerned that "PGA" also underplayed a level of family conflict in the paternal family. "F" strongly opposes either of his children being placed with "PGA". Without going into too much detail, there has been a rift in the paternal family as a result of "F's" mother having accused "PGA's" father of sexual abuse. Whilst "PGA" tried to maintain that this was not a complex dynamic, I do not think that she was being wholly truthful about that, and she was not willing to accept that managing the dynamics of "F", his 'side' of the family,

and all the emotions that circle around that complex issue would be demanding and would place a strain upon her. "PGA" envisaged herself supervising all the birth family contact, without seeming to have any appreciation of how difficult that might be. There was also a naivety to her assessment of how much contact "A" could cope with, given her attachment to "Mr and Mrs PA".

97. It was my assessment of "PGA" that this somewhat superficial and over positive approach has its foundations in her belief that she was 'promised' that "A" was going to be placed with her in March 2020, and that is the assurance that should be honoured. My impression was that her 'battle' with Warwickshire has become a central issue for her, and that this has led to her failing to appreciate the issues from the perspective of "A", or being able to hear the concerns and rationale of the professionals who do not support a move.

98. I accept that the evidence is clear that moving "A" to the care of "PGA" would be to gamble with her emotional stability. Of course, that risk has to be balanced against the advantages of "A" being able to grow up with her brother, and within her birth family.

99. For "B", there is no such gamble. He will be able to move from the care of his mother to the care of "PGA" without the same degree of upset and distress. Further, managing his contact with his mother and his father would not pose the same degree of emotional complexity for "PGA". The concerns that I have expressed about "PGA's" insight and ability to manage sit wholly differently in the welfare analysis for "B", who must move from his mother, unlike for "A", who can remain settled and stable where she is.

<u>The relationship which the child has with relatives, including the prospective adopters, and any other relevant person</u>

100. I have already detailed many of the relevant matters within this judgment already as to these aspects of the evidence. "A" has a wonderful relationship with "Mr and Mrs PA". They love and adore her. "A" has a bond with her brother, "B", and a limited attachment at present with "PGA". "A" needs to maintain her relationship with her parents in order to a have a clear sense of her identity throughout her life.

<u>Conclusion</u>

101. Whilst this has been a complex and difficult case, I found myself at the end of the evidence in a similar position to that of the Guardian. The welfare outcome for each of the children was clear. It is my determination that "B" cannot remain in the care of his mother for all the reasons that I have given. Nor would he be safe in the care of his father. "B's" welfare best interests are best met by the making of a care order in favour of Coventry City Council and being placed with "PGA". I approve the transition plan.

102. There is no need for an order to regulate contact. The local authority will share parental responsibility for "B" up until the point at which "PGA" feels able to make an application for a special guardianship order, and so professionals will be able to support and review the arrangements for contact in a pro-active a child centred way. There will need to be a reduction in "F's" contact, and his position seeking twice weekly contact is unrealistic within a long-term placement. I approve the care plan as amended by the contact plan.

103. As for "A", the risks involved in "PGA's" wish to care for her are too great in my view. "A's" welfare best interests throughout her life are can only be met by way of remaining in the care of "Mr and Mrs PA". Whilst I acknowledge that adoption is a draconian order, it is the only order that will allow "A" to truly benefit from the stability, love and security that "Mr and Mrs PA" are offering to her. Because the adoption will be an open one, adoption will also allow for "A" to benefit from a relationship with all of her birth family, including her mother and father. But most importantly, she will be able to form a strong and enduing attachment with "B" via regular and meaningful contact. Special guardianship will not afford "A" the benefits of adoption and will leave this family open to further destabilising litigation.

104. In the twenty-first century, families come in very many forms. Whilst the sibling relationship is enduring and life-long, the benefit of "A" and "B" growing up in the same house is not such that I should place "A" at risk of all of the other harms and disadvantages that I have outlined within this judgment. Their relationship can be promoted and maintained by the extensive contact being offered by "Mr and Mrs PA". I dispense with the consent of "M" and "F" to the making of that order on the basis that "A's" welfare demands that I do so.

105. I have every faith in "Mr and Mrs PA" that they understand and will support contact with every member of "A's" family in line with the contact plan, which I approve. To make an order would, in my view, risk being over-restrictive. "A" is only three and a half years old. As she grows, her needs for contact will develop and change. The disadvantage of an order would be that her family would not be able to arrange her life in a way that best met those needs. I do not consider that a s8 contact order is necessary or appropriate in those circumstances.

Her Honour Judge Walker

SCHEDULE

SCHEDULE OF MAIN DIFFERENCES BETWEEN SPECIAL GUARDIANSHIP ORDERS & ADOPTION		
	SPECIAL GUARDIANSHIP	ADOPTION
1. STATUS OF CARER	Special Guardian: If related to child retains existing relative status	Parent for all purposes: If related to child existing relative status changes
2. STATUS OF CHILD	A child living with relatives/carers who remains the child of birth parent	The child of the adoptive parent as if born as a child of the marriage and not the child of any other person therefore adoption includes a vesting of

		'parenthood' Sec 67 ACA 2002
3. DURATION OF ORDER	Ceases automatically on reaching 18 if not revoked by court earlier ?whether also ceases on death The legal relationship created is therefore time limited and not lifelong Sec 91(13)CA 1989	Permanent The legal relationship is lifelong Sec 67 ACA 2002
4. EFFECT ON BIRTH PARENT PR	PR retained by birth parent SG can impose limitations in use (see 6 below) Sec 14C(1)&(2) CA 1989	Birth Parent PR extinguished Sec 46 ACA 2002
5. CARER'S PR	PR vests in special guardian/s Sec 14C(1)&(2) CA 1989 Subject to limitations (see 6 below)	PR vested in adopter/s Sec 49 ACA 2002/S 2 CA 1989 No limitations (but see joint operation* below)
6. LIMITATION/RESTRICTION OF PR (a) removal from jurisdiction	(a) up to three months without leave, thereafter only with written consent of all PR holders or leave of court unless court gave general leave on making SG order Sec 14C(3)(b)&14C(4)/14B(2)(b) CA 1989	(a) No restriction
(b) change of name	(b) cannot change surname without written consent of all PR holders or order of the court Sec 14C(3)(a)/14B(2)(a)	(b) No restriction name change may take place at time of making adoption order or thereafter
(c) consent to adoption	(c) consent required from birth parents and special guardians or court must dispense with consent of birth parents and special guardians Sec 19,20,52 & 144 ACA 2002/14C(2)(b)CA 1989	(c) consent required from adopters only or court must dispense with consent of adopters only
(d) medical treatment	(d) may be difficulties where each special guardian agrees but birth parents do not in the following circumstances: Sterilisation of a child This is the example given in the government guidance to SGO in "Every Child Matters" in Relation to effect of section 14C(2)(a) – no authority is cited Ritual Circumcision	(d) no restrictions where each adoptive parent agrees (subject to age/Gillick competence of child) on giving consent for medical treatment *However where adoptive parents themselves disagree in

	See Re J [2000] 1 FLR 571 Suggests that like sterilisation the consent of all PR holders would be required for this procedure	these scenarios a court order may be required (see below)
(d) medical treatment contd	Immunisation See Re C [2003] 2FLR 1095 This added contested immunisations to the small group of important decisions where the consent of both parents was required Life prolonging/Life shortening If the above scenarios require consent of all with PR surely it must then extend to issues of whether treatment should be given or withheld in terminal cases Sec 14C(1)(b) with (2)(a) Ss1 does not effect the operation of any enactment or rule of law which requires the consent of more than one person with PR in a matter effecting the child If consent of all PR holders is required for these type of decisions does this then impose a duty upon SG to consult with birth parents in advance and to bring the matter back to court for determination if birth parents indicate an objection?	*Sec 2(7) CA 1989 Where more than one person has PR for a child each may act alone and without the other but nothing in this part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child
(e) voluntary accommodation	(e) If SG objects LA cannot accommodate child unless court order If all SGs consent but birth parents object would appear that LA cannot accommodate child unless court order if birth parent willing and able to provide accommodation or arrange for accommodation to be provided	(e) where adoptive parents agree they can accommodate voluntarily
(e) voluntary accommodation contd (f) removal from voluntary accommodation	This is not the case if there is in force a residence order and the residence order holder consents nor if there is a care and control order pursuant to wardship or inherent jurisdiction and the person in whose favour the order is made consents. (f) Any person may remove from voluntary accommodation at any time	(f) adoptive parents can remove from voluntary accommodation

(g) consent to marriage under 18	This is not the case if residence order holder of carer under wardship/inherent jurisdiction agrees to the voluntary accommodation How is the 'exclusive' nature of the SG's PR intended to operate in these circumstances ? It appears that the statute requires the consent of all PR holders therefore if SGs consent to accommodation but parents do not the parents can simply remove the child. Sec 20 (7)(8) &(9) CA 1989 (g) if all SG agree no restriction the Marriage Act 1949 has been amended to enable SGs to give valid consent where SGO in force (unless also care order in force) sec 3(1), (1A)(a)&(b)	(g) if all agree no restriction
7. DEATH OF CHILD	Special guardian must notify parents with PR Sec 14C(5) CA 1989 Special guardians may not be able to arrange for burial/cremation in circumstances where parents wish to undertake such a task if the SGO ends on death See by way of analogy R-v-Gwynedd CC ex p B [1991] 2FLR	No requirements for notification The rights and duties of legal parents do not end on death therefore would be no such conflict
8. REVOCATION OF ORDER	Specific statutory provision for birth parents to apply for discharge of SGO with leave of the court, leave not to be granted unless there has been a significant change of circumstances Specific statutory provision for court to discharge of its own motion even where no application in any 'family proceedings' Sec 14D CA 1989	No statutory provision for revocation in wholly exceptional circumstances court may set aside adoption order, normally limited to where has been a fundamental breach of natural justice. See for example Re K Adoption & Wardship [1997] 2FLR 221
9. FUTURE APPLICATIONS BY PARENTS (a) Residence (b) Contact (c) Prohibited Steps (d) Specific Issue	 (a) Leave required (b) no automatic restriction (c) no automatic restriction (d) no automatic restriction Sec 10(4, (7A)&(9) CA 1989 A parent is entitled to apply for any	 Leave required Leave required Leave required Leave required Sec 10(2)(b), (4), (9)

	section 8 order except residence where is SGO	
10. RESPONDENTS TO FUTURE LEGAL PROCEEDINGS RE CHILD	Birth parents would be respondents in addition to the SGs to any applications in relation to the child for Section 8 orders, EPOs, Care /Supervision Orders, Secure accommodation etc	Only Adopters would be automatic respondents
11. MAINTENANCE	Does not operate to extinguish any duty on birth parents to maintain the child	Operates to extinguish any duty on birth parents to maintain the child Sec 12(3)(b) AA1976/Sec 46(2)(d)ACA 2002
12. INTESTACY	Child placed under SGO will not benefit from the rules relating to intestacy if the SGs die intestate	Adopted Child will have rights of intestate succession