Neutral Citation Number: [2025] EWFC 13

Case No: ME22C50219

IN THE FAMILY COURT

Canterbury Combined Court Centre
The Law Courts
Chaucer Road
Canterbury CT1 1ZA

Date: 19/12/2024

Before :

MS JUSTICE HENKE

- -

Re: F (A Child) (Future Welfare: Post-Adoption Contact: Unconscionable Delay)

- -
- -

Chris Barnes (instructed by **Invicta Law**) for the **Applicant**
Chantelle Barker (instructed by **Stilwell & Singleton**) for the **First Respondent**
Polly Thompson (instructed by **Reeves & Co.**) for the **Second Respondent**

Hearing dates: 10-12 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 19 December 2024 by circulation to the parties or their representatives by e-mail. It has subsequently been anonymised and is formally handed down and released to the National Archives at 10:30am on 29 January 2025.

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MS JUSTICE HENKE

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

Ms Justice Henke :

Introduction

1. I have before me an application under Part 4 of the Children Act 1989 which was issued by Kent County Council on 12 July 2022. The subject of the application and the child for whom I am concerned is F (not her real initial). She was born in the summer of 2020. She was 23 months old when the application before me was issued. She is now 4 years and 4 months old. This is the second public law application in relation to F, the first having been issued when she was a day old. The final care plan I am asked to endorse is a plan for F to be adopted. Accordingly, an application for a placement order was made by the local authority on 10 April 2024. Within that application, I am asked to dispense with her parents' consent to her adoption. F's mother resists the local authority's applications. She wishes F to be returned to her care. Failing that, she would wish to be reassessed by an independent social worker to prove that she can parent F. However, if contrary to the mother's primary case, I do endorse the care plan for adoption and make a placement order, I am asked to make an order pursuant to s.26 of the Adoption and Children Act 2002 to ensure that any adoptive placement facilitates contact between F and her mother.

Background

2. F's mother is GH (not her real initials). She prefers to be known as G. Hence for the remainder of this judgment that is what I shall call her. G was born in 2001. She was 18 years old when F was born. G is now 23 years old. G has been assessed by Dr Conning, a clinical psychologist, both in the first set of proceedings and within these proceedings. Her reports are before me. They tell me that her full-scale IQ was assessed in the previous proceedings as 73 (within the borderline range). That was broken down as borderline for verbal comprehension (72), her perceptual reasoning is extremely low (69), her processing speed is average (92), and her working memory is low average (83). The assessment conducted within these proceedings again puts her in the overall borderline range with a full-scale IQ of 70 broken down as verbal comprehension borderline (74), perceptual reasoning extremely low (69), working memory low average (83) with processing speed not being obtained. Dr Conning concluded within her report dated 7 November 2022 that:

   > *"8.2.01 G's overall level of cognitive functioning does not suggest that she has a global learning disability. However, her cognitive profile is 'spikey', that is, there is not consistency between her performance in different areas of cognitive functioning. Her areas of relative cognitive weakness lie in verbal comprehension, that is, verbal abilities that require reasoning, comprehension, and conceptualization; and in Perceptual Reasoning, that is, nonverbal reasoning and perceptual organization. In contrast, her Processing Speed Index lies in the Average range while her Working Memory Index lies in the Low Average range. Individuals with statistically significant and unusual differences between their Index scores can find that these differences interfere with their cognitive functioning and learning because of the mismatch between different areas of functioning."*

3. It was Dr Conning's opinion that "*during the final hearing G would benefit from the assistance of an intermediary because of her low level of verbal comprehension.*

Assistance from an Intermediary will help ensure that she is able to understand the proceedings as they unfold. I am concerned that she may not always be a good judge of her level of understanding and that during the final proceedings there will be a large amount of information to process, and she may not have the opportunity to check her understanding with her solicitor or barrister as frequently as may be needed".

4. Since Dr Conning's recommendation, *West Northamptonshire Council v KA and others* [2024] WLR 23 and *A Local Authority v A, B, X and Y (Through their 16.4 Children's)* [2024] EWHC 906 (Fam) have been published. G's participation could be facilitated by the court and the advocates using simple language and sentence structures, by pausing to ensure she understood and by providing breaks in the proceedings and her evidence to enable her to process what had been said and to rest after periods of concentration. Accordingly, G was able to participate and did not need to have an intermediary before me as she did not need one.

5. F's father is IJ (again not his real initials). I shall call him I for the remainder of this judgment. I was born on 14 April 2021. He is not named on F's birth certificate, and he does not have parental responsibility for his daughter. At the time that the public law proceedings before me were issued he was subject to a restraining order made on 8 December 2021 preventing him from having contact with G for two years. He has been served with notice of these proceedings as he was with the previous public law proceedings. He has chosen not to engage in the previous proceedings or these proceedings. He knew of the hearing before me but chose not to attend.

6. At the time the current public law application was issued, F was already subject to a supervision order made in previous proceedings which had concluded on 20 October 2021. During the previous proceedings and since her discharge from hospital, F had been placed with her mother in mother and baby foster placements until 24 August 2021 when F and her mother moved into the community with the support of social services.

The Events which Precipitated the Second Public Law Proceedings

7. It had been considered in the previous public law proceedings that F living with her mother in the community was not without risk. By August 2021, G's ability to parent F had improved in the foster placements but she was still a young mother, F was her first child, and there were concerns about her ability to keep F safe from third parties who might pose a risk to her and F as well as her ability to meet F's needs consistently. Nevertheless, within the first proceedings, it was considered that the risks were worth taking as placement with her mother in the community provided F with an opportunity to be cared for by her mother.

8. It is against that background, on 18 June 2022, the local authority received a report from a concerned neighbour that G had resumed her contact with I. The Out of Hours Team of the Local Authority contacted G and asked her if that was true. G denied that it was. However, on 20 June 2022 a social worker made an unannounced visit to the home G and F shared. There, when shown photographic evidence, G admitted I had been at the property on 18 June 2022 and that she had resumed a sexual relationship with him. She told the social worker that she considered that I deserved a chance to

have contact with his daughter and that she was considering revoking the restraining order. The social worker advised G strongly that she should not do that, but G did not accept that advice and contacted the police the same afternoon to tell them she was considering revoking the restraining order.

9. On 20 June 2022, a report was made to the local authority that G's previous partner, MD, had come to her home and was banging on the door and windows.

10. On 22 June 2022, the local authority received an anonymous referral that G was in contact with I.

11. On 29 June 2022, Kent police carried out a welfare check. G told them that I had called her from a No Caller ID number and threatened her that his girlfriend would "*slice her up*" if she did not let him speak to F.

12. By 1 July 2022, the local authority was receiving information that G has started a new relationship with LM. Initial police checks disclosed he had recently been released from prison and posed a risk to G and F.

These Proceedings

13. The second application for public law orders was made on 12 July 2022.

14. It initially came before District Judge Batey on 9 August 2022. At that time the local authority had been unable to identify a suitable foster care placement for F. The court therefore adjourned the application for interim separation, made no new order and gave directions to further the proceedings. Those directions included a direction for an updating parenting assessment; a cogitative assessment of the mother and directions for the assessment of alternative carers, if G could not care for F.

15. The next hearing was before HHJ Davies on 26 September 2022. The supervision order made in the previous proceedings was due to expire and accordingly was extended to last for the duration of these proceedings. At the time that order was made, the IRH was listed for 21 December 2022.

16. The application next came before the court om 28 October 2022 when it was heard by Recorder Reed. At that hearing, the court made an interim care order, refused interim removal and endorsed a plan for F to be placed in a mother and baby placement with G.

17. By a subsequent consent order, the timetable for the proceedings was altered. The IRH was re-listed in February 2023. The timetable was further extended by a further consent order with the IRH to be listed on the first available date after 10 March 2023. That timetable was further extended by yet another consent order with the IRH being listed on 5 April 2023.

18. The IRH on 5 April 2023 came before District Judge Rahman. By that date, the local authority had filed and served its evidence confirming that they sought care and placement orders in relation to F. The care plan was opposed by G. A final hearing was set down with a time estimate of three days to begin on 13 November 2023.

19. On 13 October 2023, the Agency Decision-Maker considered F's case and concluded that they required further information about G's new relationship, maternal family members and the mother's parenting capacity before they could make a decision regarding the care plan for adoption. Consequently, and by consent, the case was adjourned for a final hearing before HHJ Scarrett to begin on 13 May 2024.

20. On 15 May 2024, HHJ Scarrett gave an extempore judgment in which he refused to endorse the local authority's care plan for adoption and found that it was not in F's best interests to be placed with her mother in the community. Accordingly, the court adjourned the case and invited the local authority to change its care plan to one of long term foster care with ongoing contact between F and her mother and indicated that on the next occasion it would make a care order on that basis. The court expressed the wish that F could remain with her current foster carers, Mr and Mrs K (not their real initial). The final hearing took place on 3 June 2024 when HHJ Scarrett made a final care order in relation to F, refused to make a placement order, and adjourned the proceedings to enable the local authority to file an amended care plan by 17 June 2024 which was to be considered at a hearing on 9 July 2024. The local authority indicated that they intended to apply for permission to appeal. That application was adjourned to 11 October 2024.

21. In the meantime, the local authority had begun to make inquiries of F's present foster carers via their 'new' fostering agency. In summary, the Team Manager wished to know whether, despite what had been said by Mrs K in the court proceedings, whether they "*are putting themselves forward to care for F long term and what this may look like*". The response was unequivocal: "*Mr and Mrs K have been very clear that the maximum amount of time they would keep F for is 5 years […] They cannot commit to care for her until she is 18*".

22. The above information was provided to HHJ Scarrett at the hearing on 9 July 2024. The judge gave an indication of further amendments required to be made to the care plan, but recited on the face of the order (which mistakenly refers to a "part heard final hearing on 3 June 2024) "*to hear that the current foster carer has indicated that she can only keep F in her care for about 5 years, stating that this was not the impression she gave in evidence, the Court stating its decision might have been different in this extremely finely balanced case had it been aware of this. The Court indicated that a postscript will be added to the Judgment in relation to this issue, noting that the Local Authority has lodged an application to appeal the decision of the Court*".

23. The Judge e-mailed the local authority solicitor on 10 July 2024 and requested that the following observation be drawn to the attention of the Court of Appeal: *"I would want the C of A to know – following yesterday's hearing when I heard for the first time (as did the Guardian) – that the foster carer has decided that she can in fact only care for the child for a maximum of 5 years, that my decision might have been different in this "extremely finely balanced" case (as described by the Guardian). In my judgment it is important for the C of A to know of this*".

24. The local authority applied for permission to appeal the orders of HHJ Scarrett. Permission to appeal was granted on 25 July 2024 by Peter Jackson LJ who indicated that:

    "There is a compelling reason for an appeal to be heard. Having dismissed the application for a placement order on 3 June, the judge received further information on 9 July that led him to cast doubt on that decision. Whatever the substantive merits of the appeal, and whatever justification there may have been for the judge's doubt, the status of the decision settling [M's] long-term future is unsatisfactory and should be examined on appeal as a matter of urgency. A hearing will also enable the grounds of appeal to be considered on their merits if that is necessary."

25. The appeal was heard on 9 August 2024 and judgment was delivered on 29 August 2024. The Court of Appeal allowed the appeal and remitted the application for a public law order and for a placement order for hearing in the Family Court. Pending that re-hearing, F has remained in the interim care of the local authority.

26. The necessary directions were given by HHJ Sullivan on 19 September 2024 when the case was timetabled towards a final hearing before me on 10-12 December 2024.

The Hearing Before Me

27. At the hearing before me the local authority was represented by Mr Chris Barnes, G was represented by Ms Barker and the child, through her Guardian was represented by Mrs Thompson. I am grateful to all counsel for their careful and succinct presentation which enabled all the issues to be ventilated and properly explored in evidence in a proportionate manner and at G's pace.

28. In order to determine the applications before me I have had the benefit of an updated core bundle, an updated supplemental bundle and a disclosure bundle, all of which I have read. I have also had the benefit of access to the full bundle and have been taken to specific pages within it. In addition, I have had the benefit of oral evidence from the following witnesses.

<u>Gerri Wetherall</u>

29. Ms Wetherall is an Independent Social Worker. She had provided a PAMs assessment of G in the previous proceedings. Within the previous proceedings, she had supported F moving into the community with her mother but had stated that IF G relapsed F would not be safe. Unfortunately, it was Ms Weatherall's view that G had relapsed.

30. Within this, the second set of proceedings, Ms Wetherall conducted an interim parenting assessment of G dated 26 October 2022 and a full CUBAS assessment of G's parenting which is dated 15 December 2022. I accept Ms Wetherall's evidence that each of the assessments she conducted took into account G's cognitive profile. The process was adapted to meet G's needs. I accept Ms Wetherall's evidence that she has read the papers before me and that nothing within the papers causes her to alter the opinion she gave in her last report, namely that:

"*I have assessed G independently of MD and found G's knowledge in principle is not the obstacle to safer care. Significant other obstacles remain however, precluding F's longer-term stability and emotional protection in her mother's care beyond the protective environment of the current foster placement*."

31. It was Ms Weatherall's opinion that G can learn how to parent and that she can put that learning into practice but she cannot sustain that level of parenting. G is unable to provide and maintain good enough parenting for F. Despite all the intervention throughout F's life and all G has learned from the mother and baby foster placements, the social workers and the assessments, there remain issues about budgeting, hygiene and keeping F safe. G continues to associate with people who pose a risk of harm to herself and F. G has insight and understands the concerns, but she cannot consistently put into practice what she knows F needs. The same problems which were evidence over 4 years ago are still there. G can make changes and wants to make changes, but she simply cannot sustain those changes and thus cannot consistently keep F safe or meet F's needs with the reliability and consistency that F needs. G's own needs for love and affectionate is so great that she ignores her own advice to herself and associates with those who pose a risk to her and F.

32. Ms Weatherall did not consider that any further assessment of G and her ability to parent F was necessary. There were no gaps in the evidential landscape. G's inability to parent F consistently is not as a result of lack of local authority support. G has an innate need for a relationship whether those to whom she is drawn are good for her or not.

33. Ms Weatherall gave her evidence professionally and with much sympathy for G. As she told me "*We all want her to do better*". That was an expression of the goodwill of all the professionals in this case who wanted to do everything they could to enable G to parent F but have reluctantly had to conclude that G cannot parent F consistently.

<u>Team Manager, X</u>

34. X is the Team Manager for Y , the social worker who was allocated to F in September 2023. Ms Y had provided an updating parenting assessment dated 25 March 2024 and the local authority's statement of evidence dated 9 April 2024. Ms Y was unable to give evidence before me by reason of ill health. A hearsay notice had been served in relation to her evidence and had been accepted by all parties. Ms Butler gave evidence in Ms Y's stead. Her evidence was brief and professional. She told me the local authority had not prejudged the outcome of the assessments.

<u>Social worker, Y</u>

35. Ms Y did not give evidence before me but I read her parenting assessment and statement as well as the transcript of the evidence she gave before HHJ Scarrett.

<u>Social Work Assistant, Z</u>

36. Ms Z is the social work assistant who was allocated to this case and who has supported G since 12 February 2024. She had provided two statements to the court and gave oral evidence which updated the court. Ms Z's role had been to help G

make better choices and provide support. Ms Z had worked with G in the knowledge that G had learning difficulties, but she had not seen G's cognitive assessments. Ms Z considered that she had taken G's cognitive difficulties into account when working with G. She told me that she had worked in a manner which ensured G understood what Ms Z was saying. I accept Ms Z's evidence. She told me that for about the last two months G had a partner, LM, and recounted a conversation where LM and G had debated whether they had begun seeing each other in September or October 2024. Ms Z was a dedicated professional who had tried to support and assist G lean to be a better parent. She told me that although there were many occasions when G could get up and when G could keep her home clean and tidy etc, there were other occasions when the standards slipped. Ms Z was an obviously honest and fair witness. I accept her evidence.

Family Finding Social Worker, W

37. Ms W is a family Finding Social Worker. She had prepared a statement for the court and gave oral evidence. She had worked in the team for seven years and obviously was experienced in her field. She had conducted a "dry-run" in relation to F against the local Link Maker list of prospective adopters. Of the available adopters 5 were a match, all of which were open to direct contact, staying in touch contact. F's profile had been circulated anonymously and three potential adoptive families had expressed an interest. She explained to the court that Barnardos would provide two years post-adoption support and that that could be extended. When asked by Ms Barker on behalf of G, what would happen if adopters were found for F who would not support contact with her natural mother, Ms W stated that the service would look for other adopters. She could see no reason why the Guidelines which required F to be matched with a couple, the match to be approved by the panel and ratified by the ADM within 3 months of the placement order. Ms W was sincere when giving her evidence which I accept.

Mrs K

38. Mrs K and her husband are foster carers. F and G were placed with them as a mother and baby placement on 30 March 2023. On 20 May 2024, after HHJ Scarrett's decision, G moved out of the K's home, but F stayed with them. F remains with them to date. F is flourishing in their care. Sadly, they cannot provide F with a forever family and F must move from their home at some point.

39. As Mrs K gave her evidence, it became clear to me that she was fond of both G and F. Sometimes she spoke directly to G from the witness box as a parent might speak to their own child. I find that Mrs K had provided consistent guidance and support to G throughout the placement. However, despite her very best efforts, G could not parent F consistently. There were positives in G's parenting but there were times when she would not get up and F's needs were not met. There were persistent issues about hygiene and keeping on top of household tasks. G did not provide F with a balanced diet and F suffered from constipation as a result. Despite persistent warnings, G left dangerous items within reach of F. As far as Mrs K was concerned G had felt comfortable in her home and had never felt inhibited to parent F. Mrs K told me that in February 2024 F had told her that she and G were going to meet B. F told Mrs K that she was not allowed to tell her that. Later, F told Mrs K in front of G that she had

indeed met A and he had given her a toy. G told F not to lie. It transpired that F was not lying and that G was. G knew that she was not allowed to take F to meet anyone. I find that Mrs K is telling the truth about what F said. F was telling the truth. G had told her to lie because she knew she should not be meeting anyone with F. G has admitted to Mrs K she knew that what she had done was wrong. I accept G knows that she should not have got F to lie to cover for her.

Ms M

40. Ms M has provided a mother and baby placement for F and G twice. The first occasion was from May to August 2021. The second occasion was from 28 October 2022 until 30 March 2023. Ms M was a thoughtful and straight forward witness. She told me in oral evidence as she did in her written statement that in many ways G was a confident parent but that she failed to parent F consistently. Ms M noticed that G was much more receptive to advice during the first placement. Ms told me that on the second occasion, "*her care of F was more confident, but she still could not do the right thing*". Ms M told me that G can parent F, but "*when she does it doesn't last for long*". I accept Ms M's evidence.

Current Social Worker, N

41. Ms N became F's social worker on 28 June 2024. She has provided written and oral evidence to the court. At the conclusion of the evidence in this case, Ms N was given the opportunity by me to file and serve an updated care plan which reflected the evidence she gave. That was received on 17 December 2024. Ms N gave evidence in a matter-of-fact manner. When giving evidence about G's future contact with F if the plan were long term foster care, she struggled to remember the issue was what was in the best interests of F and told me that G "*would accept*" a frequency of contact. I find that this was an example of Ms N struggling to separate her desire for G to do well and her sympathy for G from the need to act in F's best interests. Having watched G in court in general and when giving evidence, I can appreciate the difficulty. G is charming and engaging. She is vulnerable and professionals, such as Ms N, want to help her.

The Mother, G

42. I have read all of G's statements. In addition, I permitted G to place a letter before me in which she set out that she is not a bad mother and that she just wants a chance. In her oral evidence before me, G was engaging and personable. She is obviously vulnerable. As she gave her evidence, she provoked a desire to nurture and care for her. She told me that she was motivated to care for F. She feels positive. She is prescribed Sertraline for her mental health. The dosage has recently been increased. In cross-examination, G accepted that F needed a decision to be made about her future now. She acknowledged that the proceedings had gone on too long and F had had too many placements.

43. G told me that throughout the previous proceedings and these proceedings, she has grown up, she has learned a lot. G accepted that F needed parents who could keep her safe and provide her with consistency and predictability. G accepted that over the years that she had a lot of advice and support. She knew what to do to parent F and

can do it most of the time. However, she frankly accepted that she could not do it all of the time. G accepted that she could put a show on when in the company of those assessing her, but she also asserted that she could do it when alone with F. There were, however, times when she accepts the care she gave F was not good enough. She accepted that she struggled with getting up in the mornings. G accepted that she found caring for F in the night difficult sometimes. She knew to keep dangerous objects away from F but accepted that she did not always do so when in a mother and baby placement. G accepted that she has struggled and struggles to parent F consistently. G also accepted that she had failed to keep F safe. The most obvious example of that was her rekindling of her relationship with I in 2022 when she knew he was a risk to F and herself - *"I was weak and lonely*". As she told me when she rekindled that relationship, she "*didn't think about F*". G accepted that she initially lied about getting back together with I. She had not told the social worker despite F being subject of a supervision order because she "*was very stupid and scared what people would think of me*". Whilst G did not accept that she had had a relationship with any other man since I, it was the term relationship with which she disagreed. G told me about a man called O who had helped her after she had left the mother and baby foster placement. She denied dating him but told me that when he "*flipped out*", she realised he had serious mental health issues. G accepted that since I, she had seen MD and LM. From her evidence, it was clear that LM was part of her life leading up to the final hearing before me. G said she had been having sexual intercourse with LM since October. She described LM as a "*former crackhead*" and told me he had convictions for violence. She had had information about him under Claire's law. In evidence, she told me that she did not think he was a risk and explained how his ex-girlfriend had, she said, made allegations up against him which had resulted in the police arresting him for violence. However, after all the evidence had been completed, G through her counsel told the court that she had argued with LM over the telephone whilst at court. She had asked him to move out of her home. It was reported to me that he had threatened to harm her. As I watched G at the back of court, she appeared genuinely frightened that he would attend court and harm her.

<u>The Guardian</u>

44. I have the benefit of her report for the May 2024 hearing as well as her November 2024 report for this hearing. In her oral evidence she told me that G had been fully assessed and that there was no further evidence that she considered necessary to enable the court to make a decision in relation to F. Further, she did not consider it in F's best interests to adjourn the proceedings to see if G could care for her. The Guardian was not confident that G could keep F safe. Sadly, in her opinion, G cannot care for F full-time and nothing she had read or heard within this hearing had changed her mind about that. The Guardian advised the court that the search for an adoptive placement for F should be time limited. That limit should be six months. F cannot stay in her current placement and her next move should be her last move. The Guardian would expect F to be in her next placement by her fifth birthday. She would like F to have made the transition to her next and forever placement before the next school year. She told the court that the best option for F is adoption. Preferably, there should be open adoption with direct contact with G once a year. Contact would be to meet F's identity needs. The Guardian was confident that a placement could be found which would facilitate contact post adoption. However, the strong advice from the Guardian was that if an open adoptive placement could not be found, then the priority

for G must be permanence and a forever home. Permanence is best achieved through adoption. If, however, F is placed in long-term foster care then contact with her mother should be no more than monthly and should, if possible, be organised within the school holidays to enable contact to be more meaningful for F and G. Contact would need to be supervised, eventually by the foster carer themselves. In relation to another attempt to place F with her mother, the Guardian told me that potentially it would be disastrous and could cause F significant harm if it failed.

My Analysis and my Decisions

The Threshold Conditions

45. It is accepted that the threshold criteria within s.31(2) Children Act 1989 is crossed in this case. The agreed threshold is as follows:

> "A. *The Mother accepts that the parents' relationship is categorised domestic abuse and violence which places F at risk of suffering emotional and physical harm as a result of their relationship. In particular:*
>
> > *i. The Mother accepts that between 25 December 2019 and 30 January 2020 there were several domestic incidents. The first being Father grabbing Mother by the throat and pushing her out the door. The second incident Mother was using the toilet when Father pushed her head backwards (29.12.2020), The third Father threatened that he would kick Mother's door in and broke her phone.*
> >
> > *ii. The Mother accepts that on 29 March 2020, Father threatened Mother with a knife, holding it to her leg and telling her he would kill her and unborn F.*
> >
> > *iii. The Mother accepts that on 5 July 2020 Mother and Father got into an argument and Father threatened to smash her up and smashed a mirror in their flat.*
> >
> > *iv. The Mother accepts that she continued to have contact with the Father despite advice from professionals not to do so. As a result the child has been at risk of physical and emotional harm in utero and would continue to suffer significant emotional distress and risk of physical harm in the care of the parents due to exposure to conflict or its aftermath.*
>
> *B. The Mother accepts that the Father regularly smokes cannabis, and she is aware that he has used speed on one occasion.*
>
> *C. On occasions, the Mother has had difficulties in managing her finances, prioritising a new mobile phone which resulted in her having to borrow money for food, electricity, formula and nappies, which would place F at risk of neglect if it were to continue.*

D. Mother has ignored all professional advice and support and has contacted Father, resuming contact and a sexual relationship with him:

a) In June 2022 Mother attempted to contact Father directly and indirectly [A(i)4, C7, C36, J2]

b) On or around 18 June 2022 Mother allowed Father into her home, when F was in her care; they had sexual intercourse. Mother says that her friend took the child for a walk. [A(i)4, C5, C7]

c) On 20 June 2022 Mother, when speaking to the social worker, initially denied that Father had been at the family home but then accepted this when shown photographs that were taken by neighbours [A(i)4, C5, C17]

d) On 20 June 2022 Mother informed the social worker and a Police officer that she wanted the restraining order against Father discharged but later changed her mind. [A(i)4, C5, C7, C38]

As a result, the child has been suffered, and is likely to suffer, significant emotional distress and physical harm in the care of her Mother due to exposure to conflict between Mother and IJ.

E. Mother prioritises her own needs above that of the child and continues to pursue domestically abusive relationships that place the child at risk of significant harm:

a) On or around 31 May 2022 there was an altercation between the Mother and her then partner MD; MD threatened the Mother. The child was in the home in bed. [A(i)5, C7, C36, J49, J56]

b) On or around 13 June 2022 the Mother reported to the Police that MD was following her and taking photographs of her without her consent [A(i)5, C7, C36]

c) On or around 20 June 2022 MD attended the family home where the child was 5 B125 present and was banging on the windows and doors aggressively [A(i)5, C7, C37] A

as a result, the child has suffered, and is likely to suffer, significant emotional distress and physical harm in the care of her Mother due to exposure to conflict and unsafe persons who pose a risk."

46. I accept that the factual matters agreed in the preceding paragraph are sufficient to satisfy the threshold criteria. Accordingly, I find on the basis of the above admissions that the threshold criteria in s.31 CA 1989 is crossed and that F was suffering and was likely to continue to suffer significant harm at the relevant date. However, I remind myself that just because the threshold criteria is met and the gateway to public law orders has been opened that does not mean that I must go on and make public law

orders in this case. My task is to make a holistic welfare evaluation remembering at all times that F's best interests throughout her life are my paramount consideration.

The Law in Relation to Future Welfare

47. The law in this case is not in dispute.

48. Where the plan, as here, is adoption, I must apply s.1 ACA 2002. Section 1 states:

"***Considerations applying to the exercise of powers***

(1) Subsections (2) to (4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court or adoption agency must have regard to the following matters (among others)—

(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 his 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 (c. 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed,] *and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—*

(i) the likelihood of any such relationship continuing and the value to the child of its 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.

(5) In placing a child for adoption, an adoption agency in Wales must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) In coming to a decision relating to the adoption of a child, a court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) 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 51A (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.

(8) For the purposes of this section—

(a) references to relationships are not confined to legal relationships,

(b) references to a relative, in relation to a child, include the child's mother and father.

(9) In this section "adoption agency in Wales" means an adoption agency that is—

(a) a local authority in Wales, or

(b) a registered adoption society whose principal office is in Wales.]

49. In *W (A Child)* [2016] EWCA Civ 793, McFarlane LJ (as he then was) stated:

"*68. Since the phrase "nothing else will do" was first coined in the context of public law orders for the protection of children by the Supreme Court in Re B, judges in both the High Court and Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child as described by Baroness Hale in paragraph 215 of her judgment: "We all agree that an order compulsorily severing the ties between a child and her parents can only be made if "justified by an overriding requirement pertaining to*

the child's best interests". In other words, the test is one of necessity. Nothing else will do." The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase "nothing else will do" is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s 1). The phrase "nothing else will do" is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons (see Re B-S [2013] EWCA Civ 1146, Re R [2014] EWCA Civ 715 and other cases).

69. Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase "nothing else will do" can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that outcome that falls to be evaluated against the yardstick of necessity, proportionality and "nothing else will do". […]

71. The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged. In Re H (A Child) [2015] EWCA Civ 1284 this court clearly stated that there is no presumption in favour of parents or the natural family in public law adoption cases at paragraphs 89 to 94 of the judgment of McFarlane LJ […]"

50. Section 21 of the Adoption and Children Act 2002 states:

"*(1) A placement order is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority.*

(2) The court may not make a placement order in respect of a child unless—

(a)the child is subject to a care order,

(b)the court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met, or

(c)the child has no parent or guardian.

(3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied—

> *(a)that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or*
>
> *(b)that the parent's or guardian's consent should be dispensed with. This subsection is subject to section 52 (parental etc. consent).*
>
> *(4)A placement order continues in force until—*
>
> *(a)it is revoked under section 24,*
>
> *(b)an adoption order is made in respect of the child, or*
>
> *(c)the child marries or attains the age of 18 years.*"

51. Section 52 states as follows:

> "*(1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that—*
>
> *(a)the parent or guardian cannot be found or lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent, or*
>
> *(b)the welfare of the child requires the consent to be dispensed with.*"

52. In relation to the dispensing with consent, *In P (A Child)* [2008] EWCA Civ 5351, Wall LJ stated:

> "*In our judgment, the answer to this question is self-evident, and is to be found in section 1 of the 2002 Act, which we have set out in full at paragraph 37 of this judgment. Section 1(1) plainly applies when the court is deciding whether or not to dispense with parental consent to a placement order. In these circumstances, section 1(2) of the 2002 Act requires the court (the word is the mandatory "must") in these circumstances to treat "the child's welfare throughout his life" as its "paramount consideration". "Paramount consideration" as Lord MacDermott classically held in J v C [1970] AC 668 at 711 means a consideration which "rules upon and determines the course to be followed" […]*
>
> *In our judgment, similar considerations apply to applications under section 52(1)(b) of the 2002 Act. The guidance is, we think, simple enough. The judge must, of course, be aware of the importance to the child of the decision being taken. There is, perhaps, no more important or far-reaching decision for a child than to be adopted by strangers. However, the word "requires" in section 52(1)(b) is a perfectly ordinary English word. Judges approaching the question of dispensation under the section must, it seems to us, ask themselves the question to which section 52(1)(b) of the 2002 gives rise, and answer it by reference to section 1 of the same Act, and in particular by a careful*

consideration of all the matters identified in section 1(4).” “In summary, therefore, the best guidance which in our judgment this court can give is to advise judges to apply the statutory language with care to the facts of the particular case. The message is, no doubt, prosaic, but the best guidance, we think, is as simple and as straightforward as that.”

53. Section 26(2) of the Adoption and Children Act 2002 states that:

While an adoption agency is so authorised or a child is placed for adoption—

(a)no application may be made for

(i)a child arrangements order under section 8 of the 1989 Act containing contact provision, or

(ii)an order under section 34 of that Act, but

(b)the court may make an order under this section requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the person named in the order and the child otherwise to have contact with each other.

54. In *R & C (Adoption or Fostering)* [2024] EWCA Civ 1302 the Court of Appeal considered the provisions of ss.26 and 27 of the Adoption and Children Act 2002. It noted:

“*In Re D-S (A Child: Adoption or Fostering) [2024] EWCA Civ 948, this Court allowed an appeal against a judge's refusal to make a placement order and made the placement order itself. In his judgment with which the other members of the Court agreed, Peter Jackson LJ concluded that the child's relationships with her birth family were "not of such importance that they can outweigh the predominant need for her to have a family of her own". He described this as a factor which spoke "in favour of contact taking place, if it can be arranged, after C is placed for adoption and later adopted." He recorded that the local authority could be "expected to honour its care plan for current contact, and for a 3-month search for adopters who will accommodate meetings with family members." But he concluded that "overall, it would not be better for us to make a contact order, in fact it might be detrimental to the greater priority of finding an adoptive family for C." […]*

66. In these observations, the judge overlooked the fact that it was his duty to "set the template for contact going forward". This case seems to fall four square within the words used by Wall LJ in Re P at paragraph 151. As in that case, there is a "universal recognition" that the relationship between the siblings needs to be preserved. It is "on this basis that the local authority / adoption agency is seeking the placement of the children …. [T]his means that the question of contact between the two children is not a matter for agreement between the local authority / adoption agency and the adopters: it is a matter which, ultimately, is for the court". In those circumstances, "it is the court which has the responsibility to make orders for contact if they are required in the interests of the two children".

> *67. In reaching his conclusion, the judge quoted passages from my judgment in Re T and R. It does not follow, however, that in every case where the court concludes that it is strongly in the interests of the children to continue to have sibling contact the option of adoption should be ruled out. Each case turns on its own facts. In Re T and R, the crucial importance of contact to the psychological wellbeing of the subject children and their older siblings, the importance of maintaining the children's sense of their cultural and community heritage, which could only be achieved through contact, coupled with the community's antipathy to adoption which made contact unfeasible, led to a conclusion that adoption was not in the interests of the children's welfare. In other cases, the evidence will clearly demonstrate not only that ongoing sibling contact is in the children's interests but also that it is likely to be achievable in an adoptive placement. In my view, this is just such a case.*
>
> *68. Under the current law, as the President said in Re B, "it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement to which the adopters do not agree". But that does not obviate the court's responsibility to set the template for contact at the placement order stage. In this case, the local authority was committed to search only for adopters willing to accommodate sibling contact and invited the court to make an order for contact under s.26, both to meet the children's short-term needs and to set the template. There was of course a possibility that the search for such adopters might be unsuccessful or that adopters might subsequently refuse to agree to contact. But in the circumstances of this case, that possibility was not a sufficient reason to refuse to make the placement order.*"

<u>My Welfare Analysis and Decision-Making</u>

55. Although my analysis is, of necessity, written in linear form, it is intended to be read as a whole.

56. F's future welfare is my paramount consideration. She is nearly 4 ½ years old. She is a delightful, funny, intelligent child. G loves F dearly. G's eyes light up when she speaks about F. G wants nothing more than to care for F and for them to be able to live as a family.

57. I have before me a formal application on behalf of G for an adjournment of these proceedings so that G's ability to care for F may be further assessed by another Independent Social Worker. Having heard all the evidence, I dismiss that application. I have before me Ms Weatherall's assessments, the parenting assessments of the social workers, the evidence of two experienced mother and baby foster carers and the Guardian's own analysis. There is no gap in the evidential landscape. There is no necessity for any further assessment.

58. Further, as the case developed, it became apparent that the application on the ground translated into a plea by G to be given another chance to be able to show in the community that she can parent F. In essence I am asked to place F with her in the community for a period to see if G could do it.

59. I place in the balance that F's delightful personality, her intelligence and her resilience about which I have heard is due in part to the care her mother has given her. I factor in that F has lived in the community with her mother from the end of August 2021 until June 2022 and that during that period the perception of the professionals was that G was providing good enough care. However, that period ended when G exposed F to danger by bringing her daughter into contact with I. I therefore place in the balance that G can parent F but not consistently. I factor in that enabling F to be placed with her mother on any legal basis would enable F and G to maintain their relationship and to build upon it. I do not underestimate the benefit to F of having a continuing relationship with her mother. From birth until shortly after HHJ Scarrett's decision, F has been with her mother and since HHJ Scarrett's decisions she has maintained contact with her mother which I accept she enjoys. I accept and place in the balance in my decision-making that any plan for F that does not return her to her mother's care will disrupt her relationship with her mother and will cause her emotional and psychological distress and potentially harm. I acknowledge that G is a significant adult in F's life and that G is important to her.

60. However, I also factor in that F has been the subject of social work intervention and observation since birth. She was placed in the community with her mother from late August 2021 until the inception of these current public law proceedings. The previous period of placement failed. There is overwhelming evidence before me, which I accept, that any further attempt at placing F with her mother in the community is similarly likely to fail. G can learn how to parent. G knows what to do and can do it. However, sadly I have had to conclude on the basis of weighty evidence that the protracted history of this case has shown that G cannot sustain the changes needed and she cannot provide the reliable and consistent care her daughter needs. One of the great sadnesses of this case is that G herself when she gave evidence had insight and could accept her own failings as a mother but despite that insight cannot sustain the necessary changes to enable her to keep her daughter safe. I accept the Guardian's evidence that if a second attempt by G to care for F failed, it would be "*disastrous*" for F and risk causing F "*significant*" harm.

61. F has experienced eight separate placements in her short life. F needs stability and permanence. She needs to be able to put down roots and to be nurtured to enable her to reach her potential. I accept the Guardian's evidence that the next move must be F's last move.

62. F has now been placed with Mrs K and her husband for a considerable period of time. F cannot stay there long-term, and I accept the Guardian's evidence that F needs to move and be settled before the beginning of the next school year, if possible.

63. I consider that F could be placed in long term-foster care. Long-term foster care is an option for F. The detriment for her is that children in long-term care often experience numerous placements. F has already experienced too many placements. Foster care is unlikely to enable F to put down roots. However, the advantage for F would be that contact with her mother could be maintained, probably monthly, and she would grow up maintaining a relationship with her mother. I have already acknowledged the importance of that relationship for F and for her emotional and psychological well-being.

64. I accept the evidence of the Family Finder that if I consider that adoption is in F's lifelong best interests, then an adoptive placement is likely to be found for her. There is no anticipated barrier to her being matched and that match being approved within the timescales provided by the Government's guidelines. Adoption is not without its disadvantages. I accept and factor in that adoptive placements do fail. Adoption breaks the legal relationship between parent and child. The adoptive placement proposed in this case is an open placement that will facilitate contact between F and her mother at least once a year and potentially twice a year. Such contact will be for F's identity needs. It is anticipated a match for F will be found which will facilitate that contact. I accept the evidence that the culture around adoption and contact is changing. However, I accept and also factor into my decision-making the Guardian and the social worker's evidence that F's primary need is permanence and stability. Given her placement history to date I am told and accept that permanence must be the priority. Putting it simply in this case for F, her need for permanence outweighs her need for contact. Permanency must be the priority for F. I therefore factor into my decision-making that if I endorse a plan for adoption, F's relationship with her mother in reality will be at least severely disrupted and may be severed. That comes with a risk of emotional and psychological harm which I do underestimate. I however also place in the balance that F needs a permanent family where she can find stability and security and where she will be physically, emotionally and psychologically safe. I accept that F has a window of opportunity to move from Mrs K's and that this move must be her last if F is not to suffer yet more significant harm. I accept the evidence of the professionals that an adoptive placement gives F the best chance of the permanence which F desperately needs. The preference is a placement which will facilitate direct contact with G for F's identity needs but ultimately her need for permanence is the priority.

65. Accordingly, I stand back and look at the welfare options available for F. Having balanced all the factors in favour of and against the welfare options that are available for F, I have concluded that F's best interests throughout her life will be met by an adoptive placement outside her family. F's history of placements to date and the failure of her placement with her mother in the community mean that F has an overwhelming need for permanence and that is best achieved for F by adoption. F's best interests are my paramount consideration. On the facts f this case adoption is undoubtedly in her best interests.

66. The amended care plan filed by the local authority provides a commitment to searching for adopters who will facilitate limited annual direct contact between F and G. That contact will be limited. It is for F's identity needs. I have considered whether it is necessary to ask the local authority to re-draft their care plan to make a time limited plan search for an adoptive placement failing which the contingency plan would be to search for a long term foster placement. However, I find that the advantages of adoption for F so far outweigh the benefits of long term foster care that if an adoptive placement can be found for F then it should be secured for her. The evidence I have heard is that the matching process should be completed in this case within the Government Guidelines. The risk of a protracted search for adoptive placement in this case is minimal and in any event the care plan as now drafted provides a mechanism for review to mitigate any risk of drift. In those circumstances, I endorse that care plan as now placed before the court and without further

amendment as being in F's lifelong best interests. It follows that I proceed to make a care order in relation to F.

67. I find that F's welfare requires that I dispense with her mother's consent to adoption. I have considered what to do with I's consent to adoption. He does not have parental responsibility for his daughter but in the circumstances of the case, I consider it prudent to record that in so far as it is necessary for me to do so his consent to F's adoption is dispensed with as that is what F's welfare requires. Having done so, I make the placement order sought.

68. I have considered whether I should make a s.26 ACA contact order to set the template for contact between F and her mother. G asks me to say the frequency should be monthly and if that is not in F's best interests, then she seeks as much contact as I will order. I understand G's sentiments but what she seeks is not in F's best interests. It would be disruptive and would in my judgment undermine F's ability to settle in her forever home.

69. I have accepted the local authority's care plan and their commitment to match F with an adoptive placement which will facilitate direct contact for identity purposes. In the circumstances, I have reminded myself of s.1(6) ACA 2002. In this case, I do not consider a s.26 order is necessary.

70. I know G will be heartbroken by the decisions that I have made but my task has been to make decisions with F's lifelong best interests as my paramount consideration.

71. I cannot close this judgment without considering the protracted nature of the proceedings before me. The delay in this case is unconscionable. The second public law application was issued as long ago as July 2022. It has taken nearly 30 months to reach a conclusion. Delay is contrary to the interests of all children, and it has been contrary to F's welfare. She has been the subject of social care intervention all her life and within these current proceedings alone has had to wait for more than half her life awaiting a decision about her future. During that time, she has had eight separate placements. F deserved better than that.

72. Standing back and looking at the chronology, the delay in this case is not attributable to any one factor. The reasons are multiple but three stand out.

73. Firstly, the use of consent orders. The first IRH was listed in December 2022. It should never have been vacated by consent. The two other consent orders that followed built on unconscionable delay in this case. I have reminded myself of PD12A and paragraph 6.1-6.6 thereof. In particular, I consider that paragraph 6.3 is apposite. It states:

> "*The court may extend the period within which proceedings are intended to be resolved on its own initiative or on application. Applications for an extension should, wherever possible, only be made so that they are considered at any hearing for which a date has been fixed or for which a date is about to be fixed. Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if*

possible, the other parties of the nature of the application and the reason for it. The party should then make the application orally at the hearing."

74. The effect of the three consent orders in this case was to extend the statutory time limit of 26 weeks without any specific consideration of the impact on the statutory time limit or its purpose. The clear expectation in paragraph 6.3 and the sentence I have underlined above in particular is that applications for extension of the time limit should be considered at a hearing. A hearing would have provided an opportunity for robust case management.

75. Secondly, the professionals in this case have on occasion and totally unintentionally lost sight of F being the subject of the proceedings and her best interests being the paramount consideration. G is engaging and vulnerable. The most natural reaction to her and her vulnerability is to want to nurture her and to enable her to effectively parent F. G and F have thus had a number of mother and baby placements as well as parenting assessments within the previous proceedings a well as these proceedings. Each has said the same thing, G can parent F but she cannot do it consistently and keep F safe. Looking at the chronology in this case, from an evidential perspective the case has not been advanced since the ISW's assessment concluded on 15 December 2022. What happened thereafter, in my judgment, is that under the label of further assessment, G was given yet further chances to parent F when there was already strong evidence that G could parent F but, despite extensive social work intervention and support in a number of forms, could not sustain change and was unlikely to be able to do so in the future.

76. Thirdly, I cannot ignore the time lapse between the IRH in April 2023 and this case being listed for final hearing in November 2023. The reason for the delay appears to be pressure on the Family Court system and the lack of court hearing time. That final hearing listed in November 2023 was then vacated after the filing of a consent order because the Agency Decision-Maker required further evidence. That resulted in the case being listed in May 2024 before HHJ Scarrett. The consent order makes no mention of the extension of the statutory time limit, and it appears that no formal application for such an extension was every sought. The statutory time limit was simply extended by default. That is not good enough. It is not in accordance with PD12A chapter 6. It is a practice that is to be deprecated.