

Neutral Citation Number: [2024] EWFC 83 (B)

Case No: CF26/23, CF28/23, CF29/23 and CF30/23

Cardiff Civil and Family Justice Centre

2 Park Street, Cardiff, CF10 1ET

Date: 12th February 2024

IN THE FAMILY COURT SITTING AT CARDIFF

Before :

HIS HONOUR JUDGE MUZAFFER

Between :

AA **Applicant**

-and-

BB **First Respondent**

-and-

CC **Second Respondent**

-and-

D, H, K and N **Third to Sixth Respondents**

(Children by their Children's Guardian, Helen Tucker)

The Applicant appeared in person

The First Respondent appeared in person

The Second Respondent appeared in person

Miss Angela Ricciardi, instructed by Robertsons Solicitors, for the **Third to Sixth Respondents**

Hearing date: 11th January 2024

Judgment handed down: 12th February 2024

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

His Honour Judge Muzaffer:

Introduction

1. This judgment is about four siblings D, H, K, and N. D is the youngest and in the final year of primary school. N is the oldest and has recently turned 18. H and K are both teenagers in the final years of childhood. When addressing them collectively, for ease I shall refer to them as ‘the children’, notwithstanding the fact that N is now an adult. I hope that N will not take offence to this approach.
2. The children’s step-father, AA (‘the step-father’), would like to adopt them so that he becomes their legal parent and the children be treated in the future as being of the relationship that he has with their mother and his wife, BB (‘the mother’). The mother supports his applications, but they are vehemently opposed to by the children’s father, CC (‘the father’). He holds parental responsibility for each of the children.
3. The children are parties to the proceedings by their Children’s Guardian, Ms Helen Tucker. Each of the children support adoption orders being made, as does Ms Tucker.
4. The court heard the application on 11th January 2024 and committed to providing a written judgment. It was not possible to complete and circulate this in draft until 2nd February 2024, with the formal handing down listed to take place on 12th February 2024.

Summary of my decision

5. For understandable reasons, this has been a case of extremely high emotion. The judgment is necessarily detailed and lengthy, and I have no desire to exacerbate the anxiety and distress by withholding my decision until the end.
6. I am going to make a step-parent adoption order in respect of each of the children and dispense with the father’s consent to do so. I shall also make a child arrangements order providing for supervised contact between D and the father. The children’s surnames shall be changed on the making of the adoption order.

Background

7. I did not have the benefit of a case summary or skeleton argument prior to the start of the final hearing. I have deduced the following from the trial bundle and court files.

The mother and the father's relationship, and contact post separation

8. The mother and the father commenced a relationship in 2003, and married on 1st December 2005, shortly after N's birth. The mother states that the marriage was never particularly happy, but she and the father proceeded to have K, H, and D before separating in January 2017. The mother makes allegations of controlling behaviour and emotional abuse, but states that the primary source of acrimony was the father's bullying of her eldest daughter, X (half-sibling to the children). It is noted that the father disputes the mother's allegations, and he in turn alleges that he was the subject of controlling behaviour at the hands of the mother.
9. The children remained living with the mother after the parents separated. It appears that contact between the father and the children was inconsistent, with the mother alleging that the father was harassing her and exposing the children to emotional harm through erratic and unpredictable behaviour. The mother issued an application for a child arrangements order dated 2nd July 2019, and this was swiftly resolved by consent with an order dated 19th August 2019 providing for the children to live with her and spend time with the father each Tuesday and Thursday and on alternate weekends (daytime only).
10. Unfortunately, this did not settle matters, and the mother issued a further application dated 28th October 2019 stating that the children no longer wanted to see the father given the emotional upset that contact was said to be causing. The mother alleged that the father continued to denigrate her in front of the children, would shout at them, smoke cannabis in their presence, and cry uncontrollably during contact.
11. Cafcass Cymru produced a Child Impact Analysis dated 12th March 2020. It records that H did not want to spend any time with the father, but N and K did provided that he changed his behaviour and the activity was based in the community. D was said to miss the father and want regular contact with him.
12. The report recommended a variation to the existing order to provide for community-based weekend contact, increasing in duration if consistent and incident free. As set out within the final order made by consent dated 5th October 2020, it was agreed that contact would move to twice per month for a period of four hours, progressing to six hours after six months. These arrangements applied to N, K and D (albeit with the caveat "*if they so choose*"). H was not made the subject of an order, although it is recorded that they could join contact at any time if they so wished.
13. It is noted that the mother applied for a non-molestation order against the father during the second set of proceedings on the basis that he had harassed and verbally abused her in relation to questions of contact, including in the courtroom itself at a

hearing on 19th December 2019. An order was made in standard terms on a without notice basis, and although this was subsequently challenged by the father, it appears that he did not attend the final hearing listed for 18th February 2020 and an order was made in his absence extending the injunction to expire on 3rd January 2021. It does not appear that oral evidence was taken and any findings of fact made against the father.

14. Both the mother and the father agree that contact remained inconsistent and beset with difficulties in the aftermath of the October 2020 final order. The mother states that the father persisted with the behaviours that resulted in contact breaking down in 2019, including continuing to smoke cannabis in the presence of the children. The father's general case is that the problems in contact are because of the mother active undermining of the relationship.
15. It is agreed that H and K only attended a handful of contacts, with this coming to a complete halt in early 2022 further to an allegation that the father slapped H following an argument. N continued to sporadically attend contact until Summer 2022, before deciding that they no longer wished to do so. D has spent the most amount of time with the father, with this taking place approximately twice per month and progressing to overnight stays and holiday contact. However, the mother stopped contact in September 2022 when it is alleged that D returned home smelling of cannabis and seemingly under its influence (although there is no suggestion that this would have been anything other than passive inhalation). It is accepted by the father that he took no active steps to reinstate contact, considering that returning to court "*would do more harm than good*".

The mother and the step-father's relationship, and the applications to adopt

16. The mother and step-father commenced their relationship in April 2019, with the step-father moving to live with the mother and children in October 2019. They became engaged in April 2020, and married on 1st July 2022. There is no dispute that the step-father has played a very active role in the children's lives over the last four and a half years, and a strong and stable family unit has been established.
17. The idea that the step-father should adopt the children is said by K to have been theirs, with the other children then also advocating for this to happen. The step-father and the mother agreed, and the Local Authority were notified of the intention to make an application on 28th February 2023.
18. Applications in respect of each child were issued on 6th July 2023 (for the purpose of s.49(4) Adoption and Children Act 2002, prior to N turning 18). The matter was first listed before HHJ Furness KC on 7th September 2023, at which point the court had before it Annex A reports prepared by the adoption agency social worker Miss Jade Howells, and a step-parent adoption report prepared by Ms Tucker for Cafcass Cymru. Neither of these reports supported the making of adoption orders. On the basis that Ms Tucker's report was received only very shortly prior to the hearing, the

court adjourned matters to 14th September 2023 in order to allow the parties the opportunity to reflect on its contents. The court made a child arrangements order by consent providing for the children to live with the step-father as well as the mother, and order that the step-father has parental responsibility for the children pursuant to s.4A Children Act 1989.

19. Matters were not capable of resolution at the adjourned hearing, again listed before HHJ Furness KC, albeit it is recorded on the face of the order that the court expressed the view that it would be difficult to justify making an adoption order considering the reports received. The matter was timetabled to a final hearing with a time estimate of three hours. It became apparent that Ms Tucker had not spoken with the children prior to the completion of her report, and the court directed an addendum report to be filed alongside statements from the parties.
20. The addendum report recorded a change in Ms Tucker's position in that she now supported the making of adoption orders. Although the addendum is dated 25th October 2023, it was only served on the parties the day before the final hearing listed to take place on 8th November 2023. On the retirement of HHJ Furness KC, the matter was reallocated and heard by me. Given that there was now a divergence of views between the professionals in the case, in addition to the complexity associated with making adoption orders in respect of four separate children, I determined that it was necessary to join the children as parties and appoint Ms Tucker as their Children's Guardian. This made an adjournment inevitable, but one was also appropriate given the late filing of the addendum report, and the need for the court to receive further evidence on the hitherto neglected question of future contact.

QLRs and the final hearing

21. The court considered that it would not be assisted by oral evidence from the parties addressing the allegations and counter allegations (including in respect of the alleged assault on H – a factual determination not being necessary to determine whether an adoption order should be made). However, the court provided for hearing limited evidence dealing with each party's account as to how and when contact came to an end and the proposals for future contact. The court considered that both the quality and significant distress conditions were met pursuant to s.31U of the Matrimonial and Family Proceedings Act 1984, and that the step-father and mother ought to be prohibited from cross-examining the father and vice versa. Two QLR appointments were directed, but notwithstanding HMCTs' best efforts, nobody could be found willing to assist at the re-listed final hearing on 10th January 2024.
22. The court was prepared to proceed and ask questions of the parties itself, adopting the approach to terminating a QLR appointment as identified by the President in his *View from the President's Chambers: July 2023*. However, the court was informed at the outset of the hearing that none of the adult parties actively sought to give evidence or have the other cross-examined. Given that there was now general agreement as to how

and when contact ceased, and that contact between D and the father ought to commence regardless of the outcome of the application to adopt, the court determined that it was no longer necessary or proportionate to receive oral evidence from the step-father, mother, and father. The court did, however, proceed to hear evidence from Miss Howells and Ms Tucker. Each party had the opportunity to ask questions and address the court fulling in closing submissions.

23. It is recorded that the court utilised screens to divide the father from the mother and step-father throughout the course of the hearing.

Meeting the children

24. Given the ages of the children and the extent of their involvement in the process, I was conscious that this might be a case in which they wanted to meet me. I requested that this be considered as part of an updating report from the Children's Guardian prior to the adjourned final hearing. This records that N, K and H wished to meet me, but also that "*they would think about it*". No formal application dealing with the question followed, and I was not aware of the children's views prior to reading the update on the morning of the final hearing. This is regrettable, as it would have been my keen desire to enable the children to feel more involved and connected with the proceedings, and to give them an opportunity to satisfy themselves that I understood their wishes and feelings. It would have also helped them to understand the nature of my task.
25. I recorded my intention at the conclusion of the hearing to write a letter to the children regardless of the outcome. That remains the case, although the question of the children meeting me can be revisited should they wish to do so.

Positions and Issues

26. The positions of the parties can be summarised as follows.
27. The mother and the step-father: the step-father seeks and the mother supports the making of adoption orders in respect of each of the children. They commit to promoting contact between the children and the father in the future and agree to a defined child arrangements order being made for supervised contact for D. If the court makes adoption orders, they intend to change the children's surnames in accordance with the children's wishes.
28. The father: he opposes the making of adoption orders in respect of any of the children. He accepts that contact with N, K, and H is unrealistic given their current views, but would like to work towards this in the future. He is desperate for contact to resume with D, and it was his position at the outset of the hearing that he agreed to this taking place on a supervised basis. However, in closing submissions, the father argued that

supervision was unnecessary. Although the father had previously indicated that he would agree to a change of the children's surnames, he stated that this was contingent on the applications for adoption orders being dropped. His position at final hearing was that he opposed any change being made.

29. The Children's Guardian: she supports the making of adoption orders in respect of each of the children, and for a defined order being made for supervised contact to take place between the father and D. Ms Tucker also supports the children's surnames being changed.

Legal Framework

30. The step-father makes his application pursuant to section 51(2) Adoption and Children Act 2002 (ACA 2002). As the father has parental responsibility, his consent is required before an adoption order can be made: s.47(2)(a) of the ACA 2002. The court can only dispense with the father's consent to the adoption order if it is satisfied that the welfare of the children requires the consent to be dispensed with: s.52(1)(b) ACA 2002.
31. The paramount consideration of the court must be the child's welfare throughout their life, pursuant to section 1(2) ACA 2002. The court also has regard to the provisions of the welfare checklist at s.1(4) of that Act, and the fact that an order should not be made unless it is considered that making the order would be better for the child than not doing so. The court must also have regard to the general principle that any delay in coming to a decision is likely to prejudice the child's welfare.
32. Article 8 of the European Convention on Human Rights says that everyone has a right to respect for family and private life. An adoption order that severs the legal parenthood of one individual and confers it on another, and in this case permanently extinguishes the father's parental responsibility in respect of the children, is clearly a gross interference with this right. The court is only permitted to sanction such an interference if it is necessary and proportionate in response to the children's circumstances. The court must strike a fair balance of both the rights of the adults and the children involved, but where a child's rights come into conflict with those of others, it is the child's rights that the court should treat as more important.
33. The court also has regard to Article 12 of the United Nations Convention on the Rights of the Child 1989, which makes clear that the opinions of children and young people should be considered when people make decisions about things that involve them. Those opinions should be taken seriously, although that is plainly not the same as saying that they must be agreed with.
34. The European Court of Human Rights has held that there is a distinction between adoptions by strangers and adoptions by family members, including step-parents. In *Söderbäck v Sweden* [1999] 1FLR 250, the distinction was explained as follows (at paragraph 31):

“While it is true that the adoption in the present case, like the contested measures in the *Johansen* case, had the legal effect of totally depriving the applicant of family life with his daughter, the context differs significantly. It does not concern the severance of links between a mother and a child taken into public care but, rather, of links between a natural father and a child who had been in the care of her mother since she was born.”

35. In *Re P (Step-Parent Adoption)* [2015] EWCA Civ 1174, the Court of Appeal considered *Söderbäck* in the following terms (at paragraph 48):

“Where an adoption application is made by a step-parent, the approach of the ECHR in *Söderbäck v Sweden* should be applied according to the facts of each case. In doing so the following central points from the judgment in *Söderbäck* are likely to be important:

- (a) There is a distinction to be drawn between adoption in the context of compulsory, permanent placement outside the family against the wishes of parents (for example, as in *Johansen v Norway*) and a step-parent adoption where, by definition, the child is remaining in the care of one or other of his parents.
- (b) Factors which are likely to reduce the degree of interference with the Art 8 rights of the child and the non-consenting parent (Parent B), and thereby make it more likely that adoption is a proportionate measure are:
 - i. where Parent B has not had the care of the child or otherwise asserted his or her responsibility for the child;
 - ii. where Parent B has had only infrequent or no contact with the child;
 - iii. where there is a particularly well-established family unit in the home of the parent and step-parent in which ‘de facto’ family ties have existed for a significant period.”

36. McFarlane LJ went on to consider the approach that the court should take to proportionality as follows (at paragraph 62):

“The reason why context is important is that, in each case, it is necessary to evaluate the proportionality of the intervention in family life that is being proposed. For the child, and for the child’s welfare throughout his life, there will be a qualitative difference between adoption by strangers, with no continuing contact or legal relationship with any member of the birth family... and an adoption order which simply reflects in legal terms the reality in which the child’s family life and relationships have been conducted for some significant time.”

37. Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child: s.46(6) ACA 2002. In non-agency / step-parent adoptions, contact arrangements may proceed by agreement

or may be regulated by a child arrangements order pursuant to s.8 Children Act 1989. Such an order is governed by the principles of s.1 Children Act 1998, including consideration of the paramountcy principle and the welfare checklist.

Evidence

38. I have considered the bundle of documents prepared for the final hearing by the solicitor for the children. In addition, I have considered statements prepared by the step-father and the mother on or around 12th October 2023 (missing from the bundle but on the court file), and the Child Impact Analysis dated 12th March 2020 from the second set of private law proceedings (CF19P01628). Although I consider everything that I have read and heard, I shall only refer in this judgment to what is necessary to explain my decision.

Evidence of Jade Howells, social worker for the adoption agency

39. Miss Howells prepared Annex A adoption suitability reports in respect of each of the children. Each report provides a comprehensive overview of the step-father, mother, and father's circumstances, together with a history of the family dynamics. The children's views on both adoption and contact, as well as their respective needs, are considered both individually and collectively. She appropriately considers the range of orders that might be made, and identifies that *"this has been an extremely difficult recommendation to make"*. On the one hand, she acknowledges that the children have a close and loving relationship with the step-father, want the orders to be made, and that the father has not been involved in the decision making for the children for some time. Against this, she balances the father's involvement in the children's lives to date, his desire to rebuild relationships, and D's wish for contact.

40. In concluding that adoption orders should not be made and recommending a parental responsibility order to the step-father, she states:

"I am particularly mindful that the wishes and views of the children must be heard but also balanced against the clear criteria set out in the Adoption and Children Act 2002 that when considering the merits of granting an adoption order, the court has to be satisfied that nothing else will do. Whilst taking all this into account, I am not currently entirely convinced or satisfied that alternative orders would in fact suffice."
[TB 249]

41. Miss Howells expressed similar sentiment in her oral evidence, stating on more than one occasion that she felt an adoption order was *"too extreme"* when considering the case law.

42. Unfortunately, notwithstanding the otherwise thorough approach to her work, I am bound to conclude that Miss Howells has erred in her approach to assessing whether a

step-parent adoption order should be made. As made clear in *Re P*, the statements made in cases such as *Re B (a child)* [2013] UKSC 33 to the effect that adoption will only be justified where ‘nothing else will do’ are made in the specific context of compulsory adoption outside of the family. The fact that a step-parent adoption involves a lower degree of interference with Article 8 rights, and may therefore be more readily justified, does not appear to have been considered by Miss Howells.

43. Otherwise, Ms Howells did her utmost to assist the court with thoughtful evidence. In response to questioning from the father, she stated that there was no reason for her to believe that the children had been influenced by the mother and step-father, although she did consider it possible that the very strong views held by N, K, and H had contributed to D’s occasional ‘flip-flopping’ on contact. Miss Howells noted that the siblings were a close-knit unit, and the family very open generally. Miss Howells was clear that the court should reach the same outcome for each of the children, whatever that should be, as to do otherwise posed the risk of undermining the sibling relationship. She supported supervised contact between the father and D, and the children’s surnames being changed.

Evidence of Helen Tucker, Cafcass Cymru Children’s Guardian

44. Ms Tucker’s first step-parent adoption report dated 30th August 2022 was prepared under the pressure of time and relies heavily on the contents of Miss Howells’ Annex A reports. The report concludes with a recommendation that a parental responsibility order be granted to the step-father. In terms of identifying a reason for this conclusion, I note the following:

“I have read the documents provided to the court by the local authority and can understand their reasoning by the recommendation of a parental responsibility order. This would afford [AA] a level of responsibility for the children which he is seeking to give [sic] the children the level of permanence they are seeking from him.”

45. As set out above, Ms Tucker’s initial report was filed without her having met the children and independently ascertain their wishes and feelings. Her second report is dated 25th October 2023 and provides further insight into the children’s views and their reasons for them. Meeting the children clearly had a significant impact on Ms Tucker’s thinking, as she now concluded that adoption orders should be made “*given the strength of feeling each of the children has with regards to this order*”.

46. It must be said, however, that this recommendation is not supported by any further analysis of substance. Paragraph 8 of the report, headed ‘Conclusion’, is largely word for word the same as the corresponding paragraph of the initial report, notwithstanding the fact that an adoption order is now preferred. There is no explanation as to why the recommendation has changed, no attempt to balance the competing considerations for the children collectively or as individuals, and no

reference whatsoever to the question of proportionality. Whilst there is some assistance to be gained from Ms Tucker's consideration of certain factors within the framework of the welfare checklist, I regret that the report fails to deliver on its basic function to provide a balanced analysis to the court. Rightly or wrongly, one could hardly blame the father if he concluded that Ms Tucker had reduced a very complex question to the single issue of the children's views.

47. In her oral evidence, Ms Tucker was clear that she did not believe that the children had been subject to any undue influence or manipulation when it came to their views. She described the children as having their own minds and strong personalities. Ms Tucker considered that this was underlined by D feeling free to express the fact that they wanted to re-establish a relationship with the father.
48. Ms Tucker's view was that the children would be greatly disappointed if adoption orders were not made. She considered that they had good insight into what an adoption order meant both practically and legally, and sought an order that recognised their family unit as it now exists. Ms Tucker suggested that N encapsulated the views of the others when suggesting that the step-father had provided the children something that they did not think possible. N considered that adoption was the natural progression for them moving forward and into adult life.
49. Ms Tucker emphasised that the children are a very close, with D the subject of much attention from their older siblings. She was of the view that whilst the children's individual needs are different, there was significant cross-over with the needs of the sibling group. Ms Tucker was concerned that D would be left feeling very separate from their siblings if the court considered adoption orders were appropriate for the others but not for them, and that this risked undermining the stability of the family unit.
50. I noted that Ms Tucker was also of the belief that adoption orders might form the basis for the father re-establishing a relationship with N, K, and H, although this would also require the father to acknowledge the relationship that they have with the step-father.

Impressions of the mother, the father, and the step-father

51. I think it important to record something of my general impressions of the mother, the step-father, and the father, as formed by reading their statements, observing their cross-examination, and hearing their submissions.
52. It was clear that the father found the proceedings extremely challenging. His emotions ran close to the surface throughout both hearings that I conducted, and he appeared overwhelmed by his upset on more than occasion. I have no reason to doubt his sincerity when he describes the extent of his love for his children, and can well understand why the prospect of their adoption is such a frightening and distressing

prospect. I found it notable that the father was unable or unwilling to acknowledge his own role in the demise of his relationship with his children, choosing instead to focus on the actions of the mother. I was left in no doubt as to the extent of ill-feeling that he continues to bear towards her. There was more than one occasion where I felt that the father lost sight of the children in pursuit of his own need to deflect blame for the current circumstances.

53. Unsurprisingly, the mother and step-father presented a united front. The step-father took the lead on most points, and appeared to be focussed on the welfare needs of the children and their stability. Whilst it was clear that the mother continues to take issue with the father's actions, her focus appeared to be on the future rather than on the acrimony of the past. They appeared sincere in stating that they wanted to build a positive relationship with the father even if an adoption order is made, and in their hope that the older children would one day want to revisit the question of contact.

Analysis

54. The court's paramount consideration is each child's welfare throughout their life. The court has regard to all the circumstances, and particularly to the issues identified within the welfare checklist at s.1(4) ACA 2002.

(a) the child's ascertainable wishes and feelings regarding the decision, having regard to age and understanding

55. N is now an adult, and so naturally what they say must be given a lot of weight. N is described as being chatty and confident. They do not want to have any form of relationship or contact with the father, who they describe as a "horrible and a nasty person". N states this is a consequence of their lived experiences and details the impact on them of witnessing the father use cannabis and denigrate the mother and step-father. Contact is described as having been "psychologically draining". N wishes to be adopted by the step-father to finalise the parent/child relationship that they have with him and to cement the family unit. N fully understands the implications of an adoption order being made. N has already actively looked at changing their surname by deed poll prior to obtaining a new passport, but is now awaiting the outcome of these proceedings.
56. K is described as polite, outspoken, and mature for their age. K is approaching late teens, and so again I must listen carefully to what they have to say. K states that they were the one who raised the question of being adopted on the basis that they wanted the relationship with the step-father to last. K has clearly formed a close relationship with the step-father, in contrast to that which was had with the father. K shared that "when [AA] came into our lives, we expected him to be like [CC] because that's what we thought a dad is". K considers the father to be "mentally and physically abusive", and currently does not wish to have a relationship with him. Like N, K describes past contacts being characterised by the father smoking cannabis, and calling the mother and step-father names.

57. Miss Howells states that H presented as being confident, outspoken, and with a good sense of humour. H is also a teenager nearing the end of childhood. H supports an adoption order being made, stating that they want the relationship that they have with the step-father to be “official”. They explained that *“I love him so much. He has been more of a father in the first year of my life than my actual father has been all my life.... If I could choose who I want as a dad, I would pick him... If people ask who my dad is, I say [AA].”* H does not wish to see the father, and showed little emotion when talking about him. H stated that *“he’s a horrible person. I wasn’t happy when I was with him. It felt forceful. I never really wanted to be there. He’d be nice one minute and then scream at you.”* H confirmed that they had not had contact with the father since the alleged slap to the face, for which the father never apologised. Ms Tucker suggests that H presented as being traumatised by this incident and remains fearful of the father. H’s views of the father are not new. It is agreed that H, like K, has only had contact with the father on a handful of occasions since the parents separated.
58. D is described as being funny and polite, and is an outgoing and active child. Miss Howells found D to be notably more confident and louder in the presence of the mother, step-father, and siblings. Both Miss Howells and Ms Tucker state that they have explained the legal implications of an adoption order to D in an age-appropriate manner, and that D confirmed that this is what they would like to happen. It is clear that D has a close and positive relationship with the step-father, and identifies as part of the family unit alongside their siblings. It ought not to be overlooked that D has now spent longer living with the step-father than with the father.
59. I note that it is the father’s case, revealed only in closing submissions, that D had told him that they did not want to be adopted when he visited D unannounced at school on 11th December 2023. On this occasion, it appears that the father attended at school and asked that D be brought out of class to speak with him in the reception area about attending the forthcoming Christmas concert. The fact that the father did this and moved the conversation onto something as sensitive as the adoption was plainly extremely inappropriate. That the father then tried to record D on his phone during this conversation, something to which D was seemingly alive, only makes matters worse.
60. This will have been first time that D had seen or spoken to the father for some time, and it must have been quite a shock that it came without warning in the middle of a school day. I have no doubt that D will have felt under immense pressure during this exchange. I am satisfied that the father will have presented in a state of heightened emotion, and that D will have naturally felt conflicted about what to say for the best. Even if D did pass comment on the adoption, I much prefer the evidence of two experienced social work professionals who have explored the issue with D with far greater sensitivity on more than one occasion.
61. In respect of contact, D has both positive and negative recollections of spending time with the father. D would like to resume regular contact with the father in the future, so

long as they did “*nice things*”, and not “*illegal things like take me to buy drugs*”. I note that in her addendum report, Ms Tucker records that “*D already calls [AA] dad, and this has become stronger since the last hearing when the adoption was not granted.*”

62. Whilst I consider it inevitable that the children have been caught up in the acrimony that has existed between their parents over many years, I accept the views of both Miss Howells and Ms Tucker that there is no basis to conclude that the mother and step-father have actively sought to manipulate the children or turn them from the father. The professionals have satisfied me that the children’s views are authentic and driven by lived experience – both in terms of negative experiences in contact, and in respect of the love and close relationship that they have formed with the step-father. The fact that D is confident and able to express that they want to see the father, notwithstanding the strong views held by siblings with whom they are very close, suggests that they are not the subject of undue pressure even whilst tensions are at their highest.

(b) the child’s particular needs

63. Each of the children has a need for stability and security. N, K, and H are all at slightly different, but critical points in their lives. They face important challenges educationally and are also contending with the transition from childhood to adulthood. Although somewhat younger, D has their own changes on the horizon, including moving from primary to secondary school in September. Preserving the children’s emotional welfare ought to be the priority for each of the adults involved in their lives.

64. I am satisfied that the children’s needs are being met by the mother and step-father, and that this will continue to be the case irrespective of whether the court makes adoption orders. They are clearly happy and thriving in their family unit. Whilst it might be said that the demise of the children’s contact with the father means that their identity and emotional needs are being neglected, I think it unfair to lay that at the feet of the mother and step-father. There is a history of contact being promoted, the children clearly have their own views on what went wrong, and the father has never opted to issue his own application of any kind in the Family Court. Looking forward, I consider that the mother and step-father are sincere when telling the court that they will facilitate supervised contact between D and the father whatever the outcome of the proceedings.

65. The real issue when it comes to the children’s needs is their desire for the step-father to be more than he currently is, not in terms of emotional or practical support, but in status. It is not a question of care or decision making, but the fundamental sense of belonging within a unified family. N, K, and H have been particularly clear that this is what they crave not just for themselves, but for each other. They express wanting to make it official and ensure that it lasts. There appears to be almost a fear that what they have now lacks permanency and is at risk of being taken away. If they were

asked in express terms, I am sure they would say that they need that uncertainty and anxiety put to bed.

66. It is also plainly the case that the children need the relationships that they have with each other to remain strong and undisturbed. I accept the evidence that they share a particularly close and loving attachment, and no doubt this will have been a source of great strength in the years that followed the separation of their parents.

(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

67. On a day-to-day basis, there would be no practical change to the children's circumstances. They will continue to live in much the same way as they do now, cared for at home by their mother and step-father. Given their ages, they will also remain fully aware that they have a biological birth father with whom they may or may not be having contact.

68. The important change would be in respect of status. The children's legal ties to their father would be extinguished, and the step-father would instead be regarded in law as their 'official' father. In order to assess the question of proportionality, it is necessary to evaluate the scale of what is being lost by this change. This includes looking at the quality, substance, and importance of the father's role in his children's lives.

69. The evidence is that N, K, and H have transferred their paternal relationship and identity from the father to the step-father, a fact that even the father seems to acknowledge when he refers to having "*already lost* [them]". H and K have had very limited contact with the father since the parents separated in 2017 and this is not a situation that they appear inclined to revisit any time soon. Although N has seen the father as recently as the summer of 2022, they are equally clear that they have no intention of further contact. In addition, there is no suggestion that the father has sought to exercise his parental responsibility in respect of the eldest three children for many years. The reality is that the relationships currently exist as a matter of law, but not in life or the real world.

70. The situation in respect of D is different. D participated in regular contact with the father up until September 2022, and has expressed a clear wish for this to be restored. Unlike the other children, there is some limited evidence that the father has sought to exercise his parental responsibility for D since the parties separated. Although this was not verified, the father told the court that he rings D's school monthly to see how they are getting on and is on the school's mailing list. It was also the father's intention to attend D's recent school play, albeit that D chose not to attend school that day in light of the events on 11th December.

71. It was said on behalf of Ms Tucker that the court ought to consider the attempts to exercise parental responsibility in respect of D as tokenistic and lacking in substance. The fact that the father made no effort to restore contact between September 2022 and

the issuing of the adoption application in July 2023 is certainly curious given his suggested devotion to D. However, the real question here is how an adoption order sits with the agreed position that contact ought to resume at the end of these proceedings. It cannot be said that the father and D's relationship does not exist in the real world in the way that this might be true of the relationship between the father and the other children. Whilst a meaningful relationship might currently be on hiatus, the quality, substance, and importance of the father's role in D's life will inevitably change if contact takes place consistently and safely. The reality is that D stands to lose more than the others from the change in legal status that an adoption order would bring.

72. Of course, it is entirely possible that the children may change their views as they grow older. The wholly negative view of the father held by N, K, and H may soften over time. How they feel now may well not be the same as how they feel in 10 or 20 years' time. If that is the case, will they be burdened by regret or even guilt? It is impossible to say, but the court must be live to such risks when tasked with considering the welfare of the children throughout their lives. For now, I consider that the prospects of reconciliation are at best speculative, and very unlikely to be improved in the short to medium term if the court does not make the adoption orders.
73. In respect of D, there is an additional dimension to the risk that their view may change later on in life. Might they not only regret it, but consider themselves to have been led by their siblings? Could it be the basis for a wedge in the sibling relationship? Given the strength of the sibling bond, this seems unlikely, but it is not inconceivable.
74. Having focussed on what the children might stand to lose if adoption orders are made, it is equally important to look at what they would gain. The children would enjoy an enhanced sense of stability and security within their family unit, and it would cement a relationship that they have found extremely beneficial. An adoption order would guarantee a link to the step-father beyond the children's 18th birthdays, and even after his death. The children would also be empowered by the fact that their firm wishes have been listened to and respected.
75. Adoption orders would marry up the legal relationships with the real-world relationships that have become established over the last four and a half years. The step-father has already become the children's psychological and social father, and the making of an adoption order would confirm that status as a matter of law. Adoption orders made in respect of all four children would also ensure that they remain full legal siblings for the duration of their lives.

(d) the child's age, sex, background and relevant characteristics

76. I have already dealt with much of what would fall under this heading elsewhere, and do not intend to repeat myself. However, it is worth adding that now that N has turned 18, this application represents the only chance to be adopted by the step-father.

Similarly, K only has a limited amount of time for a further application to be made if an order is not made on this occasion.

(e) any harm which the child has suffered or is at risk of suffering

77. Although the court determined that it was not proportionate to hear oral evidence and make findings of fact, it is noted that each child has reported being exposed to harm whilst in their father's care. The complaints include the father using and dealing cannabis in their presence, failing to provide for their basic needs, and abusing and denigrating the mother and step-father. In addition, there is the allegation that the father assaulted H by slapping them following an argument. It is said that N, K, and H are genuinely fearful of their father, and whilst home alone in June 2023, they took the decision to call the police when they became concerned that the father was parked near their house.
78. I have experienced first-hand the extent of the father's emotional response to matters concerning his children. I do not intend that as a criticism, and I fully acknowledge the pressure of the proceedings and what is at stake. However, I have no doubt that the children will have suffered harm if exposed to the father in a heightened state of distress. As children, they are likely to have found this type of presentation overwhelming.
79. I am concerned that the father's emotions cloud his judgment and result in him prioritising his needs over those of the children. A good example of this would be the father's visit to D at school before Christmas. This is bound to have unsettled D, and the upshot was that they did not participate in their last Christmas play in primary school. This type of behaviour, together with the accepted use of cannabis and mental health difficulties, presents an ongoing risk of harm to the children.
80. The father's case is that the mother and step-father have harmed the children by failing to promote the relationship with him. I do not agree that there is an evidential basis for this for the reasons already set out at paragraph 62 above.
81. The fact that N, K, and H have rejected their paternal relationships is evidence in and of itself of an upbringing that has been emotionally harmful. As detailed above, the children now need to have the stability and security of their current family unit preserved. If it is undermined for any reason, they are likely to experience further harm. If adoption orders are not made, there is likely to be a degree of emotional turmoil for the children, particularly N, K, and H. This too could be potentially harmful, particularly given the important points that they are at in their lives.
82. Finally, as I have already acknowledged, there is the risk of emotional harm to the children if adoption orders are made based on views held now but not maintained in the future.

(f) any relationships that the child has with relatives and the value of them continuing

83. It is agreed that there is value in D rebuilding a relationship and contact with the father regardless of the outcome of the application. D wants to see the father, and they plainly have a shared history and identity. It must also be remembered that the biological tie between D and the father will always exist even if the legal link is extinguished.
84. If adoption orders are not made, there is a risk that D will view their desire to have contact with the father as the reason why. This may lead to resentment and potentially undermine the efforts to re-establish the relationship.
85. In respect of N, K, and H, there appears little prospect of a relationship being resurrected in the immediate future. If an adoption order is not made, this is likely to result in their views becoming further entrenched. They will know that it was the father that blocked what they so wanted, confirming in their minds that he does not listen to them and is unwilling to put their needs first. It would not be good ground for building bridges.
86. On the other hand, if the court does make an adoption order and the children consider that the importance of the step-father has been acknowledged, this may ease the tension and in time provide the emotional security needed to explore a relationship with the father once more.
87. In terms of the children's relationship with the wider paternal family, I am told that the only person of note would be the paternal grandmother. The father moved to live with his mother after the parents separated, and she would see the children during the father's contact. The Annex A report does not consider the children's relationship with the paternal grandmother in any real detail. However, it does record that N, K, and H have stated that they do not want a relationship with her, whilst D simply stated that "*she's nice*". On the little information that I have, it seems probable that the prospects of this relationship being resurrected are entwined with any future relationship that the children develop with the father. With that in mind, it is currently difficult to see N, K, and H's relationship with the paternal grandmother surviving adoption.
88. Whilst the children would lose the tie to their paternal grandmother, adoption would cement the link that they have developed with the step-father's wider family. The Annex A report states that the children have a strong relationship with the step-father's mother, who they call 'Nan', as well as the step-father's sister and her children.

Range of powers available to the court / the realistic options

89. Child Arrangements Order (lives with) and a Parental Responsibility Order: The court has already made a child arrangements order providing for the children to live with

both the mother and the step-father, and an order granting the step-father parental responsibility in respect of each child. This approach has the advantage of affording the step-father the authority to bring the children up, care for them, and make decisions about them. It reflects the everyday reality of him being a parent. It also underlines to the children that their home is with the mother and step-father, and that this will remain the case unless otherwise ordered by the court.

90. This approach would mean that the children's legal parentage remains unchanged from what it has been throughout their lives to date. It would not create the lifelong 'official' tie that the children want or marry up the legal relationships with the de facto relationships that have been established. In addition, absent a court order ending it sooner, the step-father's parental responsibility ends at the point that each child turns 18. As such, in the case of N, this approach is already redundant.
91. Special Guardianship Order: The court could make a special guardianship order in the step-father's favour, although no party suggests this as a realistic option. A special guardianship order would secure the step-father's position in the children's lives whilst also maintaining their existing legal parentage, but it would also allow the step-father to exercise parental responsibility to the exclusion of the mother as well as the father. It would plainly not be in the children's interests to risk their mother being side-lined if there was ever disagreement with the step-father.
92. Adoption Order: An adoption order would create a life-long legal relationship between the step-father and the child, with the children being treated in law as being from the relationship between the mother and the step-father. The step-father would also obtain parental responsibility to exercise until the children turn 18. The children would continue to be afforded stability and consistency of care within what their family unit, with an additional sense of belonging and permanency.
93. However, the finality to adoption orders includes severing the legal relationship that the children have had with the father and wider paternal family since birth. This may well result in a sense of loss in later life if the children's views change, or if the relationship between the mother and step-father breaks down. The father would no longer possess parental responsibility in respect of the children, and would have no right to be consulted on issues such as the children's education or medical needs.
94. Child Arrangements Order (contact): Irrespective of whether the court makes an adoption order, the court can make a child arrangements order providing for D to spend time with the father. No party suggests that an order ought to be made in respect of the older children. A child arrangements order would have the benefit of clearly defining what is to happen with contact and when. Any arrangement would then be enforceable in the event of the order being breached. The alternative, namely making no order, is likely to lead the parties into further conflict, and risks contact not taking place or being susceptible to breakdown.

Decision

95. This is a finely balanced case and one that has been difficult to decide. The court is dealing with children who are part of a close-knit sibling group, but who have their own individual needs and considerations that must be recognised. At one end of the spectrum is N, now an adult. At the other is D, a young child still in primary school. What is right for one cannot be assumed to be right for the other. The range and extent of competing arguments is reflected by the diverging views of the two professionals in the case, Miss Howells and Ms Tucker.
96. Although I have not heard oral evidence and cannot come to firm conclusions about what has or has not happened in recent years, I am satisfied that:
- a. the father's behaviour in the period after his separation from the mother has driven N, K, and H away and reconciliation is currently extremely unlikely;
 - b. the father's cannabis use, mental health, and erratic and overly emotional behaviour has caused the children harm and poses and ongoing risk to their welfare;
 - c. the father continues to put his needs before those of the children;
 - d. the stability and security that the children have had whilst living with and being cared for by the step-father stand in stark contrast to their experiences of life being cared for by the father;
 - e. the children view each other, the mother, and the step-father as being the most important people in their lives, and;
 - f. there is no basis to conclude that the mother and step-father have actively undermined the children's relationship with their father.
97. There is good evidence that the children are now part of a settled and stable home with their mother and step-father. I am satisfied that this is a well-established family unit, notwithstanding the fact that it has only been in existence for four and a half years, a relatively short period of time. The children have made it clear that the step-father has assumed the role of father in all but legal title. This is not a case where there might be concerns of unrealistic hopes and assumptions as to the quality of the marriage. Bearing in mind how fast life moves, particularly when children are involved, this should now be treated as a tried and tested family setup. Furthermore, given the close bond that clearly exists between the children and the step-father, there is every chance that these relationships would survive the breakdown of the marriage if this were to unfortunately happen further down the line.
98. I am alive to the fact that step-parent adoptions may be driven or complicated by motives and emotions derived from conflict. I am satisfied that this is not the case here. The evidence is that the application has been led by the children, who have satisfied two separate professionals of the strength and authenticity of their views. The application was not made in the heat of a battle. The mother ended contact in September 2022, and the father did nothing about this. For all intents and purposes, matters were settled at the point that the step-father issued his application in July 2023.

99. In terms of the quality, substance and importance of the father's role in the children's lives, I note the following:

- a. The children and the father have not lived together since January 2017.
- b. In respect of K and H, the father has only had contact on a handful of occasions since 2017, and not at all since early 2022.
- c. In respect of N, there has been no contact since the summer of 2022.
- d. There appears no prospect of contact taking place between the father and K, H, or N in the immediate future.
- e. There is no evidence that the father has sought to assert his parental responsibility in respect of K, H, or N in recent years.
- f. That whilst the father and D spent time with one another until September 2022, this was in accordance with a child arrangements order that only provided for contact twice per month. It is agreed that contact will resume on a monthly basis in the first instance.
- g. That whilst there is evidence that the father has recently sought to assert his parental responsibility in respect of D, this is limited in nature and had no meaningful or positive bearing on D's life. On the contrary, I consider the father's attendance at D's school to have been reckless and likely to have caused harm.
- h. Notwithstanding the disruption to his relationship with his children, the father has never sought to bring an application to the court for either contact or enforcement.

100. The truth is that the father's relationship with his children has been either non-existent or poor in quality for several years. I have already considered in detail the potential losses associated with adoption, and conclude that what N, K, and H stand to lose is of a modest order. Their relationship with their father exists as a matter of law but has no foundation in reality.

101. D arguably stands to lose more than their siblings from the change in legal status that an adoption order would bring. The importance of the father's role in D's life will increase if contact takes place consistently and safely (although the court would perhaps be unwise to consider that a foregone conclusion). That said, D's desire for contact and the expectation that this takes place is just one consideration. It does not alone give basis to stop an application for an adoption order in its tracks. The court is required by statute to consider whether there should be contact arrangements in place before making an adoption order, and post-adoption contact orders are routinely made.

102. I have given anxious consideration to D's predicament and how their circumstances differ from those of their siblings, in respect of whom it might be said more powerful arguments for adoption orders exist. The mother and step-father were clear that the children ought to all have the same outcome. The father did not actively suggest that D should be treated separately, although I suspect that he would probably accept this if it meant defeating at least one of the applications.

103. Ultimately, I agree with the views of Miss Howells and Ms Tucker that the court should prefer one outcome for all four children. To my mind, the difficulties with making adoption orders in respect of N, K, and H, but not D include:
- a. taking a close-knit set of full siblings and reducing them to half-siblings in the eyes of the law, when none of them want this to happen;
 - b. the creation of a division in the household, where everyone but D is related legally;
 - c. the father's legal parenthood becoming a stigma to D;
 - d. the efforts to restore contact with the father being undermined if D considers that this is the reason why different orders have been made; and
 - e. the risk of creating resentment within the sibling relationship if N, K and H benefit from having a legal link to the step-father (such as inheritance rights), whereas D misses out.
104. Whilst I look at D as an individual, my paramount consideration is their welfare throughout their life. D's siblings are currently at the core of D's being and sense of identity, and all being well, they will prove to be the longest relationships of their life. Protecting the integrity of these sibling bonds, both for now and for the future, is of the utmost importance when it comes to ensuring D's lifelong welfare.
105. I have considered whether there is any benefit to deferring the decision in respect of D until after efforts have been made to reconstitute contact. However, that would leave D in a state of uncertainty as they approach the important transition to secondary school. It might also deter D from engaging in the contact if they conclude this might affect the possibility of adoption. In addition, it would be contrary to the principle that any delay in coming to a decision is likely to prejudice a child's welfare. A decision needs to be made in respect of all four children now.
106. The children's primary need is for stability, security, and a sense of belonging within their family unit. Whatever the rights and wrongs, the children have experienced considerable emotional turmoil since their parents separated and now need a sense of closure. The fact is that the step-father has effectively acted as the children's father for some years, and I can understand why the children, particularly N, K, and H, are so determined for the step-father to be their father in every sense – socially, psychologically, and legally. Only adoption can achieve this.
107. Whilst I have not in any way considered them determinative, the strength of feeling expressed by the children is clearly a powerful consideration. N, K, and H have each carefully and consistently articulated their case for adoption, and I must consider the impact on them emotionally if they do not consider that their views have been treated as important at their respective ages. This is particularly so in respect of N, who at 18 will have no further opportunity to be adopted. D's wishes must be considered in line with their age and understanding, but that is not to say they should be ignored. D too has a right to be heard.

108. I have concluded that the welfare of each individual child throughout their respective lives is best served by the children having a father who exists emotionally, practically, and legally, and that adoption orders should be made. Whilst there are losses, the benefits that will come with permanency carry greater weight. I acknowledge that this is a serious interference with the father's Article 8 rights, but I have identified factors that significantly reduce the degree of interference and make adoption a proportionate measure in response to the children's circumstances. This outcome also balances the respect for family life that the mother, step-father, and children are entitled to within their family unit. That is where the children's main family life exists, and I remind myself that where a child's rights come into conflict with those of adults, it is the child's rights that should prevail.

109. On the basis that I have decided that adoption is in the children's welfare interests throughout their lives and also proportionate, I dispense with the father's consent to the making of adoption orders.

Contact

110. Given their current views, the father does not actively seek contact with N, K, or H. However, he makes it plain that he would dearly love to see them and hopes that this will happen in time. It may be that once the children feel that their views and relationship with the step-father have been acknowledged, they will be more inclined to build bridges. The mother and the step-father told the court that they would be supportive of contact if this is what the children wanted.

111. In respect of D, it is agreed that contact should resume. This is not inconsistent with an adoption order being made. In discussions with Miss Howells and Ms Tucker, D has been able to understand and express a view on the distinct issues relating to both adoption and contact. Whilst D will no longer be having contact with their legal father, he remains the biological father and somebody with whom D has a pre-existing relationship.

112. It is the recommendation of both Miss Howells and Ms Tucker that contact should take place on a supervised basis and be monthly in the first instance. This is agreed by the mother and the step-father. The father also accepted this proposal at the outset of the hearing, but in closing submissions stated that he took issue with the necessity for supervision.

113. I have no hesitation in concluding that contact should resume with professional supervision and note the following points in addition to the wider issues covered in this judgment:

- a. D has not seen the father for some 18 months and may well be anxious about it resuming in the aftermath of these proceedings.

- b. The father has a longstanding and ongoing dependency on cannabis, and it appears likely that this exacerbates rather than manages his vulnerability to high emotion and distress.
 - c. The father accepts that he has had issues with his mental health in the past, but it is not clear to me what steps have been taken to manage or address these difficulties.
 - d. There are concerns, repeated by all the children including D, about the quality of unsupervised contact historically.
 - e. I consider it likely that the father will initially find it very difficult not to discuss the adoption and other adult issues with D in the way that he sought to do so when attending D's school before Christmas.
114. Collectively, these issues put D at a risk of harm if contact were to resume unsupervised in the community.
115. I agree that it is in D's interests for contact to start monthly, with a view to it progressing to a fortnightly basis if it goes well and the father attends consistently. I shall leave it to the parties to propose when and where this should commence, and shall hear further submissions if needs be at the handing down of judgment.

Change of surname

116. Although this question did not receive much attention at the final hearing, on the making of a step-parent adoption order, the mother and step-father will specify the surname that they wish the children to go by and which will be registered on the adoption certificates that will be issued. As such, I am not clear the basis on which it is suggested by counsel for Ms Tucker that the court needs to make a specific issue order addressing the question. It strikes me that it ultimately becomes a question for the children's legal parents and holders of parental responsibility to determine by agreement.
117. If I am wrong in that regard, I invite the parties to address me on the correct approach at the handing down of judgment. The court shall then give the matter further consideration with reference to s.1 Children Act 1989 and the principles derived from *Dawson v Wearmouth* [1999] 1 FLR 1167.

Next steps

118. This judgment will be formally handed down at a hearing fixed for 10.00am on 12th February 2024. My intention is to then defer making the adoption orders for 28 days from the handing down to give the father time to seek permission to appeal if he wishes to do so. I acknowledge that this is a balanced case, and that I am disagreeing with at least one professional (although I have explained my reasons why). Given the irreversible nature of an adoption order, it is better that any questions of appeal are dealt with prior to the order taking effect. I shall explain the appeal procedure to the father before judgment is given.

HHJ Adem Muzaffer

2nd February 2024

Postscript:

1. At the handing down of judgment:
 - a. It was determined that contact between D and the father should commence on a supervised basis once per month for a period of three sessions. Thereafter, contact shall progress to a fortnightly frequency for four sessions. If contact progresses well and the father remains committed, contact shall then move from the contact centre into the community for two hours once per fortnight.
 - b. No party sought to persuade the court that a specific issue order was required in respect of the change of name, although the court gave a short judgment on the issue in any event.
 - c. The father sought leave for permission to appeal, which was refused. The father was informed of the appeal procedure to the Court of Appeal.
 - d. The court questioned whether this judgment was suitable for publication, subject to appropriate anonymisation. The step-father, mother, and Children's Guardian all agreed that it was, whilst the father did not oppose. The court noted the size of the sibling group, and determined that additional redactions were required to minimise the risk of identification. The court considered that removing reference to the precise ages of the youngest three children and their genders struck the appropriate balance and maintained the integrity of the judgment.