

Neutral Citation [2022] EWFC 163

IN THE FAMILY COURT AT WEST LONDON

CASE NO:

ZW21C00254

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF EA

BETWEEN:

BEFORE

RECORDER MCKENDRICK KC

A LOCAL AUTHORITY

Applicant

-And-

(1) EL (Mother)

(2) TA (Father)

(3) MT (Proposed Special Guardian)

(4) EA (A Child) (By her Guardian)

Respondents

Ms Laura Hibberd (instructed by Local Authority Solicitor) for the Applicant
Ms Rupinder Bhinder (of Powell Spencer and Partners) for the First Respondent
Ms Wing Yan Chan (instructed by Hameed & Co) for the Second Respondent
Ms Hala Mustafa (instructed by Barnes and Partners) for the Third Respondent
Mr John Paul Cregan (instructed by Duncan Lewis) for the Fourth Respondent

Hearing Dates 14 – 23 November 2022

APPROVED JUDGMENT

Handed Down 23 November 2022

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.

RECORDER MCKENDRICK KC:

Introduction

1. I am concerned in these proceedings with EA, born in February 2020. My focus is her welfare.
2. These proceedings are public law proceeding brought by the applicant Local Authority to resolve disputed welfare issues in respect of EA. The applicant invites the court, of its own motion, to make a Special Guardianship Order appointing MT as EA's Special Guardian. This is opposed by EA's father. It is supported by EA's mother, MT and EA's guardian (for the purposes of these proceedings).
3. Having heard evidence and submissions over six days, I have determined:
 - a. to make a Special Guardianship Order in respect of EA, appointing MT as the special guardian; and
 - b. to vary the Prohibited Steps Order to prohibit the mother being on the road the father lives on or in the father's home whilst he has contact with EA until further order; and
 - c. to dismiss the father's application for a twelve month Supervision Order and a Child Arrangements Order.
4. Set out below are my reasons to support these conclusions.

EA

5. EA is now aged almost three years. She currently resides with her father from Monday to Friday morning and resides, normally, with MT from Friday until Sunday. An interim Supervision Order is in place to permit the applicant to oversee her welfare. She attends nursery for fifteen hours during the week and spends time with TA's friends, part of semi-formalised support network. She often attends the home of Mr and Mrs S, who live very close to the father, on Tuesdays and Wednesdays. On

Thursdays, EA spends the afternoon with Mr P and his wife. They look after her and her father drops her off and picks her up. EA sees her mother at supervised contact sessions on Thursdays and Fridays.

6. EA is often described within these proceedings as ‘delightful’, ‘happy’ and ‘clever’.

The Proceedings

7. The applicant issued proceedings on 28 June 2021. These proceedings are delayed: the twenty six weeks milestone was as far back as December 2021. The regrettable impacts on EA are obvious. An Interim Supervision Order was made at a case management hearing on 21 July 2021 which required EA to remain in her father’s care at his home. The mother agreed to leave the home and be temporarily accommodated by the Local Authority.
8. Case management hearings have taken place on 22 July 2021, 27 August 2021, 5 October 2021, 1 February 2022, 29 April 2022 and 27 June 2022. An Issue Resolution Hearing took place on 27 June 2022.
9. On 21 July 2021, deputy District Judge Lecointe made a prohibited steps order dealing with the mother’s and EA’s interaction.
10. On 27 August 2021 Recorder Cowton QC extended the Interim Supervision Order and made a prohibited steps order in these terms:

“The mother is prohibited from attending the child’s home [address] and EA’s nursery until further order or the conclusion of the proceedings.
The mother.. is prohibited from removing EA from the care of the her father.. until further order or the conclusion of the proceedings.”
11. A pre-trial review took place on 21 September 2022 and further directions were made.

12. The final hearing took place between 14 and 23 November 2022 before me sitting at the Family Court in West London. Ms Hibberd represented the applicant. Ms Bhinder represented the mother (with the assistance of her intermediary, Ms Ball of Communicourt). Ms Chan represented the father. Ms Mustafa represented MT and Mr Cregan represented EA. I am grateful to them all for their considerable assistance and professionalism. Translators for the Romanian language assisted both the mother and the proposed special guardian and I extend my gratitude to them.
13. At the outset of the hearing I made an order dealing with the mother's participation in the hearing. This order was un-opposed and based upon the detailed and helpful recommendations set out in Communicourt Intermediary report dated 20 October 2021, which followed an assessment of the mother on 14 October 2021. The report notes that the mother has difficulty maintaining focus over long periods and has difficulties processing sentences exceeding three key words. The report discusses some of her challenges with expressive and receptive language. As a result the hearing has mostly proceeded in 45 minute segments followed by 10 minute breaks.
14. I asked Ms Bhinder whether she was satisfied her client had capacity to conduct the proceedings at the outset of the hearing. She was clear her client did have that capacity. On the third day the mother gave evidence. Counsels' questions were collated and approved by the intermediary and by me. They were sensitively put by Ms Hibberd. On instructions, Ms Chan sought permission to ask further questions to those which had been agreed. The mother was content to answer further questions and these were discussed with Ms Ball.
15. On the fifth day the father reported through his counsel he was unwell and whilst at court he intended to leave to visit his General Practitioner. Ms Chan sought an adjournment. This was opposed by two of the parties. I granted the adjournment for the remainder of the fifth day given there was adequate time to permit the evidence and submissions to be completed within the time estimate. It was important for the father to hear the evidence of MT and the children's guardian.

Background

16. EA's parents met around six years ago. Her mother is now in her thirties. She is Romanian. She was raised in an orphanage. Dr Mann, a clinical psychologist, carried out limited cognitive functioning assessments because of the language difficulties. Those he was able to carry out revealed extremely low scores - on the 1st centile. Overall, he concluded her functioning was in the extremely low to low range consistent with the bottom (1-10) centile. He neither made nor reported a psychological condition or diagnosis.

17. Her father is in his seventies and is originally from a territory in Asia. He has worked for much of his life, often self-employed. I detect he is a proud man. He attended court every day (bar one, which was the day the judgment was handed down) and attentively followed the proceedings silently, but carefully - always dressed in a dark suit and crisp white shirt.

18. EA is the only child of their relationship.

19. In July and September 2019 staff at a Hospital made referrals to the applicant. They noted the mother was homeless and that she had made allegations she was the subject of domestic abuse. She was accommodated at a refuge. The father says he required her to leave his home, as she was responsible for aggressive outbursts, smashed furniture and damaged his home. The applicant notes a contemporaneous police report corroborates the father's version. Concerns were raised by health visitors in late 2019 that the mother was abusing alcohol and had neither purchased nor obtained items in preparation for the impending birth. A Child and Family Assessment recommended that after birth EA be placed on a 'Child In Need' plan with additional support. The midwifery teams reported that after EA's birth the mother smelled of alcohol, EA's clothes smelled of cigarettes and the mother was reluctant to feed her new born baby girl. A subsequent alcohol hair strand test did not evidence chronic alcohol use. On or around 19 February the mother left the refuge and resumed residing with the father. Concerns were raised in respect of EA's welfare - it was alleged there were frequent altercations between the mother and father. On 17 March 2020 EA was placed on a Child Protection Plan under the category of neglect. In May 2020 the father's GP noted concerns about his mental health, that he suffered from bipolar and was not taking his medication. On 19 November 2020 the police attended the family home

because of a domestic dispute between the parents. The mother is reported to have been 'removed' because of vandalism of the flat and the EA was left in the care of her father.

20. In early 2021 the applicant began rigorous assessments of the parents. In an assessment report dated 10 April 2021 the independent social worker, Monique Anthony, reported significant concerns about the mother's parenting capacity which could not be addressed in a reasonable time frame. The relationship between the parents was described as 'co-dependent, volatile, hostile and abusive'. A recommendation was made that EA required a long term placement with family or friends or approved adopters.
21. The father's parenting assessment was also fairly negative. It noted he had some strengths but the challenges and difficulties outweighed the strengths. It was noted the father could not provide long-term permanent care throughout EA's minority. Short term risks could be mitigated with professional support and a family/friends networks.
22. In the applicant's 'Social Work Evidence Template' for the court, dated 28 June 2021, it was noted that whilst EA lived with her parents 'there are significant concerns about her exposure to domestic violence and parental mental health difficulties'. Her home environment was described as 'unpredictable and unsafe, characterised by chronic neglect of her emotional and developmental needs'. A video emerged of the parents arguing in EAs presence. Her father was noted to have "developed a strong bond with his daughter and loves her dearly, he has been observed kissing and cuddling EA and she responded positively to this". He, however, struggled with articulating EA's developmental needs and need for stimulation. He was reported to acknowledge he could not raise her alone due to his physical health challenges. The section 31A care plan recommendation to the court was for EA to be placed with extended friends or family members.
23. After the interim supervision order was made the applicant continued to assess EA's welfare. A social work visit took place on 4 August 2021 and it was noted that the 'home conditions to be a concern'. They were observed to be better some weeks later and EA was noted to be clean and dressed appropriately. Her immunisations were

recorded as up-to-date and the health visitor had no concerns about her developmental growth. She was attending nursery for fifteen hours per week and the social worker gave evidence in a statement dated 26 August 2021 that “the nursery has not raised any concerns regarding EAs presentation or emotional well-being during the last core group meeting.” The same statement noted “the local authority appreciates how hard TA is working to continue to care for EA.”

24. The father’s friends, Mr and Mrs S, who had been considered as potential special guardians, decided not to proceed with the full assessment. The initial viability assessment was positive.
25. A health visitor from NHS Central London Community Healthcare Trust produced a written report dated 11 August 2021. It details at least 15 face to face contacts and others by telephone. It described the home as cluttered but clean. It noted EA was “well and thriving and there are no health concerns at this time”.
26. A joint parenting assessment of EA’s parents was carried out by Cristina Fantaza, independent social worker, dated 4 January 2022. It identified a number of very significant areas for further work and assessment in the recommendations section.
27. Thereafter further assessments were carried out and a number of further case management hearings took place. It is not necessary to set out further detail, the evidence traverses some of the more recent assessment and work undertaken with the family.
28. Ms Chan made reference to the written records of recent Family Support Worker visits. The most recent observations recorded in the papers are of visits which took place on 10 October 2022, 18 October 2022, 25 October 2022 18 November 2022. They paint a mostly positive background with some concerns raised.

The Evidence

The Mother

29. In her first witness statement the mother said the father would struggle to look after EA and that she needed to be there to support him. She accepted she had argued with the father after EA was born and the police were called out as she was throwing things around. She asked for support and noted EA would start nursery in May 2021. She emphasised that apart from one week, she had been with EA throughout. In September 2021, however, she filed a statement saying: “I want EA to be placed with MT, I know EA will be safe, will have good routines, be loved and properly looked after with good routines.” In a further witness statement the mother accepted she broke the prohibited steps order and regularly came to the father’s house. She said she came to clean at his request and the house was “very messy” and the bathroom was “disgusting”. She accepted she had also stayed at the father’s flat. She noted another man was living as a lodger at the father’s flat.
30. In her oral evidence she answered questions directly and clearly. I checked with her whether she understood the difference between truth and lies and the importance of telling the truth. She was clear that she did and presented as an honest witness, keen to help the court. She acknowledged she smoked with the father in the family home and this continued after EA was born. This was mostly in the kitchen. She said the lodger in the father’s flat lived in a bedroom in the flat and was then moved to the loft. She ‘saw’ him for two months. She confirmed the father had shown her kindness and told me about the background to EA’s name.

The Father

31. The father’s first statement notes he did not oppose the interim supervision order but that he would oppose the interim care order and took the view there was no basis for EA to be separated from him. He accepted the ‘threshold’ was met because of the mother’s anger management issues and the damage she has caused to the family home. He challenged the parenting assessment that determined him to be unsuitable. He had a mini-stroke in March 2021, but had recovered. Whilst he had a history of mental health problems he had been well for a long time. He denied domestic abuse. He focused heavily on the key date of 21 July 2021 - when the mother moved out – to demonstrate the improvements in EA’s welfare. He noted he was fatigued at times

and was reliant on Mrs S who was looking after EA from Friday evening until Sunday afternoons. He stated: "I will prioritise EA over EL".

32. In his second statement he noted the terms of the prohibited steps order renewed by the court on 27 August 2022 which prohibited the mother from "attending" the father's and EA's home. In that statement he gave evidence that the mother had not returned to his home and she had not lived at his home since the 21 July 2021. He said she had come to his garden for help with papers and he had collected her belongings once she had been evicted from previous accommodation. He denied the mother had returned to live and gave evidence that he "would not allow her to enter my home". He acknowledged he had permitted a lodger from Pakistan who had immigration difficulties to stay in his "loft" for a short time. He sought to address concerns that EA had bruises and was seen in dirty clothes. He put forward other friends to help him with his care of EA given the S's would not proceed with special guardianship. He noted that MT had started looking after EA from 25 October 2021 and she had in reality replaced the S's weekend role. He acknowledged challenges working with her but thought that on the whole their relationship had not broken down. He explained EA did not spend Easter weekends with MT because he had wished to celebrate Easter with friends and EA in the aftermath of the global pandemic restrictions being finally lifted.

33. In his third statement he repeated that the mother had not "lived in my home since 21 July 2021" but did acknowledge she "did turn up at my home several times". In respect of the lodger he noted he realised that "this should not happen". He stated "I regret that I have not given the full truth and I apologise to the court and anyone concerned."

34. The father began his oral evidence by correcting several untruths set out in his earlier witness statements. He accepted he had lied to the court. His evidence was not, initially, clear and explicit. For example, he said that a previous part of his witness statement was "not quite true." This required me to clarify with him whether statements were either true or false. He understood this and accepted previous statements were false.

35. He complained that MT's care came with a "dodgy background" and outlined his purported concerns. On occasion he was rude about her. He denied he had stopped contact between EA and MT in April 2022 because he was angered over her reporting her concerns about him to the applicant. He said it never entered his mind that the lodger might present a danger to EA. When asked whether he could provide EA with stability he answered simply and honestly: "It's complicated". He acknowledged that the way he communicates with MT was "useless" and pointedly said he would refuse to let her into his home when she drops off EA (his counsel told me later in the hearing he had changed his mind on this point). He was angry that MT had not told him about a time when she took EA to accident and emergency. On two occasions in his evidence, he suggested that Mr P should be EA's special guardian and she should live with him and his wife.
36. He presented as a man under siege and looked and sounded very tired. There were hints of pride and stubbornness. He had to be reminded to tell the truth. He was also capable of being focused on EA and expressed how much he wanted to continue to care for her, which is genuine. Despite his beaten down demeanour, he managed to come across as a father committed to EA. I formed the impression he has, and continues to find, the intrusion of these proceedings a great strain.

Social Work Evidence

37. In a witness statement dated 25 May 2022 the student social worker notes EA is settled with her father and is comfortable with him. She noted the routine that EA spent Friday to Sunday with MT, she enjoys those visits and calls her "mummy". She noted concerns, during the father's care, with EA's bruises, dirty clothes and attending nursery in pyjamas. She was of the view the father needed support looking after EA.
38. I have read the reports of Monique Anthony considering the parenting capacity of EA's parents. The father's is dated, 12 April 2021. The mother's report is of the same date. I have taken this evidence into account particularly if I were to reject the application for a special guardian order and EA were to remain in her father's care,

particularly in the light of the post birth difficulties and the mother's return to the family home in contravention of the prohibited steps order.

39. The updated SWET, completed by the then allocated social worker is dated 17 June 2022. It notes the special guardian assessment of MT, dated 2 January 2022, which was positive. She confirmed the applicant's proposed outcome for the proceedings was that a special guardianship order be made to MT. She explained why the mother was not capable of caring for EA. She noted the applicant was "initially .. satisfied" with the father's care of EA but went on to note his care of her appeared to be deteriorating. That father was resistant to MT; he was not open and transparent and he was struggling given his age to provide consistent care to EA. Concerns remained that his house was cluttered and not clean. She detailed that a series of unannounced visits over the summer of 2022 painted a picture of concern bordering on neglect of EA, who had rashes and bites. She gave evidence that MT had told the applicant about the lodger and that the father stated this was only for a brief period and he lived upstairs in the loft. EA was noted to be 'relaxed and comfortable' in her father's care. She was described as "clean and well presented" and "does not lack in regards to play and stimulation". It was reported her nursery described her as happy and settled and had not raised significant concerns about her appearance, only that at times she was unkempt. It was noted the health visitor reported she had a healthy diet, a good routine and is "meeting her developmental milestones and there are no concerns". It was said that at a meeting the father had said he would only care for EA for another 2-5 years but then he later retracted this. On the basis the court made a special guardianship order with MT, it was suggested EA have once a week unsupervised contact with her father and contact on special occasions and fortnightly supervised contact with her mother and special occasions. A detailed assessment of the father was set out.

40. An updating statement is provided by the current allocated social worker dated 26 October 2022. She states the applicant considered the recommendations of the independent social worker, Mr Wale but cannot accept them. She emphasised the lack of stability with father and the stability with MT.

41. The oral evidence was given by two social workers. I was asked to hear their evidence concurrently. All counsel agreed to this and so did I. On reflection, I did not find this particularly helpful. I would have preferred instead to receive the direct evidence of the individual social workers, giving their factual and opinion evidence. Too often, because of the 'hot tub', answers were couched in the language of "the local authority considers". That is of course no criticism of the social workers, they were asked to give their evidence in this way and I agreed.
42. In their evidence they reinforced the local authority's written evidence, the parental and special guardian assessments and their overall conclusion that a special guardianship order was required and EA's welfare required MT become her special guardian. I was provided with an updated transition plan after they gave evidence. It sets out the proposed contact between EA and her mother and father.

MT

43. MT noted she had been looking after EA from Fridays to Sunday for some time and wanted to be her full time carer. She raised concerns about the father. That he was old and looking after EA tired him out. That the father relied on nurse and a wide support circle. She gave evidence that EA has told her "daddy angry". She noted EA was often dirty or unkempt. She was concerned about her routine. She said "overall I think that the father is a good dad and that he loves EA but I believe he needs [support]". In September 2022 she gave evidence her relationship with the father is strained. She describes him as "combative" "hostile" "cold and distant". She said in writing that EA was often unsettled in her company when she was in the car returning EA to her father's care.
44. MT gave honest and straightforward evidence focused on EA. EA needs stability. She explained how EA calls her "mummy" and EL "mum". She was clear EA must not lose contact with her parents. She could not name positives about the father's care of EA but said "he tries his best, but maybe that is not enough". She explained how a former partner has caused problems and there was now involvement from the courts.

AP

45. Mr P is a family friend. He gave evidence by video link as he was on holiday overseas. He is married and has a number of children and grandchildren. EA spends Thursdays with him and his wife. They are very fond of her. They have offered support to the father and EA and will continue to do so. He warmly described EA, her likes and dislikes. He emphasised EA is a “delightful and happy child” and described her as very clever. He had few concerns about the father’s home and was last there about one week ago. He was very disappointed to hear about the lodger and that the parents breached the Prohibited Steps Order. He emphasised that the father is devoted to EA. He told me, contrary to Mr Wale’s written report, he had met Mr and Mrs S and been to their house. His evidence was honest, clear and straightforwardly given.

GS

46. She and her husband live close to the father and EA. They are married with 4 children. They both work full time. They have supported the father and EA. EA has spent a lot of time at their house, particularly prior to MT’s involvement but this continues until the present. They ruled themselves out as possible special guardians and explained their concern that their private information had been disclosed by the applicant without their consent. She told me EA “adores her dad” and is always happy to see him. She was cross that the father had lied to her about the mother attending his home. She was happy when MT was “found” and became involved as a carer for EA. She was clear that her wish for EA was for her father to look after him. She felt it important EA knows her father is fighting for her. She also emphasised what a smart girl EA is and warmly spoke of EA’s interaction with their dog, the family’s Jack Russell. From her evidence it is clear Mrs S has an emotional attachment to EA and was visibly emotional on occasion when giving her evidence.

Nick Wale, Independent Social Worker

47. Mr Wale provided three reports and was questioned on the first day of the hearing (because of his other commitments). He was directed to report to the court and was provided with a letter of instructions. He variously carried out in-person direct observations, conducted telephone interviews and reviewed papers. In his first report,

dated 1 April 2022 he concluded the father “is currently capable of continuing to be the main carer for EA...there is good evidence of [the father] being able to meet EA’s overall ‘day to day’ welfare and safety needs in a calm, caring, nurturing and proficient enough manner...EA has a very established, secure, loving and stable relationship with her father.” He considered the shared care whereby EA spent the week with her father and the weekends with MT appropriate and it was not necessary for the father to care for EA full time. He opined “In an overall balanced sense and in applying the principle of ‘good enough’ parenting, I consider that [the father] is able to keep EA safe from physical harm. I also note he recorded the father position that “He [the father] was clear that he would not breach any safety plan put in place around mother’s contact with EA– including not allowing the mother to visit the family home or have any form of unauthorised contact with EA”. In his second report, dated 2 June 2022, Mr Wale was confronted with the reality that the father had permitted the lodger to stay in his home and had breached the Prohibited Steps Order (hereafter “the PSO”) by letting the mother stay in his home. The father acknowledged to Mr Wale the lodger had stayed but continued to deny to Mr Wale that the mother had stayed in breach of the PSO. He told Mr Wale the mother may have entered his home without his permission. The report records the depth of the father’s anger directed to MT of her informing the applicant what the mother had told her about the lodger and the mother staying at the father’s home, but also more widely MT’s concerns. His second report records the fact the father’s home was dirty and cluttered and the toilet was “completely unacceptable”. Further he noted the very poor relationship between MT and the father, describing it as “highly problematic, mistrusting and not a proper basis for safe and consistent care to be provided to EA..”

48. Mr Wale set out the following in response to his updated letter of instructions:

“Notwithstanding this, and in relation to the alleged concerns that the father has allowed the mother to visit his home on numerous occasions against the agreed plan and PSO in place and which purportedly involves EA possibly being present during some of these occasions (as might reflect the photograph / Facebook material held by MT) – then it simply follows that this would, of itself and at the very least, represent a very serious contra- indicator to the father being able to be deemed a fully protective parent towards his

daughter,

EA.

The alleged situation is also further compounded by way of the father allowing a male friend of his to certainly live in his loft area, and also allegedly for some period of time in part of his home – in circumstances where, on his own admittance, he failed to share this issue with the relevant authorities and indeed the author.

Within this, I note that the father openly reported to me that his male friend was not allowed to have contact with his own daughter and where, subject to confirmation, this might have been linked to court proceedings being issued for that child and the issue of domestic abuse being a factor within this.

As such, this does of course further call into serious question the father's 'protective capacity' and overall ability to safeguard EA– such that I would conclude that EA's welfare and safety needs cannot be met in her father's care – if proven.

In terms of the neglect related issues around EA attending school in her pyjama's (sic) and having a dirty sock I would respectfully suggest that, whilst these provide an indication of how the father is coping etc, there overall issues are not such that these, for themselves, would affect my overall previous recommendations.

....

In any event, if the court in this matter were to ultimately adjudge that (the father) did allow the mother into his home/have unauthorised access to EA, it is clear to me that, whatever the merits of such possible support network, that this cannot adequately compensate for such possible shortfalls on his part.

....

As already detailed within my response to question 1, **IF** it is ultimately adjudged by the court that (the father) allowed the mother to attend/live in his home, then it simply follows that this would, of itself, represent a very serious contra-indicator to (the father) being able to be deemed a fully protective parent towards his daughter, EA.

If the court in this matter were to ultimately adjudge that (the father) did place EA at risk by way of allowing the mother to visit/stay over at his him (sic) then it seems to me that, for itself, this would represent a highly compelling reason for EA to be placed outside of his primary care.”

49. In his third report, dated 24 October 2022, he records he had spoken by video call with Mr and Mrs S and the Mr and Mrs P, as well as having further spoken by telephone with the father and MT. He was impressed by the S and P couples. It was noted “[the father] is very regretful and apologetic around previously allowing the mother into his home against the agreed plan in place and; also, around allowing a man to live somewhere in his property. He conveyed that he has learned much from this and that he will never repeat the same, in any way”. He recorded that “When it was plainly put to her, she confirmed that she had no real undue worries for (the father’s) care of EA over the last 3 months or so....She considers that she is much better placed than (the father) to provide safe, secure and stable care for EA.” Notwithstanding his earlier report, Mr Wale concluded that:

“In considering and balancing all relevant factors, and within the context of a very comprehensive and robust Safety and Support Plan being put in place, I consider that it cannot reasonably and responsibly be excluded that the fathers proposed (sic) support network has the very real potential to play a very important, reliable and meaningful support and safeguarding/ monitoring role in enabling him to be able to continue to provide ‘ good enough’ care for EA– for as long as his health and age allow. For the record, I cannot conclude that this would be for the entire duration of EA’s minority – but, nonetheless, possibly for a good proportion of the same. Such possible plan would need to include all members of the support network, being able to meet and openly communicate with each other – this includes MT. Such possible plan must make clear all of the necessary expectations of everyone involved. The network will need to have a clear monitoring role alongside that of providing support. The whole exercise is likely to be much advanced by way of a ‘network planning meeting’ being held.”

50. In his oral evidence Mr Wale was keen to assist the court but remained wedded to his written opinion, particular his opinion expressed in his third report that the father's 'support network' was a sufficient safeguard for EA and meet her needs. He described the father as "overall coping". He considered with a "proper safety plan" the risks to EA could be managed because EA was now verbal and the support network (by which he meant the Ss, the Ps, MT and social services for as long as they remain involved) was robust enough. He told me that father's care would only be safe if the court has full confidence in the "support network" as the father "cannot be fully relied upon". He further said "I am clear the father cannot be wholly trusted". He remained of the view that a supervision order and child arrangements order were the best way to dispose of the proceedings.

The Guardian

51. The child's guardian produced a helpful detailed welfare analysis. She recounts her visits to the father's home:

During my visit to the family on 21st July 2021, I noted that the family share one bedroom with EA's cot in the same room as the parents' double bed. There is a middle room containing EA's toys and a cupboard with clothing. These rooms were tidy and reasonably furnished. The kitchen was acceptable, although cluttered.

I noticed there were also a lot of items on the steps on the way up, although placed to one side. Some of these items could be a hazard to EA if she were to trip and fall and the kitchen could also be a hazard if items were to fall down, so could do with some further organising.

...

In relation to health and safety, I had a look around the home. It was a little untidy in some areas but improved. I couldn't smell cigarette smoke, which was an improvement. The kitchen still has some medicines on high shelves, which need to be in a lockable space or to put doors on the cupboards. The father said he's waiting for the council to fix the cupboard doors. EA was able to climb onto a chair in the kitchen so they could be in her reach. However, the father says he doesn't leave her unattended in the kitchen. There was also

some bathroom cleaner on the windowsill of the bathroom that would be better in a cupboard. I informed the father of my thoughts in relation to these health and safety issues.

52. The child's guardian also visited MT's home and met with EA. She records:

From my observation I could see that EA is content and confident around MT and she has a clear and stable routine. It was clear that EA has a good bond with MT. I observed where EA sleeps, in MT's bedroom, where EA has her own small bed with child friendly covers and teddy bears. There is also a child's lamp in the room so that a low light can be kept on for EA during the night.

53. The child's guardian was in court throughout the evidence, watching and listening carefully, and has evidently fully absorbed the written evidence filed and served in the proceedings. Her conclusions and recommendations in writing are:

“Having carefully considered all the evidence above, including Mr Wale's most recent recommendations, I do concur with the analysis of the local authority in that it would be in EA's best interests to have a stable main carer who can provide consistent care for the remainder of her minority.

There is a positive Special Guardianship assessment of MT, which highlights many strengths such as MT's commitment towards caring for EA as well as supporting [the father] with advice and guidance.

MT has the ability to provide consistent good quality care for EA for the remainder of EA's minority. She has demonstrated this over the last year through the ongoing weekend respite contact.

MT has an established relationship with EA and there is a solid bond between them. EA is observed to be content and confident with MT and in MT's home. MT would be able to support contact with both EA's father and mother and understands the importance of these relationships for EA, in particular maintaining her links to her heritage and culture. MT is herself of Romanian background and would be able to promote this aspect of EA's culture.

I recommend that EA is made subject to a Special Guardianship Order to Ms MT.

I recommend that the father has fortnightly weekend overnight contact with EA.

MT is open to the father celebrating special occasions with EA and this arrangement would be made between themselves.

I support the local authority recommendations for contact between EA and her mother; Fortnightly supervised contact in the contact centre, with progression onto community contact supervised by MT. MT is open to the mother celebrating special occasions with EA and this arrangement would be made between themselves.”

54. The Guardian’s recommendations remain un-altered in her oral evidence. She said that in respect of EA’s welfare and care MT “needs to have the overriding say in what is going on.” She focused on stability and predictability, emphasising that EA needs to know where her home is and what her routine is. She remained of the view the father cannot meet EA’s overall welfare needs now or in the future. She was clear, questioning the multiple carers the father proposes, as not good enough for EA. She was able to list positives about the father, his warmth, the gentle way he communicates with EA, his attention to her educational and medical needs. She observed EA spends the longest un-interrupted period of care with MT. She described EA’s emotional needs as requiring: love and care; guidance; boundaries; support generally and with social skills particularly; predictability of care; and as she grows older all of those in the context of beginning school, navigating social skills and educational demands and providing her with the space to make her own choices.

The Agreed Threshold

55. Ms Chan’s submission is that the appropriate disposal is a Supervision order (with a Child Arrangements Order). This would require the court to consider the section 31 Children Act 1989 (hereafter “1989 Act”) threshold test to be met, on the evidence. The other parties invite the court to determine the proceedings by making a Special Guardianship Order, which is a private law order, which does not require the section 31 1989 Act threshold to be met. I am told by counsel that it is convention, or at least

good practice, in cases of this nature to set out an agreed threshold or make findings. I consider it necessary that I do find the threshold is crossed. First, because it is an important aspect of Ms Chan's case, on behalf of the father, that the protective regime he proposes includes the oversight and safeguards of the 12 month Supervision Order. To properly and fully evaluate that option, as I must, I should consider it to be an option open to the court. Secondly, it is also important for EA, and those who care for her, to know what the background to these proceedings is and why orders of the court are necessary. Thirdly, it may be a necessary and helpful background in respect of future proceedings.

56. The agreed threshold facts as of 30 June 2021 are:

Parental Relationship

1. The parents' relationship has featured volatility, verbal arguments and aggression on a frequent basis, to which EA has been exposed. For example, but not exclusively:
 - (a) On 29.07.2019, the mother called the police following a domestic incident and the mother was asked to leave the property, she was 3 months pregnant at the time.
 - (b) On 19th November 2020 the police attended the home address in relation to a domestic dispute. EA was present in the flat. The mother was removed from the property having vandalised the flat and was provided emergency accommodation by [the local authority].
 - (c) On 30.03.2021, the mother showed Ms Monique Anthony (Parenting Assessor) a video of the parents arguing at 3am. The parents were shouting at each other, the father called the mother a "bastard" and threatened to call social services and the police. During the argument the father was seen holding baby EA

Neglect

2. The child is at risk of suffering neglect and not having her emotional needs met by the parents:
 - (a) On 17.03.2020, Baby EA was placed on a Child Protection Plan under neglect.
 - (b) The mother's older child D was removed from her care in Romania due to concerns of neglect.

- (c) In July 2019 and September 2019 the mother was sleeping rough whilst pregnant with EA.
- (d) EA has been exposed to the parents smoking within the one-bedroom flat within which they lived with EA. This exposed EA to second hand smoke which is may affect her health. The parents had been advised by professionals not to do this, but they continued to smoke within the flat (in the kitchen).
- (e) At the relevant date the PLO parenting assessment did not support EA continuing in the father's care as he could not meet EA's needs, her emotional needs in particular, and as a result she would suffer neglect/emotional harm
- (f) At the relevant date the PLO parenting assessment of the mother did not support EA's continuing placement in her care as she was likely to suffer neglect.

Parental health

- 3. The psychological assessment of the mother (dated 21st October 2020) concluded she had low cognitive ability, difficulties managing anger, lacked insight into professional's concerns and lacked capacity to make the necessary changes.
- 4. The father has Type 2 diabetes, currently controlled with medication. He suffered a mini-stroke in February 2021 during the PLO assessment, and has a diagnosis of high-blood pressure. His medical records show a diagnosis of bi-polar disorder albeit his mental health is currently stable.

57. I find as of 30 June EA was suffering and was likely to suffer significant harm and that the harm and risk of harm was attributable to the care given to her by both her mother and her father.

58. In considering threshold and indeed welfare (see below) I have firmly in mind Hedley J's well known observations in Re L (Care: Threshold Criteria) [2007] EWHC 3527 (Fam), warning against the dangers of equating 'significant harm' with harm attributable to 'commonplace human failure or inadequacy' where he held:

'society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience

disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done’.

The Law

59. The advocates helpfully agreed a detailed note of the relevant legal principles. It is comprehensive and I express my gratitude to them all. I have borrowed from their written work.
60. Special Guardianship orders are set out in section 14A of the 1989 Act. The court may make a special guardianship order either upon application or upon its own motion in any family proceedings.
61. The applicant is required to prepare a Special Guardianship support plan under the Special Guardianship Regulations 2005.
62. Section 14C (1) of the 1989 Act has the effect that whilst a special guardianship order is in force:
 - (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
 - (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).
63. In deciding whether or not to make a special guardianship order the court must have regard the child’s welfare as the paramount consideration and be satisfied that making an order is better than making no order at all. The court must apply the welfare checklist under section 1(3) of the 1989 Act.

64. Section 14B (1) of the 1989 Act requires that before making a Special Guardianship order, the court must consider whether, if the order were made (a) a child arrangements order containing contact provision should also be made with respect to the child, (b) any section 8 order in force with respect to the child should be varied or discharged.

65. The child's welfare is paramount. However, the court must consider the rights of the parents (their Article 8 right to respect for family life). In Yousef v Netherlands (2002) 36 EHRR 20, [2003] 1 FLR 210 at [73] the Court held: 'that in judicial decisions where the rights under Article 8 of parents and those of the child are at stake, the child's rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail'.

66. There is no presumption of a right that a child be brought up by a child's birth parents. Baroness Hale said in Re G [2006] 4 All ER 241 at [31] "None of this means that the fact of parentage is irrelevant" and she quoted with approval a Commonwealth judge's dictum:

'I am of the opinion that the fact of parenthood is to be regarded as an important and significant factor in considering which proposals better advance the welfare of the child. Such fact does not, however, establish a presumption in favour of the natural parent, nor generate a preferential position in favour of the natural parent from which the Court commences its decision-making process ... Each case should be determined upon an examination of its own merits and of the individuals there involved'.

67. The principle that there is no presumption or right for a child to be brought up by a member of his/her natural family was also stated in Re W (A child) [2016] EWCA Civ 793, at paragraph 71:

"The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged. In Re H (A

Child) [2015] EWCA Civ 1284 this court clearly stated that there is no presumption in favour of parents or the natural family in public law adoption cases at paragraphs 89 to 94 of the judgment of McFarlane LJ”

68. In Re S (Adoption Order or Special Guardianship Order) [2007] EWCA Civ 54 – Wall LJ held that:

“We would add, however, that, although the "no order" principle as such is unlikely to be relevant, it is a material feature of the special guardianship regime that it is "less intrusive" than adoption. In other words, it involves a less fundamental interference with existing legal relationships. The court will need to bear Article 8 of ECHR in mind, and to be satisfied that its order is a proportionate response to the problem, having regard to the interference with family life which is involved. In choosing between adoption and special guardianship, in most cases Article 8 is unlikely to add anything to the considerations contained in the respective welfare checklists. Under both statutes the welfare of the child is the court's paramount consideration, and the balancing exercise required by the statutes will be no different to that required by Article 8. However, in some cases, the fact that the welfare objective can be achieved with less disruption of existing family relationships can properly be regarded as helping to tip the balance.”

69. In Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670, McFarlane LJ (as he then was) held at paragraph 43:

'In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.

The linear approach... is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future

upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.'

70. In T (A Child) [2018] EWCA Civ 650 the Court of Appeal emphasised Re W (A Child)(Care Proceedings: Court's Function) [2013] EWCA Civ 1227, the Court of Appeal stated:

"80. The court's powers extend to making an order other than that asked for by a local authority. ... It is simply not open to a local authority within proceedings to decline to accept the court's evaluation of risk, no matter how much it may disagree with the same. ...

81. It is likewise not open to a local authority within proceedings to decline to identify the practicable services that it is able to provide to make each of the range of placement options and orders work in order to meet the risk identified by the court. That is the purpose of a section 31A care plan. If a local authority were able to decline to join with the court in the partnership endeavour of identifying the best solution to the problem, then there would be no purpose in having a judicial decision on the question raised by the application. It might as well be an administrative act. Parliament has decided that the decision is to be a judicial act and accordingly, the care plan or care plan options filed with the court must be designed to meet the risk identified by the court. It is only by such a process that the court is able to examine the welfare implications of each of the placement options before the court and the benefits and detriments of the same and the proportionality of the orders sought.

....

83. ... For the reasons that follow, this court has concluded that although it is for the local authority to decide what services to supply, as a matter of law they must supply sufficient services to prevent the State's intervention becoming disproportionate. The decision about the proportionality of intervention is for the court, the decision about the services which are necessary is for the local authority. Not all services will be practicable and it is for these reasons that the court needs to know what services are practicable in support of each of the placement options and orders that the court may

approve and make. A local authority cannot refuse to provide lawful and reasonable services that would be necessary to support the court's decision because it disagrees with the decision or the court's evaluations upon which the decision is based. It should form no part of a local authority's case that the authority declines to consider or ignores the facts and evaluative judgments of the court. While within the process of the court, the State's agencies are bound by its decisions and must act on them.

Analysis

71. Before I turn to the court's necessary welfare focus, it is important to briefly deal with the fact no party has made an application for a special guardianship order. All parties, through their solicitor or counsel, agree the court can make such an order of its own motion. Plainly there is a jurisdiction for the court to do so: see section 14A (6) of the 1989 Act. I have considered Re H (A Child) (Analysis of Realistic Options and SGOs) [2016] 1 FLR 286 and Re P-S (Children) (Care Proceedings: Special Guardianship Orders) [2019] 1 FLR 251. The fact that no application has been made for a Special Guardianship Order in these proceedings, is really a matter of form over substance. I am satisfied leave to pursue such an application pursuant to section 10 (9) of the 1989 Act would have been given. There has been no procedural or other unfairness in the proceedings.
72. All parties, through their counsel, agree that all the statutory, formal requirements required by the 1989 Act are met and the issue before me is whether a Special Guardianship Order is in EA's best interests as evaluated against the other options.
73. It is necessary to resolve the dispute in these proceedings by considering the options against the welfare checklist. There are three options:
- a. the option advanced by the applicant, the mother, the proposed special guardian and EA, through her Guardian - a special guardianship order appointing MT special guardian for EA, with regular contact taking place between EA and her parents;
 - b. or, the two options advanced by the father which are, in order of preference:

- i. a supervision order and a Child Arrangements Order with EA remaining in her father's care supported by the wider network which includes some weekends with MT; or
- ii. an adjournment pending the fuller assessment of the network with a formal network meeting and/or an adjournment to permit the full assessment of Mr P and his wife as potential special guardians.

74. I remind myself of the welfare checklist:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

75. EA's ascertainable wishes and feelings are not at the forefront of the evidence. She loves her father, enjoys her time with her mother and loves MT ("mummy"). There is ample evidence to support the fact she enjoys spending time with her father who is regularly described as gentle with her. MT described EA in her written and oral evidence, as being unsettled when she returned her to her father's care, presumably mostly on Sundays. I do not doubt EA is at times unsettled and that may be because she dislikes the constant change or some crankiness creeps in when she is tired. Overall, the evidence points to EA having a very close attachment to her father. She needs him in her life. He has been a constant. EA also enjoys her time spent with a wider selection of adults, children and pets. Having listened carefully to the evidence EA has a positive view of the time she spends with the Ss and their children (and their dog). She also enjoys her time with the Ps on Thursdays and enjoys being with their

wide family of children and grandchildren. EA especially enjoys the love, support and care given to her by MT.

76. EA's physical needs require her to be kept safe from harm, to remain clean, well-nourished and appropriately fed. She needs a clean and largely uncluttered home. She needs carers who will protect her from strangers who might deliberately harm her and family members who might not realise they are acting in a way that is harmful to her. Her current educational needs require her timely attendance at nursery (currently 15 hours per week) and wider stimulation through play and social inter-action. She is clever and her two year old intellect plainly requires considerable stimulation and engagement and this, in turn, involves time and patience on the part of the adults in her life. Her emotional needs are more complex. I agree with the evidence of the child's guardian and adopt her evidence (set out above) within my analysis. At the forefront of EA's needs are a constancy of physical, verbal and emotional warmth from the adults who care for her. She needs a consistency across the caring adults in this regard. She needs the adults who care for her, to be united in the purpose that is cherishing her welfare, her physical and emotional growth and the development of her education. It is not enough they individually strive for this with her. She needs adults who are capable of working together, putting aside their differences, and effectively communicating with each other, for her. EA is already, I suspect, smart enough to know when that does not take place. Such failures are already likely to be damaging her and the risk of this damage grows as her receptive communication skills and emotional instincts develop with age and maturity.

77. All of these needs are complex and demanding now, but as she grows from nearly three to rising five and enters school, her needs will grow in number and complexity. What is described above will remain, yet become more challenging. She may face the risk of greater dangers of physical harm going to and from school and in school. Her educational needs will develop as she must simultaneously access the curriculum and develop greater social skills as she navigates the world of teachers in classrooms and the yet more challenging world of peers in the playground. Her emotional needs as she navigates these changes will be at the apex of this complex, little world. It is against this background that, in my judgment, I am clear that EA needs stability and

consistency now but particularly for the years ahead. It should also go without saying, but must be said, that she needs to be protected from the risk of serious harm.

78. EA has dealt with a number of changes of circumstances in her short life. At first, she lived with her mother alone, then with parents. Then with her father alone. Then with her father and the Ss. Thereafter, and currently, with her father and MT with support from two other families. I cannot be clear about the impact of this on her. Much of the evidence in these proceedings focuses on the adults, not on her. It would not be right for her to be subjected to over assessment. However, it is a fact that EA has lived with change and yet is still described as happy and clever. Furthermore, the evolution of living arrangements which would (eventually) involve EA living with MT but seeing her parents is not a drastic one. She currently spends the largest period of uninterrupted time in MT's care. She will continue to see her father and mother and the plan, placed before me, is for her to eventually have overnight unsupervised time with the father. Any potential change, if the Special Guardianship order were to be approved, is significant, but it must not be overstated when seen against the context of both EA's history and her current arrangements.
79. EA has a rich ethnic, racial and cultural heritage. Her ethnic Chinese father's and Romanian mother's heritages offer quite different, sophisticated hinter- and fore-lands. These should be explored and developed now and throughout her minority. Either proposal (the applicant's or the father's primary position) would seek to accommodate the diverse parental influences given (happily) MT shares the mother's nationality and thereby has a similar ethnic and cultural background.
80. In my judgment, EA is at risk of three different but inter-related strands of significant harm. The first is the risk of physical and emotional harm arising as a result of her father's inability to understand or foresee the dangers and/or harms that may befall EA through the actions of others. This is plainly evident from the agreed factual background that he accepted a lodger in the family home during these proceedings without informing the applicant or foreseeing this man could present a risk to EA. It is not necessary to determine whether this man slept in the loft throughout or spent some of the time in the father's flat, or to determine how long he was there (one week or two months). It was potentially harmful to EA and the father's own evidence was to

discount any risk. The father was also misleading about this. Secondly, the father, I suspect through kindness to the mother (not wanting to see her homeless), consented to accommodating the mother in his home. Both parents acted in breach of the PSO. Their volatile relationship, frequent arguments and violence should play no part in the safe and secure home EA needs.

81. The second is the risk emotional harm to EA of growing up in circumstances where she has multiple homes and multiple carers, particularly in circumstances where the carers cannot communicate with each other properly and row with each other. This lacks stability, consistency and the emotional certainties that EA needs. EA may not feel certain about where her home is, now, and in the future. She may be bewildered by frequent changes. In my judgment, she is at risk of significant harm if she is deprived of the stability she needs to grow emotionally (feeling loved and secure); educationally (meeting her educational potential as a clever child); and socially (maintain good peer and adult relations beyond her immediate family) because of the uncertainty caused by multiple carers and as a result of their disagreements. Whilst stability and consistency for all children are important, stability for EA now, and in the next few years, is of considerably more importance (and instability presents considerably more risk of greater harm) given: i. her mother's challenges; ii. her father's honest (and correct) acknowledgement he cannot care for her on his own; and iii. the very significant changes and challenges that have already taken place (such as weekend care changing from Mr and Mrs S to MT).
82. The third risk, is the risk of emotional harm to EA, should a Special Guardianship order be made, should her father then be marginalised from her life. Her father plays a very significant role in her life. Unless a Gillick competent EA, or the appropriate authorities for valid reasons decide otherwise, he should continue to regularly have contact with her so that she continues to know him, feels his love and gentleness and thereby understands who he is, so she can understand herself. This must not be underestimated and MT should be supported to understand this by the applicant. Relatedly, EA's relations with the Ss and Ps should also not be marginalised.
83. Having considered the applicant's and Guardian's written and oral evidence, MT has the capability to meet EA's needs (subject to support with what is said above). I

accept this evidence. I see no merit in the father's complaints about her care of EA. I place trust in her and should the circumstances or challenges of any former relationship present risks to EA, she would take all appropriate and immediate steps to protect her.

84. The mother does not have the ability to care for EA adequately. She recognises this. It does not diminish her love for her daughter. It is to her credit she was able to see she should not be EA's carer and to her further credit she embraced MT as EA's Special Guardian.

85. There are many positives about the father's capabilities. His love and gentleness are apparent. There are many strengths to his hands-on care too. The written evidence of the health visitor is very positive. The feedback from the nurse raises no challenges. The applicant themselves have managed the situation with an interim Supervision Order and not removed EA from the father's care. They themselves have praised his efforts. Mr Wale sees the father's care as the appropriate outcome. But undoubtedly the father cannot now, and will increasingly in the future, be unable to offer EA the stability and consistency she needs. For the reasons I have endeavoured to explain above, EA's current and future complex emotional needs cannot be met with instability and inconsistency without risking her emotional wellbeing. Nor has the father satisfied me, given his untruthfulness to the court, to the applicant and to Mr Wale, that he is able to protect EA from the harm of others or from the damage which may come about from his own volatile interactions with EA's mother.

86. I have little difficulty in preferring the evidence in respect of the father's parenting capability of the applicant and the Guardian, over the written evidence of Mr Wale. I did not find his third report persuasive in circumstances where his second report made clear the unsuitability of the father in the light of the breach of the PSO and lodger situation. In as much as I was invited to trust in the wider support network I simply do not think this is robust and realistic enough to protect EA from the harm caused by instability, lack of consistency and adults who do not see eye to eye.

87. Turning then to the three options.

88. No order would plainly not be appropriate. No party seeks it. They are right not to do so. Reverting to no order would almost certainly damage EA's emotional wellbeing and put her physical wellbeing at high risk of significant harm.
89. I evaluate the three options together, side by side, but entirely within the context of the preceding paragraphs where I have engaged the welfare checklist factors. There has already been delay in these proceedings. I approach the evaluation on the basis further delay is contrary to EA's welfare.
90. First, permitting EA to remain in her father's care would not be inconsistent with her ascertainable wishes and feelings and would not be inconsistent with her cultural background. It would involve the least change. There are positives, which are highlighted in the reports from the Health Visitor and the Nursery. The father's love for EA is not doubted. However, it would not avoid the risk of emotional harm brought about by the instability of multiple carers and multiple homes. It would not present sufficient certainty. Even with a supervision order, EA's physical and emotional needs would be at risk of harm, given the background of the breach of the PSO and the lodger situation, which both took place during the interim Supervision Order period. The father and his plan do not have the capabilities to protect EA in these areas. The Supervision Order has neither created stability or consistency. The reports that EA is happy does not diminish from this analysis: happiness is not the same as achieving the stability and consistency that EA needs now and in the short to mid-term future.
91. The Special Guardian Order would create change for EA and she would miss her father. This can be (partly) ameliorated with contact and support. EA's emotional and physical needs are more likely to be advanced and protected in MT's care. She will have the stability and consistency she needs. She will know her home and this will provide her with the secure platform to develop and mature. From there she will be provided with the stable emotional base to go forth and grow and do well emotionally, educationally and socially. She will be protected, as she has been to date in MT's care, from the risk of physical harm of others or harm by witnessing her parents', at times, acrimonious relationship. A Special Guardianship order would also create much stability in EA's mind, given there are some doubts in the father's mind, and

professional concerns, about his ability to care for EA as he further ages. The last option of an adjournment is a non-starter. It involves delay and a wholly uncertain potential assessment of a range of disparate adults. It does not provide for the coherent emotional stability and consistency I have tried to describe in the paragraphs above, now or in the future, that EA deserves. Nor is there sense in considering a potential but uncertain, future special guardian (who has not hitherto put themselves forward) when a candidate is before the court in circumstances where the evidence amply demonstrates she has the parenting capabilities and EA knows and loves her.

92. Focusing on EA's welfare as the court's paramount consideration, in the context of the written and oral evidence the court has received, a Special Guardianship order appointing MT is required.
93. I now consider whether the Special Guardianship order is a necessary and proportionate interference in the mother's and father's right to respect for their family life. The mother supports such an order and recognises it is the best outcome for her daughter. There is no violation of her Article 8 rights given she validly and properly consents and in any event the reasoning below in respect of the father's rights applies as much to the mother's.
94. The father, through Ms Chan, submits the Special Guardianship Order would amount to a violation of his right to respect for a family life. As set out above, I have tried to explain why such an order is required to protect the welfare of EA and is in her best interests. Whilst her welfare is my paramount consideration, as a public authority, I must properly consider EA's father's rights. I observe, first, that a Special Guardianship Order which will preserve his parental responsibility because disposal in this way, does not remove his parental responsibility entirely, although his exercise of it will be limited given the statutory scheme places principal responsibility with the Special Guardian. The Special Guardian's rights take priority over his and MT can make decisions for EA in the exercise of her parental responsibility. EA needs, as the Guardian observed, someone to be in control. He will, of course, continue to see EA regularly. EA will no longer continue to share residence between the father's home and MT's. She will live with her Special Guardian, whilst enjoying contact with her father. There are therefore interferences with the father's Article 8 rights to respect for

his family life with his daughter and I do not underestimate those. These are, however, more limited than the interferences if the court were asked, and made, an adoption/placement order. The father will continue to play a role in EA's life and at times exercise his parental responsibility. I am entirely satisfied that EA's rights and her need for stability, consistency and to be protected from the risk of future physical and emotional harm, justify the making of the special guardianship order. Such an outcome is necessary to protect her from emotional harm and the risk of physical harm and is proportionate as her protection cannot be more easily achieved.

95. I have stood back and carefully considered whether stability and consistency are a sufficient basis to make the orders I am asked to. I have considered this matter carefully. Stability and consistency may sound insubstantial to many. It may feel far removed from chronic neglect or actual harm or the even worse calumnies inflicted upon children by their parents, often seen in the family courts. However, the converse of stability is instability. EA's welfare demands more. Against the background described in this judgment, taking into account her welfare as the court's paramount consideration, stability and consistency will help EA, and those who love her, to achieve the best welfare outcomes for her. Further and importantly, it must also be acknowledged that the court has found that neither parent can adequately protect EA from future risk of significant harm, as is explained above. In the circumstances there is no violation of the parental human rights.

96. I have also considered contact and have done so before and after making the Special Guardianship order. Contact between EA and her parents will be part of the exercise of parental responsibility by the appointed Special Guardian. I am told in evidence MT will afford respect to the parents and protect and nurture EA's relationship with them. She must do so assiduously with both, particularly with her father, who will grieve my decision. EA needs both her parents. She particularly needs some continuity with her father, his love for her and his gentleness. These proceedings have not doubted his love for her, although sadly he will likely not have understood or felt that. I have considered the applicant's transition plan which determines that contact is in EA's best interest. I expect MT to respect that. She must now set aside her difficulties with the father and work with him to help EA understand her evolving circumstances. She must take the initiative. Anything less from MT would be to

betray the confidence entrusted in her by the court. I foresee she will honour that, for EA's sake and I thank her for taking on the task of being EA's Special Guardian. EA is special and MT will be her guardian: protecting her includes advancing her relationship with her parents, even when this is difficult, which is likely to be the case in the months ahead. For these reasons I decline to make some form of Child Arrangements Order in respect of contact. My conclusions are reinforced by the fact the applicant will fund mediation between the father and MT. I also anticipate that MT will properly consider that EA's welfare will likely be advanced by having ongoing contact with Mr and Mrs S and their family. EA has spent much time in her short life with them. She enjoys it. This family may have a role to play in her life. Such commitment and love should not be easily discounted. Possibly the same can be said for the P family but I leave that to EA's Special Guardian's evaluation.

97. I also record that it is necessary for safe contact between EA and her father that the prohibited steps order be continued to prevent the mother coming to the father's home when EA is there. She must not do so. Her solicitor understood this.

98. This judgment will be translated into Romanian by the applicant.

99. I thank all parties and their legal representatives for assisting me to resolve these proceedings in EA's best interests.