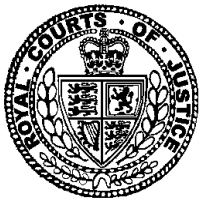

Neutral Citation Number: [2018] EWFC 87 (Fam)

Case No: ZC174/17 and ZC175/17

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/08/2018

Before:

MRS JUSTICE THEIS DBE

- -

Between:

	The Royal Borough of Greenwich	**Applicant**
	- and -	
	Prospective Adopters **- and -** **A** **- and -** **B** **- and -** **The Children** **(by their Children's Guardian, Kieran Travers)** **- and -** **C**	**1st Respondent** **2nd Respondent** **3rd Respondent** **4th & 5th Respondent** **6th Respondent**

- -

Mr Mark Love (instructed by **London Borough of Greenwich**) for the **Applicant**
Ms Sally Bradley (instructed by **Freemans**) for the **1st Respondent**
Mr Dingle Clark (instructed by **Lillywhite Williams, Dagenham**.) for the **2nd & 3rd Respondent**
Mr William Metaxa (instructed by **Covent Garden Family Law**) for the **4th & 5th Respondent**
Ms Gemma Kelly (instructed by **Hains and Lewis**) for the **6th Respondent**

Hearing dates: 14th - 17th August 2018

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MRS JUSTICE THEIS, DBE

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

Mrs Justice Theis DBE:

Introduction

1. The court is concerned with a number of applications relating to two children. They can be summarised as follows:

   (1) An application for adoption orders by the prospective adopters;

   (2) A deemed application by A and B to oppose the adoption order pursuant to s47 (5) ACA 2002;

   (3) A deemed application by C for leave to apply for a special guardianship order (SGO) and thereafter if granted an application for a SGO.

2. A and B are the children's parents. They have not cared for the children for some years due to the destructive consequences of their chronic drug addiction and resulting neglect of the children. Both parents were very irregular attenders at contact with the children and attending other appointments for assessments. The only member of the wider family who was assessed was a paternal aunt. The full assessment did not support placement of the children with her. Care and placement orders were made on 4 November 2016, with the court endorsing the plan for adoption. The parents last saw the children in March 2017, following which the children were placed with the prospective adopters in early April 2017, where they remain.

3. The parents seek leave to oppose the adoption application and found their application on the prospects of placement of the children with the maternal aunt, C who is the subject of a positive SGO assessment. The parents and C state she was not properly assessed earlier by the local authority when she should have been. That failure is broadly accepted by the local authority. One of the tragedies in this case is that all parties agree had C been assessed prior to the children being placed with prospective adopters there is every likelihood the children would have been placed with her.

4. The applications by the parents and C are opposed by the local authority and the Children's Guardian, who submit, in summary, that it would be deeply damaging to move the children now due to the secure attachments they have now formed with the prospective adopters and the instability and harm that would be caused if that was disrupted.

5. The court is in the somewhat unusual position of considering both an application for leave to oppose and leave to apply for an SGO in circumstances where the final assessments have been done. These assessments (risk assessment by Janet Walker ISW, attachment assessment by Dr D and SGO assessment on C by Terence Wilson ISW) were directed for understandable reasons, to avoid delay and because of the unusual circumstances of this case. In February 2018 C indicated she would be withdrawing her application, due to her concerns about disrupting the children's placement as she accepted they were happy there. As a consequence, the hearing time in April 2018 was reduced to reflect that. Unfortunately, on the eve of the April hearing the local authority circulated an electronic court bundle that had identifying details about the adoptive placement. To her very great credit, C immediately notified the parties and the court once she realised the position. However, this serious data breach by the local authority meant the prospective adopters and the children had to

move home at very short notice, have not been able to return to their property and have had to take significant steps to secure theirs and the children's identity.

6. Following this data breach by the local authority C re-considered her decision about the placement of the children remaining with the prospective adopters, as she feared the data breach would impact on the stability of the placement and she was concerned about how the children would feel later in life trying to understand why they were not placed in the wider birth family. She was concerned they would feel no one in the birth family wanted them. She seeks an order that would start the process of the children being placed with her. The matter was re-allocated to me in April 2018 and following two directions hearings was listed for 4 days, commencing 14 August.

7. Before dealing with the detail of the court's decision there are a few general points I would like to make.

8. No-one could have sat through this hearing without being struck by the wholly genuine position of both the prospective adopters and C. What shines out from all the written and oral evidence is that these three adults all want to do what is best for these two children. That is their common aim. The prospective adopters have shown admirable commitment in caring for the children. They have sought and taken on board any advice, have provided the security and stability that the children needed which was lacking when they were in the care of their parents. C fully recognises all they have done for the children and that the children are, as she describes, in a happy place. C was unaware until relatively recently what the position was in relation to the children. She lives some distance away, had her own children to care for and was wholly inexperienced in these types of proceedings and lacked any experience of dealing with the local authority in these circumstances. I accept her evidence that she had no real understanding how serious the position was until late summer 2017. By the time she was assessed, and the final documents were completed in these proceedings, it was accepted by all that if she had been assessed at a much earlier stage there is every likelihood the children would have been placed with her. The conflict this puts C in was evident for all to see when she gave her oral evidence which was both powerful and moving; she recognises the children are happy where they are but does not want the children to feel later in life no-one in the family wanted to care for them.

9. Put simply, the question I have to decide at this hearing is whether in August 2018 the children should remain with the prospective adopters or be placed with C. Whatever decision I do reach I am satisfied that going forward there should be proper structures in place to support the children's placement wherever it is and tangible and effective support put in place that can be provided to whoever the children are not placed with. The local authority, who in my judgment bear the responsibility for the position the prospective adopters are in (through the data breach) and C (through failing to assess her when they should have done) must ensure this is in place and pro-actively ensure it is maintained for as long as it is required.

10. As set out below I am critical of the conduct of this local authority. I, of course, accept that they operate under considerable pressure however I am satisfied in this case basic core social work was not carried out by the allocated social worker during the care proceedings and prior to placement of the children with the prospective adopters. There was a failure to make basic enquiries about the possibility of

placement in the wider family, this error was compounded by a failure of effective supervision of the allocated social worker and scrutiny by the IRO who was allocated to the case, who both share the responsibility for these failures. This was compounded further by the Agency Decision Maker, who approved the plans for an adoptive placement without properly scrutinising whether the wider family had been properly looked at. Additionally, from late summer 2017 when the prospects of placement with C became a possibility the local authority were obstructive and negative about assessing C and did not retain an open mind, as they should have done. This is perhaps best illustrated by two social workers spending over 7 hours with C, with no proper planning or record being kept and then writing to C stating they were not changing their plan. It is of note and striking that only a few months later an ISW assessment undertaken by Terence Wilson, on the same material, came to an entirely positive assessment of C.

11. What this case has highlighted is the critical importance of a local authority having effective systems in place from an early stage in care proceedings to ensure that the wider maternal/paternal families are considered as possible placement options for the children. Whilst it is recognised that the parents should put forward any names they want to be considered, that does not absolve the local authority of the enquiries they should independently be making. The continued retort by the local authority that the parents had failed to put anyone forward failed to recognise these are parents who failed to provide the basic care for their children or provide basic co-operation within the care proceedings, this local authority should have undertaken their own enquiries. What is of such concern in this case is that an older half-sister of the children was already placed with a maternal aunt. There is simply no evidence of this local authority even considering this obvious placement possibility or that aunt being a source of wider family information.

12. What has been clear from the evidence in this case, which I suspect is not isolated, is that unless the family have experience of family proceedings the language that is used regularly in these cases is simply not understood by the wider family. C gave compelling evidence about how she simply had no idea of the difficulties, she had been led to believe the difficulties were short term and the children would be returned to their parents. She thought the mother was clean from drugs (when she clearly wasn't) and, if required, C thought she would be contacted by the local authority.

13. In relation to the serious and significant data breach; the local authority accepts full responsibility for the consequences of this, as they should do. The consequences for the prospective adopters and the children to move at short notice and to take the significant steps they have taken to protect their and the children's identity have been considerable. I directed statements as to what steps have been taken to ensure this does not happened again. Whilst I accept that this was genuine human error, as set out in the statements by two senior members of the Legal Department the changes in procedures outlined in those statements go some way to ensure it doesn't happen again.

14. I would hope this local authority will learn from what I consider have been their errors in managing this case and improve the systems they have in place to seek to ensure this situation does not arise again.

15. The criticism of the local authority and their failures, whilst important in the wider context, should not overshadow what is right for the future care of these children and the situation the court is dealing with now.

16. As well as the court bundle the court has heard oral evidence from:

    (1) F- allocated social worker

    (2) Janet Walker - Independent Social Worker (ISW) who undertook risk assessment

    (3) Dr D - Child therapist

    (4) Terence Wilson - ISW who undertook assessment of C

    (5) C - maternal aunt who puts herself forward to care for the children

    (6) A - children's mother

    (7) Kieran Travers - Children's Guardian

17. The father attended the first day of the hearing but did not stay in court very long. He has submitted a signed statement, Mr Clark informed the court that he was unable to attend the second day due to his health. The mother to her credit attended both days and gave oral evidence. C has attended every day and has clearly taken a keen interest in the evidence. She has at times found it very emotional but has demonstrated a deep understanding of the issues the court is dealing with. The prospective adopters did not attend the hearing, they were not required to give oral evidence, but have been represented throughout by Ms Bradley

18. A hearing was fixed on 7 August 2018 to consider the legal framework in which these applications should be considered, the parties filed skeleton arguments and agreed the framework, which was endorsed by the court.

Legal Framework

19. Due to the legal and evidential overlap between the respective legal tests and evidence to determine each application it is agreed that to seek to rule on each application independently and separately risks artificially compartmentalising the evidence. It is agreed that the court should hear the oral evidence before considering the applications, and the applications should be considered in the following sequence:

    (1) The first stage of the parents' joint application for leave to oppose the application of the prospective adopters for an adoption order, namely change in circumstances, and if passed

    (2) C's application for leave to apply for a SGO and if successful

    (3) The second stage of the parents' leave to oppose application and, if granted,

    (4) The cross applications for adoption and SGO.

20. The parents' application for leave to oppose is founded on C's application, the change of circumstances being that she was not assessed when she should have been, and then at the second stage the positive SGO assessment of C.

21. The two-stage test for the parents' application under s 47(5) Adoption and Children Act 2002 (ACA 2002) is

(i) Has there been a change of circumstances?

(ii) If so, should leave to oppose be granted?

22. The change in circumstances relied upon in support of a leave application must be relevant and material to the question of whether or not leave should be granted; it must be of a nature and degree sufficient to reopen consideration of the issue, but the statue does not require the change to be 'significant' *Re P (Adoption: Leave Provisions) [2007] 2 FLR 1069.*

23. If the court is satisfied that there has been a change of circumstances the court then needs to consider C's application for leave to apply for an SGO under s 29 (5) ACA 2002. In accordance with s 14A (3) and (12) Children Act 1989 (CA 1989) the factors the court should pay regard to in exercising its discretion are set out in s 10 (9) CA 1989, namely

(a) the nature of the proposed application for the section 8 order;

(b) the applicant's connection with the child;

(c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and

(d) where the child is being looked after by the local authority –

(i) the authority's plans for the child's future; and

(ii) the wishes and feelings of the child's parents.

24. In *Re G (A child) [2014] EWCA Civ 432* the court was faced with a similar position as here, an application made by a non-parent after adoption proceedings had been commenced. The Court of Appeal in *Re G* considered the legal route for a person in such circumstances and held that there was no discrete requirement to show a change in circumstances and s 1 ACA 2002 does not govern the determination of the application. The application falls for adjudication in accordance with the approach for applications for leave to apply to revoke placement orders. McFarlane LJ stated as follows:

'23. In short, this court in **Re P (Adoption: Leave Provisions)** ***[2007] EWCA Civ 616****, [2007] 2 FLR 1069 held that, when considering an application by a parent for leave to oppose adoption under s 47(5) the court's decision whether or not to grant leave was governed by ACA 2002, s 1 meaning that the child's welfare throughout his life was the court's paramount consideration. Conversely, this court held in* Warwickshire County Council v M *that, in the context of an application under s 24 for leave to apply to revoke a placement order, the court's determination is not*

governed by s 1 and the child's welfare, whilst relevant, is not the paramount consideration.

24. The decisions in the cases of Re P *and* Warwickshire CC v M *are not in conflict. They were determined by the Court of Appeal within five months of each other and Thorpe LJ was a member of both constitutions. The difference in outcome with respect to the two apparently similarly worded statutory provisions arises from the application of ACA 2002, s 1(7). ACA 2002, s l applies whenever a court is "coming to a decision relating to the adoption of a child" (s 1(1)). Section 1 (7) reads as follows:*

"In this section, "coming to a decision relating to the adoption of a child", in relation to a court, includes—

(a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 (or the revocation or variation of such an order),
(b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act, but does not include coming to a decision about granting leave in any other circumstances."

25. In Re P *in the context of an application for leave to apply to oppose an adoption under s 47, the court held that such a determination was "a decision relating to the adoption of a child", and, because it did not relate to "the initiation of proceedings in any court", s 1(7)(b) applied thereby bringing such a decision under the requirement within s 1(2) to afford the child's welfare paramount consideration. Conversely, the court in* Warwickshire CC v M, *when considering an application for leave to apply to revoke a placement order under s 24 considered that such an application was one relating to granting leave for the "initiation" of proceedings by an individual under the Act. In consequence, and in contrast to s 47 which merely gives leave to oppose an existing application, an application for leave to apply to revoke does not fall within s 1(7)(b). Further, as was held in both* Re P *and in* Warwickshire CC v M, *s 1(7)(a) does not apply to an application which is simply for leave to apply, as such a decision is not a substantive decision to make, or revoke, an adoption order, placement order or contact order under s*

26. It therefore followed, in the Warwickshire *case, that an application for leave to apply to revoke a placement order is not one to which s 1 of the 2002 Act applies.*

27. In the context of the present proceedings, is an application for leave to apply for a residence order under s 29(4)(b) an application for leave for "the initiation of proceedings" or not? It is, in my view, not possible in this context to distinguish between an application for leave to apply to revoke a placement order and an application for leave to apply for a residence order in ongoing adoption proceedings. Both are for the "initiation of proceedings" and consequently an application under s 29(4)(b) falls outside s 1(7) in the same way as this court held in Warwickshire CC v M *was the case with respect to an application under s24. It*

follows that a court is not required to afford paramount consideration to the welfare of the child when determining whether or not to grant leave to apply for a residence order under s 29. There is, however, no reason for departing from the approach described by Wilson LJ, as he then was, in Warwickshire CC v M *at paragraph 29 when describing the second stage of an application for leave under s 24(3) once a change in circumstances has been established:*

"...a discretion arises in which the welfare of the child and the prospect of success should both be weighed. My view is that the requisite analysis of the prospect of success will almost always include the requisite analysis of the welfare of the child. For, were there to be a real prospect that an applicant would persuade the court that a child's welfare would best be served by revocation of the placement order, it would surely almost always serve the child's welfare for the applicant to be given leave to seek to do so. Conversely, were there not to be any such real prospect, it is hard to conceive that it would serve the welfare of the child for the application for leave to be granted."

28. Finally, in terms of the test to be applied, Miss Meyer's submission that an applicant for leave under s 29(4) must establish, as a first stage, "a change in circumstances", in like manner to the test facing those who apply under s 24 and s 47, is not accepted by Miss Henke. She submits that whether or not there has been a change in circumstances may be relevant in some cases, however, where, as here, the provision applies to "any other person" that class of individuals could include, for example, a natural father of a child who lacks parental responsibility. He, it is suggested, may emerge into the subsequent adoption proceedings late in the day, and have played no part in the "circumstances" which justified the making of the original placement order. Miss Henke therefore argues that there should be a one stage test within which the court will, naturally, look at the previous factual matrix and compare the current circumstances but without the formal structural need for a discrete first stage at which "a change in circumstances" has to be established.

29. There is, on this point, a danger of the court dancing on the head of a pin and considering a difference which, in reality, is without a distinction. In any application of this nature, where the applicant is not simply wishing to have a voice in the proceedings but is seeking leave to apply for a residence order, the underlying factual circumstances, and any change in those circumstances since the making of the original placement order, is likely to be of great relevance. Parliament has, however, held back from introducing an express statutory provision requiring the court to be satisfied about a change in circumstances where the application is for leave under s 29(4), in contrast to the approach taken in the other two provisions. I would therefore step back from holding that there is such a specific requirement where leave is sought under s 29(4). However, when considering whether to grant leave to apply under s 29(4), and when adopting the approach described by Wilson LJ in Warwickshire CC v M, *I consider that any change in the underlying circumstances will be of great relevance both when the court assesses the prospects of success for the proposed residence application and when considering the welfare of the child.*

30.. I am most grateful to Miss Meyer for the insight that she has brought to the application of the statutory scheme to the unusual circumstances of this case. I agree

with her basic submission that the circumstances of this appellant could have been catered for by treating her application as an application for leave to apply for a residence order under s 29(4) for the reasons I have given. If such an application were made there is no discrete requirement for the establishment of a change in circumstances, ACA 2002, s 1 does not govern the determination of the application by requiring the court to hold the child's welfare as its paramount consideration, but the application would fall for adjudication in accordance with the approach described by Wilson LJ in Warwickshire CC v M.

25. If the court does grant C leave to make her application the court then needs to consider the second stage of the s 47 (5) application for leave to oppose. In accordance with s 1 (7) (b) ACA 2002 the child's welfare throughout his life must be the court's paramount consideration, however a full welfare hearing is not necessarily required at the leave stage. The approach of Wall LJ in *Re P (supra)* was endorsed in *Re B-S (Children) (Adoption: Leave to Oppose) [2014] 1 FLR 1035.* In *Re P* Wall LJ stated *'the test should not be set too high, because…parents…should not be discouraged either from bettering themselves or from seeking to prevent the adoption of their child by the imposition of a test which is unachievable'.* The fact that the child was already placed with prospective adopters, or that much time had elapsed since placement, could not of themselves act as a bar to an application for leave to oppose the adoptions order: these factors would be present in the majority of applications.

26. The evaluation of the child's welfare must be carried out in the light of the Supreme Court's guidance in *Re B [2013] 2 FLR 1075.* The court must take an appropriately long-term view and should not be deterred by the prospect of short-term disruption from making an order that would be in the child's best interests throughout his life.

27. The Court of Appeal in *Re B-S (supra)* lists some 10 factors to which the court must have regard when determining an application for leave to oppose adoption. They are set out below:

"(i) Prospect of success here relates to the prospect of resisting making of an adoption order, not, we emphasise, the prospect of ultimately having the child restored to the parent's care.

(ii) For purposes of exposition and analysis we treat as two separate issues the questions of whether there has been a change in circumstances and whether the parent has solid grounds for seeking leave. Almost invariably, however, they will be intertwined; in many cases the one may very well follow from the other.

(iii) Once he or she has got to the point of concluding that there has been a change of circumstances and that the parent has solid grounds for seeking leave, the judge must consider very carefully indeed whether the child's welfare really does necessitate the refusal of leave. The judge must keep at the forefront of his mind the teaching of Re B (Care Proceedings: Appeal) [2013] UKSC 33, in particular that adoption is the 'last resort' and only permissible if 'nothing else will do' and that, as Lord Neuberger emphasised, the child's interests include being brought up by the parents or wider family unless the overriding requirements of the child's welfare make that not possible. That said, the child's welfare is paramount.

(iv)At this, as at all other stages in the adoption process, the judicial evaluation of the child's welfare must take into account all the negatives and the positives, all the pros and cons, of each of the two options, in either giving or refusing the parent leave to oppose. Here again, as elsewhere, the use of Thorpe LJ's 'balance sheet' is to be encouraged.

(v)This close focus on the circumstances requires that the court has proper evidence. But this does not mean that judges will always need to hear oral evidence and cross-examination before coming to a conclusion. Sometimes, though we suspect not very often, the judge will be assisted by oral evidence. Typically, however, an application for leave under s 47(5) can fairly and should appropriately be dealt with on the basis of written evidence and submissions: see Re P paras [53]–[54].

(vi)As a general proposition, the greater the change in circumstances (assuming, of course, that the change is positive) and the more solid the parent's grounds for seeking leave to oppose, the more cogent and compelling the arguments based on the child's welfare must be if leave to oppose is to be refused.

(vii)The mere fact that the child has been placed with prospective adopters cannot be determinative, nor can the mere passage of time. On the other hand, the older the child and the longer the child has been placed the greater the adverse impacts of disturbing the arrangements are likely to be.

(viii)The judge must always bear in mind that what is paramount in every adoption case is the welfare of the child 'throughout his life'. Given modern expectation of life, this means that, with a young child, one is looking far ahead into a very distant future – upwards of eighty or even ninety years. Against this perspective, judges must be careful not to attach undue weight to the short-term consequences for the child if leave to oppose is given. In this as in other contexts, judges should be guided by what Sir Thomas Bingham MR said in Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124, 129, that: 'the court should take a medium-term and long-term view of the child's development and not accord excessive weight to what appear likely to be short-term or transient problems.' That was said in the context of contact but it has a much wider resonance: Re G (Education: Religious Upbringing) [2012] EWCA Civ 1233, [2013] 1 FLR 677, para [26].

(ix)Almost invariably the judge will be pressed with the argument that leave to oppose should be refused, amongst other reasons, because of the adverse impact on the prospective adopters, and thus on the child, of their having to pursue a contested adoption application. We do not seek to trivialise an argument which may in some cases have considerable force, particularly perhaps in a case where the child is old enough to have some awareness of what is going on. But judges must be careful not to attach undue weight to the argument. After all, what from the perspective of the proposed adopters was the smoothness of the process which they no doubt anticipated when issuing their application with the assurance of a placement order, will already have been disturbed by the unwelcome making of the application for leave to oppose. And the disruptive effects of an order giving a parent leave to oppose can be minimised by firm judicial case management before the hearing of the application for leave. If appropriate directions are given, in particular in relation to the expert and other evidence to be adduced on behalf of the parent, as soon as the application for leave is issued and before the question of leave has been determined, it ought to be

possible to direct either that the application for leave is to be listed with the substantive adoption application to follow immediately, whether or not leave is given, or, if that is not feasible, to direct that the substantive application is to be listed, whether or not leave has been given, very shortly after the leave hearing.

(x)We urge judges always to bear in mind the wise and humane words of Wall LJ in Re P, para [32]. We have already quoted them but they bear repetition: 'the test should not be set too high, because … parents … should not be discouraged either from bettering themselves or from seeking to prevent the adoption of their child by the imposition of a test which is unachievable."'

28. In both *Re M'P-P (Children) [2015] EWCA Civ 584* and *Re W (a Child) [2016] EWCA Civ 793* the Court of Appeal, in cases with similar issues to this case, have emphasised the need for the court to have regard to the particular facts of each case and a comprehensive welfare analysis of the pros and cons is undertaken that the overall proportionality of a plan for adoption falls to be evaluated. In *Re W (A Child); Re H (A Child) [2014 FLR 1266* the Court of Appeal (Sir James Munby P) described the approach to the second stage under s 47 (5) at paras 16 – 18 as follows:

"[16] 'In addressing the second question, the judge must first consider and evaluate the parent's ultimate prospects of success if given leave to oppose. The key issue here (Re B-S, para 59) is whether the parent's prospects of success are more than just fanciful, whether they have solidity. If the answer to that question is no, that will be the end of the matter. … In evaluating the parent's ultimate prospects of success if given leave to oppose, the judge has to remember that the child's welfare is paramount and must consider the child's welfare throughout his life. In evaluating what the child's welfare demands the judge will bear in mind what has happened in the past, the current state of affairs and what will or may happen in future. There will be cases, perhaps many cases, where, despite the change in circumstances, the demands of the child's welfare are such as to lead the judge to the conclusion that the parent's prospects of success lack solidity. Re B-S is a clear and telling example; so earlier was Re C (A Child) Re D (Children) (Adoption: Leave to Oppose) [2015] EWCA Civ 703, [2016] 2 FLR 119. 17.'

***[17]** I explained in Re L (Leave to Oppose Making of Adoption Order) [2013] EWCA Civ 1481 (see particularly §45) how the judge hearing the leave application, and considering a parent's prospects of success for that purpose, has to look into the future and do the best he can to forecast what decision the judge hearing the adoption application, who will have the child's welfare throughout his life as his paramount consideration, is going to make. In this way, the factors that are ultimately going to be relevant to the decision whether or not to grant the adoption order are therefore also material at the leave stage.*

***[18]** If the parent does have solid grounds for seeking leave, the judge has to consider whether leave should nonetheless be refused and this involves a consideration of whether the child's welfare really does necessitate such a course. Here the concentration is on the impact on the child of there being an opposed adoption application."*

29. If leave is given to the parents to oppose the adoption application and/or C is given leave to make her application for an SGO the court will then need to conduct a comparative analysis of the realistic placement options having regard to the relevant welfare checklists. The court is required to balance the benefits and detriments of each option for the child's future and whether the children should remain with the prospective adopters or be moved to their aunt having regard to the respective welfare checklists.

30. As Thorpe LJ described it in *Re W (Adoption: Set Aside and Leave to Oppose) [2011] 1 FLR 2153 para 18* as being the parent's task at that stage *"to persuade the court at the opposed hearing to refuse the adoption order and to reverse the direction in which the child's life has travelled since the inception of the original public law proceedings".* In *Re M'P-P (supra)* McFarlane LJ allowed the appeal as the trial judge had failed to give sufficient weight to the effect on the children of removing them from the care of their primary attachment figures and the value, from the children's perspective, to the continuation of that relationship.

31. As the cases have repeatedly made clear it is only once the comparative analysis of the placement options have been considered it is only then that the overall proportionality of any plan for adoption falls to be evaluated and the phrase "*nothing less will do"* can properly be deployed. If the ultimate outcome of the case is to favour the making of an adoption order that option then falls to be considered against the yardstick of necessity.

Relevant background

32. Both children were made the subject of care and placement orders on 4 November 2016, following being removed from their parent's care in June 2016. Prior to June 2016 both children were subject to Child Protection Plans under the category of neglect, caused mainly by both parent's chronic drug addiction.

33. Both parents have other children. The mother has two older children. one, now an adult, who lives with the maternal grandmother, and another child who lives in London with a maternal aunt under an SGO.

34. The father has three children, He does not have contact with them.

35. The parents have recently had another child. Due to the parents continued drug addiction and concerns about the volatility of their relationship there was a pre-birth conference and care proceedings issued when this child was born. The child was born suffering withdrawal from cocaine, methadone, morphine and codeine. The child is now placed in their maternal aunt's care and that placement was secured by a SGO on 29 May 2018.

36. During the care proceedings for the children the parents contact was reduced from three times a week to once a week due their consistent failure to attend contact. Despite coming from large families, they did not put forward any family members to be carers and in relation to a paternal aunt, who put herself forward in the care proceedings they objected to her continued assessment, although the mother changed to support her at the final hearing.

37. In October 2016 the parents were informed the final care plan was adoption. Following a three-day contested hearing the children were made the subject of care and placement orders on 4 November.

38. On 16 November the father approached the local authority and spoke to a social worker, asking that the mother's sister be assessed, no name or contact details were provided. The social worker is recorded as informing the father that as care and placement order were made there was no continuing obligations to assess family members. The father was advised to speak to his solicitor.

39. On 20 March 2017 the parents were informed by the local authority that prospective adopters had been identified and a goodbye visit was arranged for 22 March, which took place on 27 March.

40. The prospective adopters were matched with the children on 27 March.

41. On 28 March the maternal grandfather, spoke to the duty social worker and the allocated social worker, he made reference to another family member who was not considered but the local authority records do not give details of any identified family member. It is reported the focus of the maternal grandfather's concerns appears to have been his contact with the children.

42. The parents were informed on 30 March by letter of the recommendations of the local authority's Adoption Panel that the children be matched with a family for adoption.

43. The children were placed with the prospective adopters on 6 April 2017.

44. On 5 May 2017 the maternal grandfather made contact with the local authority again, it is recorded the presenting issue was his wish to see the children. It was explained to him the children had been matched and a letter was sent to him confirming this.

45. Following the adoption application in July 2017 the matter was listed for a first directions hearing on 12 September 2017. The parents attended indicating they seek leave to oppose and were deemed to have made an application. The maternal grandfather wrote to the court stating his eldest daughter, C, could care for the children and a previous requests for her to do so by both the mother and him had been ignored. He stated that C could care for the children *'Temporarily as our main aim is to have the children reunited with their parents*' and that he was rebuffed**.** The local authority were directed to file a response to this information.

46. The local authority contacted C and went to see her. C informed them she and the Maternal grandfather had discussed her putting herself forward after the care and placement orders had been made. C wrote to the court on 15 October stating she opposed the adoption application and considered the local authority should have approached her to adopt the children before considering other adoptive placements.

47. At the next hearing 23 October 2017, the matter was timetabled for a hearing in December, to consider the parents' application for leave to oppose. The December hearing did not proceed as the mother was taken ill at court. The Children's Guardian sought an assessment of C to be completed by an ISW, the case was timetabled for a two-day hearing in April 2018.

48. The SGO assessment relating to C was filed in February 2018 and was positive.

49. The Children's Guardian visited the children and reported on their progress and his concerns on the impact on them if they were separated from the prospective adopters.

50. These observations caused C to reconsider her position and inform the court that she would not be proceeding with her application due to concern that it would cause them disruption. She indicated her intention to withdraw her application and sought contact with the children by her position statement dated 9 March 2018. As a result the final hearing in April 2018 was reduced to one day.

51. On 29 March the local authority sent out bundles to each party. The bundles received by the parents and C contained the full un-redacted Annex A report with the confidential personal details of the prospective adopters and the children. C immediately informed the court and the parties of this error.

52. On 5 April the parents did not attend the hearing but were represented. HHJ Pearl made a number of directions for further reports (risk assessment by Janet Walker, updated SGO regarding C and a report from Dr D), the matter was reallocated to me and listed for directions on 16 May. In addition, HHJ Meston, sitting s9, made injunctions under the inherent jurisdiction to prevent the parties disseminating the confidential material.

53. The matter was listed before me on 16 May and 26 July when directions were made leading to this hearing.

The evidence

F– allocated social worker

54. **F** is a social worker working with the adoption team. She has provided three statements. She has been aware of this case since 16 June 2016 when, as part of the local authority procedures, she held a meeting with the original allocated social worker. This was part of the structure of early parallel planning by the local authority, to enable the adoption team to be appraised of the case and keep any planning they are required to do under review. That meeting took place 10 days after the children had been removed from the care of the parents under an interim care order. The record that meeting notes under the possibility of relatives caring for the children *'Neither of the parents have put forward any family members for assessments'.*

55. Following the care and placement orders being made the case was allocated to G in the adoption team, a student social worker working under F's supervision. When G's placement came to an end in May 2017 F became more involved and was the liaison point for the prospective adopters and their adoption social worker, on matters to do with the adoption support, and the making of the adoption order application.

56. She confirms a duty social worker from the children's team attended the first hearing of the adoption application on 12 September 2017. The duty social worker visited C as part of the work done to respond to the parent's application for leave to oppose. The duty social worker left the local authority shortly thereafter and to avoid further changes for the children F became the children's allocated social worker.

57. The statement from the team leader dated 27 September 2017 was the first statement setting out the Local Authority's response to C being put forward as a prospective carer for the children. She is the team leader to the two social workers who visited C on 21 and 22 September 2017. The statement states *'The purpose of the visit was to explore the indication from the maternal grandfather that she tried to put herself forward previously to care for the children and clarify this issue'.* According to C's evidence, which I accept, these two social workers spent 2 hours with her on 21 September and about 6 hours with her on 22 September. She said their discussions were wide ranging and they spent time with her daughter. When asked about why she did not put herself forward one of the social workers records C *was 'not able to offer an insightful explanation about her lack of action about this matter'*. This sets the tone of the statement which in my judgment is designed to be entirely defensive of the local authority position, lacks the balance it should have and fails to acknowledge any failings by this local authority to undertake the enquiries it should have done prior to October.

58. F's first statement dated 9 November 2017 followed the direction made on 23 October requiring, in effect, for there to be an account of the local authority actions in this case regarding discussions with the wider maternal family. The relevant chronology can be summarised as follows:

(i) On 30 May 2016 a legal planning meeting records that the social worker was to *'explore extended family members on both sides i.e. aunts, uncles, grandparents available to take on the care of the children'.*

(ii) A case note was recorded on 19 May 2016 from the team manager stating if an ICO was granted the children should be placed in foster care and *'the parents are refusing to provide extended family members details'.*

(iii) On 30 May/2 June information is uploaded refers to a 'significant others' documents which lists some of the names and addresses of family members for the mother, the maternal aunt caring for an older sibling is on there, C isn't. At around the same time information was received from another London Local Authority to say that the maternal aunt had an SGO relating to an older child of the mothers.

(iv) On 1 June the father contacted the local authority requesting financial support for child care by his sister but refused to give any details of her. The following day the paternal aunt contacted the local authority asking to be assessed as a carer.

(v) The children were removed from the parents care pursuant to an interim care order on 6 June 2016 and placed with foster carers.

(vi) The meeting between the allocated social worker and F took place on 16 June when it was recorded neither of the parents have put forward any family members for assessment. I note there was no reference to the list of family members that had been uploaded onto the system in early June referred to at (iii) above.

(vii) The first LAC review took place on 17 June 2016, attended by the Independent Reviewing Officer. The notes of the meeting record the *'parents have not put forward any family or friends names to be considered as a possible placement for the boys'.* Again, I note no reference to the information detailed at (iii) above. That meeting

recommended that the allocated social worker *'explore extended family members for contact and whether or not there is anyone suitable to care for the children'.*

(viii) A case note of a home visit on 2 June 2016 by the allocated social worker notes he would be completing a parenting assessment and notes the parents' objections to the paternal aunts assessment but records him explaining to the parents *'that Local Authority's position is that in the event parents are ruled out as possible carers, the LA will always consider placing children with family members'.*

(ix) The case notes are noted to record the focus then going forward was the parent's unreliability in attending contact.

(x) The CMO dated 26 August 2016 notes the parents were directed to put forward any alternative carers by 6 June, they have not done so and the paternal aunt will be further assessed following a positive viability assessment.

(xi) the second LAC review was on 7 September which F notes the parents did not attend, F notes in her statement *'which again would have given them [the parents] an opportunity to put forward an alternative carer to the paternal aunt, or the plan of adoption'*. There is, again, no recognition of the responsibility on this local authority to take its own steps to assess the possibility of placement with the wider family. This is even more surprising as two of the mother's older children are placed with the wider family and at this time the parents were barely functioning at a basic level in relation to these children due to their own difficulties with drug abuse.

(xii) On 12 October 2016 the plan for adoption of the two children was considered by the Agency Decision maker. He received reports from the allocated social worker and his team manager, the only family member discussed within the minutes is the paternal aunt This is despite the minutes recording that the two older half siblings live with members of the wider maternal family. The plan was accepted and a letter sent to the parents on the same day. F states in her statement *'Had the family felt aggrieved that this plan had been made without C being assessed, they could have made attempts to raise this with the Local Authority, or with their legal representation. There is no information on the system to suggest that they did this'.* This somewhat bold statement fails to recognise the realities of the case, namely (i) the failure by the local authority to explore placement with the extended family (other than the paternal aunt); (ii) there is no evidence to suggest the wider family (other than possibly the paternal aunt) were told anything about this decision; (iii) by this stage the history of the parents co-operation within the care proceedings or attending any contact with the children was very limited.

(xiii) F refers to emails she sent in November 2017 to the team manager at the time of the final care hearing and the IRO to ask if they had any recollection of any other family members being put forward, in particular C. It is noteworthy that the IRO records the decision of the first LAC review for the social worker to explore extended family but gives no indication as to how that action was followed in the second LAC review. The inference is that the apparent failure to undertake those enquiries was not put under any scrutiny at the second LAC meeting. This is perhaps illustrated by the failure of the local authority to file a complete genogram in the care proceedings, the one in the papers was done after the commencement of the adoption proceedings.

59. I agree with Mr Metaxa on behalf of the Children's Guardian the tone of this statement seeks to exonerate the local authority of any responsibility regarding exploration of placement with the wider family, in particular C. The following example gives the flavour at para 23 *'There is nothing in the case note [of 22 June 2016] to suggest that either of the parents proposed C as an alternative carer…in this conversation with the allocated social worker'.* With the clear implication that the allocated social worker is merely the recipient of information with no independent obligation on him to undertake basic proactive enquiries to establish who the wider family were and whether they could care for these children. This is despite the positive decision of the LAC review meeting on22 June 2016 requiring him to do so, which was simply not followed up in the meeting on 7 September. The statement at paragraph 36 seeks to put responsibility on C to have contacted the local authority to put herself forward. F in her oral evidence confirmed this statement was approved by a senior manager in the permanency team. It is unfortunate, to say the least, that the message conveyed by this statement was not modified as, in my view it should have been, to reflect the responsibility on this local authority for the position the children were in and the failure by them to properly investigate the placement options for these children with the wider family.

60. The attitude of the local authority continues when the family do start seeking to put forward C. 3 weeks after the final care and placement order the father spoke to the allocated social worker, asking for a maternal aunt to be assessed. He was advised that the case had concluded, and no further assessment was possible. Very belatedly, the local authority now accept this advice was wrong, and there should have been consideration given to the assessment request.

61. In March 2017 the parents were informed about the placement plans for the children and the children were matched with the prospective adopters on 27 March. The following day a social worker took a phone call from the maternal grandfather 'MGF') and sends a message to the allocated social worker asking her to contact him and referring to him having another family member that was not considered. The record of the phone call with the MGF by the allocated social worker at the time states the focus was more on him having contact with the children, with no mention of the family member.

62. On 5 May 2017 there is another case note of the MGF speaking to the allocated social worker at the time, the recording refers to his contact being the focus of the discussion, although the letter written on the same day refers to the MGF's other daughter not being assessed which raises questions about the accuracy of the local authority records. Again, the focus of the letter is for the parents to put forward family members.

63. It is of note and concern that it appears that some of the local authority recordings were put on the system months later and do not reflect the contemporary records, such as letters, and the later recordings appear to lack the detail about assessment of the wider family.

64. In her second statement in February 2018 F recognises some of the local authority failings. She sets out how the continuing uncertainty has affected the prospective adopters and in relation to C supported there being a one-off meeting between C and

the prospective adopters and also twice-yearly letter box exchange, including photographs.

65. She summarised the advice received from Dr D (the Specialist Looked After Child Clinician and Child Therapist), who has been involved with the children since April 2017 and sets out her welfare analysis which focuses upon the impact on the children of being separated from their current carers whom they each have secure attachments with.

66. In her final statement dated 25 June 2018 F rightly opens with an unreserved apology on behalf of the local authority for the data breach that occurred. The statement summarises the evidence from others, confirms the prospective adopters having taken steps to secure theirs and the children's position following the data breach and confirms the local authority view had not changed and they support the adoption order being made. This is largely based on the detrimental consequences for the children on any change in carer.

67. In the event that an adoption order is granted the local authority recommends the post adoption contact is annual to the birth parents, C, to include the maternal aunt and the siblings who live with her, the MGF and the eldest sibling. It is hoped that the birth family will respond to the contact from the prospective adopters.

68. At the hearing on 26 July I directed an adoption support plan should be filed. The plan dated 8 August 2018 is a 32 paragraph document with a lot of generalisations and little tangible detail. That document has been further revised during this hearing and I will consider it at the end of this hearing if I make an adoption order.

69. The full and detailed Annex A reports have been contributed to by F, the children's previous social worker and a further social worker (from an adoption agency,). They provide the information required and support the adoption orders being made.

Ms Walker – ISW and author of risk assessments in relation to placement with prospective adopters or C.

70. Following an interim risk assessment by the team manager and F after the data breach Ms Walker, an experienced ISW, undertook a further assessment instructed by the Guardian's solicitor.

71. She has provided two comprehensive risk assessments in relation to both the prospective adopters and C, with detailed appendices with a record of her meetings. As she sets out in her helpful summary document there is no risk- free option. Despite trying, she was unable to meet with the parents, who failed to engage or respond to any meetings.

72. In her view, the risks presented by either placement option is very different.

73. In relation to a placement with C due to the geographical distance between C and the parents, the birth family support for the placement and C's clarity about managing any contact Ms Walker considers the risks of disruption by the birth family of the placement of the children with C as being *'less likely'.* However, that lower risk needs

to be balanced with the disruption in the attachments the children have with the prospective adopters.

74. As to the children remaining with the prospective adopters she notes the steps the prospective adopters have taken following the data breach. This has included all the practical steps involved in a move from the home at very short notice, seeking to ensure there is stability for the children, maintaining their education and taking advice as to how to explain the changes to the children. Additionally, they have had to make the longer-term changes that are involved in moving area and reducing the risks to them and the children following the data breach. In Ms Walker's view in her report *'the plans could not be improved upon, in terms of reducing risk that the children's birth family will be in a position to identify their current and future home and school..'*.

Dr D – Specialised Looked After Child Clinician and Child Therapist

75. She has prepared a detailed written report dated 15 May 2018 following instructions from the Guardian's solicitor. In addition, she has provided a note of her conversation with C on 11 July 2018.

76. She has had regular contact with the prospective adopters and the children since April 2017, when her advice was sought to support the placement. Initially she had weekly contact, then fortnightly and it is currently every three to four weeks. In addition to the face to face visits she has email and telephone contact in between and holds regular reviews to consider the level of the support required. In her oral evidence she confirmed she liaises with F regularly, usually after each visit.

77. In her written and oral evidence she remained clear that her opinion was that separating the children from the prospective adopters at this time is likely to have *'multiple and enduring implications'.* Whilst she recognised that after a period of distress and despair the children may be supported to build new attachment relationships within the birth family there are a number of factors that would impact on that. First the secure attachment the children have with the prospective adopters and what that means for these children means any permanent separation from them is likely to impact on the children both developmentally and emotionally. The children have already experienced considerable loss and separation, the risks if they move from the prospective adopters is that they may revert to their earlier behavioural presentations or shut down emotionally. The trust and security in the relationship they have built up with the prospective adopters has taken time and provides building blocks for future relationships. To separate them now from the prospective adopters and introduce another style of parenting and relationship risks the security and stability they have to date, is likely to confuse and when considered with the impact on their ability to trust this could adversely impact on their capacity to form future close and meaningful relationships. Dr D describes their identity as being '*firmly established'* within the prospective adoptive family, they readily identify with the cousins, aunts, uncles and friends.

78. In cross examination she was pressed about the attributes C has, such as insight, empathy and readiness to access help and support but she did not consider those matters mitigated the harm she considers the children would suffer by a move.

79. Her opinion remained as set out in her report *'To separate them now when they are increasingly learning to trust and build more secure attachment patterns, to bond with each other and show shared enjoyment in activities with each other and with the prospective adopters, to feel safe and to respond, safely and stability they are offered is likely to have a profound and enduring impact through all areas of their lives and development….To fracture their growing relationship with the [prospective adopters]… would…be likely to have a significant negative impact upon both children.'* She recognised the strong and ethical argument that children should remain with their birth family, and acknowledged that birth families feel their biological ties could be a mitigating factor and build the child's sense of identity and belonging, but that can't be looked at in isolation of the children's actual circumstances. In her opinion the children can be supported in understanding their dual identity and emotional sense of belonging to two families, but this should be done therapeutically in an age appropriate way and over time rather than an action as '*drastic as removing'* the children from the prospective adopters.

Terence Wilson – ISW who completed SGO assessment of C

80. Mr Wilson conducted the SGO assessment of C. It is a detailed and comprehensive assessment, although he recognises that he was only assessing one part, F undertook the other sections of the SGO assessment. In oral evidence he confirmed he spent over 8 hours with C and her family. He made the following comments at the end of the first report dated 22 February 2018:

'..in the event the of the Court deciding the children should be moved to live within their birth family, [C's] suitability as a carer is recommended very strongly indeed.

I do recommend that the parties allow and facilitate a meeting between the prospective adopters and [C]. In my view such a meeting is likely to reassure the prospective adopters with regard to the character and disposition of [C], to the extent that they may feel disposed towards allowing and facilitating direct contact in the future.'

81. The addendum report dated 6 June 2018 followed two telephone conversations with C and confirms his assessment of C as *'a formidable matriarch who is highly attuned to her sister's manipulative strategies and very substantially supported by locally based family and friends'.* Disappointingly the report notes despite Mr Wilson communicating with the local authority twice about receiving updating information and instructions he received no response from the local authority.

A **- mother**

82. The mother has filed a short statement giving her support to placement of the children with C and would not disrupt the placement, as she has not done regarding the placement of two of her other children with her other sister who lives nearby. She states in her statement if the children are made the subject of an adoption order she would seek to disrupt the placement and did not seek to moderate that position in oral evidence. She confirmed in her oral evidence she had deleted the emails she had received with the details of the prospective adopters and agreed to her email account being looked at to confirm this, which it was by her counsel Mr Clark and Ms Kelly, C's counsel.

83. For the first time in her oral evidence she said that she had given details of C to the allocated social worker and her legal team around the time of the care hearing in October. There is no contemporary evidence to support this, it is surprising that bearing in mind this has been an issue since September 2017 that it has not been mentioned by her before.

C **– maternal aunt**

84. She has provided two written statements, fully co-operated with the visit from the social workers in September 2017 and the SGO assessment by Mr Wilson.

85. In her powerful and compelling oral evidence C laid bare the conflict she obviously feels about what is right for the children. She displayed enormous empathy and understanding about the position of the children and the prospective adopters and recognised the children were happy and loved by them. Her fears are based on the risk of disruption of the placement by the parents and the impact of that on the children, together with the risks to them of finding out that their sibling and half siblings are placed within the wider family and would ask themselves why they were not as well. She was very concerned that the children should not feel at any stage they were not wanted by the birth family. No one who heard that evidence could have been left in any doubt that the children's welfare and what is right for them was the focus of her evidence and, in my judgment, will remain the focus in the future. She deserves the admiration of the court for the care and consideration she has shown to not only the children but the prospective adopters as well, paying a heartfelt tribute to them and what they have done for the children.

Kieron Travers – Children's Guardian

86. Mr Travers has provided three reports and visited the children prior to each report. He saw them in December 2017, March and May 2018. In each of his reports he describes the changes he had noticed in their behaviour, the growing attachment he observed between the children and the prospective adopters is detailed in his report in a cogent and convincing way.

87. In his oral evidence he recognised a gap in his enquiries was not meeting with C, which he accepted would have been *'helpful'.*

The children

88. The evidence about the trauma and neglect the children suffered whilst in their parents care is detailed in the judgment of HHJ Pearl on 4 November 2016. Following the interim care order in June 2016 they were placed with foster carers for 10 months but continued to experience the uncertainties surrounding the parents irregular attendance at contact. The foster carers supported the move to the prospective adopters on 6 April 2017. They have now been there for 16 months, which represents a significant part of their respective lives.

89. They were told at the time of the placement in April 2017 that this was to be their last move, giving them the reassurance their welfare required and providing the foundations the prospective adopters have built on as described in the evidence, particularly from Dr D and Mr Travers. The evidence also demonstrates that despite

the unplanned move the prospective adopters have managed to ensure the risks of instability have been kept to a minimum.

90. There is evidence to suggest the children are showing some anxiety about the delays and wanting to know their future and whether they are going to stay in their current home.

Submissions

91. The court has had the benefit of detailed and helpful written closing submissions by the parties. They have each been considered and can be summarised as follows.

92. The local authority continue to support the adoption order. Whilst recognising the positive assessments of C, they submit the risk of harm to the children will be greater if they are moved from their current placement. They rely principally on the evidence of Dr D, which is supported by the evidence of F, Ms Walker, and Mr Travers. They recognise such an order will sever the legal relationship with the birth family in circumstances where there is a positive assessment of a member of the birth family but, they submit, balancing the risk of harm in this case submit each child's welfare requires the adoption order to be made and that such an order is proportionate in the circumstances.

93. Ms Bradley, on behalf of the prospective adopters, highlights at the start of her submissions the prospective adopters recognition of C's position, and recognise the failures by the local authority to identify members of the wider birth family earlier. From their perspective they set out how they felt unsupported by *'senior figures in the local authority'* following the parents indicating they were going to oppose the adoption and, in particular, following the data breach. Regarding the respective welfare checklists (s1 (3) CA 1989 and s1(4) ACA 2002) she submits the starting point is the harm the children have suffered, their emotional needs arising from their harmful experience and the ability of each of the respective carers to meet those needs and provide a secure home environment and the impact on the children of any change and the effect on them throughout their lives of having ceased to be a member of their birth family and become an adopted person. She relies on the evidence of Dr D, Ms Walker and Mr Travers and the impact on these children at this time of such a move of carer. She recognises the advantages for the children of being placed with the birth family but, she submits that has to be balanced with the evidence of the extent of harm to the children if they move from their current placement. Even recognising the strengths of C's parenting history and skills such a move would still be contrary to the welfare of the children, even considering the lifelong welfare analysis required in s 1(4). Reliance is placed on Dr D's oral evidence, that expands on what she sets out in her report. She submits the risks consequent on the data breach in relation to the prospective adopters has to be factored in, but the court can rely on the steps that have been taken to date and are planned to take that reduce those risks. That risk has to be considered in the context of what is known about the parents and the effective strategies that have been deployed to date. Regarding future contact she submits what is now required is a period of reflection and the changes that are on the immediate horizon. With a more structured adoption support plan in place there is then a process to enable the indirect contact to take place with the prospect of other arrangements being considered in the future. The prospective adopters have shown they are committed to life story work, that is going to overseen by F and Dr D and the

prospective adopters though their own backgrounds bring added insight into the importance of this work.

94. Ms Kelly on behalf of C in her thoughtful and measured submissions provides a helpful analysis of the relevant issues and evidence. She submits insufficient weight has been given to the benefits of growing up inside the birth family, not only as a general proposition but the features of this case where there is a well-trodden path of the wider family looking after siblings and half-siblings. It did not feature in the balancing exercise undertaken by the local authority and remains a risk for the children in the future. The risk of the parents seeking to locate the placement has not properly been factored in bearing in mind the extent of the information the parents were sent and the risks for these children of another disruption, possibly at short notice. The level of insight C has shown to the position of the children has not sufficiently been taken account of when considering the steps that could be taken with support of ameliorating the risks of the children moving to C. She submits the court needs to be cautious about the weight the court attaches to the conclusions of Ms Walker and Mr Travers, the former was limited to a large extent to considering the risks from the disclosure breach and the latter took an early view supporting the adoption without conducting his own evaluation of C. She confirms C does not seek a contact order, and emphasises that C is in a very different position from the parents, there is no evidence to support she might inadvertently disclose details and she offers a safe bridge between the adoptive family and birth family that is very likely to assist them in their identity and coming to terms with their own history.

95. Mr Clark, on behalf of the parents, echoes much of what Ms Kelly submits. He considers the court should consider Dr D's evidence with some care, as she has been focused on a limited aspect of the balancing exercise and does not sufficiently consider the bigger picture. He submits when the risk assessments are looked at there remains a high risk that the parents will seek to disturb the placement, and that risk has not sufficiently been weighed in the balance.

96. Mr Metaxa, on behalf of the Guardian, sets out his analysis to support the submission that the faulty approach by this local authority to the question of extended family members is established. He submits as a result of the local authority failings all parties have been put through very considerable emotional strain, in particular the children:

' a) remain at risk of experiencing the stress of their prospective adoptive carers during these proceedings, (although the carers have handled these difficulties with enormous fortitude and remained child-focussed); b) remain at risk of having their adoptive placement disrupted, were the court to decide that they should move to C; c) remain at risk of having their future contact to maternal family members negatively affected in the aftermath of the prospective adopters having had to go through contested adoption proceedings; and d) of course, most importantly, have lost the chance of being brought up within their birth family. It is acknowledged that the risks a) and c) above have been very significantly aggravated by the data breach.'

97. Whilst he pays tribute to the parenting capacity and child focussed motivation in C's application he submits the court should make an adoption order due to the impact of any move of the emotional and developmental needs of the children, both in the short and long term. He accepts the comparative risk analysis undertaken by Ms Walker

and is reassured in relation to that by the steps the prospective adopters have taken to date.

Discussion and Decision

98. The background to this case provides a unique and troubling set of circumstances where in my judgment the local authority has let down these two children in three fundamental ways.

99. First, the failure to properly identify and assess C as being a possible carer for the children. That failure being compounded in my judgment by the attitude taken in these proceedings up until this hearing that effectively it was the sole responsibility of the parents to suggest who in the wider family could be considered. The duties in s 22 (4) CA 1989 could not be clearer

> *'(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall,* ***so far as is reasonably practicable****, ascertain the wishes and feelings of—*
>
> *(a) the child;*
>
> *(b) his parents;*
>
> *(c) any person who is not a parent of his but who has parental responsibility for him; and*
>
> ***(d) any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.***
>
> *(5) In making any such decision a local authority shall give due consideration—*
>
> *(a) ……..*
>
> *(b)* ***to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain…'***
>
> *(emphasis added)*

100. Second, the data breach. Whilst the evidence makes clear it was a genuine human error the impact on the prospective adopters, the children and C has been enormous. It has delayed the court being able to make a decision, it lost the goodwill created by C's child focussed approach in withdrawing her objections and has delayed the possibility of any meeting or communication directly or indirectly between C and the prospective adopters, as was envisaged prior to April 2018. In addition, according to Ms Bradley, there appeared to be no agreed plan to manage the consequences of the data breach.

101. Third, the generally overly defensive position taken by the local authority, for example in the statements filed by F. An illustration being the implied criticism of C for not responding to the letter from the prospective adopters in June 2018 without taking any pro-active steps to assist that process. I accept C's evidence that she had left a message with the care planning team about this. Her oral evidence about how she wanted to discuss with someone how to respond in the best way was compelling

and entirely child focussed. I have no doubt good advice is available in the local authority to assist with this but it must be accessible and available. A further example is the lack of a detailed adoption support plan. It required a direction from the court for one to be produced and has required significant re-drafting to provide the right support for this case rather than a list of generalised statements of intent.

102. As I have set out at the start of this judgment although critical of this local authority and the actions taken that feature should not overshadow the reality for the children now. It is hoped that having had this contested hearing it has brought clarity about a number of issues, in particular regarding C. Her child focussed and empathetic approach should not be lost sight of by either the prospective adopters or the local authority and should be supported to be available, if required, in whatever way that may meet the future needs of these children.

103. All parties accept there has been a change in circumstances, in accordance with the first part of the two-stage test s 47 (5), which is clearly right.

104. Ms Kelly makes the valid point that in undertaking the holistic welfare evaluation in the second part (with the child's lifelong welfare under s 1 ACA 2002 being the paramount consideration) where the parent's application is founded entirely on C's application this should be the focus of the exercise with no need to separately consider any deemed application by C to apply for an SGO. I accept her submissions that leave should be granted. There are solid grounds based on the positive assessment of C, which all parties accept if it had been available earlier the children would have been placed with her. This option presents a realistic option of the children being placed in the birth family, which bearing in mind the consequences of adoption and the requirement of the court to consider the ability and willingness of any of the relatives to meet their needs supports leave being given. The court has to weigh in the balance any harm in granting leave, in this case there is none as there will be no delay in determining the competing applications. Mr Metaxa submits there are advantages to these children in the unique circumstances of this case for the court to go on and consider the competing applications.

105. For these reasons I will give leave for the parents to oppose the making of the adoption order. The practical effect of that is that C should be given leave to make her application for a SGO, the prospects of success of that application have solidity and the welfare interests of the children would be met by the court considering the application particularly as no delay will be incurred.

106. Turning now to consider the welfare evaluation the court is required to do when considering the realistic placement options for these children. The reality in this case is there are two competing placement options for the children; remaining with the prospective adopters under an adoption order or placement with C under an SGO.

107. There has been no dispute about the high level of care that has been provided to both children by the prospective adopters since April 2017. All the reports evidence their enormous commitment to these children, their willingness to take and act on support and advice, both before and after the data breach. C in her oral evidence acknowledged this, she paid tribute to the love and commitment the prospective adopters have shown to the children.

108. Placement with the prospective adopters would have the advantage of maintaining the increasingly secure attachments the evidence demonstrates each of the children have with the prospective adopters, with the long term emotional and development benefits such attachments carry with them. The evidence comes primarily from Dr D, F and Mr Travers. All of whom have visited over a period of time and give detailed evidence to support the changes they have observed. However, if the children remain with the prospective adopters and an adoption order is made they will lose the opportunity and advantages of being brought up within the birth family and being able to maintain real links with siblings and half siblings, although the evidence demonstrates they have limited knowledge of the birth family and no established relationship or knowledge of C.

109. C has a proven history of bringing up her own children, Mr Wilson's assessment is extremely detailed and positive. C has displayed great empathy in relation to the children's position and recognises the need she will have for support and expresses a willingness to fully utilise such support she will be given and, as Mr Wilson observed, will not shy from voicing her concerns if she considers additional support is required.

110. There are risks of disruption by the parents with both options, the evidence establishes that it would be less if the children were placed with C but that has to be balanced with the evidence about the personalities of the parents and the effective steps the prospective adopters have taken to date in extremely difficult circumstances with virtually no notice.

111. There are real risks to the children's emotional and developmental health if they move from their current placement, I accept the evidence of Dr D. Even taking into account all the parenting skills and experience C undoubtedly has and her willingness to take advice and support the evidence establishes that the sense of trust the children have been able to build up would be damaged by any move, and be detrimental on the children both emotionally and developmentally, with long term implications on their ability to make and maintain secure relationships. The secure attachments the children now have are their reality and is the best base from which to confront the various issues that lay ahead of them in understanding their past. The prospective adopters have already demonstrated their ability to do this. Whilst recognising the importance of placement in the birth family and the advantages such a placement would have, particularly one as experienced and loving as C would be, the risks of emotional and developmental harm to these children in the particular circumstances they are in now is in my judgment too high.

112. Having undertaken the comparative analysis of the competing options I have carefully considered the proportionality of each option and whether anything less than adoption will do. I am satisfied that only an adoption order will meet the welfare needs of these two children, which is the order I am going to make. The impact of change of placement would likely cause them harm through disruption of their current attachments and that such harm cannot be ameliorated by the accepted qualities of C's parenting, even as a member of the birth family. This decision is governed by these children's particular needs now and is no criticism of C's position in this case. I agree with the prospective adopters she has had the children's welfare at the forefront of her mind.

113. I have considered the question of whether there should be any contact other than what is proposed. C does not seek any order for contact which is consistent with my judgment that her approach remains entirely child focussed. I will hear submissions about the final agreed arrangements for indirect contact.

114. I leave this troubling case with the hope that despite the difficulties in this litigation this hearing has ensured the court has undertaken a thorough investigation of the options for these children. My hope now is that now a decision has been made, with a structured support plan in place and time for reflection real and tangible steps can be taken to re-build trust between the prospective adopters and C. In my judgment that is likely to be of great assistance and benefit to both the prospective adopters and the children in the years to come.