Neutral Citation Number: [2024] EWFC 87

Case Number: LU92/21 (LU20C03361)

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London
Date: 3 April 2024

Before:

MR RICHARD HARRISON KC
Sitting as a Deputy High Court Judge

Re C (A Child) (Adoption by Foster Carers)

BETWEEN:

Luton Borough Council — **Applicant**

and

(1) Ms C (the mother) — **Respondents**
(2) Mr C (the father)
(3) Mr D (foster carer)
(4) Mrs D (foster Carer)
(5) C (a child, by her children's guardian)

Ms Dinali Nanayakkara (instructed by Ms Katie Thould) appeared on behalf of the applicant.
Ms Samantha Dunn (instructed by Ms Jennifer Browne of Machins solicitors) appeared on behalf of the first respondent.
Mr David Marusza (instructed by Ms Siobhan Murray of Reeds solicitors) appeared on behalf of the second respondent.
Ms Emma Vincent (instructed by Ms Emma Copeland of Bretherton Law) appeared on behalf of the third and fourth respondents.
Mr George Lafazanides (instructed by Mr Steven Jacob of Fahri Jacob solicitors) appeared on behalf of the fifth respondent.

Hearing dates: 23, 24, 25 and 26 January 2024 and 21 and 22 February 2024

Approved Judgment

This judgment was handed down remotely by email.
The time of hand-down is deemed to be 2pm on 3 April 2024

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The judge has given leave for this judgment to be published. In any published version of the judgment the anonymity of the child, the other respondents and the children's guardian must be preserved. Failure to do so will be a contempt of court.

MR RICHARD HARRISON KC:

Introduction

1. This has been a difficult case. I am very grateful to all of the advocates for the helpful submissions they have made to me and for the skilful and sensitive manner in which the case was conducted before me.

2. C, who is now aged 5, is a much-loved little girl. She has been the subject of proceedings since March 2020.

3. On 9 March 2022, HHJ Gargan made a care order and a placement order in circumstances that I shall describe below. On 7 July 2022 the placement order was set aside by the Court of Appeal and the proceedings were remitted for reconsideration.

4. Following various interim hearings, the proceedings were listed before me in January and February 2024. This is my reserved judgment.

5. Since the matter was before HHJ Gargan, the complexion of the case has changed significantly.

6. Mr and Mrs D, the foster carers with whom C has lived for nearly 4 years, wish to care for her on a permanent basis. All of the parties agree that they should do so. The primary issue concerns the appropriate legal structure under which C's home with Mr and Mrs D should be underpinned. The parties' positions on this issue can be summarised as follows:

   (a) Mr and Mrs D seek an adoption order. Their application is supported by the local authority and the guardian. If the court does not grant an adoption order, they are willing to continue caring for C under either a special guardianship order or as long term foster carers under the existing care order.

   (b) The parents oppose an adoption order. They contend that C should remain living with Mr and Mrs D, pursuant to either a long-term fostering arrangement or under a special guardianship order (or possibly a combination of the two). It is the mother's wish (supported by the father) to resume the care of C in due course; despite this the parents are prepared to agree to the court making an order under section 91(14) of the Children Act 1989, preventing either parent from making applications without the permission of the court for a period of two years.

7. In the event that the court makes an adoption order, the parents invite the court to make an order for direct contact between them and C for up to six times a year. This is opposed by the other parties. Mr and Mrs D (supported by the local authority and guardian) propose that there should be a so-called 'wish you well' contact; thereafter there would be no further direct contact for at least a year, after which they have agreed to keep the question of contact under review. As for indirect contact, Mr and Mrs D propose that there should be reciprocal letterbox contact. They initially suggested it should take place once a year, but are prepared to agree to it being twice yearly.

Background

8. C's parents are not married but have been in a relationship (in one form or another) for over 25 years, albeit living in separate households. The father, a self-employed builder, is now aged nearly 56 and the mother is aged 42. C is their fourth surviving child. The mother has suffered from type 1 diabetes since the age of 16 and has experienced hypoglycaemic episodes. The father's health is generally poor. I have read that he suffered a heart attack in 2020. He appeared to be suffering bad health during the hearing; he courteously left the courtroom at various points when he was having unrestrained coughing fits.

9. C's three older siblings were all previously the subject of care proceedings which led to them being removed from their parents' care and placed with other members of the family. Her oldest sibling X, whom I believe is aged 20, is now living with the mother once again.

10. C has a range of serious medical conditions. In particular, she has hypopituitarism and central incisor syndrome with piriform stenosis. The associated symptoms of these conditions include development delay, dysmorphic features and heart abnormalities. As a result, she has to take regular medication including hydrocortisone every six hours and a number of other drugs daily under a regime which must be followed precisely. In case of medical emergencies, her carers must follow an adrenal crisis management plan. Her condition makes her extremely vulnerable to stress, to the extent that this could be life-threatening.

11. C was previously described by HHJ Gargan as '*one of the most vulnerable children to come before this Court*'. As she starkly put it '*if she becomes stressed, she might die*'.

12. The guardian describes C as follows:

> "[C] is an absolute joy to meet and spend time with. She is equally charming and unintentionally funny given her mature mannerisms, expressive face and also the wise things she says which sound like a much older child. [C] is slightly shorter than most children her age but not noticeably so. She has beautiful strawberry blonde hair which she takes pride in having styled and worn nicely with clips or plaited. Her disability presents itself in 'seen' and 'unseen' ways; so [C] has one central top incisor tooth, internal nasal cavity changes which can impact on breathing when she isn't well. She also has (not noticeably) shorter arms and legs than most children. Her CIS means she has pronounced features, one central incisor tooth and a slightly pronounced forehead; this and her pituitary gland issues has meant that it has never been fully clear how [C] will develop around her learning, gross or fine motor skills. Thankfully she continues to surprise those around her and loves hobbies which help her development; dance, swimming, trips to the park and soft play. She is also a keen artist and cake maker!
>
> Internally; [C] cannot regulate her own adrenal system, which has potentially life-threatening consequences if her body [is] under 'stress' which can even include common childhood illness' / coughs and colds'. She therefore has a strict protocol for medication and if she ever becomes unwell - day and night (so disrupted sleep for anybody caring for her) to administer medication which means her 'cortisol levels' remain stable."

13. In her report dated 4 October 2021, the guardian identified that as a result of her complex needs C is a child who required more than '*good enough*' parenting. This plainly continues to be the case.

14. As a result of her medical conditions, C spent the first 16 months of her life in various hospitals. It is very much to the mother's credit that she was with her throughout that time apart from for four days when the father was present.

15. In March 2020, the local authority issued care proceedings within which they raised various allegations against the parents and asserted that C was likely to suffer significant harm in their care.

16. On 28 April 2020, C became the subject of an interim care order. Following her discharge from hospital around that time she was placed with Mr and Mrs D, who were specialist agency foster carers. She has lived with them since then, thus for nearly four years. Theirs is the only home she knows. She regards Mr and Mrs D as her parents and refers to them as 'Mummy' and 'Daddy'. From C's perspective, Mr and Mrs D's children are her older siblings.

17. C has regular visiting contact with members of her family, principally her mother. Since October 2022, this has been taking place every two months at a contact centre for a period of approximately one and a half hours.

18. During the course of the proceedings before HHJ Gargan, two of C's maternal aunts put themselves forwards as long-term carers for C and initially received positive special guardianship assessments, although these were later reversed. Mr and Mrs D also applied to be considered as special guardians and they too received a positive assessment.

19. On 7 June 2021 the court found that the threshold criteria were met on the following basis:
    a. the parents' historic problems with cocaine and alcohol, the mother having been clear for some three years but the father having continued to use cocaine linked to his use of alcohol;
    b. the mother's poor management of her type 1 diabetes;
    c. the mother's temperament and her ability to safeguard the children; and
    d. the father's inability to protect any children against the mother's dysregulated outbursts.

20. At around the same time, a 'North Yorkshire hearing' (see *North Yorkshire County Council v B* [2008] 1 FLR 1645) took place before HHJ Gargan at which the court reached the conclusion that a placement of C with her parents was not a realistic option for her.

21. In October 2021, the local authority informed the court that Mr and Mrs D had withdrawn from seeking a special guardianship order as they had been unable to reach agreement as to the level of financial support they would receive under such an order. The local authority had previously supported their application for special guardianship, but as a consequence of their change of position it filed an amended care plan proposing adoption and made an application for a placement order.

22. On 26 November 2021 the local authority filed a statement in which it addressed the arguments for and against a long-term foster placement with Mr and Mrs D. As Baker LJ later recorded in the Court of Appeal judgment:

> "The arguments in favour were said to include: (1) that C had been cared for by the Ds for a significant period of time and was settled in the placement; (2) that she would not need to transition to another placement which was likely to be stressful for her; and (3) that the local authority would continue to provide support around contact with the birth family. The arguments against were said to be: (1) that C would not be cared for within her birth family; (2) that long-term foster care did not offer permanency; (3) that Mr and Mrs D could end the placement at any time, a risk which was of greater consequence here because of the potential for ongoing disruption to the placement from the mother; and (4) that C would remain a looked after child and subject to the intrusion and stigma that attached to a child in care. Balancing those arguments, the local authority had concluded that this option was not in C's best interests."

23. The guardian's final analysis in the original proceedings was summarised by Baker LJ at paragraphs 12 to 14 of his judgment, which it is unnecessary for me to set out in full. Her recommendation was for care and placement orders, as sought by the local authority. Within her child impact analysis she said the following:

> "Emotionally, I would advocate C is 'home', and this is who she sees as her parents. Many children have to consider the detachment process from their foster carers when adoption and permanency is needed to 'tip the balance' for the longer term stability. For C this is going to be no easy transition. Stress and the impact on her adrenal function could impact on the length and impact of transition or in the worst scenario [affect] C's health… The balance in my view is so narrow, about whether C should be able to stay with her current carers whom she sees as her family, in spite of the obvious and worrying instability that brings, or whether the 'risk' is worth it to consider permanency through adoption so that she doesn't have to spend potentially upwards of 15 years in long-term foster care"

24. The final hearing was listed before HHJ Gargan in February and March 2022. In the guardian's position, it was recorded that she '*despairs at the thought of C's placement with Mr and Mrs D breaking down for financial reasons and inflexibility on both sides*'. She identified C's existing placement with Mr and Mrs D as one which '*best meets her welfare needs and where going forward she could have the best of both families she knows, contact with her birth family and stay with Mr and Mrs D*'. As a result of her inability to prescribe the bespoke solution which she considered would work best for C, she found herself '*having to support the orders sought by the local authority as the* 'next best' *outcome for C – even though she can see the potential for this being detrimental for C compared to keeping her where she is, even if that was by way of long term foster care*.'

25. After hearing oral evidence from local authority witnesses, the parents and the guardian, HHJ Gargan concluded that she should accede to the local authority's application and made a care order and a placement order. Her judgment dated 9 March 2022 makes clear that it was a conclusion she came to with reluctance. As she put it at paragraph 24:

> "If I were satisfied that C could not return to her parents and I had a magic wand, I would be waving it incredibly hard to have this little girl stay where she is… It would avoid disruption for her. She would remain in a settled family home that she regards as her family. Her medical needs would all be met. She would have no disruption of her medical care. She would have a progression into the school she currently thinks she is going to in September, which is just up the road. In addition, most significantly, she would continue in some form or other to have contact with her birth family."

26. The mother appealed the placement order. The judgment of the Court of Appeal (Baker LJ, Carr LJ and Welby LJ) was handed down on 9 July 2022 and is reported at [2022] EWCA Civ 930. The appeal was allowed on the basis of two of the mother's five grounds of appeal, namely:

    (1) The judge wrongly concluded that "nothing else would do" when she did not have any evidence that long term foster care with Mr and Mrs D was not a realistic option; and

    (2) The judge erred in concluding that "nothing else will do" and that adoption was proportionate and in C's best interests when there was further information in respect of placement with the Ds as long term foster carers required to conduct this analysis and the court was not provided with the financial information sought in respect of fostering allowances.

27. At the time of the hearing before HHJ Gargan, there was a lack of clarity as to Mr and Mrs D's willingness to continue to care for C. The local authority had made it clear to them that they were unwilling to continue to fund them at the enhanced agency rate. The extent of C's care needs inhibited Mr and Mrs D from working overtime and they did not consider that they would be able to afford to care for C (as well as meeting the overall needs of their family) on the basis of the proposed reduction to their income.

28. By the time of the hearing before the Court of Appeal, Mr and Mrs D's position had shifted. It was summarised in an email from the local authority social worker to the family finding team which stated:

> "I have had numerous conversations with Mr and Mrs D following last week's [permanency planning meeting].
>
> The reality of C potentially moving to another family has made them reflect and reassess their position. First and foremost, they are worried that a move from their family will cause C disruption, upset and loss, they have made it clear that they wish to continue to care for C and find the thought of her leaving their family upsetting, they want to do all in their power to provide her permanence.
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> Since C's care plan changed to adoption Mr and Mrs D voiced that they wanted to adopt C but were hesitant to pursue adoption under an arrangement where allowances were means tested and reviewed annually (as this did not provide family financial security).
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> …

> Mr and Mrs D understand that any adoption allowance would be means tested and reviewed annually, the reality of C having to move has made them reflect that they do not want this to prevent them continuing to care for C long term. Mr and Mrs D want to let the LA know that they want to be considered as prospective adopters.
>
> They understand that any adoption allowance would be lower than the fostering allowance they have been receiving and means tested annually.
>
> Unquestionably, it will be in C's interests to be adopted by the Ds and we hope the LA will thoroughly explore them as potential adopters. It seems that the Ds' reluctance to enter a financial arrangement that was means tested and reviewed annually is what has prevented the matter being pursued, now they are willing to proceed knowing any allowance will be annually reviewed."

29. This email led the Court of Appeal to cause enquiries to be made as to Mr and Mrs D's position regarding long term foster care. In response, Mrs D sent an email in the following terms:

> "In response to your email we would unquestionably look after C under long term foster care arrangement with [the agency]. The therapeutic support offered to C and carer support offered to us at present are highly valuable. Going forward we believe this will be highly beneficial as C continues to physically emotionally develop. We love C very much as [a] member of our family and are committed to doing all we can to secure permanency within our care.
>
> We are of course willing to be flexible, and have only ever over the proceedings tried to be as flexible as possible with the information provided to us."

30. The Court of Appeal held that this new information about Mr and Mrs D's position '*added weight to* [the mother's arguments] *that the judge did not have sufficient evidence to conclude that long-term foster care with Mr and Mrs D was not a realistic option…*'. Lord Justice Baker added '*To my mind, these latest emails give rise to real hope that the outcome which the judge plainly believed to be the best option for C may now be within reach.*'

31. At paragraphs 40 and 41 of his judgment, Lord Justice Baker set out the conclusion of the Court of Appeal in the following terms:

> "To sum up, there was strong evidence to support the view that it was in the interests of C's welfare to remain with Mr and Mrs D. She is settled there, receiving high quality care. She has formed a close relationship with her carers and members of their family. It is the only home she has ever known. She has very complex and demanding medical and therapeutic needs which Mr and Mrs D are able to meet. She is highly vulnerable to suffering a serious, possibly life-threatening, adverse reaction to stress from disruption to her routine. She is expecting to go to a local school in the vicinity of the Ds' house. Although there have been difficulties with contact, remaining with Mr and Mrs D would allow her to retain an element of direct contact with her birth family. In my view, long-term foster care was an option which should have been considered and evaluated alongside the other options in accordance with case law, as part of "a balancing exercise in which each option is evaluated to the degree of detail

> necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options." For the reasons set out above, however, the judge's analysis of the realistic options for C's future care was flawed. She failed to deal clearly with the option of long-term foster care with the Ds, to the extent that at the appeal hearing the parties were unable to agree whether it had been treated as a realistic option or not.
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> The appellant's argument in the first two grounds of appeal that the judge did not have sufficient evidence that long term foster care with the current carers was not a realistic option and that there was further information which should have been obtained before the decision was made has been strongly reinforced by the recent emails. It seems clear that Mr and Mrs D are no longer saying that they cannot continue to care for C unless they receive support at the current level. Even if the option of long-term foster care with the Ds was not a realistic option at the time of the hearing, it has unquestionably become so now."

32. Although the appeal was allowed on the basis that the option of long-term foster care had not been adequately evaluated, the Court of Appeal expressed no view as to which of the potential options for C should be preferred. Lord Justice Baker, anticipating the manner in which the case has subsequently developed, said at paragraph 43:

> "At [the remitted] hearing, the court will have to consider all the realistic options for C's future. Although I have expressed the view on the basis of the evidence now available that long-term foster care with Mr and Mrs D is a realistic option, I am expressing no view as to which option should ultimately preferred. There were other options before the judge and further realistic options may emerge. For example, as anticipated in the recent emails, Mr and Mrs D may decide to proceed with their own adoption application. Although we were not addressed on this at the hearing, it seems to me that they could initiate this process by serving notice on the local authority under s.44(3) of the 2002 Act. There will be arguments for and against the various options which the judge conducting the rehearing will have to evaluate."

33. Following the hearing in the Court of Appeal, the matter was relisted in the Family Court at Luton. There was a directions hearing on 10 May 2023 when the case was timetabled to a final hearing in September 2023. At a pre-trial review in early September, the final hearing was adjourned to dates in December 2023, after the court was made aware that Mr and Mrs D might seek to pursue their own adoption application. A lack of judicial availability resulted in that December hearing being vacated and re-listed before me in January and February 2024.

Legal framework

Care order

34. C is already subject to a care order and it is unnecessary for me to address the relevant law concerned with the making of such an order.

35. The effect of the care order is that C is presently living with Mr and Mrs D as foster carers. They do not hold parental responsibility for her. Parental responsibility is shared between the local authority and the parents. This, however, is subject to the Children Act 1989 ('the 1989 Act'), s 33(3)(b) which gives the local authority the

power to determine the extent to which a parent, guardian or special guardian may exercise their parental responsibility.

36. Where a child is subject to a care order, it is the duty of the local authority to facilitate reasonable contact with the parents. The local authority may not refuse contact (save in a situation of urgency) without being authorised to do so by the court.

Special Guardianship

37. The court's power to make a special guardianship order derives from section 14A of the 1989 Act. In considering whether to make such an order the child's interests are the Court's paramount consideration. Regard must be had to the matters set out in the welfare checklist. Section 14A sets out various conditions as to the persons who may seek special guardianship; all of these are met in this case.

38. The scheme of section 14A envisages that an application will normally be made by the person or persons seeking to be a special guardian, but section 14A(6) allows the court to make an order in any family proceedings in which a question arises as to the welfare of the child.

39. The effect of a special guardianship order is to confer what is sometimes described as enhanced parental responsibility upon the special guardian. They are entitled to exercise their parental responsibility to the exclusion of any other person with parental responsibility apart from another special guardian. The status also allows a special guardian to remove a child from the jurisdiction for up to three months without the consent of other holders of parental responsibility.

Adoption

40. Although these proceedings were remitted to enable the court to reconsider the local authority's application for a placement order, that application is no longer pursued. Mr and Mrs D have issued an application for an adoption order, which is supported by the local authority and the guardian.

41. Section 44 of the Adoption and Children Act 2002 ('the 2002 Act') applies in cases where proposed adopters wish to adopt a child who is not placed with them for adoption by an adoption agency. Sections 44(2) and (3) require notice to be given to the local authority within a certain timescale. It is not disputed that the relevant notice has been given.

42. After giving notice, a couple may make an adoption application pursuant to sections 49 and 50 of the 2002 Act. Those sections contain various conditions as to domicile, habitual residence, the age of the child and the age of the applicants which are not in dispute in this case.

43. In making any decision under the Children Act 1989 with respect to the upbringing of a child, section 1(1) mandates that the court's paramount consideration must be the child's welfare; the court must have regard to the "welfare checklist" in section 1(3).

44. In the case of adoption, section 1(2) of the 2002 Act provides that the paramount consideration of the court must be the child's welfare, throughout her life. The court is obliged to have regard to the non-exhaustive matters set out in section 1(4), namely:

    a. the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
    b. the child's particular needs,
    c. the likely effect on the child (throughout [her] life) of having ceased to be a member of the original family and become an adopted person,
    d. the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
    e. any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,
    f. the relationship which the child has with relatives, and with any other person in relation to whom the court … considers the relationship to be relevant, including –
        i. the likelihood of any such relationship continuing and the value to the child of doing so;
        ii. the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs;
        iii. the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

45. Where a parent does not consent to the child being placed for adoption or the making of an adoption order, consent may only be dispensed with if the child's welfare 'requires' this: section 52(1)(b) of the 2002 Act.

46. The United Kingdom is unusual in Europe in permitting the complete severance of family ties without parental consent, a position noted by Baroness Hale in *Down Lisburn Health and Social Services Trust and another v H and another* [2006] UKHL 36.

47. Ms Dunn, on behalf of the mother, helpfully draws my attention to *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625. In that case, Wall LJ commented upon the strength of the word 'requires' in section 52(1)(b) of the Act. He observed that a child's circumstances may 'require' statutory intervention, perhaps even indefinite or long-term removal from home but not necessarily adoption. The word 'requires' has "*the connotation of the imperative. What is demanded rather than what is merely optional or reasonable or desirable*". Wall LJ also held that there is not an "*enhanced welfare test to be applied in cases of adoption*" as opposed to "*the simple welfare test*" and that the difference between section 1 of the 1989 Act and section 1 of the 2002 Act is that the latter requires the judge to recognise the lifelong implications of an adoption order and to focus on the child's welfare "*throughout his life*" and also contains a more extensive "*welfare checklist*" than in the 1989 Act.

48. Ms Dunn further submits, and I accept, that the Draconian nature of a non-consensual adoption order has been emphasised in both the domestic and Strasbourg jurisprudence. It entails a very substantial interference with the ECHR Article 8 rights of the subject-child, the child's siblings and the parents. An adoption order should only be made as a

last resort as family ties may only be severed in very exceptional circumstances. Before taking such a step, everything must be done to preserve personal relations between the child and her family and, where appropriate, to rebuild the family. It is not enough to show that adoption will enable the child placed in a more beneficial environment for her upbringing: see, for example, *K and T. v. Finland [GC], no. 25702/94,* ECHR 2001-VII; *YC v UK* (2012) 55 EHRR 967.

49. In *Re B (Care: Interference with Family Life)* [2003] EWCA Civ 786, Thorpe LJ emphasised at para [34]:

> "Where the application is for a care order empowering the local authority to remove a child or children from the family, the judge in modern times may not make such an order without considering the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 Art 8 rights of the adult members of the family and of the children of the family. Accordingly, he must not sanction such an interference with family life unless he is satisfied that that is both necessary and proportionate and that no other less radical form of order would achieve the essential end of promoting the welfare of the children."

50. The position was summarised in concise terms by the Supreme Court in *Re B (A Child)* [2013] UKSC 33*,* where Baroness Hale said:

> "The test for severing the relationship between parent and child is very strict. Only in exceptional cases and where motivated by overriding requirements pertaining to the child's welfare, in short, where **nothing else will do**." (emphasis added)

51. In *Re B-S (Children)* [2013] EWCA Civ 1146 the Court of Appeal expressed serious concern about the manner in which the courts were approaching cases involving non-consensual adoption. This led the President, Sir James Munby to say:

> "Before proceeding any further, it is necessary for us to go back to first principles and to emphasise a number of essential considerations that judges *must* always have in mind, and we emphasise this, at *every* stage of the process. Regrettably, the continuing lack of attention to what has been said in previous judgments necessitates our use of plain, even strong, language."

52. Commenting upon the Supreme Court decision in *Re B*, the President went on to say:

> "The language used in *Re B* is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option", a "last resort – when all else fails", to be made "only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do": see *Re B* paras 74, 76, 77, 82, 104, 130, 135, 145, 198, 215."

53. The President further highlighted that the court should adopt the *'least interventionist'* approach and cited with approval the following observations of Hale J in *Re O (Care or Supervision Order)* [1996] 2 FLR 755 at 760:

> "the court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered to be in the better interests of the children … unless there are cogent reasons to the contrary."

54. At paragraphs 26 to 28 of the judgment, the President emphasised three points drawn from Lord Neuberger's speech in *Re B*:

> "First (*Re B* paras 77, 104), although the child's interests in an adoption case are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.
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> Second (*Re B* para 77), as required by section 1(3)(g) of the 1989 Act and section 1(6) of the 2002 Act, the court "must" consider all the options before coming to a decision. As Lady Hale said (para 198) it is "necessary to explore and attempt alternative solutions". What are these options? That will depend upon the circumstances of the particular cases. They range, in principle, from the making of no order at one end of the spectrum to the making of an adoption order at the other. In between, there may be orders providing for the return of the child to the parent's care with the support of a family assistance order or subject to a supervision order or a care order; or the child may be placed with relatives under a residence order or a special guardianship order or in a foster placement under a care order; or the child may be placed with someone else, again under a residence order or a special guardianship order or in a foster placement under a care order. This is not an exhaustive list of the possibilities; wardship for example is another, as are placements in specialist residential or healthcare settings. Yet it can be seen that the possible list of options is long. We return to the implications of this below.
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> Third (*Re B* para 105), the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. So "before making an adoption order … the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support." In this connection it is worth remembering what Hale LJ had said in *Re O (Supervision Order)* [2001] EWCA Civ 16, [2001] 1 FLR 923, para 28:
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> > 'It will be the duty of everyone to ensure that, in those cases where a supervision order is proportionate as a response to the risk presented, a supervision order can be made to work, as indeed the framers of the Children Act 1989 always hoped that it would be made to work. The local authorities must deliver the services that are needed and must secure that other agencies, including the health service, also play their part, and the parents must co-operate fully.'

That was said in the context of supervision orders but the point is of wider application."

55. The President then stated:

> "It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking."

56. Emphasising the need to '*call a halt*' to previous bad practices, the President further emphasised that:
    a. 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;
    b. What is required is evidence of the lack of alternative options for the children and an analysis of the evidence that is accepted by the court sufficient to drive it to the conclusion that nothing short of adoption is appropriate for the children;
    c. There must be an assessment of the benefits and detriments of each option for placement and in particular the nature and extent of the risk of harm involved in each of the options.
    d. The court must produce an adequately reasoned judgment; and
    e. The judicial exercise should not be a linear process; it must be a "*global holistic evaluation*". The judicial task must be to evaluate all the options, undertaking a global, holistic and multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option.

57. In *Re H-W (Children), Re H-W (Children) (No. 2)*[2022] UKSC 17 the Supreme Court was concerned with an appeal against the making of care orders. At paragraph 45, Dame Siobhan Keegan made the following observation which is apposite in the present context:

> "In truth, the obligation under article 8 ECHR, so clearly recognised in *Re B* does no more than re-state the longstanding proposition of English childcare law that the aim must be to make the least interventionist possible order, but the emphasis given to the issue in *Re B* was overdue".

58. The courts have recognised that long-term fostering can be a more appropriate permanence option for a child than adoption: see, for example, *Re M (Adoption or Residence Order)* [1998] 1 FLR 570.

59. Before making an adoption order the court is required to give specific consideration to the question of post-adoption contact between the child and the parents. Section 46(6) of the 2002 Act provides:

> '(6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.'

60. Ms Dunn has drawn my attention to the Nuffield research published in 2021 which highlights some of the potential benefits of post-adoption contact. It is relevant to note in the present context, however, that on page 7 of the paper the authors noted that:

> "Good relationships between adoptive parents and birth parents helps to create positive experiences for children, whereas conflict is associated with higher levels of depression, anxiety, and behavioural difficulties."

61. I was also referred to research into post adoption contact undertaken in 2018 by B Featherstone, A Gupta and S Mills (*The Role of The Social Worker in Adoption: Ethics and Human Rights: An Enquiry* (British Association of Social Workers, 2018)). In *Re B (A Child)(Post-Adoption Contact)* [2019] EWCA Civ 29, the current President, Sir Andrew McFarlane made reference to that research and commented at paragraph 29 as follows:

> "I accept these findings and factor them into my analysis of the application before me. Each case is very different on its facts because we are dealing with people in a myriad of different circumstances and family dynamics. But what was once a closed door is now very much an open one and any court considering making an order as life-changing as an adoption order must carefully consider whether it would be in the child's best interest to keep this door to the original family open through indirect and direct contact."

62. Prior to the implementation of the Children Act 1989, the leading authority on the question of post-adoption contact was the House of Lords decision in *Re C (A Minor) (Adoption Order: Conditions)* [1989] AC 1, in which Lord Ackner stated:

> "The cases rightly stress that in normal circumstances it is desirable that there should be a complete break, but that each case has to be considered on its own particular facts. No doubt the court will not, except in the most exceptional case, impose terms or conditions as to access to members of the child's natural family to which the adopting parents do not agree. To do so would be to create a potentially frictional situation which would be hardly likely to safeguard or promote the welfare of the child. When no agreement is forthcoming the court will, with very rare exceptions, have to choose between making an adoption order without terms or conditions as to access, or to refuse to make such an order and seek to safeguard access to some other machinery, such as wardship. To do otherwise would be merely inviting future and almost immediate litigation stopped"

63. In *Re R (Adoption: Contact)* [2005] EWCA Civ 1128, Wall LJ reviewed the position in the light of the imminent coming into force of the 2002 Act. He stated at paragraphs 47 to 49:

> "[47] It is, of course, the case that matters have moved on very substantially since *Re C*. When *Re C* was decided, the Children Act

> 1989 was not in force and adoption proceedings were not designated as family proceedings. Accordingly, if there was to be post-adoption contact between siblings or other members of the adopted child's family, the only way that could be enforced was by conditions being written into the adoption order under section 8 of the Children Act 1989. Equally, back in those days it was more common, as Lord Ackner himself points out, for there to be no contact between family members and the adopted child after an adoption order had been made; although, of course, he recognises that there were exceptions to that rule.
>
> [48] We were shown s 1 of the new Adoption and Children Act 2002, which is due in force later this year, which demonstrates the clear change of thinking there has been since 1976, when the Adoption Act was initially enacted, and which demonstrates that the court now will need to take into account and consider the relationship the child had with members of the natural family, and the likelihood of that relationship continuing and the value of the relationship to the child.
>
> [49] So contact is more common, but nonetheless the jurisprudence I think is clear. The imposition on prospective adopters of orders for contact with which they are not in agreement is extremely, and remains extremely, unusual."

64. The proposition in paragraph 49 of *Re R* was reaffirmed by the Court of Appeal in *Oxfordshire County Council v X, Y and J* [2010] EWCA Civ 581, and in *Re T (Adoption: Contact)* [2010] EWCA Civ 1527, [2011] 1 FLR 1805. In the *Oxfordshire* case the Court of Appeal stated at paragraph 36:

> "It is a strong thing to impose on adoptive parents, it is "extremely unusual" to impose on adoptive parents, some obligation which they are unwilling voluntarily to assume, certainly where, as here, the adoption order has already been made. Was there a proper basis for taking that extremely unusual step? In our judgment, there was not. The judge found that the adoptive parents were genuine when they express their concerns, so what was the justification for imposing on them something they conscientiously and reasonably objected to, particularly when, as we have seen, they say that they have not ruled out the possibility of letting the natural parents have photographs in the future? As we have said, they are not to be saddled with an order merely because a judge takes a different view. The adoptive parents are J's parents; the natural parents are not. The adoptive parents are the only people with parental responsibility for J. Why, unless circumstances are unusual, indeed extremely unusual - and here in our judgment they are neither - should that responsibility be usurped by the court? We can see no good reason either on the facts or in law. On the contrary, there is much force in the point they make, that they wish their status as J's parents to be respected and seen to be inviolable - not for themselves but in order, as they see it, to give J the best chance for the adoption to be successful."

65. In *Re B* (supra) Sir Andrew McFarlane conducted a review of the previous authorities on post-adoption contact as well as acknowledging the developing body of research in relation to this issue. His ultimate conclusion (with which the other Court of Appeal judges agreed) was that despite the relatively recent research into the potential benefits of post-adoption contact the position as a matter of law remained unchanged. He said at paragraph 62:

> "A placement for adoption hearing has the potential for having an important influence upon the development of any subsequent long-term contact arrangements. As required by ACA 2002, s 27(4), the court must consider the issue of contact and any plans for contact before making a placement for adoption order. The court's order may well, therefore, set the tone for future contact, but the court must be plain that, as the law stands, whilst there may be justification in considering some form of direct contact, the ultimate decision as to what contact is to take place is for the adopters and that the court will be 'extremely unusual' for the court to impose a contrary arrangement against the wishes of adopters."

The parents

66. I have read a great deal about the parents and had the benefit of hearing them give evidence.

67. I entirely accept that both parents love C very dearly and that they want what they consider to be best for her. The mother, in particular, has shown considerable commitment towards her daughter throughout the early period of her life and since she was first removed from her care. She has attended the regular periods of contact facilitated in the limited environment of a contact centre at decreasing levels of frequency. This cannot have been easy for her, but she has nevertheless taken up the sessions virtually without fail and made an effort to make them a positive experience for C. The local authority social worker, Ms EW, accepted in oral evidence that her attendance has been '*very good indeed*'. I deal with contact in more detail below.

68. At an early stage of the care proceedings a psychological assessment was undertaken by Dr Clark-Dowd, whose report is dated 10 August 2020. Dr Clark-Dowd concluded that the mother has narcissistic and histrionic personality traits and identified anger management as an issue for her. She identified the mother's inability to work with professionals as a particular issue and recommended cognitive behavioural therapy; it is to the mother's credit that by the time of the final hearing in the care proceedings she had not only taken up this recommendation and but gone beyond it and had a significant amount of counselling.

69. Within the local authority documents the mother has variously been described as 'loud', 'vibrant' and 'stubborn'. It is said that she can come across as 'aggressive and intimidating' to professionals, a point of view she has been able to acknowledge. The Permanence Report dated 22 October 2021 records that:

> "When [the mother] does not agree with professional's views, she can passionately challenge and defend her own point of view. This can sometimes be to an intense level, leaving professionals intimidated and fearful of her response, which impacts on [the mother's] ability to establish positive relationships with those around her."

Since that report was prepared the mother has had additional counselling. While this has not eliminated the mother's personality traits, as the guardian acknowledges, she is now less aggressive and volatile than she has been in the past.

70. The negative aspects of the mother's personality were apparent to me when she gave her oral evidence. I am not suggesting that she behaved inappropriately while in court. On the contrary, I consider that she did her best to answer truthfully difficult questions that were put to her. Nevertheless, she was at times voluble and sought to communicate her point of view vigorously. This reflects her strength of feeling about wishing to be reunited with her daughter.

71. Regrettably, in my judgement, the mother lacks insight. Although she does have an appreciation that she can come across as loud and forceful, I do not think she fully understands the impact which her behaviour can have on others. I accept that social workers and other professionals have at times found her to be intimidating, although given the nature of their work they will inevitably have to encounter and deal with parents with a range of personality traits. Of much greater concern is the mother's failure to appreciate the impact upon Mr and Mrs D of her repeated complaints about them and the things she has said and done during contact which have had the effect of undermining the crucial role they play in C's life (see further below). These have had the effect of creating tension in her relationship with them and have caused Mr and Mrs D to feel considerable anxiety. The strain which Mrs D feels about being subject to constant critical scrutiny was apparent to me when she gave her evidence. The mother does not appreciate the harmful impact upon C of being caught in the middle of a relationship which she has caused to become so strained that civilised communication between the respective parties has become all but impossible. Her defensive statement to the guardian that '*I can't help my personality and how I can be*' demonstrates that there is little prospect of her changing her approach.

72. The mother also harbours the strong belief that there is a realistic prospect that C can safely be returned to her care. Her views are encapsulated in her most recent statement where she said '*As I want my daughter home, if I cannot get her home now then it is my intention to make an application for her come home again in the future*'. She said something similar to the guardian who commented: '*she still feels given all the options her main and first option would be for [C] to come home to her care*'. Although it is easy to sympathise with a parent's anguish at an enforced separation from their child, the mother's stance demonstrates a lack of appreciation about the devastating impact upon C of being removed from the home in which she has lived for over three years and from the care of the people she considers to be her parents.

73. The guardian vividly described in her written evidence the '*dire*' chaotic and unhygienic home in which she witnessed the parents to be living when she paid a visit there last Spring. Even if, on the most optimistic possible scenario, the mother were able to resolve her difficulties to a degree where she could safely parent a child, the impact upon C of being removed from her current family would be so serious that I consider it remarkable that the mother has been unable to acknowledge this. The undisputed evidence about C's medical conditions and the potentially life-threatening consequences for her of being subjected to stress are quite plain. The mother's inability to recognise this in the context of her persistent ambition to secure C's return to her

demonstrates that she finds it challenging to prioritise C's needs above her own. It is also surprising that she told the guardian that if C were to live with her, she would support C seeing Mr and Mrs D's children but not the foster carers themselves as often. This is further evidence of her inability to recognise their crucial parental role, as is her comment to the guardian that '*I don't think they are ready to have [C]… yeah they have managed to foster her with the rules going on about what can and can't be done for them, but not adopt her*'.

74. The father has played substantially less of a role in C's life than the mother. He was much less involved in the early stages. He has been to fewer sessions of contact. It is unnecessary to quantify the number of sessions he has missed or to go into details as to the reasons for his absence. I accept that he has at times been unwell and that this is likely to have been a factor. To his credit, he recognises that he is in no position to care for a child at present; he acknowledged to the guardian, for example, that he is still drinking alcohol and using cocaine occasionally. He was clearly unwell during the hearing before me. His position has been to support the mother in her ambition to have C returned to her care. The findings I have made about the mother's lack of insight in this respect apply equally to him.

Mr and Mrs D

75. Mr and Mrs D filed a joint statement and individual statements. I heard oral evidence from Mrs D but not Mr D (the parties agreed this was unnecessary).

76. Mr D previously served in the army and is now a fireman; Mrs D is a nurse. They have been married for well over 10 years and have two children of their own who are now aged 13 and 11. They have been approved foster carers since 2016 and have cared for children of different ages with varied needs.

77. Based upon everything I have read and heard, I consider that the quality of parenting they have provided to C has been exceptional. They have made sacrifices in order to provide C with round the clock care. Mrs D told me in evidence, and I accept, that at times they have prioritised C's needs above those of their own children. It is obvious to me that C occupies a central place in their home and that the lives of Mr and Mrs D are primarily focussed upon meeting her complex needs. I have read and accept the detailed description of the care they provide in the letter from their solicitors dated 2 October 2023.

78. There is no doubt that Mr and Mrs D have a strained relationship with the mother. They have been wounded by her repeated criticisms of them. They also have a poor working relationship with the local authority, no doubt fuelled by the frequent changes of social worker, a perception that the local authority has been insufficiently sensitive to their position as well as mis-steps such as the disclosure to the parents at one stage of personal information about them. The strain which they feel as a result of a prolonged process during which they have been subjected to critical scrutiny was obvious from Mrs D's evidence. It is to their credit that they have been able to put aside whatever personal feelings they might hold towards the parents and promote a positive image of them to C. They have encouraged her to go to contact and not sought to undermine it.

79. I asked Mr and Mrs D (through their counsel) what their second-choice arrangement would be in the event that I declined to make an adoption order: would they, in that position, consider it better for C to be cared for under a long-term fostering arrangement or under a special guardianship order. They were unable to choose between those two alternatives and I gained the sense that they felt that being asked to make such choice placed them in the invidious position as they consider that neither option would be in C's best interests. In my judgement, Mr and Mrs D feel a justified sense of dread at the prospect of having to engage directly with the parents (especially the mother) without social work support as a result of the hostility which has been directed towards them; this is the prospect they may face under a special guardianship order. Equally, they have come to view with dismay the notion that they may have to parent C for the remainder of her childhood under a foster care arrangement where they will lack parental responsibility and will need to seek consent in relation to routine matters such as going on holiday (a planned family trip to Norfolk was previously cancelled after the mother refused consent).

80. Mr and Mrs D have long been concerned about the financial implications of caring for C on a long-term basis. I do not have up-to-date figures, but note from the original SGO assessment that at that time there was a surplus between their income and *basic* monthly expenditure (by 'basic' I mean excluding items such as clothing and social activities) of approximately £1,400 per month. Making an SGO at the time of the original proceedings would have led to an immediate reduction in their income of about £1,000 per month, with ongoing support after two years being means tested. They did not believe they could commit to an arrangement which would have such a detrimental impact on their ability to provide a good quality of life for their family. In my view, their position in relation to finances has been entirely understandable and I do not consider any of the criticisms levelled at them over this issue to be justified. The level of care which they need to provide for C has had an impact on their respective abilities to work and in particular to undertake overtime. It is entirely reasonable for them to consider their overall financial situation and to have regard to the needs of their family as a whole.

Contact

81. I have read and heard a significant amount of evidence relating to the contact which C has had with her parents and her brother X.

82. The parents' case is that C benefits from contact and that it should continue to take place on at least a bimonthly basis (their wish is for it to be increased to monthly). They contend that the benefits of contact are a reason to refuse an adoption order or alternatively to make an order for post-adoption contact.

83. The local authority and the guardian acknowledge that aspects of the contact have been positive for C. Nevertheless, they (in particular the guardian) maintain that the contact has been a source of stress for her. It is asserted that C is caught in the middle of a fraught relationship between the mother (in particular) and Mr and Mrs D, the root cause of which is the mother's inability to accept the parental role which the foster carers have been fulfilling for C.

84. I have had the benefit of reading in detail a dedicated 'contact bundle' which contains a selection of reports from the contact supervisor(s) as well as foster carer logs relating to days when contact has taken place and the days immediately prior to and following contact. The logs were prepared by either Mr or Mrs D (mainly the latter) and therefore do not come from a neutral source. Having read the logs in detail and heard evidence from Mrs D, I am satisfied that they fairly record matters observed by the foster carers. It is notable that the logs are balanced in that as well as recording negative remarks which C has made about contact they do also record positive things she has said. I accept Mrs D's oral evidence that the logs are not a complete record; they do not record every instance of concerning behaviour from C which they have encountered. They have been written in a style to enable C to read them in future, should she wish to do so.

85. From the list of dates at the start of the contact bundle, I note that initially direct contact was taking place three times per week (save for periods when lockdown restrictions were in place; at these times Mr and Mrs D facilitated video contact as often as daily). At some point in the latter part of 2021 it was reduced to fortnightly. In April 2022, following the hearing at which a placement order was made, the contact was further reduced to monthly. In October 2022 (notwithstanding the decision of the Court of Appeal to set aside the placement order) it was further reduced to bi-monthly. It has remained at this level of frequency since then.

86. The supervisors' reports of the contact describe that – save in one important respect - contact has been a largely positive experience for C. They record the mother interacting in an affectionate and child-focused way with C and C responding positively.

87. By way of example, during the session on 22 December 2022 the mother and C engaged creatively playing a shopkeeper game. The mother brought presents for C which she clearly enjoyed receiving and playing with. The supervisor observed warmth between them concluding that it was a pleasant session which C seemed to enjoy.

88. A further example is to be found in the notes of the session on 7 February 2023 which was also described in very positive terms by the supervisor. C smiled upon walking into the room and seeing her mother and brother, with whom she then shared hugs. A lot of enjoyment was clearly shared unwrapping and playing with presents. The mother engaged with C in a child-focussed way in relation to her toys and helped her count out numbers. Contact ended with hugs and the mother and C each telling the other '*I love you*'.

89. The above are not isolated examples. The reports contain a significant number of similar positive descriptions of the contact which it is unnecessary for me to recite.

90. The guardian's evidence, however, is that the supervisors' reports are likely to paint an overly positive picture which does not reflect the reality of the experience for C. She does not seek to criticise the supervisors, but makes the point that they lack the training to assess the interactions between C and her family from a social work perspective and thus identify some of the subtle cues which suggest that the contact may be less beneficial for C than superficially might appear to be the case. The guardian's evidence was that this was an issue she had encountered in other cases.

91. The guardian was present during the contact which took place on 23 May 2023. In support of her contention about the supervisors' notes she emphasised the difference between what was (and was not) recorded in the report of the contact and what she herself observed.

92. The report of contact on 23 May 2023 describes positive interactions between C and her parents (both attended that day) and brother similar to those which I have summarised above: they played well together; C was praised appropriately and it was said that she '*thrives from receiving [the praise]*'; hugs were shared at the end of the session which C left '*happily*'.

93. By contrast, the guardian said the following at paragraphs 26 and 27 of her report about the same period of contact:

> "During the family time I observed there were interactions that [C] reacted to. [F] made a comment about her teeth which [M] noticed and then became the subject of some bickering to not mention things like this in front of her. I also noticed when he kissed her on the face and she recoiled. [M] said 'she doesn't like that remember'. Often [M] and [F] spoke over each other, which culminated in them realising [C] couldn't get her views known and [M] said to [F] 'let her speak'.
>
> I sensed overt and false positivity which [C] didn't seem to enjoy; particularly when being tickled in the ribs, she pulled back. At several stages in response to questions or directions from her parents [C] bared and gritted her teeth and grunted. [F] blew raspberries on her to which she said 'I don't like that'. At one stage [C] looked watchful from [M] to the supervisor then back to me as [M] made a comment about her hair saying 'where's your curly hair gone?' [C] was trying to explain that [Mrs D] had done her hair today. [M] had made an assumption that [Mr or Mrs D] had straightened it and started to protest about how inappropriate that was given [C]'s age. The supervisor noted it but tried to direct [M]'s attention back to the task, [M]'s disapproval was clear in her face and voice. The hostility was overt and [C]'s response to this was to stop, watch and seem uncertain."

94. I accept the guardian's evidence as to the matters she observed, but I only partially accept her contention that it undermines the positive descriptions from the supervisors in the various reports which I have read. The supervisors were not called to give evidence and thus the reports have not been challenged through cross-examination. Although the report of the contact on 23 May 2023 does not set out the negative aspects of the contact in the same detail as the guardian, it does identify that the mother raised the issue relating to C's straightened hair and notes that this is a potential source of conflict. The report also notes that an issue arose over the father commenting on C's brown tooth and potential for such comments to affect C's self-esteem. Other reports of contact have not been so unequivocally positive as to omit mention of concerns which have arisen.

95. The foster carer logs also corroborate to some extent the proposition that aspects of the contact have been positive for C. The logs refer to a number of instances of C reacting positively in anticipation of contact (e.g. '*yay I can play with toys*' on 9.8.22, 17.10.22 and 13.12.22; '*You went in happy holding [the social worker's] hand*' on 13.12.22; on 28.3.23 '*you was (sic) happy to go and see her, you told me you love the toys*' and '*you*

went in happily with contact worker'; '*you was (sic) happy to [be] going to play at tummy mummy's*' on 23.5.23; '*pleased to be going to the contact centre*' on 17.7.23) or coming out of contact happily ('*You came out of contact happily drinking a flavoured water…it was reported you had a good time…you showed me a picture you had painted*'; *'..spoke to me about seeing tummy mummy and how you enjoyed painting. You told me that tummy mummy is very loud*' on 18.10.22; '*Came out happily*' on 27.3.23; '*you came out pleased to see me telling me you'd enjoyed some cake and did maths with tummy mummy*' on 23.5.23; '*you showed me the cakes you had made with Tummy Mummy*' on 16.10.23). That C has been able to derive some enjoyment at contact is to the credit of the mother and to Mr and Mrs D for promoting contact in a positive way.

96. The positive features of the contact have to be qualified by issues which have arisen which have been detrimental for C. These all stem, in my judgement, from the mother's inability fully to accept and respect the role which Mr and Mrs D play in her daughter's life. Although the mother was ruled out as a carer for C in 2021, she has never been able to accept this. Her wish (understandably from her perspective as a mother) has always been and remains to resume the care of C as soon as possible. The limited involvement she now has in C's life causes her feel marginalised and, in my judgement, resentful of the parental role which the Ds fulfil. The more she perceives C to be close to her foster parents, the more it threatens her own position as a mother and her ambition to resume C's care. These are human emotions which are easy to understand and with which one can sympathise. The problem for C, however, is that it is led to her being caught in the middle of a very tense adult dynamic about which she is becoming increasingly aware. The mother, as I was able to observe when she gave her evidence, is forthright and direct in her manner of communication. It has been difficult for her to conceal from C her disapproval of the foster carers or to restrain herself from intervening to assert herself as C's mother, even though from C's perspective Mr and Mrs D are the people she considers to be her 'mummy' and 'daddy'.

97. The main sources of tension at contact have been in relation to food, nomenclature and the mother's overt or implicit criticisms of Mr and Mrs D, mainly in relation to these issues but not exclusively so (examples include the straight hair issue and changing C's nappy for one regarded by the mother as more suitable, an action justifiably described by the guardian as '*passive aggressive*').

98. As a result of C's serious medical conditions, Mr and Mrs D have been astute to ensure that she follows a very strict diet. Food that might be considered a treat is strictly rationed or not allowed at all. C is encouraged to drink water and not sugary or flavoured drinks. It is not difficult to imagine that it must be challenging and no doubt stressful for Mr and Mrs D to ensure that C adheres to this diet and forgoes food and drink which other children with whom she comes into contact (perhaps even her own foster siblings) are allowed to consume. For Mr and Mrs D, therefore, it is important that the boundaries they have set around the consumption of food should be respected and not undermined when she has contact. This has been made clear to the mother more than once. Nevertheless she has on occasions brought to contact flavoured water to drink or given C more than one snack (cake, plus raisins to take home) despite being advised that she should not do so (e.g. the notes of contact on 14.6.22 record that the mother was clearly advised that for medical reasons C should not be given more than

one snack and that even showing C raisins to take home could upset her if she was not allowed to have them; she was also advised to bring healthier snacks instead of chocolate, such as yogurt or fruit; see also the review notes dated 27.3.23).

99. On one level, it is of course understandable that a mother having limited contact with her daughter should wish to make the sessions as pleasurable as possible for C; part of that is giving treats to C that she enjoys. This perspective was reflected in the observation of the contact supervisor to the guardian when she wondered whether Mr and Mrs D could respond better and be more lenient about C coming back to them with drinks or snacks as the contact is infrequent and time limited. If I was concerned with a child who did not have a serious medical condition, I would have complete sympathy with this observation. In C's case, however, I consider this criticism of Mr and Mrs D to be unwarranted. It is entirely understandable that they should be hyper-vigilant to ensure that the risks to C of suffering an episode which requires hospital treatment or worse are minimised. Part of this involves ensuring she follows a strict diet which, as I have observed, must be challenging for them to enforce. Undermining the boundaries which the Ds have set around the consumption of food and drink places C in position where she is encouraged to disobey rules set for her at home; this in turn will increase the challenges her carers face in enforcing those rules. It also creates a conflict of loyalties for her and undermines the parental role fulfilled by Mr and Mrs D.

100. From C's perspective, the mother ignoring rules around food has exposed her to tension. In June 22, for example, C reacted to being given a chocolate bar by saying '*Dad does not give me that*'; before the contact started Mr D had sought to emphasise to the contact worker in C's presence that only one snack was allowed and that raisins should not be given in addition to chocolate. On 12.7.22 the foster carer log records '*I took you to see your tummy mummy today you told me* ***that your (sic) only gonna have one snack*** *and you was (sic) looking forward to playing with toys at tummy mummy's*' (my emphasis). On 22.10.22 C told the mother that she was not allowed to have the flavoured water, to which the mother responded that it was allowed when seeing her. On 7.2.23 C told the mother that her mummy said she is not allowed to drink flavoured water; the mother appeared to find this upsetting and told C that she is her mummy and that C was allowed to have it. On 18.7.23 the mother questioned C about who had told her she could not have milkshake when C first indicated she was not allowed to have it.

101. Another source of tension surrounding contact has been the mother's reaction to C referring to her foster carers as 'mummy' and 'daddy' and her use of the term 'tummy mummy' to in relation to the mother. I have sympathy for the upset which the mother must feel hearing her daughter use a term which she will perceive as undermining her status as a mother. Nevertheless, the terms used by C reflect the world as she experiences it. Her foster carers are, as she sees it, her mummy and her daddy: they cater to all of her day-to-day physical and emotional needs as parents do. She knows that her mother is the person from whose 'tummy' she came into the world; she is able to enjoy spending time with her, but she does not relate to her in a parental capacity. The mother's inability to restrain herself from correcting C inevitably creates tension and confusion for her and undermines her relationship with Mr and Mrs D. An example of this is recorded in the notes of the contact on 18.10.22 (the mother corrected C's use of the term '*daddy*' saying '*you know he is not your daddy don't you*' to which C initially looked puzzled before quickly saying '*my foster carer*'). There are other examples.

102. C's exposure to the tension between her parents and her foster carers has inevitably had a detrimental effect upon her. For example, on 13.12.22 the foster carer logs record her telling Mrs D on the way home after contact that '*tummy mummy was cross with me, arguing [you're] not my mummy*'; she went on to tell Mr D before bedtime '*how sad tummy mummy made her feel today*'. Earlier, the contact worker had explained to Mrs D that the mother had become angry and argued with C about her reference to Mrs D as '*mummy*' and when C had spoken about her '*nan*' and '*pop*', meaning her foster grandparents. Another example of C's reaction to being exposed to tension is recorded in the foster care log for 6.2.23 with C telling Mrs D '*tummy mummy didn't shout today*' and '*Daddy says one snack only, so mummy gives me 1 big one*'. Similarly, on 28.3.23 the foster care log records '*You* [i.e. C] *said you promised me that tummy mummy would only give you one snack*'.

103. The foster carers' evidence is that C '*struggles to regulate her emotions on the day of contact and in the few days afterwards… often after contact she is very out of sorts, nothing is good enough or what she wants. She really struggles to calm down and often gets very upset but cannot be consoled.*' In her oral evidence, Mrs D recounted that when C becomes dysregulated she '*shouts, doesn't use words, throws things across the room; everything is not OK, nothing is good enough*'. The trigger for such behaviour, she said, was contact. It can take a day or sometimes a few days for C to '*re-regulate*'. I accept this evidence, which echoes the social worker's oral evidence that the contact has involved '*stress and dysregulation*'.

104. An example of dysregulated behaviour after the contact occurred on 10 January 2024 when C '*found it incredibly difficult to regulate her emotions*' and was '*screaming and crying, and was extremely clingy*'. Her level of distress was such she did not attend a new club which had been due to start. This was a period of contact at which the nomenclature issue had come to the fore. In my view, C's reaction after contact goes beyond the type of unsettled behaviour often observed in children following contact. It is caused by her exposure to the tension in the adult relationships.

105. Although there are repeated examples of the mother saying things which undermine the foster carers, she has not done so on every occasion of contact. For example, on 17 October 2023 C said to the mother '*You are my real mum but you couldn't keep me*'. The supervisor recorded that the mother appeared to be a little shocked and upset by this (understandably so in my view) but was able to hide it very well from C and diverted the conversation. The mother later commented to the supervisor that this had been difficult for her to hear but she was not sure what C had been told and therefore did not say anything. This is to the mother's credit, but it does not detract from the adverse impact which her inability to restrain herself on other occasions has had upon C. The guardian's view is that given everything that has happened to date, the mother's behaviour at contact is '*highly likely to remain disruptive'*. I consider her view to be justified.

106. The guardian's evidence is that when completing an emoji chart, C made clear unprompted that her feelings about seeing the mother were best reflected by the symbol denoting '*I like this sometimes*'. This, in my judgement, is a reflection of the ambivalence she feels.

107. I cannot leave the subject of contact without commenting upon the session that was arranged to take place on 27 December 2023. The parents did not attend contact; I accept that their absence was due to a mix up after the dates were changed. Of greater concern is the fact that this was planned to be a '*Wish you well*' contact; in other words an opportunity for the parents and C to say goodbye to each other in anticipation of C's adoption. In my view, it was wholly wrong for the local authority to arrange this type of contact prior to the matter having been determined by the court. It meant that C had to go through some work to prepare her for the difficult experience of saying goodbye to her birth family. When the parents failed to attend C displayed symptoms of distress over several days; Mrs D's oral evidence was that her dysregulation was more extreme than she had previously encountered it to be in connection with contact. This is likely to have been connected to the work which was done with her in anticipation of the contact. The session will have been built up as having special importance and as a last opportunity to see the parents for some considerable time (not 'forever', as Mrs D made clear in her oral evidence). Mrs D's evidence, which I accept, is that C did not become upset when the purpose of the contact was explained to her; her reaction occurred after the contact failed to take place. It is easy to understand that C must have felt upset and let down when her parents did not attend.

6 July 2021

108. Some of the evidence focussed on a session of contact that took place on 6 July 2021. C became unwell during the contact. Following her return home with the foster carers her condition became so serious that she was taken to hospital. It is alleged that the mother failed to observe the warning signs during contact that C might require urgent medical attention. The contact notes record that C was shaky on her legs after taking part in some painting. She fell asleep for 25 minutes and upon waking she vomited (an indicator that medical attention may be required). The mother then cleaned her up and changed C's nappy before she was returned to Mr D, who was waiting in the car outside the contact centre. By the time C returned home she had become so lethargic that Mr and Mrs D gave her a double dose of her usual medication. Nevertheless, she had a high temperature and became sick again. At this point Mr D administered an emergency injection and called an ambulance to take her to hospital. Fortunately, her condition stabilised and she was discharged from hospital at approximately 10.30pm.

109. More than two and a half years have elapsed since this event. The precise sequence of what occurred during contact is unclear from the notes. It is not possible for me to find that the mother was at fault. There is no doubt, however, that it was a traumatic day for Mr and Mrs D which has left a lasting impression upon them as to the mother's ability to recognise when C may be in need of medical attention.

110. The events of that day have undoubtedly contributed to the poor relationship between the parents and Mr and Mrs D. During the initial SGO assessment of Mr and Mrs D, the mother asserted that the foster carers '*do not have an understanding of* [C]*'s needs and they do not respond to her medical needs adequately*' (an allegation I have no hesitation in rejecting). In support of this assertion, she made reference to what had occurred on 6 July 2021 and accused the foster carers of having sent C to contact '*knowing full well she was poorly*' (an accusation I also reject). As I have recorded above, for their part Mr and Mrs D believe that the mother was negligent during

contact. The fact that an incident which occurred so long ago featured so prominently in the evidence reflects the ongoing lack of trust between the relevant parties.

The local authority evidence and analysis

111. On 9 November 2022 the local authority filed a statement from Mr PW of the adoption and placement team setting out what had been happening with regard to planning for C. Following the placement order, the case had been allocated to the adoption team and steps were taken, prior to the Court of Appeal hearing, to find an adoptive placement. After Mr and Mrs D communicated their wish to continue caring for C, the local authority began to focus upon them as potential long-term carers.

112. At a permanence planning meeting in July 2022, the local authority sought the views of Mr and Mrs D as to the various potential options for C. The foster carers remained '*resolute*' in ruling out special guardianship '*due to ongoing contact requirements with birth family*'. They were willing to consider long-term fostering but only if they continued to receive a higher allowance than the local authority was willing to pay. They expressed a positive wish to adopt C.

113. Although the Court of Appeal had remitted the case as a result of the failure adequately to evaluate long-term foster care as an option, this appears to have been ruled out at an early stage by the local authority. Mr PW said in his statement of 9 November 2022 that:

> "Following discussions with the Agency Decision Maker on the 18th October 2022, **she was confident that the LA would not support LTF for a 3-year-old.** C would be subject to social work intervention for a further 15 years (approximately) of her life, including Social Work and Fostering Supervising Social work announced and unannounced visits, visits from the IRO, no PR responsibilities for carers, PEPS, Health and LAC reviews etc. This level of intervention is not deemed appropriate/proportionate and would likely impact C's sense of belonging/identity. Additionally, the position of the LA is that all LTF carers would become in-house carers. The Ds have stated their desire to remain with their agency if LTF is the option, but this has a financial implication to which the LA would be unable to commit public funds." (my emphasis)

114. It is notable from that statement that whereas the local authority was quick to rule out long-term foster care with Mr and Mrs D, it continued to view adoption by a family other than Mr and Mrs D as a realistic possibility (notwithstanding the judgment of the Court of Appeal and the medical evidence from which it should have been obvious that such an outcome posed very serious risks for C). Mr PW said in his statement:

> "The LA is not considering any other permanence option outside of adoption, and the relative merits of placing C in an alternative adoptive family remains the same as shared above. However, it is noteworthy to state that while C can transfer her attachment to the new carers, it may present some challenges. The LA is hopeful that an adoptive placement with alternative carers is achievable with a robust transition plan, child-focused direct work, an attachment-focused therapeutic input and working together with the Ds."

The expression 'some challenges' is a significant understatement, in my judgment, which does not adequately convey the gravity of the risk that moving C to another family would have posed for her, a risk that has increased with the passage of time.

115. The current social worker to whom the case has been allocated is Ms EW. She has been visiting C every four to six weeks and therefore knows her reasonably well. She has found herself in the unfortunate position of having to speak to evidence filed by her predecessors. The evidence from Mr PW's statement which I have cited above – in particular the sentence '*Following discussions with the Agency Decision Maker on the 18th October 2022, she was confident that the LA would not support LTF for a 3-year-old.*' – caused me to ask her whether it was the policy of the local authority to advocate in favour adoption when dealing with children of that age. Ms EW was clear that there was no such 'policy' and I accept her evidence.

116. Despite Ms EW's evidence, however, I have formed the clear view that whilst it may not be a 'policy', the local authority's general approach is that adoption for young children should be a 'first port of call' once it has ruled out reunification with the parents as an option. Such an approach is directly contrary to the authorities I have cited above about the Draconian nature of adoption and the need to treat it as a last resort to be advocated only in very exceptional cases.

117. Ms EW made clear in her oral evidence that as a member of the adoption and placement team it is not normally her role to prepare the local authority's final evidence in cases of this type, although it is something she has done previously when she had a different role. She also fairly accepted, when asked by Ms Dunn, that her evidence failed to address a number of relevant issues.

118. Ms EW did make some important points in her oral evidence, which I accept. She spoke about the importance of post-adoption letterbox contact as a means of maintaining a meaningful relationship between the child and her birth family. In the local authority's view, such contact should take place twice yearly. She also considered that the question of direct contact should be reviewed after 12 months by Mr and Mrs D in conjunction with the post-adoption team. She attributed the evolution in the local authority's position about contact to the fact that C's needs are '*ever changing*'. She took issue with a suggestion made by Mr and Mrs D that any move towards direct contact should be contingent upon C asking to see her birth family, making the valid point that C is far too young to have such a responsibility placed upon her. Importantly, Ms EW expressed confidence that Mr and Mrs D would listen to advice about contact and that they would always put her needs and wishes first. This confidence was based upon '*lots of discussions*' about the potential benefits of contact, including in helping a child to understand her identity. I agree with Ms EW's assessment of Mr and Mrs D.

119. Although there are aspects of the local authority's evidence which I accept, in my judgement, its analysis of the potential realistic options fails adequately to recognise the approach which the authorities mandate and the need to consider whether severing C's ties with her birth family is a proportionate response to her individual needs and circumstances. Its analysis, especially when set out in tabular form, appears to start from a position in which the different options are treated as having broadly equivalent intrinsic merit. In approaching the case in this way, the local authority has lost sight of

the need rigorously to consider the alternatives to adoption and to advocate the latter only if it is proportionate to do so and where '*nothing else will do*'.

120. I do not take issue with any of the matters identified as positive or negative features of adoption, long-term foster care and special guardianship set out in the table under paragraph 16 of Ms EW's statement dated 20.9.23. My criticism – and it is not a criticism of Ms EW personally – is the local authority's failure to analyse the option of adoption through the lens of exceptionality. For example, the section addressing 'permanence' identifies in relation to adoption that *'[C] would achieve absolute permanence through the granting of an Adoption Order. Adoption would offer [C] emotional security and provide [C] with a strong sense of belonging, whilst her welfare will be safeguarded and protected*.' In so stating the local authority appears to be treating '*absolute permanence*' as an unqualified advantage of adoption without even acknowledging the other side of the '*absolute permanence*' coin which is severance of C from her birth family. Severance, and the risks it poses to the child and her sense of identity, lie at the heart of the concerns expressed by higher courts and the requirement mandated by those courts that adoption should only be contemplated as a last resort.

121. It can also fairly be said that some of the matters highlighted by the local authority as advantages or disadvantages of each option are generic in nature, set out with insufficient thought as to how they might apply in the case of this individual child. For example, the local authority identifies as a disadvantage of long-term fostering the fact that '*no placement is absolute within the fostering service*' and accordingly C could suffer several moves if her foster carers decided to end the placement. Whilst this may be correct in a generic sense, on the facts of this case Mr and Mrs D have made clear their unwavering commitment to C and that they will continue to care for her whatever the legal structure. Although it is not possible to rule out the risk of the placement breaking down, that risk is significantly lower for C than it may be for other children who are subject to a long-term fostering arrangement.

122. It is also notable – especially given the need for the court to be alive to any resource issues which may affect the local authority's thinking – that in this case financial considerations are a significant feature of the local authority's analysis. One of the reasons for Mr and Mrs D's reluctance to become long term foster carers has always been the unwillingness of the local authority to continue to fund them at the same rate, its stance being that as long-term foster carers their allowance would be cut by approximately £1,000 per month, a very substantial reduction in income for a family for whom finances are tight. The local authority has managed to come to a financial agreement with Mr and Mrs D in the event that an adoption order is made; I struggle to understand why it has been unable to come to a similar agreement in the event that long-term fostering is deemed to be the most appropriate outcome. The guardian considers that the local authority has not been '*fully truthful*' in maintaining that finances did not play any part in its planning rationale for C and I can understand why she has formed that view.

123. Similarly, I find it very difficult to understand how it can be justified that the local authority is willing to offer support for contact by providing a venue and supervisors under arrangements for long-term fostering or adoption, but not in the event of a special guardianship order being made. I have not been directed to any provision under the Children Act 1989 or any relevant regulations which would preclude the local authority

from including this form of critical support as part of a special guardianship Support Plan. To a bystander, the stance it has adopted would give the appearance of creating rather than seeking to remove obstacles in the path of a solution other than adoption. Understandably, its stance has also fuelled the anxieties of Mr and Mrs D as to the prospect of having to manage any future contact without support.

124. The serious deficiencies, as I consider them to be, in the local authority's analysis are matters which I must and do bear in mind, but they are not determinative of the case.

The guardian

125. Ms B has been C's guardian since 2021, thus for more than two and a half years. She clearly knows C well and, in my judgement, she is very well placed to identify her needs and the outcome which is right for her.

126. I have made reference to Ms B's previous report where, amongst other things, she identified the potential for C to continue to have contact with her birth family as a positive advantage of long-term fostering. This is no longer her view. She considers that one of the few advantages of the lengthy delay in this case is that it has enabled there to be '*a trial run'* of a fostering arrangement with ongoing contact. It is clear to her that it has not worked and that persisting with such an arrangement will be detrimental to C's welfare.

127. The guardian is highly critical of the local authority, using strong language to convey the extent to which she feels that C has been let down since first being taken into care. She says at paragraph 3 of her report:

> "I have never been more frustrated in representing a child in any matter than I have in these proceedings; delay after delay has been caused by the inefficiency and lack of clarity in the local authority care planning and changing the plans for [C] at almost every stage. She has had no consistency in her life offered through the local authority being her 'corporate parent' or advocate in these proceedings other than her foster carers and myself."

Although I might not express myself in quite such strong terms, I accept the broad thrust of her criticism. It is a significant matter which I need to bear in mind in considering, in particular, whether C should continue living with her foster carers under a care order.

128. The guardian has undertaken an analysis of the various realistic options, which in my view is insightful. She does not expressly refer to the need to treat adoption as an option of last resort, but it is clear from her most recent report and her oral evidence that it is something she has had well in mind. She is careful to identify the potential risks of an adoption order to C's sense of identity and understanding of her history. If, as the guardian proposes, no order is made for post-adoption contact, she recognises the risk that C may question why contact has been stopped as she is likely to have an enduring memory of it.

129. Ultimately, after balancing a range of different considerations the guardian has come to the clear conclusion that the right outcome for C is adoption with no order for post-adoption contact.

130. As to contact, she expresses her views in trenchant terms:

> "Given that [Mr and Mrs D] have had to spend most of the past 3 years defending their care of [C], negotiate with social workers about her care package and needs, have allegations made against them (including inferences by her parents and professionals that they are financially motivated to care for [C]) now expecting them to consider willingly facilitate post-adoption contact is absurd and shows no consideration of what has happened with the birth parents or the carers, not least any impact on [C] if the kind of behaviour we have seen to date carries on and she is exposed to it."

In my judgement, she is justified in coming to her conclusions.

131. The guardian identifies a risk to C that even if contact were to continue at a much-reduced level of frequency, the ongoing conflict and mistrust between the parents and Mr and Mrs D would expose C to emotional harm. She points out that C is starting to adapt her emotions and behaviour around the time she spends before, during and after contact and considers that in the long run there is a very real risk that this will have such a significant impact upon her behaviour that it could lead to a breakdown of the placement. Having given careful consideration to the totality of the evidence, I have come to the conclusion that the guardian is correct in her assessment of these risks.

132. The one aspect of the guardian's analysis with which I do not agree is her suggestion that C '*deserves*' permanence, by which she means adoption. It is inappropriate, in my judgement, to suggest that a child 'deserves' to be subject to an order which entails severance from her family. Every child, including C, deserves an outcome which best meets their interests. In exceptional cases that will be adoption; in the majority of cases a different solution will be more appropriate and proportionate.

Analysis and conclusions

133. In considering the application for adoption I must treat as my paramount consideration C's welfare throughout her life. I must also have specific regard to the matters set out in section 1(4) of the 2002 Act, sometimes referred to as the enhanced welfare checklist. This checklist is non-exhaustive and to the extent that there is no overlap between the different checklists I also have regard to the one contained in section 1 of the Children Act 1989.

134. It is unnecessary to set out seriatim my conclusions in respect of each individual matter in the checklists. The guardian has done so in relation to the 2002 Act checklist at paragraphs 40 to 49 of her analysis and, save for my reservations about her suggestion that C 'deserves' permanence, I agree with what is set out there.

135. I begin with C's age. She is now just 5. This is relevant in a number of ways. First of all, I am required to have regard to her wishes and feelings in the light of her age and understanding. C's overriding wish is to maintain the security of her home with Mr and

Mrs D. At her young age, however, she is incapable of understanding the implications of the complex decisions I have to make and it is a factor that carries little weight in the analysis.

136. Of much greater significance is that C is now at an age where she will carry forward enduring memories of her relationship with her parents, her mother in particular. She may not see them as her parents but nevertheless they have played an important role in her life for as long as she can remember. The same can be said to a lesser degree of her brother X.

137. It is also highly significant, in my judgement, that C is living in the only home she has ever known. She will have no memory of her life before she came to live with Mr and Mrs D. From her perspective, her foster carers are her parents; her foster brothers are her brothers; her foster carers' wider family are her family; their home is her home. She sees herself as an integral part of her foster family. Actions or words which have the effect of undermining her fundamental sense of security (whether this is intended are not) are likely to cause her confusion and, in my view, emotional harm and to leave her feeling insecure and destabilised. At her young age these are emotions which she will find difficult to process, aggravating the harm to which she may be exposed.

138. C's needs can only adequately be met by her remaining living with Mr and Mrs D. They provide her with an exceptional amount of love and support as though they were her parents. They cater for her medical needs by providing her with round the clock care and managing to maintain a strict diet for her. In spite of the personal criticisms to which they have been repeatedly subjected, they have done their utmost to shield C from any feelings of hurt and hostility towards the parents which they may feel and have been astute to promote a positive view of them. Despite their serious concerns, they have been assiduous in promoting and facilitating contact and their approach, in my judgement, has been instrumental in enabling C to enjoy a relationship with the parents which, in some respects at least, has been positive. Holding a positive and sympathetic view of her parents will be important for C in making sense of her own identity.

139. For any child, the prospect of losing their home and their family as a result of the breakdown of a placement is potentially devastating. In C's case, I do not consider it probable that her placement would break down whichever order I make. I consider that Mr and Mrs D are fully committed to her and would not reject her merely because I declined to make an adoption order. Nevertheless, the risk of the placement breaking down is not so low that I can discount it from my evaluation. In addition to the risk of a breakdown occurring, I must consider the magnitude of the consequences of that risk were it to materialise. The consequences for C, given her enhanced medical needs, would be far more serious than those which other children in an equivalent situation would face. She would be exposed to a level of stress and anxiety well beyond anything she has encountered in her life to date. There is a real risk that such an outcome could cause C serious and enduring harm or even be fatal to her.

140. The possibility of a placement breakdown is not the only risk I need to consider. Despite Mr and Mrs D's commitment to C, there is a very real risk short of a full breakdown that the placement may become destabilised. The level of commitment and sacrifice needed to provide C with round the clock care cannot be underestimated,

especially when at times this entails giving priority to C's needs over those of Mr and Mrs D's children. If the stability of C's placement is undermined, there is a real risk that her behaviour may deteriorate to an extent where her place within the family unit becomes threatened, testing to the limit the ability of her carers to continue to provide her with the level of care that she needs. At the very least, such a scenario is likely to increase tensions within the household exposing C to heightened stress with potentially serious adverse consequences for her physical and mental health.

141. C has been able to enjoy a relationship with her parents and her brother X for the whole of her life. Despite the well-documented issues with contact, she has derived some benefit from those relationships. Severing those links through adoption undoubtedly carries risks. There is a risk that C will miss seeing her parents and brother; she has some understanding of her biological links to them and having her contact terminated may cause her anxiety as she wonders how they are and why they no longer see her. Having no contact may also have an impact upon her self-esteem and lead her to question her own self-worth. She may come to feel that she is no longer loved by her birth family or alternatively to form the view that the people whose biological genes she shares are deemed unworthy of having a relationship with her. She may develop unhealthy and unrealistic fantasies about them and her anxieties may come to manifest themselves in behaviour issues which place a strain on her placement or put its continuation in jeopardy. If C later desires to rekindle her relationship with her parents, she may feel senses of betrayal, resentment and loss at having been denied the opportunity to maintain those relationships. She may wonder, for example, how it came to be that out of all her biological siblings she was the one singled out for adoption whereas the others were permitted to remain within their wider family and to continue a relationship with their parents. Adoption, whilst offering a child 'permanence' also carries with it lifelong consequences for the child.

142. These matters need to feature prominently in the court's evaluation. They are profound issues that go to the heart of a person's identity. It is for these reasons amongst others that the courts have emphasised the Draconian nature of adoption and the need for it to be confined to cases which can properly be regarded as exceptional. In my judgement, contrary to what I consider the institutional view of the local authority, the serious nature of adoption is particularly stark in the case of a young child who is incapable of understanding its implications and articulating a meaningful view. The need for caution in such cases is especially great.

143. A number of the advantages and disadvantages of the various options which have been tabulated by the local authority are relatively peripheral in my evaluation. Matters pertaining to health and education are broadly equivalent under the different options. Similarly, having been a looked after child, C will qualify for ongoing support once she reaches adulthood under all of the different legal structures under consideration.

144. The financial package proposed under the different options is the same. It will entail a very substantial reduction in the fostering fee which Mr and Mrs D currently receive. This large drop in income is likely to add to the pressures on the family and is a factor I take into account.

145. The critical feature of adoption is the degree of permanence it entails. This is advantageous for C in many ways, but as I have set out above, being severed from her

birth family also carries risks. The key advantage for C is that it would cement her place in family which she already considers to be her own. It would align her legally with the reality of her world as she perceives it. It would confer upon Mr and Mrs D the freedom to act as her parents. They alone would hold parental responsibility for C. They could make plans without fear that their decisions might be vetoed by the parents or the local authority. They would be unburdened of the need to act in consultation with the local authority and relieved of the feeling that they are subject to constant scrutiny by an authority with whom they have a poor relationship. As an integral part of Mr and Mrs D's family, C would share the same surname as them and her foster brothers (although it is also open to the court to allow a child's surname to be changed upon the making of a special guardianship order: see Children Act 1989, s 14B(2)(a)). She would legally be their child, a status she would carry for the remainder of her life.

146. Special guardianship carries with it many of the advantages of adoption. Although special guardianship orders are capable of being discharged, it would require the leave of the court for either of the parents to be able to make such an application. It is intended to be a structure which offers permanence to a child, loosening the links with the birth family without severing them. The risks associated with severance thus would be much reduced. Special guardianship confers enhanced parental responsibility, allowing the special guardians to make a range of decisions for the child without reference to the parents. That status also gives them the right to take the child on holiday for up to three months without the consent of the parents; it would thus eliminate an issue which has previously been a source of disagreement and tension.

147. Where there is a good working relationship between the special guardians and the parents, this may well offer the best solution for the child. Conversely, where, as here, that relationship is poor it can leave the child exposed to a childhood shrouded in tension and mistrust. The parents' inability to accept C's placement with Mr and Mrs D poses real risks for her as I have identified above. Under a special guardianship order, Mr and Mrs D would not have the level of support they presently enjoy now. They would need to deal directly with the parents, a prospect which fills them with dread to the extent that they are unable to perceive any overall advantage in this legal structure over long-term foster care. In my judgement, they are justified in their apprehension. The mother's disapproval of C's placement with them is entrenched, despite the many hours of counselling she has been through. I consider that there is very little prospect of her modifying her view. In one instance, the mother's mistrust led her to make an allegation which resulted in C being taken unnecessarily to hospital. In my judgement, it is likely that under a special guardianship arrangement she would continue to criticise Mr and Mrs D and that during any periods of contact she had with C she would continue to undermine her placement and jeopardise her stability. Without local authority support, I consider that contact is likely to become a flashpoint to which C will be exposed. As she increases in age, her awareness of the conflict in the adult relationships will increase.

148. It would be possible to combine a special guardianship order with a family assistance order or even a supervision order. These would both be time-limited. They would not replicate the level of local authority support currently in place, which has failed to resolve the issues with contact.

149. If C was subject to a special guardianship order, there is a very high likelihood that the mother will bring another application seeking its discharge or alternatively an increase in contact to a level which would undermine the placement. Her proposal that she be subject to a section 91(14) order for two years is viewed by Mr and Mrs D – rightly in my view – as a statement of intent to make an application once that period has elapsed.

150. It would be open to me to make a section 91(14) order for longer that proposed by the parents. The insertion of a leave filter in the process would to some extent mitigate the prospect of future litigation but it would not eliminate it. It would certainly not eliminate the anxiety which Mr and Mrs D would feel that another application was around the corner. C has been subject to litigation since she was 16 months old. I share the guardian's view that the prospect of further litigation is likely to be destabilising for her. The guardian's level of concern is such that she said in her oral evidence '*we cannot leave the door open for further proceedings*'. In her view, the harmful impact of such proceedings cannot be understated.

151. If C continues to live with Mr and Mrs D under a long-term foster care arrangement, she will have the benefit of enhanced support from the local authority. This would be advantageous by comparison with special guardianship in the management of any contact with the parents. It would, however, mean that C was living in a home in which her primary carers lacked parental responsibility for her. They would be unable to make significant decisions without consulting the local authority (with whom they have a poor relationship) and without input from the parents whose position is likely to remain that C should not be living with them at all. C would be subject to regular local authority reviews. Her different status within the household would be apparent to her and is likely to undermine her place in the family and her sense of security. I accept Ms EW's evidence that for some children being a looked after child may carry a certain stigma, although I do think Ms Dunn makes a valid submission that in modern Britain children grow up under a wide variety of family structures. In common with special guardianship, long-term foster care would not have the effect of severing C from her birth family and would thus remove the risks associated with this. This leads the parents to suggest that it entails 'the best of both worlds' for a child. The converse to this, as Ms EW accepted in her evidence, is that it can leave a child feeling stuck in 'no man's land'.

152. I accept the submission of Mr Marusza, raised for the first time in his closing submissions, that it is possible legally for a care order and a special guardianship order to co-exist. Such an arrangement would be highly unusual and is unlikely to be appropriate save in rare circumstances. It would enable Mr and Mrs D to hold parental responsibility for C whilst maintaining input from the local authority who would act as a buffer between them and the parents. The effect of a care order, however, would be to undermine Mr and Mrs D's enhanced parental responsibility as special guardians. The local authority would have the overriding power to take decisions about C including potentially removing C from their care.

153. Ultimately, the feature of this case which stands out is C's degree of vulnerability caused by her enhanced medical needs. She is a child who requires more than adequate care. Exposure to stress poses a danger to her health to the extent that it may be life-threatening. Were her placement with Mr and Mrs D to break down, I consider that the impact on C is likely to be severe and enduring. As she grows up, C will be acutely

aware that she is different from other children and this has the potential to cause her anxiety and harm her self-esteem. It is all the more important, in my view, that she should enjoy the benefit of feeling a sense of belonging to her family that adoption can bring. It is especially important for C that everything be done to support her placement and to minimise the risks of it being undermined or, in a worst-case scenario, breaking down altogether.

154. If C was a child who did not have enhanced needs I might well have come to the conclusion that adoption was not a proportionate outcome. In her particular circumstances, I consider that the overriding priority must be to provide her with as much security and stability as possible in her current placement. In my judgement, this consideration overrides the risks associated with severance from her birth family to which I have referred above.

155. I am entirely satisfied that following the making of an adoption order, Mr and Mrs D will do everything possible to mitigate the risks to C of losing her existing relationship with her parents and brother. In conjunction with the local authority, they will be astute to promote her life story in a manner which enhances her self-esteem and identity. I accept their assurance that they will work with the local authority in keeping the question of contact with the birth family under review. They are finely attuned to C's needs and will take steps to facilitate contact if they believe it will promote her interests.

156. I do consider that C's medical needs place this case in the category of the wholly exceptional. It is an unusual case where no order other than adoption will do for C. With regret, as I acknowledge the love and commitment which the parents have shown for C, I am driven to the conclusion that C's interests require me to dispense with their consent and to make an adoption order. It is a proportionate response in the light of C's particular needs.

157. So far as contact is concerned, I do not consider that it is appropriate for me to make an order for post-adoption contact. Despite the recent research about the potential benefits of ongoing contact, it remains the case that it will rarely be appropriate to impose an order upon unwilling adopters.

158. I am also very conscious of the fact that for contact to be beneficial to C will require the parents – in particular the mother – to come to accept the reality of C's placement with Mr and Mrs D and that they are no longer her parents. It will be enormously challenging for them to be able to accept this and it is impossible for me to predict whether they will manage to do so. I accept that Mr and Mrs D will be astute to promote C's interests going forward and that this will include facilitating contact if they judge it to be beneficial for her. They will be able to draw upon the support of the local authority in keeping contact under review.

159. In my judgement, the appropriate course is not to make an order for contact, but to record as a recital Mr and Mrs D's agreement that there should be one further period of 'Wish you well' contact and thereafter to facilitate indirect letterbox contact twice a year and to keep the question of direct contact under review. As I indicated to them during the course of the hearing, I consider it important that they send regular updates and photographs to the parents as a means of maintaining a link between them and C,

even if the parents choose not to send communications in return (which they may find difficult to do). I very much hope, however, that the parents will feel able to participate in the letterbox contact and make it a two-way process. The decision I have come to will be devastating for them, but I hope they will take solace from the fact that the love and commitment they have shown thus far for C will be important for her as she develops through her childhood. Although they will no longer be C's parents as a matter of law, they will always be her birth parents. If they are able to accept C's new status they can remain important figures in her life and play a part in enhancing her identity during childhood and beyond.