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Case No: LS23C50559

Neutral Citation Number: [2024] EWFC 396 (B)

IN THE FAMILY COURT AT LEEDS

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF D (A
CHILD)**

Date 11th and 12th November 2024

Before : HHJ Hickinbottom

Between : Applicant – City of Bradford Metropolitan District Council

and -

Respondents

(1) Mother of D

(2) Father of D

(3) Child D

(4) Mrs E

(5) Mr E

Ms Maltas of Counsel for the Applicant
Mr Stout Solicitor for the Mother
Ms Forsyth Solicitor for the Father
Mr and Mrs E acting in person

Ms Kelly Solicitor for the Child taking her instructions from the Guardian

Hearing dates: 11th and 12th November 2024

APPROVED JUDGMENT

Background

1. This final hearing has been concerned with Child D, a boy, who is now aged 1 year and 7 months. The Local Authority, City of Bradford Metropolitan District Council/ Bradford Children and Families Trust (Bradford MDC), seeks care and placement orders in respect of D with a plan to place him for adoption. Mr and Mrs E have been D's foster carers since 1st August 2023, they have made an application for a special guardianship order (SGO) for D. Bradford MDC do not support D remaining in the care of Mr and Mrs E in the longer term either by way of SGO or adoption. The parents accept that they cannot care for D. Both parents support the application of Mr and Mrs E. The Guardian also supports Mr and Mrs E's application, and she has been highly critical of the Local Authority's conduct in this case. The issue in dispute for the Court to determine is whether it is in D' welfare interests that D should remain in the care of Mr and Mrs E subject to an SGO, or whether he should be made subject to care and placement orders with a plan that he is ultimately moved from the care of Mr and Mrs E to an adoptive placement.
2. D's mother is white British and his father is a Bengali Muslim. D has 3 older half-siblings who he was living with up until he came into care on 21st July 2023. Those 3 half-siblings, A, B and C, are the Mother's children to a different partner. They were also subject to these proceedings, but final orders were made in respect of A, B and C on 02/07/24 when care orders were made with a plan that they remain in a family placement within their wider paternal family. D also has another half-sibling who is older than A, B and C and who is the Mother's child to another partner, she was not subject to these proceedings and is cared for by her father.
3. Bradford MDC have undertaken a negative assessment of the Mother. The Father of D has not engaged with the assessment process. During the course of these proceedings

there was a plan to place D with his maternal grandmother. Mr and Mrs E had initially been supporting D to transition to the care of his maternal grandmother, but when it became apparent that was not an appropriate placement for D, and there being no other family carers that the Local Authority were to pursue a plan of adoption, they indicated that they wanted to keep D in their care.

4. On 02/07/24 the Court ordered Bradford MDC to complete a special guardianship order assessment of Mr and Mrs E. Bradford MDC subsequently filed an assessment of Mr and Mrs E that was negative, and they continued to pursue care and placement orders with a plan of adoption. On 19th August 2024 Mr and Mrs E, in the face of the Local Authority not supporting them as long-term carers for D either by way of adoption or by way of Special Guardianship Order (SGO), issued their own application for an SGO.

The Law

5. In respect of any party seeking findings the standard of proof is that of balance of probabilities and the burden is upon the party seeking findings, in this case Bradford MDC. If the Court is being invited to make a care order the Court has to be satisfied that the threshold for making public laws orders is crossed as set out in section 31 of the Children Act 1989. In this case as will be dealt with no party disputes that the threshold is crossed and findings have already been made by this Court in these proceedings in respect of D's older three half-siblings A, B and C.
6. In undertaking the welfare analysis where the plan is one of adoption the Court must apply the legal framework in the Adoption and Children Act 2002 and must take account of the Article 8 rights of the parents and the Child. In so far as the Article 8 rights of the parents and of D are concerned, there can be no clearer situation where they are engaged. The Local Authority seeks a placement order enabling them to place D for adoption. Adoption, if it proceeds, will end D's legal relationships with his birth family. Such an order can only be made where it is necessary and proportionate. Orders contemplating non-consensual adoption are extreme orders of last resort to be

made in exceptional circumstances where nothing else will do and where no other course is possible in a child's interests.

7. The welfare analysis is undertaken by section 1 of the 2002 Act so that the Child's welfare throughout his life is my paramount consideration. The welfare checklist in section 1(4) must be applied, requiring the court to consider, amongst other factors, the impact on D of ceasing to be a member of his birth family and becoming an adopted person; the relationships he has with his birth family, including the likelihood of the relationships continuing and the value of them doing so.

Threshold

8. The Court made final care orders in respect of A, B and C on 02/07/24. When the Court made final care orders findings were made in support of the threshold for the making of orders under section 31 of Children Act 1989. The findings made by District Judge Bell on 02/07/24 are as follows:

The Court finds that at the time protective measures were instigated the threshold criteria as set out in s31(2) of the Children Act 1989 were met in respect of the children, in that the children were suffering, or were likely to suffer significant harm and that the harm, or likelihood of harm, was attributable to the care given to the children, or likely to be given to them if the order were not made, that care not being what it would be reasonable to expect a parent to give to them.

The Court finds the following in support of threshold:

- i. The relationship between Mother and Father of D is an abusive one which has included:
 - a. Arguments and verbal abuse in the form of shouting, swearing and name calling;
 - b. On 11 July 2023, Father of D made threats to attend the family home, smash the windows and burn the house down. Father of D was arrested in connection with this offence ;

- c. As a result of those allegations Father of D was under bail conditions not to have contact with Mother, which were breached on 21 July 2023.
 - ii. Father of D has been the subject of MARAC referrals in the past and is classed as a High Risk to his partners.
 - iii. The relationship between Mother and Father of A,B and C has also been abusive one which included physical assault, threatening behaviour, shouting, swearing and verbal abuse.
 - iv. The children have suffered significant emotional harm as a result of their parents' behaviour.
 - v. The nature of these relationships render the children likely to suffer significant emotional harm in the future
 - vi. Mother and Father of D have prioritised their relationship over and above the safety and welfare of the children in that:
 - a. They were both complicit in breaching bail conditions imposed by the police for the protection of Mother and the children by meeting each other with the children present after these conditions were in place.
 - b. On 21 July 2023, Mother and Father of D attended the children's school together in clear breach of Father of D's bail conditions.
 - vii. On 21 July 2023, Mother was located in a public park by West Yorkshire Police. She was observed by them to be intoxicated by alcohol whilst caring for the children.
 - viii. The use of drugs and excessive alcohol by Mother has impaired her parenting capacity and has rendered the children likely to suffer significant physical and emotional harm and the overall neglect of their basic care needs.
- 9. Those findings were made just over 4 months ago within these proceedings, and whilst they were made in support of care orders for the 3 older children they apply equally to D who was in the care of the Mother from birth up until 21st July 2023 (approximately 4 months). On the 21st July 2023 A, B, C and D were taken into

police protection following the police finding the Mother intoxicated in the park with all four children in her care. No party has taken any issue with threshold as part of this hearing, and I am invited to adopt the findings already made by the Court. I therefore rely upon the findings already made by the Court in relation to D.

10. However, it is well-established that simply because threshold is crossed it does not mean that any public law orders should be made. The Court is required to undertake a welfare analysis and to consider the permanence plans for the Child.

Evidence

11. The Court has had the benefit in this case of having heard oral evidence from D's social worker, as well as from the Childrens' Guardian. The Court has also been able to consider all the documents in the bundle prepared for this final hearing which includes the statements of Mr and Mrs E and the minutes of the Agency Decision Maker meetings.
12. This judgment will later detail the conduct of Bradford MDC in relation to this litigation. Nothing in this judgment is intended as direct criticism of D's social worker. Having heard her oral evidence I am satisfied that she was attempting to do her best in very difficult circumstances. She had completed a positive assessment of Mr and Mrs E as well as a rescind report for the purposes of inviting the Agency Decision Maker (ADM) to consider an alternative plan to adoption. As will be dealt with in some further detail in this judgment, that plan was not accepted by the ADM, and the decision was deferred. At the point the decision was deferred it was recorded that that was on basis of the need for there to be further discussions outside to the meeting for the change of plan from adoption to SGO to be presented to a care planning meeting, and for the Independent Reviewing Officer's (IRO) views to be obtained. The social worker then prepared a further SGO report with a negative conclusion. The evidence of the Guardian was that in her opinion: at best the social worker had had significant pressure applied to her to change her report; and at worst she had been told to change it. It is not known precisely how it came to be that that report was changed, but it is clear that it was changed with no further conversations

with Mr and Mrs E, and that Bradford MDC were not open about its existence, or about the sequence of events as part of their decision-making until the Guardian and her Solicitor made a series of requests for information.

13. The social worker's oral evidence to this Court was in support of Bradford MDC's plan of adoption. In essence her professional opinion now appears to be that Mr and Mrs E are excellent carers with a strong bond with D. Bradford MDC's position that adoption with alternative carers is the only plan that will meet D's has three strands to it: Mr and Mrs E's vulnerabilities as foster carers; D's religious and cultural needs; and D's need for long term permanence. The social worker's evidence was that Mr and Mrs E's alleged vulnerability as foster carers would not of itself be an issue that would or should prevent them caring for D in the longer term and the main difficulty was that they could not meet his religious and cultural needs. The social worker did refer to the need for D to have long term stability and she spoke in her oral evidence of the benefits of adoption as opposed to an SGO in relation to permanence for D as it is lifelong and not just to 18 years old.
14. The social worker has consistently been clear in her evidence that Mr and Mrs E provide an excellent level of care to D, that they provide naturally therapeutic parenting, and she stated in her oral evidence that she had enjoyed watching them with D. It is clear in my judgment that the social worker, despite what is contained in this judgment in relation to Bradford MDC's conduct, cares about D and has a good relationship with Mr and Mrs E who she holds in high regard as carers for D.
15. The Guardian has in her final analysis and in her oral evidence provided a comprehensive analysis of the options for D considering all of the relevant welfare checklist. Her evidence is in essence that it cannot be said in this case that nothing else will do for D, as there is an option for D that allows him to be cared for by excellent carers who he has an attachment to; and who love him. Conversely, her evidence is that if D was to be removed from the care of Mr and Mrs E he will likely to be caused significant emotional harm.

Welfare Analysis

16. As Bradford MDC are seeking care and placement orders, the Court must consider the extended welfare checklist under section 1 (4) of the Adoption and Children Act 2002.

Dealing with those factors in turn:

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding)

D is clearly too young to express his views, but it is likely that he would want to be cared for by his birth family if that were possible. As that is not an option for him, I agree with the Guardian's assertion that if that were not possible "D would very much want to remain in the care of his foster parents." It is clear and not disputed that Mr and Mrs E are his primary attachment figures. He has lived with them the vast majority of his life, some 15 months. Mr and Mrs E provide D with an excellent level of care, he is integrated into their wider family, he calls them 'mama' and 'dada' and has a great relationship with Mrs E's mother who he sees regularly.

(b) the child's particular needs,

D has no known health needs, but it has rightly been identified that due to his early experiences including exposure to domestic abuse, potential exposure to substances in utero and having had several moves of carer prior to being placed in the care of Mr and Mrs E he may develop difficulties and complex needs in later life. He has already demonstrated some distress such as night terrors, although they have almost completely resolved and adverse reactions to sibling family time so significant that that contact has had to be stopped.

One of the concerns that the Local Authority have expressed in relation to Mr and Mrs E is that in light of the previous issues with them as carers that they may not be resilient enough to cope with any future behaviours from D that may emerge over time as a result of his early experiences. There is never any guarantee that any placement will not breakdown. Even though there have been some issues that have emerged over the 4 years that Mr and Mrs E have been foster carers it is also clear that they have done everything that they could be expected to do to address those concerns. They have had individual counselling and couples counselling. They have worked with Barnardo's. Moreover, all the evidence in this case including that contained within in the two SGO reports is that Mr and Mrs E are exceptional carers within whose care D is thriving. The Local Authority's own evidence is that the couple provide naturally therapeutic care. The social worker's oral evidence was that the cultural issue was the main factor in this case as to why Mr and Mrs E were not suitable to be Special Guardians and any doubts about the long-term stability of any placement with Mr and Mrs E would not of itself be determinative.

In my judgment whilst there is always a risk of a placement breakdown, that is the case for any placement. All the evidence in this case points to Mr and Mrs E being excellent and reflective carers, in so far as any difficulties they have encountered as foster carers were due to any weaknesses in them as carers or a couple, they have addressed them. They have a bond with D and care about him deeply. For all those reasons I find that they are well-placed to meet his evolving needs and considering their strengths as carers and their commitment to D the risks of a placement breaking down are reduced.

(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

The Local Authority's analysis in relation to this aspect of the welfare checklist and of (f) below is woefully inadequate. They do not deal with it at all in the social worker's final statement where the welfare checklist is dealt with, because they appear to have applied the welfare checklist at section 1 of the Children Act 1989 instead of the relevant checklist in section 1 of the Adoption and Children Act 2002.

It is an agreed position in this case that D cannot return to be cared for by his birth family, however, there is an option for D that does not require him to become an adopted person. If D becomes an adopted person that is inevitably going to have detrimental impact on him in relation to his identity over and above the impact of simply being cared for by carers who are not part of his birth family. Neither of D's parents are currently having contact with him, and sibling contact is also not taking place due to the detrimental emotional impact on the children of sibling contact between the older children and D. Although Bradford MDC refer in their evidence and care planning to the possibility of open adoption, there is no certainty that an open adoption could be achieved. At this stage as no contact with parents or siblings is currently taking place it seems less likely that an adoptive placement could be achieved with a clear plan for future post-adoption contact. Bradford MDC's own care plan refers to letterbox contact. Conversely it is known that Mr and Mrs E have a good relationship with the Mother and with the family carers for A, B and C and it is clear in this case that at any such point as contact either with the siblings and/or with either parent becomes safe and appropriate for D it is likely that they will promote those relationships and any direct contact that may be recommended by the Local Authority. D is only 1 year and 7 months old and whilst an SGO to Mr and Mrs E would mean him being cared for outside his birth family, D would not become an adopted person and there would be a very real prospect of D retaining or regaining meaningful links and relationships with his birth family which outcome would be less likely to be achieved through adoption.

The only way in which Bradford MDC appear to have considered the effect on D of becoming an adopted person is in so far as it is their case that adoption is a better plan for D as it has the benefit of more permanence. Adoption clearly has different legal implications to an SGO including that parents retain legal responsibility and would still be able to apply (if granted leave) for orders in respect of D. However, an SGO is a plan for permanence, it is also supported by the parents in this case and any benefits of adoption must be weighed very carefully against the disadvantages, which in this case are considerable.

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

Bradford MDC's main concern with an outcome that involves D remaining in the care of Mr and Mrs E in the long term is that it will not meet D's cultural needs. D is of dual heritage. His Mother is white British, and his Father is from Bangladesh and is a Muslim. The Mother has expressed a wish for D to celebrate Christmas and Easter, and also to have a halal diet and to be raised as a Muslim, although her statement says, "D's siblings are being raised as Muslims, but this is not something which I think is vital for D." Mr and Mrs E are white British and are not Muslims. They have, however, shown a real commitment to meeting D's cultural needs. The following is an extract of how Mr and Mrs E expressed to the social worker how they will meet D's cultural needs:

"We would make a space for his religion in our home. Whether that's a quiet and comfortable space for him to pray, or through open and meaningful chats about his faith. We will continue to educate ourselves through books and attending any courses deemed appropriate that Barnardo's provide. We are going to sign up for an online course for caring for a child of different ethnicity. We have provided culturally appropriate food for him. As requested by his mum we are already following a halal diet. We will celebrate religious festivals as a family with D. Reaching out to our local community to learn how they celebrate, so we can try to celebrate in an authentic and traditional way. Also respecting his mother's wishes to celebrate Christmas and Easter. We have also increased diversity within our home, buying books that D reads which celebrates children of mixed backgrounds and cultures."

The Local Authority's position is in essence that Mr and Mrs E will never be able to meet D's cultural needs as they are white British and not Muslim. A focus of the Local Authority expressed both by the ADM and later by the social worker in her oral and written evidence is not only the difficulty with promoting D's Muslim and Bengali heritage when that is not the dominant culture in the England, but in particular how D might feel about being raised by white carers when that does not reflect his appearance. Cultural factors are important. It is right to look at D's cultural background and identity when assessing what plan is the best for him. However, that factor is one factor to be weighed in the balance and not, as the Local Authority appear to have treated it in this

case, the determinative factor that trumps all others. When a proper analysis is undertaken, whilst it is important to acknowledge those cultural factors it is also crucial to consider the following:

- i) part of D's heritage is white British;
- ii) whilst Mr and Mrs E are white and Christian they are doing, and it is clear they will continue to do, everything they can to support D in connecting with and understanding his Bengali and Muslim heritage;
- iii) if D achieves permanence through an SGO to his current carers he has a real opportunity to have some relationship with at least some of his birth family which is likely to include his three older half-siblings who are also dual heritage and who are also being raised as Muslims;
- iv) the risk of harm to D of removing him from his primary attachment figures.

If it was possible for D to be cared for by say his Mother as a sole carer, D would be in the position of being cared for by a white British carer. Of course, the obvious difference is that she is his biological parent and Mr and Mrs E are unrelated to D, but it is relevant that children in our rich and diverse society are frequently being cared for by carers both related and unrelated who do not reflect an important part of their heritage. Mr and Mrs E are not D's biological family, but they are his primary attachment figures, and they can offer him: continuity; exceptional care; a commitment to meeting his cultural needs; and the opportunity for him to retain meaningful links with his birth family (which is also likely to address some of his cultural needs).

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

It is clear from the threshold findings and from all the evidence in this case that there is a likelihood of D suffering from significant harm if he were to be placed back in the care of his Mother or his Father. The parenting assessment of Mother is negative. The outcome of that assessment is not disputed by the Mother. In summary it concludes that the Mother

has very limited insight into the history of neglect in respect of her older children or the impact of drug or alcohol misuse on her ability to parent. She remains vulnerable to making poor decisions in respect of future relationships and the hair strand testing undertaken in these proceedings demonstrated for the period of testing, which was up to August 2023, cocaine and cannabis use and excessive alcohol use. She then failed to engage with the repeat hair strand testing. The Father has not engaged with the Local Authority, and there has therefore been no assessment of his ability to care for D, he does however accept that he is not able to care. It is clear given the findings that have been made together with the assessment of the Mother and the lack of engagement of the Father that D would be at risk of significant harm if he were to be placed back in the care of either parent.

In my assessment Bradford MDC have failed to consider the risk of harm to D of having to move placement as part of their analysis. The plan of adoption would necessitate D ultimately moving from the care of Mr and Mrs E. The Guardian states the following regarding the risk of a placement move for D:

“It is my view that if D was to be removed from his foster parent who seek to care permanently for him, this would cause him lifelong emotional and potential psychological harm”.

Bradford MDC have asserted in their written evidence that the impact of a move would be mitigated by his ability to form attachments (as evidenced by his ability to form an attachment to Mr and Mrs E) together with a carefully managed move. However, they also acknowledge that he has experienced instability (4 placements before coming to Mr and Mrs E) and it is also apparent from the evidence that he has demonstrated real distress such as night terrors and sobbing, screaming and clinging to Mrs E. The Local Authority’s position in relation to this issue is that children are generally moved out of short term foster care into permanent placements. However, that rationale is flawed because in this case there is an option for D not to have to move out of that placement. In those circumstances the consequences of a move cannot be ignored and must be weighed in the balance. It is also relevant in this case that D has not been with his foster carers a

short time, he has been there 15 months which is over three- quarters of his life. In my judgment D clearly will be caused significant harm if he has to move from the care of Mr and Mrs E, and that is a very important consideration.

(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.

Bradford MDC do not consider this as part of their consideration of the welfare checklist in the social worker's final statement, as the wrong checklist has been applied. These factors are clearly important matters to reflect upon when considering adoption.

The opportunity for D to have some relationship with his birth family in the future is discussed above, but this is a very important factor for D's welfare.

Another factor in this case is that despite the Mother's expressed wish for D to be raised a Muslim, and even though the Father is from Bangladesh and Muslim (and so from a different cultural background to Mr and Mrs E), they both wish for him to be cared for by Mr and Mrs E. This is a further consideration that should carry at least some weight in the welfare analysis, and it is crucial to balance this against the cultural factors. Bradford MDC appear to have elevated the cultural factors in part on the basis that the Mother has said that she wants D to be raised a Muslim, but that should not be seen in isolation because she also wants him to remain with Mr and Mrs E in the knowledge that they are not Muslims.

The Conduct of City of Bradford Metropolitan District Council.

17. Unfortunately, it is also necessary in this case to deal in some detail with the conduct of Bradford MDC. When the Court ordered a special guardianship order assessment, D's social worker, completed that piece of work. There is a document in the bundle dated 19/08/24 that is a special guardianship order assessment of Mr and Mrs E (which reached a positive conclusion) and a rescind report supporting a change of plan from adoption to SGO in favour of Mr and Mrs E also authored by the social worker which was presented to the Agency Decision Maker on 21/08/24. The rescind report included the following analysis:

“Finding an adoptive placement taking into consideration his cultural needs and his identity would mean further delay and would not offer him anything different to the current option of an SGO to his current carers which is more favourable for D. D is so happy with his current carers and formed an attachment, D would say he is fortunate to not have to move placements again and is grateful for his current carers who love him and want him to be part of their family and life. Currently there are no prospective adoptive matches for D and to keep on waiting is not something D needs and deserves. D is of age where he needs to where he will be living so that he can build on his relationships, his environment, his family and network with a view to securing and stabilizing his life. D's current carers who have cared for D since he was 4 months old and have secured an attachment which is evident through visits, D is settled and observed to be happy and thriving, it would make sense for D to remain in his current placement and offer D a sense of stability and performance [permanence] by means of an SGO order. The carers have an open view about sibling contact and this was tested on the 01/08/2024 when the sibling contact was supervised by the social workers, the carers feel that maintaining D family links is crucial to D's identity and cultural and this is something they will continue to promote as D gets older. The carers have undertaken their own research into the local mosque in the area and of the foods that D is not allowed to eat, the carers are respectful of the parents' wishes for D to maintain the family religious values of not eating Pork, the carers have purchased halal food for D to eat.”

18. The Court also has the benefit of the ADM minutes from 21/08/24 that set out that the ADM expresses the following views:

“The ADM does not feel she has a choice as it appears the Court will endorse a plan of SGO regardless. The ADM feels the current carers will not meet D’s holistic needs and is not confident it will provide the stability and consistency he needs for the rest of his life. The ADM agrees the carers are meeting D’s short term needs and are doing what they can to understand his cultural needs. The ADM feels further discussions are needed outside of this meeting before a decision can be made. The change of plan from adoption to SGO needs to be presented to a care planning meeting as it has not been endorsed in that meeting. The IRO has also not provided their views. The decision is deferred until these meetings/discussions take place.”

19. Following the ADM deferring the decision a further SGO report dated 27/08/24 was then prepared by the social worker. That report reached a negative conclusion. It was essentially the same report as she had initially prepared, but into it had been inserted some information as to why it was said that Mr and Mrs E were not suitable to be special guardians including matters relating to D’s cultural needs and in addition details of issues that the couple had encountered as foster carers. The conclusion of that second assessment was that “it is not recommended that SGO is granted for D as D would benefit more from one of an adoptive family who can meet his overriding holistic needs meeting his cultural and identity needs”.

20. At the second ADM the second SGO report was presented. The minutes of the second meeting reveal that the IRO’s view were yet to be confirmed, however the ADM went on to make a decision in the absence of the IRO’s input. The ADM decision mirrored the opinions expressed on the first occasion by the ADM and the plan of adoption was not rescinded. The Court has not heard direct evidence from the ADM or IRO, but it appears from the ADM minutes that once the amended negative SGO report was presented the ADM felt able to decide without input from the Independent Reviewing Officer. That decision was that adoption was still the right plan for D. It is not entirely

clear what if any role the IRO played in the Local Authority process although the evidence of the Guardian is that the IRO had been expressing similar concerns as she had in relation to ensuring that the foster carer's wish to provide permanency to D was properly explored by the Local Authority.

21. The Local Authority have described that first report as a 'draft' on the basis that the social worker says that due to time restraints it was not signed off by the heads of service. However, it cannot properly be described as a draft as it was a completed assessment with a reasoned conclusion and what is more it was presented to the ADM along with the rescind report which was also a succinct, but well-thought-out analysis of why an SGO to his current carers was best for D. What is really concerning in this case is the fact that Local Authority only filed the second report in these proceedings. They did not share with the Court or the parties the first positive assessment, neither did they share (as they should have done) the ADM minutes. It was only when the Guardian read the second SGO assessment and felt that something wasn't right and requested the ADM minutes that the whole picture began to be revealed. Even then Bradford MDC only shared the minutes of the second ADM. The Guardian and Solicitor for the Child then realised there was a previous ADM and requested those minutes, and having read those realised that there was a previous SGO report and requested that. So, whilst the Local Authority have provided documents upon request they have not, as they evidently should have done, been forthcoming with all the relevant information from the start.

22. Transparency is not the only concern about the conduct of the Local Authority in this case. The social worker having prepared a positive assessment then added into the report not only a view on the perceived inability to meet D's cultural needs, but a chronology of difficulties that Mr and Mrs E had had as foster carers. For example, at 5b in the initial report it simply states that:

"Mr E and Mrs E are IFA foster carers and have been approved since 2020."

23. In the second report there are 15 paragraphs of information at 5b about matters such as difficulties when 3 children were placed in their care and a time when the couple

separated in 2022 (although there was some reference to the separation in a different part of the first report). There is also an additional paragraph where the following is stated:

“Mrs E and Mr E are currently looking to foster another child to come into their home, whilst offering to be SGO carers to D, this will bring in a number of anxieties for D and also for Mrs E and Mr E, given their history of fostering, this may destabilise D’s placement and compromise care needs to D. Taking in other foster children will naturally demand attention and specific care needs who may display emotional and behavioural difficulties. This may impact on D’s stability under an SGO with his carers.”

24. What is apparent is that following the first report and the decision to alter the assessment from a positive one to a negative one there is no attempt to discuss these issues with Mr and Mrs E in order to perform a proper analysis of how those previous difficulties really might or might not impact of the stability of the placement. In her oral evidence the Guardian stated that there was “no triangulation”, that is no attempt to look at what was recorded to have happened against the context of what other information that might be available. In this case details from Barnardo’s and a discussion with Mr and Mrs E will have given a fuller picture of the precise circumstances at the time, and what might have been done to remedy any weaknesses as a couple or as a carers.

25. Bradford MDC have expressed a concern that the couple may be vulnerable as carers because of their history as foster carers including that they gave notice on a foster placement (that is that they did not want to continue with that placement) and that in 2022 Mrs E left the family home. However, the context is key. The Guardian said in her oral evidence that the evidence that she had obtained from Barnardo’s about the placement breakdown was that the child had “extraordinarily exceptional needs”, and that Mr and Mrs E had since done a lot of work with Barnardo’s and were highly thought of as carers. In addition, the relationship breakdown in 2022 has to be put in the context of the circumstances at the time as well as what has happened thereafter, which is attendance at couples counselling and individual counselling by Mr and Mrs

E. It is also evident from the social worker's oral evidence that she does not really in her professional opinion think that Mr and Mrs E are vulnerable as carers of D, and the key issue identified with them as carers is in relation to their ability to meet D's cultural needs.

26. In my judgment there is nothing to suggest that the first report was not robust enough, it deals with a lot of the past history including the relationship breakdown in 2022, but also forms a reasoned conclusion as to why Mr and Mrs E are well-placed to offer a permanent placement to D. Even if one were to conclude that the first report was not robust enough, the second report cannot be said to address any lack of robustness. The addition of negative factors with no further discussion with Mr and Mrs E and no 'triangulation' does not make the report any more robust.

27. What is clear is that the first report did not support the care plan that the ADM had in mind, as evidenced by the social worker stating in her oral evidence that she was told, "it is not our plan" when she presented the rescind report on 21/08/24. It was open to the Local Authority at this stage, notwithstanding the positive assessment, to still weigh all the factors and pursue a plan of adoption. The ability of a carer to meet a child's cultural needs is an important factor, but it is not necessarily a binary issue. Whilst there may be cases where a carer absolutely cannot meet a child's cultural needs for example if they are resistant to the idea of promoting a part of that child's heritage, but this is not one of those cases. There may be other situations where there are competing care options, where one carer is better placed to meet a child's cultural needs than another and that might be a factor to be weighed when choosing between them. In the case of competing carers, however, the assessing local authority would not produce a negative report for one carer simply because they were less able to meet the child's cultural needs. If each carer/ set of carers could care and meet (possibly to varying degrees) the child's cultural needs the Local Authority would prepare two positive reports and then they would weigh all the relevant factors before formulating their plan. In this case Bradford MDC has treated the child's cultural needs as a wholly binary issue and instead of assessing the SGO option against the other options, in light of the relevant welfare checklist (including the cultural needs issue), the

original report was amended in its content and conclusion. The reasons for this are perhaps hinted at in the ADM minutes where the ADM states:

“The ADM does not feel she has a choice as it appears the Court will endorse a plan of SGO regardless”.

28. It is concerning that the report was altered with no further discussion and against the background of the ADM sending the social worker away for further meetings, expressing the view that the Court would simply endorse the plan for SGO. It is even more concerning that Bradford MDC did not disclose: the ADM minutes of either meeting; the original SGO report; or the rescind report until specific separate requests were made for each.

29. To put this in context, Bradford MDC are seeking a placement order, their plan is to place D with carers outside his family and to seek that he is adopted by strangers so that his legal relationships with his birth family will be permanently severed. They are seeking that order in circumstances where both his parents oppose such a plan. Local Authorities clearly should act in a way that is fair, open, and honest in any event, but fairness and full and frank disclosure is even more important against the context of Bradford MDC's plan of adoption.

30. The Local Authority analysis in this case has been deeply flawed. They have taken a view about the primacy of D's cultural needs and given insufficient and in some cases no weight to the many other factors that are highly relevant to D's welfare throughout his life including the harm that D would be caused by removing him from the care of Mr and Mrs E. They have failed to properly apply the principle that adoption should only be sanctioned where nothing else will do. They have failed to apply the relevant welfare checklist. The Local Authority not performing a proper analysis or getting the balance wrong is one thing, however, it is another matter to act in a way that is not transparent or fair.

31. In my judgment in this case Bradford MDC has neither been transparent nor fair. If the SGO assessment was thought not to be robust enough, then the social worker should have explored any criticisms with Mr and Mrs E before adding them into the second report. However, it was evident that not only was the social worker's initial analysis appropriate and correct in its conclusion, but there was also no omission or lack of robustness in the SGO report. The Court has not had the benefit of hearing from the ADM, however, it is apparent that there has been an element of dogmatism in the approach of the Local Authority and that the process was unfair. Most troubling of all is that the Local Authority did not, as it should have done, set out what had happened but only revealed the true sequence of events and full set of documents incrementally and only when specific requests were made.

Conclusion

32. In my judgment this is far from being a finely balanced case. Placements of children outside of their birth family are never ideal and it has to be acknowledged in this case that despite the best efforts of Mr and Mrs E they are not his birth family, nor can they ever fully reflect his heritage as they are: white; Christian; they do not speak Bengali; and they have no direct connection to Bengali culture. However, they do have a lot to offer D. They already know and love him. The evidence of the social worker is that they provide him with excellent care. They are committed to supporting D and to understanding his heritage and culture. They are supportive of him having relationships with his birth family as and when that is right for him. The concerns for the stability of this placement in so far as Bradford MDC continue to rely on them are not in my judgment significant. Mr and Mrs E have addressed any issues and present as high-quality carers committed to D and committed to ensuring that they put themselves in the best position to care for him. There is not in my judgment any higher a likelihood that this placement will break down either due to weaknesses in Mr and Mrs E as carers or due to them fostering an additional child than there would

be in a hypothetical adoptive placement. In many ways the placement with Mr and Mrs E is likely to be more resilient due to their experience as carers, their commitment to growth and their existing bond and knowledge of D. This is not a case where nothing else will do. Far from it, D has carers who love him and are committed to him, and he will undoubtedly be caused harm if he is removed from their care; that harm is entirely preventable when Mr and Mrs E can provide him with a loving home in the long term. The making of a special guardianship order to Mr and Mrs E will provide D with permanence with continuity of care and the opportunity to retain meaningful links to his birth family, culture, and heritage. Both parents are supportive of the order sought by Mr and Mrs E.

33. I am satisfied having weighed all the relevant factors that the making of care and placement orders is neither necessary nor proportionate. It is evidently an unnecessary interference with the parents' and D's Article 8 rights to make care and placement orders when there not only is there another realistic option for D, but where in all the circumstances there is a better plan for D. Looking at this case holistically and balancing all the relevant factors in the welfare checklist, D remaining with Mr and Mrs E is overwhelmingly in his best interests both now and throughout his life. Both parents support an SGO being made, and it is clear given the assessment of the Mother, and the Father's lack of any real engagement that no less interventionist order will do for D. D requires the permanence of an SGO and the enhanced parental responsibility it will give to Mr and Mrs E. I therefore dismiss Bradford MDC's application for care and placement orders and grant Mr and Mrs E a special guardianship order in favour of D.

HHJ Hickinbottom

27th November 2024