Neutral Citation Number: [2023] EWFC 167 (B)

Case No: ZW22P00367

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 6 October 2023

Before :

His Honour Judge Willans

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Between :

(1) AB **Applicants**
(2) BA

- and –

(1) CD **Respondents**
(2) DC

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Niamh Daly (instructed by **Piper May Solicitors**) for the **Applicant's**
(Mr Mann (solicitor) at handing down)
Neeta Amin (instructed by **S Satha & Co Solicitors**) for the **Respondent's**
(Ms Hassan (counsel) at handing down)

Hearing dates: 29-31 August 2023

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JUDGMENT

His Honour Judge Willans :

1. At the heart of this decision is an 10-year-old girl, "P" ("the Child"). I should not lose sight of the fact that it is her, not the adults, welfare that is paramount in the decisions I have to make.

2. The parties who appear before me are two married couples. The applicants are the Child's biological parents. The respondents are caring for her and have been doing so now for the majority of her life. The first respondent is the Child's special guardian pursuant to an order dated 26 April 2016. The first respondent is not related to the applicants but was a close friend of the first applicant when the guardianship order was made. The picture is complicated by the fact that the second applicant and second respondent are brothers making the second respondent the uncle of the Child. The applicants have two other children who are full siblings to the Child. The applicants care for these two children of whom one is older and one is younger than the Child. The respondents have another child in their care arising out of a surrogacy relationship.

3. This somewhat complicated dynamic functioned without meaningful difficulty for a period following the making of the special guardianship order. Exactly when it began to come under strain is a matter of debate which I will return to below. However, it is clear it completely fractured by the summer of 2021 since which date there has been only the most limited contact between the applicant's and the Child pursuant to order of the court.

4. Within this judgment I examine the likely causes of the fracture and I evaluate the impact this may have on the welfare of the Child. In reaching my conclusions I am assisted by the papers contained within the final hearing bundle (supplemented by additional witness statements filed following the first day of the hearing); the live evidence of each party and of the CAFCASS reporting officer (Ms Bond) and a local authority social worker (….) who has been working the case. I have also been assisted by the representations made by counsel for the parties. This judgment is by necessity selective as to the documents and evidence cited but I have borne all the evidence in mind when reaching my conclusions. The final hearing proceeded as a 3-day attended hearing but due to some loss of time on both days 1 and 3 it was not possible to provide an ex-tempore judgment at the end of the hearing. This application has had continuity before me throughout the proceedings.

The parties' positions

5. The applicants commenced these proceedings seeking the discharge of the special guardianship order and for the Child to return to their care. However this application was later withdrawn with the applicants instead seeking a spending time with order. This is their position before me today. They seek direct contact on a regular basis. Faced by the opposition of the Child to such contact they argue for an adjournment of the proceedings for further work to be undertaken and for a guardian to be appointed to represent the interests of the Child. Whilst they do not oppose the making of a SGO in principle they argue the requirements for the making of an order have not been met and that an addendum report is required before the Court can consider a final order. Further, they argue this is a case in which the Court can expect a support plan to be provided and that this might be a route under which further support can be offered.

6. The respondents at face value do not oppose contact occurring although they reference the Child's wishes as being relevant as to whether it in fact occurs and if so the pace at which it proceeds. By the end of the hearing their finalised position was for gradual development of

contact with it being on an indirect basis only pending the Child changing her position as to direct contact. Separate to the child arrangements the second respondent also seeks the making of a special guardianship order ("SGO") to complement the order held by the first respondent. Ms [….] is the author of a Special Guardianship Assessment ("the SGA"). By the end of the hearing the respondents appeared to accept a final SGO could not be made pending receipt of further information.

Law

7. The Child's welfare is paramount and I am guided in my assessment by the matters set out within section 1(3) of the Children Act 1989 ('the welfare checklist'). An order should only be made if the making of such order would be positively better for the child than making no order. The issue of child arrangements is found in section 8 of the Act and the special guardianship provisions in section 14A and in supporting regulations to which I will return in more detail in my analysis below. Consideration of each question turns on a welfare analysis.

8. The making of a SGO gives the holder a form of enhanced parental responsibility ("PR") for the child which allows that holder to overrule the other holders of simple PR. The purpose of this is to fortify the placement and to permit its sustainability. A SGO is intended to meet the placement needs of a child throughout their minority. As a result, a party seeking to discharge such an order requires the permission of the Court to do so.

9. There is no appropriate means by which the second respondent can gain PR other than by obtaining an SGO. A lives with order would give him PR but this cannot subsist alongside an SGO. He does not fit within the category of individuals who can gain PR within the provisions of the Act. The only manner in which he could, would be if a contact order were made in his favour under section 12(2)(A) of the Act but that would be highly artificial and is not proposed by any party.

10. I should presume, unless the contrary is shown, that involvement of the applicants in the Child's life will further her welfare. The form of that involvement is silent within the presumption and will always turn on the facts of the case.

11. There are detailed regulations and some case law considering the contents of an SGA. The parties agree the current SGA fails to meet these criteria. I will return to this subject in a later section of this judgment.

12. I am asked to determine a specific factual dispute between the parties concerning the events of April and August 2021. It will be for the party making an allegation to prove it took place and they will establish it as a fact if they demonstrate it is more likely than not to have happened. In considering this I will bear in mind the broad landscape of evidence with a particular focus on the evidence of the parties themselves. To the extent I find any of the parties have not been truthful in respect of other evidence I should nevertheless proceed with caution before applying this dishonesty to the key issue in dispute. A witness may lie for a host of reasons and specific dishonesty on one matter does not prove general dishonesty on all matters.

13. In this case each of the witnesses gave evidence with the assistance of an interpreter. This has a real impact on my ability to gauge questions of credibility from the manner in which the evidence was given. However, whilst demeanour of a witness can assist the Court in considering whether something is true or not, the Court is much more likely to be assisted as

to issues of credibility when considering the detail of what is said and considering whether it is inherently consistent and also consistent with other known information.

Background

14. This is not a case which requires a detailed account of the background. Rather I will identify the key features which found this dispute. I largely draw on the account found in the first statement of the first applicant (as none of the other parties detail the history in their statements) as supplemented by the CAFCASS s7 report and SGA.

15. The first respondent cannot have children. All four individuals originate from country X and share a common cultural background. I accept the basic history given by the first applicant in her initial statement. She details meeting the first respondent when arriving in this country in 2011 and of them forming a very strong bond akin to sisterhood. She was sympathetic to the pain caused to the first respondent arising out of her infertility and agreed to 'gift' her second child to the first respondent.

16. I am told that such 'gifting' is not uncommon within the culture shared by the parties. On the first applicants case she retained the Child during the breast-feeding stage before passing the Child to the first respondent. The first applicant informs me it was understood or considered likely that the first respondent would never marry as her infertility meant she would be unlikely to find a husband within her culture. Instead, she would focus on raising the Child with it being understood the applicants would remain a part of the Child's life albeit secondary to the first respondent.

17. Shortly after this steps were taken to formalise the placement. It appears this commenced with an application for an adoption order however in due course this was withdrawn and the application proceeded successfully to a consensual SGO (April 2016).

18. In 2017 the respondents married. There is some question raised as to when the relationship in fact commenced (there is mention of a marriage in X in 2008) although there is simply insufficient evidence available to me the resolve any dispute. I am not persuaded it is necessary to do so in any event. It is evident the second respondent was not part of the process leading to the SGO. Subsequent to their marriage the second respondent has played a central and full role in the life of the Child and the respondents are regarded by the child as her parents being called 'mum' and 'dad' by her.

19. The first applicant gives an account, which I accept as being supported elsewhere, of this marriage not being supported by wider family members. She explains how both respondents' parents were 'strongly opposed' to the marriage. I remind myself that this includes the applicants' parents/parents-in law. It is said the first respondents father felt the second respondent was using the first respondent to gain rights to live in this country given he would not be marrying her otherwise due to her infertility. The second respondent's parents opposed the union as it would not permit their son to bring children into their family. I should note there is no suggestion of any opposition within the family to the initial 'gifting' of the child. The first applicant indicates she did not share these feelings so long as the child was well looked after. Notwithstanding these issues there was ongoing contact between the applicants/respondents and an open ad hoc contact relationship which worked effectively as far as the parties were concerned.

20. In about April 2019 the respondent's surrogate child was born. It is suggested the relationship between the parties cooled from this period. There is also a sense that this

process was not regarded as being as appropriate as the 'gifting' process previously described. In her statement the first applicant expresses herself negatively about the decision of the respondents to seek further children. I note in her live evidence she sought to correct this impression. I understood the respondents to also note a change in attitudes from about this time with the first respondent commenting that her relationship with the first applicant fractured from about this time. However, it appears contact continued albeit on a gradually diminishing basis. I asked about the regime of contact during live evidence but did not receive a particularly clear response. In statement evidence it is said to have diminished to monthly contact before further reducing to contact every other month or so. The best understanding, I have, was that this dated back to at least April 2020. In her final statement the first applicant details 6-weekly overnight contact.

21. The last agreed contact took place in April 2021 with the Child spending time with the applicants unaccompanied at their home. There appears to be a disagreement as to whether this was overnight or not but little turns on that detail. There is a real dispute as to what was said during that contact and whether the applicants informed the Child that they were her parents. There is a dispute as to the communications between the parties in the period April to August 2021 but no dispute there was no contact. It is agreed the applicant's attended the respondent's home in late August 2021 and that there was a heated disagreement between the adults with the Child hearing and seeing some of what took place. However, there is disagreement as to the detail of what was said and done. There is no dispute that since this date, and other than in July 2023, there has been no direct contact between the applicants and the Child.

22. Following these events, a report was made to the local authority. They carried out a Child and Family Assessment ("CFA") which is dated 15 September 2021, and determined there was no role for the local authority and that the issues would be better resolved within the Court arena.

The proceedings

23. These proceedings commenced on 4 March 2022 with the applicants seeking the discharge of the SGO (and permission to make the same application). This was supported by the first applicants first statement. A first directions hearing took place before me on 26 May 2022 with subsequent hearing before me on 7 October 2022 (Dispute Resolution Appointment "DRA"), and 21 April 2023 (Review / DRA).

24. At the first hearing I directed a section 7 report and disclosure from the local authority. The section 7 report (authored by Gemma Bond) is dated 29 September 2022. It raised significant concerns as to the emotional impact on the Child of the complex dynamic surrounding her and questioned the level of insight of the adults. It recognised the cultural background to the case but observed that the case had been transplanted into an environment and culture in which such an agreement was far from commonplace. In simple terms (my words) the adults had failed to plan for the likely complications arising out of the agreement and in doing so had effectively planned for the arrangement to fail. Work was required to fortify the child's emotional wellbeing. She recommended the application to discharge the SGO be dismissed; that life story work with the Child commence as a matter of urgency and that there should be indirect contact between the applicant and the Child to support the work being undertaken. Implicit in this recommendation was the need for all adults to accept and endorse the current arrangements and for there to be a genuine change in attitudes that would remove any uncertainty as to the Child's future living arrangements.

25. The report had envisaged work being undertaken by a specific resource; however, this was not possible. The work was later undertaken by Ms [….]. She is a social worker within the local authority's kinship team and her role was supported by Ms Bond given her access to key documents linked to the background to the case.

26. I accepted these recommendations at the hearing in October 2022 and set out a plan for life story work and indirect contact. My plan was for consideration of transition to direct contact at a 6 month point or after the life story work was complete. I fixed a further review and asked Ms Bond to provide an updating report for this review.

27. Following this hearing the second respondent made his formal application for an SGO.

28. At the hearing in April 2023, I had the benefit of an addendum report from Ms Bond (dated 31 March 2023). This report noted the Child's opposition to contact but reached the conclusion there should be continuing indirect contact and bi-monthly direct contact. Importantly, the respondents were not opposing such contact although they did comment on the practicalities of the same. I endorsed the report and made interim arrangements. I considered such would inform the listed final hearing which I also fixed. I directed the local authority to provide an SGA. I joined the second respondent as a party and directed final statements.

29. A supervised contact took place on 9 July 2023. I have a contact note for this meeting. A further contact was planned for August 2023 but the Child refused to attend and it did not proceed. I have a letter written by the Child. The SGA was produced and is dated 21 July 2023.

The Evidence

30. The evidence of the parties was given through an interpreter throughout. As a consequence, it was slow in nature and although it covered about 5 hours in duration the content was almost exclusively limited to each individual's account of the breakdown of the relationship. Aside from this applicants told me they were saddened that contact was not happening and that they bore no anger or animosity towards the respondents. Each of the applicant's told me they would engage in further work (be it mediation or therapy) and that they were only seeking a future based on contact.

31. In their evidence, aside from the evidence as to what happened in 2021, the respondents stressed the consequential impact of what took place on the Child and her currently settled view that she does not want to see the applicants. Whilst each of the respondents did not state a fixed opposition to contact their evidence suggested the way forward at this time should only include indirect contact. They wished to make it clear they had promoted contact but this had not been successful. As to future mediation the first respondent indicated she was willing to engage with such work. The second respondent took a different stance telling me that he had made a number of attempts to resolve the adult issues and was not willing to attempt this again.

32. I will develop the evidence of the adults as to the matters in dispute below.

33. The social worker explained the form of the life story work undertaken with the Child and referred to a booklet provided which remains accessible to the Child. She felt something problematic had happened in 2021 and that this was evident in the ongoing response of the Child to the contact issues. Her view was that the Child is struggling making sense of this

history. She felt there had been some negativity expressed by the applicants in respect of the respondents with regards to their marriage and the surrogacy. She had explained to the Child that the adults could not agree about contact and that a Judge was being asked to decide to help the adults.

34. She agreed she had not referenced the SGO Regulations in preparing her report and accepted there were elements within the Regulations not covered by her report. She agreed this included the views of the parents and the wishes and feelings of the Child. However, she felt the former would be presented to the Court by the applicants directly and the latter would be provided by Ms Bond. She agreed she had not referenced the impact on the Child of losing a relationship with the applicants or her siblings. If she were now asked to obtain this information, she would require a few weeks.

35. She accepted the relationship between the Child and her siblings was important but when she had raised this she had been met with a flat refusal from the Child and did not press the point given her demeanour. She agreed the relationship with the applicants would have been important but the extent to which its cessation would have been confusing would have been a function of the circumstances in which it ceased. The social worker started her work some 2 years after this point and it was not possible to ascertain whether these memories had been put aside by the Child. If the events were traumatic then she may have chosen to compartmentalise these feelings. She agreed her work may not have reached the point at which the Child felt comfortable to engage with these issues.

36. Pressed as to whether her view would change dependent on the finding the Court made as to the 2021 events, she was not clear it would. From her perspective there was a heated exchange on any case and she was struck by the anger the Child feels about this. She has to approach this from the perspective of the Child, the details cannot be known but something happened.

37. Although she had commented on contact this was a matter for Ms Bond. She did not feel contact should be left to the child and felt the issue of contact needed to be constantly kept under review with it being returned to a regular basis. Whilst it is not for the Child to make decisions a balance has to be struck. She was forced to go to the July contact and afterwards was physically unwell. Some regard has to be had to the impact on the Child if this is to be regularly repeated.

38. She acknowledged there was no obvious solution to the problem and noted the potential for a special guardian to access support from the SG team. This was the route she suggested. There was facility within the team for psychological support if required and general support and advice. This did not require a new support plan.

39. She had seen the contact note from July 2023 and agreed the first applicant had tried hard to engage the Child. The respondent's had engaged with counselling out of the surrogacy process but unfortunately the family dynamic in this case gets in the way. She believed they would encourage contact but that it would not be at the previous levels experienced. She continued to support the second respondent's application for an SGO. He had cared for the Child for a number of years successfully and was regarded by the Child as her father.

40. Ms Bond is an experienced CAFCASS Reporter, she set out her initial views in a careful and sophisticated fashion as found in her first report. I have made mention of these views above but have full regard to the contents of the report. By the time of her addendum, she was plainly grappling with the balance to be struck between the needs of the Child and the

opposition the Child had to contact. She alighted upon a contact regime set on an occasional basis supported by indirect contact. The foundation for her opinion is encapsulated in §14 of her addendum when she wrote:

> *I appreciate this is not a recommendation in line with either party's position, neither is it aligned with [the Child's] expressed wishes. However, with such a catastrophic breakdown in the relationships between the adults, and the now prolonged gap and entrenched negativity [the Child] has about her birth parents, this recommendation in my view will do the least harm, whilst also enabling [the Child] to maintain some relationship with her birth parents and siblings which I do support. If the adults do the work on their relationship and can mediate and support [the Child] to rebuild her relationship with her birth parents more quickly, there is nothing stopping the contact progressing by agreement, but regarding Court directions, this in my view is as far as they can go.*

41. In her live evidence Ms Bond continued to relate the conflict between the Child's expressed wishes (as evidenced by her refusal to attend August contact) and her need for a level of contact to meet her identity needs and to protect her against long term emotional harm. She concluded this would in all the circumstances require at least two direct contacts per annum in addition to monthly indirect contact. As such this was a modification of her recommendations.

42. She made clear she did not support the suggestion of a guardian. As she pointed out, but for her moving area on such an appointment she would be the likely guardian and as such her views would likely remain unchanged. The only point of a guardian was in respect of a Part 25 process concerning the identification and appointment of an expert who might assist the parties in identifying the type of work that might help and in signposting the same. However, her opinion was that this was not a case in which the focus should be on work to be undertaken with the Child. Rather, any work was about normalising the adult relationships. This is where the fundamental deficits lay.

43. When questioned as to the concept of 'successful proceedings' she explained:

> *[The Child] needed a clear understanding of her history, this would allow her to understand the importance of relationships with the adults around her. I would see re-establishment of relationship with birth family as important for her to enable this to develop further as a young adult. I do not want to see a separation that becomes a permanent estrangement as this would place a huge burden on her later. I do not think she will be able to have a conflict free relationship with all four as was previously intended. I think this will not be possible. But I would be concerned if this were completely shut to her.*

She could see the benefit to have a relationship with her siblings. She was not surprised the Child had become increasingly entrenched in a case in which the adult relationships have become fractured. She could see no benefit in simply repeating the failed contact of August 2023. The case required a shift in the adult relationships. The Child has a fear that if she were to see the applicants then she might not be returned to the respondents. This fear needs to be allayed.

44. Ms Bond was sensitive to the fact that these issues were superimposed on a series of other matters relating to the Child. She would soon transition into adolescence with all the

challenges that might bring; she would soon be starting secondary school, and; she is known to have autism and this will have some level of impact on how she navigates these issues.

45. She explained what she had understood as to the events of 2021 and the reasons given for contact stopping but noted she could not resolve these disputes and felt there was more that had gone on than was represented in the papers. The failure lay with the adults and this was where any work should be focused. Any support would need to understand the cultural context in which the issues had arisen.

46. She felt it would be unhelpful to stage a contact and ask the Child whether she wished to attend. It was not for the Child to be the decision maker. She felt a process of indirect contact would be best in seeking to create a more positive attitude to contact from which progression could be entertained. When considering the form of such contact she felt something natural environment (a picnic for example) would be more positive than attendance at a contact centre. However, whilst in a contact centre the role of supervision should be undertaken by a professional not by one of the parties.

47. She felt there was a very strong chance contact would not progress on the making of a final order. Indirect contact needed to be supported as this was a route towards shifting the Child's views to a point where she viewed direct contact as being non-threatening of her placement. She could not agree with the request for contact at 6-8 times per year as this would create a constant pattern of stress and anxiety around the same that would be harmful for the Child.

48. When asked whether she had a view as to the events of 2021 she observed:

> *I do not think it is one specific thing; important conversations and clarity were not had when the Child was younger and so when relationships broke down information was shared with her that was not expected by professionals. She came to understand things that challenged her fundamental understanding of who she was with a dispute as to who has the right to be your parents. This is utterly terrifying and I am unsurprised she has taken this view. She is in a defensive / survival mode.*

She felt the bare minimum of contact should be set out in an order for identity purposes. Any increases should follow out of the work done by the adults. She did not think there had been a wilful sabotage of contact by the respondents but they had become increasingly concerned as hostility had grown in the case. The form of shared care described as existing during the Child's early life was never going to be sustainable and this should have been confronted at an earlier stage. As to any work this was best suggested by the local authority.

49. Ms Bond had no concerns about the second respondent being made a special guardian.

What happened in 2021?

50. I have considered the evidence of each of the adults in this case. On the first day of the hearing, I accepted the respondents had not set out their account of these events and permitted a note of their account to be shared to inform the Court and the applicants. Instead, two statements were provided and in response the applicants also provided response statements. I admitted the same into evidence.

51. There sems to be a series of points which are agreed as follows:

- The marriage of the respondents in 2017 was opposed by family members.

- Up until around 2019 contact was progressing in a manner acceptable to all parties. It seems the level of contact at that stage might not have been at the same level as originally occurring but this was not problematic for the parties.

- At some point thereafter and by early 2020 issues had arisen and contact was reducing. This is agreed in that the applicants date the reduction to early 2020 and both respondents indicated cooling adult relationships at this time.

- However as at April 2021 contact was still continuing (as agreed by all adults).

- The last contact was in April 2021.

- Between April and August 2021 there was no contact.

- In August 2021 the applicants attended the respondent's home and there was a heated discussion. The Child was present in the home at the time and present with the adults during part of the events.

- There was no further contact after this date.

52. The accounts given as to April – August 2021 are times confused and conflicting (this relates to an individual party's evidence as much as to the oppositional accounts of the parties).

53. In summary the applicants' case is that the contact in April 2021 passed without note. Thereafter either (i) there was no further contact from the respondents leading the applicants to be worried as to what might have happened and which led them to attend the property in August, or (ii) that there were communications in which the respondents were somewhat evasive as to further contact but it was agreed there would be a contact in August. However, when this did not materialise, the applicants became worried something might have happened and thus attended the property. When they attended the property, they had no awareness or expectation of there being a particular issue. On attendance there were no issues until they probed the second respondent as to why he had not returned their calls whereupon they were told he no longer wanted to associate with them and they would not be seeing the Child. He refused to explain why and the first respondent said she could not answer for the second respondent. This caused the meeting to become heated and the applicants did mention going to Court and having the Child back if the respondents would not allow contact. They were then told to leave. This all lasted 15-20 minutes.

54. In summary the respondents contend that matters were strained by April 2021. On that occasion the Child came back from contact and was unsettled. The second respondent called the applicants to find out if anything had happened during contact but was told nothing unusual had happened. Later the Child said she had been told by the applicants that they were her parents and that the respondents were not. As a result, the Child was significantly unsettled and this is why contact stopped. In August the second applicant phoned the second respondent asking about contact, but the second respondent refused the same due to the agitation the child was experiencing. He continued to call but the second respondent did not answer. When asked the Child did not want to go to contact. Then the applicants came to the house. In the course of this meeting which lasted for about 2-hours emotions were heated and the first respondent among other things grabbed the Child and placed her on her lap and in the presence of the Child talked about the applicants being her parents and having her back. At some point the applicants acted as if to take the Child from the house

but the second respondent prevented them before asking them to leave, which they did. As they left, they were shouting that they would take their daughter back.

55. In the course of the examination, it became clear that the second respondent had given the Child an understanding of her life story in the days following this incident and prior to the CFA.

56. I considered all of the evidence with care and have drawn the following conclusions:

i) I have found it very hard to place great weight on the direct evidence given by each of the adults. They were each and all respectively poor witnesses. In giving evidence through an interpreter, I lost any sense of immediacy of response. This did not help in assessing their evidence. But I also found their responses to be generally discursive and possibly evasive. Each of them failed to fully engage with the questioning process in the manner I would have hoped for and expected. I am left in some doubt as to whether this is a language issue or a comprehension issue or a difficulty in engagement due to an unwillingness to answer the questions or craft a sensible answer which fits with their case.

ii) However I do not consider this is exclusively a matter of live evidence. Again, in different ways, each of the witnesses provided written evidence which was at times conflicted and at other times lacking in what I might have expected to be key information. Prime examples are found in the evidence of the first applicant where she wrote of being ‘sad’ to discover the respondents planned to have a ‘second’ child but when questioned about this told me this was not the case. Elsewhere there is the confusion explained at §53 above as to when the applicants became concerned as to what may have happened.

iii) But it is not just the first applicant. It is plain from the papers that the second respondent has given diametrically opposing views as to his upbringing to different people. It was either a relatively happy experience or one in which he was abused and sought asylum overseas.

iv) This does not mean I have rejected the evidence of the adults but I have approached it with caution. This has led me to look more keenly for corroborative information to answer this dispute. Fortunately, I have been able to identify such evidence to a satisfactory level.

v) I am left in little doubt that cultural issues have come to bedevil the relationship. It is quite clear (as explained by the first applicant) that the wider family did not accept the marriage of the respondents. The first applicant may have wished to tell me that she did not know about the feelings of others but I consider her bound by her statement (which she adopted) in which she is quite clear (as I have noted above). These family pressures are I judge powerful influences in a culture in which the opinions of elder members likely carries great weight. The parties come from a culture in which the extended family is important and the views of parents a significant consideration. For the second applicant and respondent’s parents to be oppositional to the marriage and later firm in the view that the child should be returned (as I find they are/were) was a matter of real significance. It would have impacted the decision making of both applicants and shaped their approach. In this context I find the respondents have in part ended up as surrogates for the views of others. This has sadly contributed to the breakdown of the adult relationship.

vi) I particularly date this to the time of the surrogacy. It appears two things were happening at that point. First it appears the concept of surrogacy is not viewed in the same manner as the 'gifting'. Second, it is clear from the evidence of the first applicant that this concerned the applicants. She makes it abundantly clear that the 'agreement' was for the first respondent to be entirely focused on the Child. Yet instead, she formed a relationship, married and then planned to bring a further child into the family. I do not accept the suggestion of a mistake in the statement in which it was said that 'sadly' following the marriage the respondent's wanted to have their own children. This I find represents the feelings the applicant held at that time.

vii) I am confident it was this changing situation that drove the wedge into the adult relationships and caused the contact to reduce from previous levels. At the same time there were obvious and natural consequences as noted by the first applicant deriving from the Child aging and the responsibilities of the respondents changing which would have impacted on the contact to an extent. I accept the evidence of the respondents of their sense of breakdown from around 2019. This was represented in meaningful reduction in contact from around early 2020 at the latest. All parties appear to accept this timeline.

viii) In my judgment this background to 2021 importantly sets the scene in which the events of 2021 come to be assessed. The once positive and open relationship was deteriorating and the 'gifted' child was no longer as accessible to the applicants as had previously been the case. I suspect a growing sense of remorse as to previous decision-making developed on the part of the applicants. I also consider the applicants perhaps never properly considered what the long-term impact of the SGO really was.

ix) In considering the events between April and August I refer back to the agreed matters above.

x) On balance I prefer the original account of the applicant as to there being no communication after April 2021 leading to the attendance at the property in August 2021. I prefer this over the revised position given during the final hearing - of there being ongoing communication which led to a form of agreement as to an August contact which then did not materialise leading to the attendance. First, this has the attraction of being the original account and I struggle to understand on what basis it came to be misstated in the first instance. How was it that the first application neglected to mention or failed to remember at that time that there had been communication and an August contact had been agreed? I find this a wholly implausible state of affairs. Second, whilst I appreciate the case that by this time contact had reduced as to regularity this does not explain why a period of nearly 4 months passed without contact if the parties remained in communication.

xi) Next and linked to this last point I judge something of note did happen in April 2021. In making this finding I prefer the position of the respondent's without making a specific finding at this stage. This would explain three things: (a) the cessation of contact during the period; (b) the avoiding of communications, and; (c) why there was a delay in timing before the applicants attended the property. On the evidence I have it is far from clear why the applicants left it till August to attend the property on their case. It is far more explicable if the delay flowed from an understanding that something had happened. If, as the first applicant claims nothing of note took place in April 2021 and that this was an entirely positive and normal contact then it

becomes very difficult to understand what then happened (or more correctly didn't happen) in the following 3-4 months.

xii) Turning now to the meeting in August, it is important to note there are some important agreements within the evidence. It appears clear all agree the Child was present. For my part I listened to the debate about the exact location of the Child at times during the visit but ultimately felt this was a somewhat sterile debate. In reality all agreed this was a heated discussion and I find voices were raised by a number of the participants. Second, it is clear the topic of the discussion was the Child and I am in no doubt adults referenced her by name or in such a way as to make it clear that they were speaking about her. Third, I find they likely spoke in their native language and I accept this is a language in which the Child is fluent. Whether the Child was outside the room listening, in the room witnessing what happened, or upstairs (or all three at times) doesn't change the likelihood that she could hear what was being said and understood it was about her. It is likely she would have been curious and would have listened.

xiii) It is also clear (it seems agreed) that in the course of the discussion talk of the applicant's having the Child back and going to Court was raised. I see this in the first applicant's final statement [§30-31]. In my assessment this conversation likely referenced the respective relationships of the Child to the adults ('our daughter'). The respondents give an account with different detail but with these foundation points.

xiv) Combining the above analysis I find the Child would have heard the following: (i) a heated discussion between the parties in which (ii) mention was made of her being the applicant's daughter; (iii) that they would take her back, and (iv) they would go to Court. Whilst there is a debate as to her exact positioning when this happened it is in fact difficult to see how this materially changes my conclusions. Of course, this information could have been given in a more harmful form but there is a baseline of harm arising in any event from the above.

xv) I prefer the evidence of the respondent's that this meeting lasted for more than 20 minutes as claimed by the applicants. I am not sure anything turns on this but it seems to me the accounts given would have required a longer period.

xvi) I am not assisted by the question of the respondent's failing to remove the applicants at an earlier point. I judge there are complex cultural dynamics of respect in play that will have impacted on each individual's response.

xvii) I am not assisted by the debate about the Child being forced onto the lap of the first applicant. It would not be at all surprising if the Child was placed on her lap at some point during the visit but I do not find my assessment requires a resolution of this point.

xviii) On balance I do find there was some level of physical interaction around the time the applicants came to leave in which the first applicant acted as if to remove the Child. I accept the second respondent intervened. I do not judge this was a particularly physical event but I find it happened. I simply prefer the evidence of the second respondent in this regard. It broadly fits better with my assessment of the circumstances of the visit. It also fits with my finding as to words being used to the

effect that the applicants would 'take her'. However, my overall assessment would not be particularly impacted had I found this not to have happened.

xix) I am supported in my assessment by words used by the Child to the social worker when spoken to within the CFA. Her voluntary expression as to who her parents are has the ring of truth about it and there is no real suggestion this was not said. I find this is a heartfelt expression of a Child in emotional crisis. This crisis has followed from what she heard during the meeting although I accept the second respondent has subsequently sought to address the point with her and this may have exacerbated her emotional response. I make the point again that the parties agree the key components as to the meeting in any event.

xx) For this last reason it is limited relevance as to how the respondents described their concerns when speaking to the social worker during the CFA (and indeed later in various meetings). How they listed the issues does not change what in fact happened.

57. I reflect back on what this might say as to the dispute linked to the April event. The willingness of the applicants to raise these sensitive issues in such a careless manner might support a finding that they would have done so earlier as alleged by the respondents. Alternatively, the respondents may have utilised the later behaviour as an ex post facto justification for their decision to stop contact in April. I have to say the latter suggestion is the more contrived of the two possibilities. Having considered all the evidence I favour the account given by the second respondent of the Child expressing to him that she had been told in April that the applicants were her parents. I accept by this time matters had deteriorated to the extent that the applicants acted as found.

58. In summary I find by April 2021 contact was starting to reduce due to intra-family issues which created a sense of fragility in the placement of the Child with the respondents. Their response to reduce contact was an entirely unsurprising reaction to the same. This contributed to the applicants (or one of them) unfortunately speaking to the Child as to her biological background. I accept (as seems agreed) that earlier in life she had spoken of all the adults in terms of mum and dad but this situation was in the past and likely lost in the mists of memory and by this point the Child had entrenched an emotional understanding of the respondents as her parents. The conversation in April was therefore poorly judged and likely to damage the Child. I judge it did. As a result, contact was stopped. In August 2021 the applicants attended the home and this visit simply reinforced the damage previously done. It has led to the Child clinging onto the adults she regards as her parents and rejecting those who might come to break that relationship. Viewed from the outside none of this is at all surprising.

Analysis

59. I will commence by reference to the welfare checklist.

Wishes and feelings

60. It is clear the Child is now oppositional to any meaningful contact with the applicants. She attended a contact visit in July 2023 but despite the appropriate efforts of the first applicant was unwilling to actively engage in that contact. She answered questions but would not engage physically and the conversations were entirely led by the first applicant. It is reported the Child was then physically sick in the car after leaving the contact. She refused to attend

the follow up contact in August 2023 and has written a letter to me in which she comments negatively about the contact and tells me she wants to stop it. I am satisfied on the evidence that these are the child's wishes and that they have not been fundamentally shaped by others or forced onto her by others. I am confident these feelings have been impacted upon by the events of April-August 2021 and I judge a likely developing sense of tension in the preceding months before those events. I doubt very much that matters simply took a new departure in April 2021. It is more likely some of the feelings of frustration evident in the later months was present and growing during this period.

61. I find it wholly unsurprising the Child will have responded to these events in the manner set out above. For her the respondents are her parents and they will be the centre of her life (along with their son). I agree with the professionals as to the significant impact that informing the Child as to her biological background would have upon her. This impact was exacerbated by the fact that it was presented in a manner which questioned her continued placement with the respondents. I consider it entirely predictable that she would consequently seek to avoid or limit contact with those she must see as presenting a challenge to all that is important to her. This case is described as factually complex. For the Child the situation will appear very clear. She is happy where she is and the applicants are suggesting this cannot continue. This will have left her scared and uncertain as to her future. She will cling on to those things which give her stability. Her decision making around contact is entirely understandable in this context.

62. In drawing these conclusions I accept there is a likelihood of the Child having become aware of the respondents concerns arising out of the shifting relationship between the parties. I understood the first respondent to accept the Child will have overheard the respondents talking about the issues. In any event this would be somewhat apparent by reason of the fact the parties continue to attend common communal events at which they no longer interact. I accept this may have reinforced the Child's views but I do not agree it is the source of these views. I also have regard to the Child's personal characteristics (see below). This may mean the Child's level of understanding of the issues in question is not set at the same level as her chronological age. Her condition is often associated with wariness around change and seeking solace in that which is known and can be confidently anticipated. It is easy to see how the issues in this case will have profoundly impacted on such a child.

Needs

63. I focus on the child's emotional needs. I agree with the CAFCASS Officer that her educational needs (being a need to engage with and make progress in her education) are likely to be negatively impacted by anxiety and worry in her day-to-day life. This case does not raise any real issue as to physical needs outside of the normal requirements of any child (for food, heating, clothing etc).

64. My concern is as to the impact this dispute is having on the Child's emotional wellbeing. I have already addressed the likely impact upon her of having her settled understanding of her identity challenged. My worry would be that she feels unable to openly engage with these issues with the respondents and in doing so bottles the emotions up with the risk they will escape later in an unpredictable and damaging fashion. I am also worried that she will come to distrust the respondents if she feels they have not been open with her leaving her isolated and at risk of forms of exploitation. My concern is that these circumstances are also highly challenging for the respondents and they have struggled to grapple with how to resolve the dispute in a Child focused manner. I did not form the impression that have a clear and developed understanding of the emotional baggage that might be created. I found

them to be rather simplistic in their approach (in a manner not particularly different from the applicants). Their lack of sophisticated understanding can be seen in the failure to predict the challenges that would arise out of the SGO and to create a strategy in advance to manage this if and when it arose. My sense is of all the adults drifting into this dispute without ever really applying their minds to the journey they were engaged on or the impact it would likely have on the Child.

65. The Child needs to know the following, and by 'know' I mean to have a clear and confident belief in the same: (a) that her placement is secure and that she **will** be continuing to live with the respondents; (b) that the respondents are accepted as being her parents and that no-one seeks to challenge or question this; (c) that if contact takes place with the applicants then it is on this basis that it proceeds. There can be no room for equivocation. It would be unforgiveable for her to engage with contact on this understanding only to be let down by the adults.

Change in circumstances

66. Any change which gives the impression or might give the Child the impression that her placement is in question must be avoided. At this time, I do not consider the Child has any real trust in the arrangements proceeding in the manner set out above. It seems clear she views contact as undermining of her family life and is understandably doing what she can to avoid it happening. Until she is confident this will not continue to be the case, I have little confidence she will engage in contact. Moreover, were she to continue to attend but not engage then I fear this would if anything likely increase the pressures on the applicants and may cause them to act inappropriately out of frustration if nothing else.

67. In many ways she needs the opportunity to have a good example of contact. I agree with the professionals that she needs to be able to experience a sense of going for contact and being able to return to the respondents to gain the confidence for the future. However, I do not believe this will be as simple as it might appear. After all the July contact gave her insufficient confidence to return. I suspect, and in doing so agree with Ms Bond, that this will now require some significant gradual groundwork to rebuild to a position at which she is confident to have direct contact again.

68. I agree with Ms Bond that this issue is not about the Child. Her response is absolutely predictable and is a natural response to the adult actions. I fail to see on what basis one would need to work with her to correct or remedy her understanding. Rather this is plainly a case in which the adults have the responsibility to address their actions. For my part I fail to see why this is requiring of a therapeutic process. In my judgment the adults simply need to adopt a mature and Child focused approach. They need to put their priorities (and those of other family members) secondary to the needs of the Child. In my view the chief responsibility lies with the applicants to seek to repair the fractured relationship with the respondents. I am not expecting a return to the previous positive relationship from 2016 but rather to a position of respect for the respondents.

69. I am in little doubt the applicants' views have been shaped by wider family pressures. They need to take a decision as to what is now more important to them. Rebuilding a situation in which they can have a relationship with the Child or being responsive to the views of family members. If they continue to be a conduit for the views of others then they really cannot expect to also have a relationship with the Child. They do not have an entitlement to a relationship but can expect a relationship if the same is best for the Child. It will only fulfil the latter criteria if it is entirely child focused as set out within this judgment.

Personal Characteristics

70. The Child is aged 10. I accept the evidence of Ms Bond as to the upcoming significant changes in the life of the Child (adolescence and secondary school). I have explained in detail her complex identity issues. I also note her neural-divergent characteristics.

Capability of adults

71. I have no doubt the respondents are meeting the Child's needs. The only live issue in these proceedings is the ability to foster and promote contact with the applicants. I have no real doubt the applicants have the ability to meet the Child's needs out of contact. The issue is their ability to remain child focused and put to one side any reservations they may have about the Child continuing to live with the respondents.

72. Whilst each of the adults appeared to state a wish to move forward positively, I have to say I found these expressed views to be somewhat forced in the circumstances. Listening to the adults I had no real sense that they had achieved a materially significant change in attitude. I felt they each (except the second respondent who was unwilling to engage in work) told me what they thought I wanted to hear. My sense was that the emotions remain raw and the feelings are deeply set. The adults did not meet each other's eyes when giving evidence and when pressed on topics it was a struggle for any of them to provide naturally warm observations about the others. This is striking in the context in which (i) the respondents have benefitted from the undoubted generosity of the applicants in 'gifting' a child, and; (ii) the applicants owe the respondents respect for the love and care they have given to the Child in bringing her up as their own child. That they have nonetheless become entrenched in the dispute before me signals the challenges they now face.

73. At this time, I am not entirely persuaded the applicants have let go of them wish to resume care of the Child. I sense they have accepted this is not going to happen and have tempered their position accordingly. But they must fully accept this is the reality if they are not going to return to the ill-conceived acts of 2021. At the same time, I find the respondents remain hyper vigilant to the applicants acting against the placement. They need and deserve clear evidence that this will not repeat itself. This dynamic will only be resolved by the applicants both accepting this reality and genuinely taking steps to repair the damage so far done.

Risk of harm

74. I repeat much of what is set out above as to the emotional implications for the Child of having her place in the world challenged. I consider any reasonable individual would immediately recognise the significance of the same to the Child.

Special Guardianship Order

75. There are very powerful arguments in support of this application. The second respondent has been for some time and will remain an important person in the life of the Child and equivalent to the first respondent (who is a special guardian) yet he holds no PR and his role is secondary to that of the respondents. He is her father figure and he and the first respondent have equivalent roles with regard to the younger child. The Child views him as her father yet at the start of these proceedings he was not even a party.

76. I note the positive SGA and the views of Ms Bond as to the role he plays in the life of the Child. She would not oppose an order. I also note the applicants do not in fact challenge the

making of a SGO in principle subject to the procedural points made on their behalf as to compliance with the regulations.

77. The difficulty with making an order relates to the rules which govern the making of an SGO. Under Children Act 1989 section 14A

> ***(8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with—***
>
> ***(a) the suitability of the applicant to be a special guardian;***
>
> ***(b) such matters (if any) as may be prescribed by the Secretary of State; and***
>
> ***(c) any other matter which the local authority consider to be relevant.***
>
> ***(11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).***

Under the 2005 Regulations a list of prescribed matters are identified pursuant to section 14(8)(b) above. Under the 2016 Amendment Regulations these requirements are modified to a limited extent.

78. The applicants contend the SGA has failed to deal with a number of prescribed matters with the consequence that the Court cannot make an Order under section 14. Under Schedule 3.1 of the 2005 Regulations the following matters are prescribed and must be considered:

> ***In respect of the wishes and feelings of the child and others:-***
>
> ***a) An assessment of the child's wishes and feelings (considered in the light of his age and understanding) regarding –***
>
> ***i) Special guardianship;***
>
> ***ii) His religious and cultural upbringing; and***
>
> ***iii) Contact with his relatives and any other person the local authority consider relevant;***
>
> ***And the date on which the child's wishes and feelings were last ascertained.***
>
> ***b) The wishes and feelings of each parent regarding –***
>
> ***i) Special guardianship;***
>
> ***ii) The child's religious and cultural upbringing; and***
>
> ***iii) Contact with the child,***
>
> ***And the date on which the wishes and feelings of each parent were last ascertained.***

Further under the 2016 amendments the additional are required to be considered:

> **(a)** ***a consideration of any harm that the child has suffered,***
>
> ***(b) any risk of future harm to the child posed by the child's parents, relatives or any other person the local authority considers relevant,***
>
> ***(c) an assessment of the nature of the prospective special guardian's current and past relationship with the child,***

> ***(d) an assessment of the prospective special guardian's parenting capacity, including their understanding of and ability to meet the child's current and likely future needs, particularly any needs the child may have arising from harm that the child has suffered, their understanding of and ability to protect the child from any current or future risk of harm posed by the child's parents, relatives or any other person the local authority considers relevant, particularly in relation to contact, and their ability and suitability to bring up the child until the child reaches the age of 18.***

79. When questioned the social worker readily accepted that she had not covered these matters. She told me (see above) that she expected the wishes of the child to be covered by the CAFCASS reporter and the views of the parents to be dealt with by their lawyers. Both counsel agreed this amounted to a gap which would require further information.

80. I have some sympathy with position of the social worker. Certainly, from my perspective I have heard wide ranging evidence which appears to engage with both the wishes of the child and the views of the parents. I am considering an application for a contact order and will reach independent conclusions in that regard. Rhetorically I question what separate benefit would I gain from an account of the same given by the social worker? I questioned whether I was in fact well placed to fill any gaps with the information available to me. In answer to this enquiry, I was properly taken to the authority of *Re S (Adoption Order or Special Guardianship Order)(No2) [2007]EWCA Civ 90* in which a clear negative answer is given to my enquiry (see §12 in particular). This authority does make clear that in such a case as this the Court need not commission an entirely new report but can simply direct the relevant authority to (a) provide the missing information and (b) where appropriate and possible set out remaining information by cross referencing to information already before the Court in other reports. In my judgment on the provision of the same the Court will also expect confirmation as to the authors continuing support for an order (or of course a change in opinion if the same is justified on the new information). For completeness I should also note the case of *Birmingham City Council v R [2006] EWCA Civ 1748* which also makes clear that there is no distinction between a report ordered pursuant to a notice and one ordered at the instigation of the Court. The latter is the case here but just because this is the case does not give me any power to limit or restrict the matters on which the local authority should report.

81. I am therefore clear I should not make a SGO at this time but should rather direct the social worker to provide the missing information whereupon I will consider whether an SGO should be made. My order will make provision for this timetable.

82. I wish to make it clear that there is force in the argument for the making of a SGO and this is of course noted in the light of the applicants stated position. Subject to the assessor providing the missing information and subject to the assessor not changing her position I struggle to see why I should not in due course make the order as sought.

Appointment of a Rule 16.4 Guardian

83. The applicants argue for a guardian to be appointed to represent the Child's interests. This is opposed by the respondents. I heard from Ms Bond as to what this might bring to the case.

84. I do not intend to appoint a guardian. I have a clear understanding of the issues in this case and would not additionally benefit from the appointment of a guardian. This would simply complicate and delay matters. I agree with Ms Bond that this would likely only assist in the

process of identifying a possible expert to guide the Court as to resources that might be provided to assist the family. But I can see no reason why either of the parties should not be in a position to make an appropriate application if the same were deemed appropriate. As I have noted above, I am as yet not persuaded that the same is required on the facts of this case. I certainly agree with Ms Bond that the focus should not be on the Child and addressing a perceived issue with her. As have noted her response is predictable and does not require therapy.

85. Furthermore, as per my findings I have set out a relatively clear and simple explanation for the issues in the case. This is not a case of alienating behaviour patterns (as suggested) and does not warrant an expert in such regard.

Contact

86. The applicants argue for an adjournment of the contact application with an interim plan for contact. The logic of this is based on the proposition that any final order made following this judgment will be bound to fail and as such the Court should retain control of the proceedings to ensure it complies with its duty to take all reasonable steps to establish a relationship between the Child and the applicants. In the interim they argue for indirect contact as recommended by Ms Bond. Ultimately their case is for the inclusion of direct unsupervised contact on a regular (albeit intermittent) basis.

87. The respondents argue for a final order based around indirect contact (as recommended) and with direct contact following when the Child is no longer resistant to the same.

88. Ms Bond could see no benefit to repetition of the failed August contact as this would negatively impact the Child and not assist in re-building the adult-Child relationship. She recommended indirect contact with a monthly letter and a monthly video message. It was hoped this would over time and with consistency in the form a supportive and non-challenging form of dialogue, lead to the Child's reservations being reduced thus permitting of direct contact. However, in any event she favoured direct contact twice a year to maintain identity.

89. In the course of the hearing questions were raised as to separate contact between the Child and the applicants other children. This was not the purpose of the hearing but I will cover it below.

90. I accept the view of Ms Bond and agree with her in respect of any suggestion of simply carrying on with contact in the face of opposition from the Child. I am quite clear that this is not a view which has been imposed on the Child and she has not had this shaped by the respondents. Rather it is a natural response on her part to the challenging circumstances that have been imposed upon her. I judge as entirely plausible the account of her being sick after contact. A process in which she is forced to have contact with individuals who she fears wish to remove her from her family will undoubtedly cause her meaningful emotional harm. To repeat this without regard to the impact to her and to do so on a continuing basis cannot be justified. It will harm her and importantly will not likely repair the relationship with the Applicants. I do not judge there is a potential for contact to simply resolve the issue by giving the Child confidence in contact through her attendance.

91. I agree the only practical way to address the issue is for the applicant's to engage in indirect contact and to do so in such a manner as to permit the Child to gain a greater confidence as to their attitudes and intentions. Whilst this has been a provision of the orders made by me

for some time now the extent of such contact has in fact been quite limited. Further it has more recently been impacted upon by the direct contact. So it seems to me to be too early to reach a confidence prediction as to how matters may develop if this opportunity is taken.

92. I repeat my earlier view that this process will be enhanced if the applicants can find a way to genuinely signal their revised approach to the relationship. In my assessment this will be a central factor in giving the respondents confidence and I suspect this will have knock on benefits for the Child-applicant relationship. I am in little doubt the Child has a perception of the impact this is having on her 'parents' and I consider there is a likelihood that improvements will have an opposite impact.

93. So I consider a twin track is really required for contact to have any chances of success: (1) indirect contact must be pursued, and; (2) the applicants need to have regard to how they can reset the relationship. I can only order the first of these two.

94. As to the second I do not consider this is a case which demands expert intervention. I agree the parties might benefit from focused mediation from a practitioner with a clear cultural understanding of the dynamic in play. But I consider this falls outside of proceedings. The Court cannot order mediation as an activity direction [Children Act s11A(6)(b)]. I have made clear my view that this case demands an adult reset and whilst an individual may benefit from assistance in such regard I do not judge it is a matter for the Court or indeed necessarily requires assistance. I would hope, if not expect, that each of these adults has the capacity to reflect on where they find themselves and rationally consider the circumstances that have led to this situation. They should inform themselves by reference to my findings and this judgment. But it is for the them, and the applicants in the first instance, to take the steps to commence the reset.

95. I therefore fundamentally accept and agree that contact should be maintained in the form of indirect contact. This is a valuable opportunity to address some of the matters set out above. I agree with the inclusion of video messages (rather than calls). This is valuable in conveying to the Child the emotions of the applicants and has the capacity to show a changed attitude in a way in which a letter may not. Further it has additional opportunity to strike curiosity in the mind of the Child by for instance including the wider family. The key purpose is to attempt to re-normalise the role of the applicants and move away from the crisis point which has been reached.

96. Ms Bond suggests a letter each month and a video message each month (with one of each per fortnight). I have to say I consider this is set at quite a high level of regularity. This is both in respect of the capacity of the applicants to maintain such a high level of one directional contact but also for the Child. I would be concerned to avoid any sense of the messaging appearing oppressive to the Child. She is currently unresponsive to a lower level of contact. In my view the contact should include a letter and video each month but it should be timed to be received at the same time. In this way the letter will complement the video. I consider this is both more practical and more likely to be received positively in due course. I personally do not consider this modification has any meaningful impact on the process of attempting to repair this relationship. To the extent I disagree with Ms Bond this is marginal.

97. Turning to direct contact it is perhaps trite to observe that were this process to be positive and were relationships to be improved and restored then it is both likely that twice per annum contact would be insufficient but also it is unlikely the parties would themselves be promoting contact restricted to this level. Whilst I would leave the parties to agree increases in contact in future between themselves I would consider on an improved footing contact

should take place on up to 6 occasions per annum (based around the conventional school holidays and half-terms). I agree in improved circumstances this would benefit from being contact in a natural environment as suggested by Ms Bond (a picnic or bowling for example). I would not be considering overnight contact without the agreement of all parties. Such contact would not require professional supervision. Unfortunately, viewed from the other perspective if there is no progress then I struggle to see the how the identity contact suggested by Ms Bond will be effective. I understand the logic of her argument as to the futility and likely damage that will arise out of repeated forced attempts, but I fail to see how this will in fact be any more achieveable simply because it has been reduced to bi-annual contact. I cannot see the Child will be any more likely to engage or in fact attend. The intermittency of the arrangements will I suspect increase rather than reduce her opposition as the applicants will seem more distant from her.

98. The purpose of identity contact is to permit the Child to understand her background and the important relationships which exist whether or not she wishes to take up the opportunity to benefit from the same. In my judgment to a significant extent the indirect contact will provide a significant element of identity contact. I am very concerned as to the impact on the Child of plotting a 6-monthly opposed visit to see the applicants. Whilst this would undoubtedly be less impactful compared to say monthly visits it would nonetheless have impact in such circumstances and I am struggling to see how the perceived benefits of the visit will outweigh the damage. I am left with a dichotomy between progress (in which case contact must be more than twice per year) and stagnation (in which case contact at twice per year is problematic). Once again the solution, if there is to be one, lies with the adults in reflecting and amending their attitudes.

Should there be an adjournment

99. I am directing this case to come back for further consideration of the SGO. However, as noted above this may not require extensive Court time. Should I at the same time adjourn the contact application?

100. In reaching my conclusions on this question I am mindful of the views of Ms Bond and of the social worker as to pessimism that progress will be made. However, I have the benefit of my settled conclusions as do the adults now. My conclusions do place responsibility primarily with the applicants and I have clearly stated my view that they need to genuinely change their attitude for progress to be made. If they cannot do this then I am sadly of the opinion that direct contact will continue to likely be harmful for the Child given it will surrounded by the potential for further conduct as was seen in 2021.

101. In this context the prospects of progress are fundamentally outside of the control of the Court. Progress is a matter for mature reflection and action by the adults. I do not consider there is an need for adjournment for expert instruction or assessment. I have already commented as to this above. I also do not consider this is a case in which the Court can justifiably hold onto the proceedings until progress is made. As should be clear I have sent a very clear message in this judgment but I cannot myself modify the adult behaviours and attitudes. Only they can. I do though note the arguments made by the applicants as to the absence of a SGO support plan. It is agreed by all that such a plan is not prescribed and that a SGO could be made without such a plan. As I observed, in the normal run of things it would seem strange to demand a support plan where there is a pre-existing special guardian who is neither seeking nor accessing support in her own right at this time. It is questionable why the addition of her partner as a SGO would fundamentally alter this reality.

102. But counsel for the applicant made two points which deserve consideration. First, she made a case as to proposed SGO being made at a time when there is now a need for support to assist the special guardians (if this is to be the case) with the relationship issues arising. Second, she can rely upon the evidence of the social worker as to there being a potential route for support pursuant to the SGO (in accessing support available to the kinship team). Third, this route is an answer to the point I raised as to what form of work or resource was in fact being proposed by the parties if they were asking me to so act. In short counsel argues a support plan would be helpful in clarifying the extent to which the local authority can provide support and/or a resource to assist the adults in the event they are willing to accept and work with the same.

103. I am on balance persuaded there is merit in this argument.

Conclusions

104. I will not make a SGO in favour of the second respondent but will direct the social worker to provide an addendum addressing the issues noted within this judgment.

105. I will direct the social worker to provide a limited and focused support plan in respect of the SGO. Whilst this can contain any matters that appear relevant to the social worker I would ask that it specifically consider what support (if any) can be offered to the special guardians in relation to managing contact, to include any support that can be offered to help the adults mediate and improve their relationships.

106. I intend to give the social worker 6 weeks to provide the above (I understood her to seek at least 3 weeks). I will fix a DRA in this regard on the first date after 8 weeks with position documents to be provided at 7 weeks.

107. I do not direct the appointment of a guardian for the Child.

108. Subject to §106 above I do not intend to adjourn the proceedings as to contact.

109. I make a child arrangements spending time with order. This will provide for indirect contact on a monthly basis. This is to include a letter and video message. There will be permission for presents to be sent on birthdays and other culturally important events. I am not ordering direct contact as I consider the benefits of the same are limited and significantly outweighed by the negatives. I have considered the situation with respect to the Child's siblings but do not intend to order separate contact. The Child is oppositional to the same in the same manner as she opposes contact with the Applicants. Their role and relevance can be captured in the video messaging.

110. I intend to hand this judgment down at a hearing at 10am in the first week of October 2023 when I return to hearing children work. I could hear this on date between 3-6 October (inclusive). It will have a time estimate of 30 minutes and I suggest it be heard remotely (unless parties wish for an attended hearing). Can I ask counsel to liaise and come back to me with the following by 4pm on 22 September 2023:

    i) A proposed date for the handing down with confirmation as to whether an attended hearing is sought

    ii) A draft order for that hearing

    iii) Any corrections to this judgment

iv) Any requests for clarification

v) Any observations as to amendments required to permit this judgment to be published in a confidential manner.

His Honour Judge Willans