

IN THE EAST LONDON FAMILY COURT

Case No: JF ZC260/17

11, Westferry Circus,
LONDON,
E14 4HD

Date: 14th February 2019

Before :

HER HONOUR JUDGE CAROL ATKINSON

Between :

Mr and Mrs A	<u>Applicants</u>
- and -	
London Borough of Barking and Dagenham (LBBD)	<u>Respondents</u>
The mother	
The father	
Charlie, the child, through his Guardian	

Ms Reardon for the A's
Ms Harding for the LBBD
Mother (Ms M) in person
Ms Pritchard for the father (Mr F)
Ms McKiernan for the child, Charlie, through his Guardian

Hearing dates: 29th -31st January, 14th February 2019

JUDGMENT

HER HONOUR JUDGE CAROL ATKINSON :

Introduction

1. Charlie is the middle child in a sibling group of three. He has a younger sister, Elizabeth, and an older half-brother, Sam. His mother and father are Ms M and Mr F. Although Mr F is not Sam's biological father, for all intents and purposes he has been the only 'father' that Sam has known.
2. On 9th July 2013, at the end of care proceedings brought by LBB, all three children were made subject to care orders. Shortly after, Her Honour Judge Wright made a placement order in respect of Elizabeth. Elizabeth has since been adopted. Sam, who has physical disabilities was placed in long term foster care in the North East, with carers who had previously cared for him. Charlie, who has global developmental delay and other serious health challenges as I shall set out, remained in long term foster care with the carers who had been caring for him since April 2013. They are Mr and Mrs A.
3. There have been a number of applications made by Mr F over the intervening years which I shall detail in a moment but at their heart his applications have been aimed at securing one or more of the children's return to his care. At the same time Mr F has worked tirelessly on the problems identified by the professionals in various assessments over the years and with a significant amount of success.
4. The applications before me are as follows:
 - a. Mr and Mrs A's application for an adoption order in respect of Charlie (made first in time);
 - b. Mr F's application to discharge the care order;
 - c. Mr F's application for a contact order in the event that an order for adoption is made.
5. At the end of this highly emotional hearing, Mr and Mrs A's position is that it is in Charlie's interests to remain with them and that I should make an adoption order to secure that placement. They maintain that they will honour ongoing face to face contact between Charlie and Mr F and do not consider an order necessary but will accept the decision of the court. As to frequency they consider 2/3 times per annum to be in Charlie's interests.
6. Mr F's position is that he seeks to care for Charlie failing which he opposes the making of an adoption order. If he cannot care for his son, no matter the order made, he seeks increased and more relaxed contact.
7. The mother, Ms M, has made no substantive applications on her own behalf. She largely supports the father, Mr F. She does seek to resume face to face contact with Charlie but she understands that she first needs to establish her ability to commit to a contact regime.
8. The guardian supports the A's as to placement but considers that a contact order, on balance, will be in Charlie's interests provided there can be some control exercised over further unsettling litigation.

Decision

9. This has been one of the hardest decisions that I have had to make in my 11 years as a Judge. However, despite my enormous admiration for Mr F's tenacity and commitment I am sorry to have to tell him that I do not intend to discharge the care

order. First and foremost, Charlie is happy, settled and well cared for in his foster placement. The A's are the most significant people in his life. To move him from their care would cause him a great deal of distress and would have a potentially irreversible negative impact upon him. Whilst he has undoubtedly made enormous and significant changes in his life, Mr F is simply not equipped to ameliorate the catastrophic impact that this would have on his son. He is simply not able to meet the high level of needs that his son would have as a result. It is overwhelmingly not in Charlie's interests to move.

10. Further, I am absolutely clear that it is irrefutably in Charlie's best interests, if he is to remain with the A's that he should do so under an adoption order. In circumstances in which he has settled with carers knowing his birth family, I have wondered whether the severing of the legal links to his birth family is necessary for his welfare – would nothing else would do to safeguard his welfare? However, I am satisfied that there are sound reasons for making an adoption order here which centre on Charlie's need for positive reinforcement of the fact that he will remain with his current carers and also his need to be guaranteed that permanency through to beyond his 18th birthday. I will give a fuller explanation in due course.
11. Unusually, and despite my belief that these foster carers will continue to honour their stated commitment to contact, I feel that it is nevertheless in Charlie's best interests that I should make a contact order setting out the minimum contact between him and his father. This decision has been finely balanced but for me the balance is tipped in favour of an order by the need to recognise the importance of Charlie's relationship with his father and provide his father with some security that (unlike with Sam) his contact will be preserved. I hope that this will dissuade him from issuing further applications in respect of his contact. However, in order to minimise the threat of further unwarranted litigation, I also intend to make an order pursuant to s.91(14) Children Act of my own motion, barring Mr F from making further applications in respect of Charlie without first securing the permission of the court.
12. So far as Ms M is concerned I make no orders satisfied that provided that she shows the commitment to Charlie through indirect contact to him at a frequency to be agreed in a written agreement over the coming 2 years then the local authority will consider introducing face to face contact between Ms M and her son.
13. I know that this decision will be devastating to Mr F. I believe that he has trusted that I would listen to him. I have. I have made no assumptions about him. I have been impressed by him. I cannot remember the last time that I saw someone so committed to trying to change and from such a solitary position. It has been my admiration for Mr F that has made this decision so difficult. How can it be right that when someone does everything that they could have done to make the wrongs right that they still fail? However, my focus in these proceedings is not Mr F. It is Charlie and what is best for him and no matter how hard his father has worked, if what he offers cannot meet his significant needs then it is not enough.

Essential background

14. When the original care proceedings were before HHJ Wright, in July 2013, the children were 7, 6 and almost 2. The family had been known to social services for some considerable time. The children had been accommodated since December 2011. Charlie had been in his current placement since April 2013 and had settled well. The plan was that he would remain with the A's under a care order.

15. I have read the Judgment given by HHJ Wright at the conclusion of those proceedings. The threshold was met on the basis of neglect, emotional harm and physical harm. In addition, the Judge comments on domestic abuse in the relationship between the parents though I can find no findings of physical violence. I note that even during the many months that those proceedings were ongoing the father had given up smoking cannabis, paid for various courses and was presenting as more stable. Despite his efforts the Judge concluded that Mr F was not able to care for the children. She was particularly concerned that he continued to deny that there was domestic abuse in his relationship with the mother and as a result lacked insight into the impact of being exposed to such abuse on the children. At the end of the hearing the Judge made care orders in respect of all three children.
16. Subsequent to that hearing the local authority issued an application for a placement order in respect of Elizabeth and she was, as I have said, adopted. Before that adoption order was made, in July 2014, HHJ Wright heard an application made by Mr F to revoke the placement order (made August 2013) in respect of Elizabeth. That application was refused.
17. In May 2015, Mr F issued applications to discharge the care orders in respect of Sam and Charlie and for contact to both children. Mr F argued that he had made sufficient changes in his life to enable both boys to be returned to his care. In particular, he said that he was able to control his emotions and he understood the impact his aggression had on others and how it impacted upon the children and their needs. Yet again he was able to demonstrate attendance at numerous courses with positive endorsements from those running the courses. At that time the LA position was that there was insufficient change. Charlie's wishes and feelings at the time were that he did not wish to live with his father.
18. At the conclusion of those proceedings in October 2015, HHJ Wright refused to discharge the care orders. She noted that in June 2014 she considered that Mr F had been more stable but she continued to be concerned that he did not understand the impact of violence upon the children. She was particularly concerned at an incident that took place at Sam's contact when it was suggested that the father had been aggressive. HHJ Wright accepted the evidence of the G that Mr F was struggling with depression, was isolated and was still fixed and rigid in his views about the children's needs. She considered that his changes had not really been meaningful and that as the children were happy and settled in placement it was not in the interests of the children to move them.
19. Mr F has not had contact with Sam since 2014 but he has continued to have contact with Charlie at a frequency of 6 times per annum.
20. The A's issued their application first in time. The matter came before me after it was transferred to this court from CFC. Mr F was in person and indicated a strong opposition to the making of an adoption order. His position was that he was able to care for his son and so at my suggestion he issued an application to discharge the care order. There is no placement order in respect of Charlie and so realising that a full welfare evaluation was necessary I directed that there should be an assessment of Mr F by an Independent Social Worker, LB. The A's had the benefit of an Annex A report within the adoption application. Given his extensive needs I also approved an assessment of Charlie's needs by a psychologist.

The law

21. The Applicants seek an adoption order. The father seeks to discharge the care order. Each has the burden of proving their case, in accordance with the relevant law and the standard of proof is always the balance of probabilities.
22. The legal test for discharge of the care order is a simple welfare test. In other words, Charlie's welfare is my paramount consideration and I am guided in my assessment of his welfare needs by the welfare checklist set out in s.1(3) Children Act 1989 (the 1989 Act).
23. On the adoption application the test is to be found in the Adoption and Children Act 2002 (the 2002 Act). In considering this application, Charlie's welfare 'throughout his life' is my paramount consideration; a subtle but important difference. Equally, the welfare checklist set out at s.1(4) of the 2002 Act guides my assessment of Charlie's welfare needs and requires an examination of how those factors will impact upon him not just today, tomorrow next year or in 5 years, but throughout the whole of his life.
24. It has been unnecessary for me to consider the formalities of this private adoption application. All are agreed that they have been met. However, the parents do not consent to the making of an adoption order. There is no placement order here, this is a private adoption. Accordingly, in order to dispense with their consent (as I am asked to do) I do have to be additionally satisfied that the child's welfare requires that I should make an adoption order (s.52 the 2002 Act).
25. It is tempting to think that consideration should first be given to the father's application to discharge the care order and should that prove unsuccessful that I should then move on to consider the application for an adoption order. That would, in my view, be the wrong approach and would risk leading me into a linear assessment of the alternatives for Charlie.
26. Following the Supreme Court decision of *In re B (A Child)(Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 2FLR 1075 and the Court of Appeal decision in *Re B-S (Children) (Adoption Order: leave to oppose)* [2013] EWCA 1146, [2014] 1 FLR 1035, the legal principles pertaining to care cases (and specifically those with care plans of adoption) have been definitively set out. I remind myself of that case law and that:

"An order compulsorily severing the ties between a child and her parents can only be made if 'justified by an overriding requirement pertaining to the child's best interests'. In other words, the test is one of necessity. Nothing else will do"

Re B (per Hale, para 215)

27. I have also considered the cases of *Re R (A Child)* [2014] EWCA Civ 1625, *Re M-H (Placement Order: Correct Test to Dispense With Consent)* [2014] EWCA Civ 1396, *Re M (A Child: long term fostering)* [2014] EWCA Civ 1406; [2015] 2 FLR 197. These cases support the contention that in conducting a welfare analysis of what is in the best interests of the child, the Court must keep front and centre of its thinking the importance of family ties and must only sever those ties where the correct welfare analysis reveals it is necessary to do so.
28. The Court must conduct a:

"global holistic analysis 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"

Re G (care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965; [2014] 1FLR 670. I note also the comments of McFarlane LJ para 50 in *Re F (A Child) (International Relocation Cases) [2015] EWCA Civ 882*.

29. Accordingly, I intend to consider both welfare checklists alongside each other then stand back and consider the various options for Charlie in a global holistic way. I remind myself that I must be careful to address all issues in *each* of the checklists.
30. Turning for a moment to the issue of contact, the father invites me to make a contact order if should I decline to return Charlie to his care. As Ms Reardon, in her helpful note on the law, observes, this is not an agency placement case: Charlie has not been placed for adoption by an adoption agency. It is a private adoption application and therefore any application for contact must be made under s. 8 of the 1989 Act.
31. The father has made his application under s.51A of the 2002 Act (post-adoption contact) in error. No point is taken on that and it is agreed that I can treat his application as if made under s.8 of the 1989 Act which is what I intend to do.
32. If I make no order for contact then post adoption the father would need leave to apply for an order pursuant to s.10(4) of the 1989 Act.
33. Finally, I should mention s.91(14) of the 1989 Act. I am grateful to Ms McKiernan for her note on the law relating to this section. No one takes issue with the principles she has set out which can be summarised as follows:
 - a. S. 91(14) empowers the court "On disposing of any application for an order under this Act' to direct that 'no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.';
 - b. Lady Justice Butler-Sloss set out guidelines for the making of s.91(14) orders in the case of *Re P (a child) (residence order: child's welfare) [1999] 2 FCR 289*. I have considered each one of those guidelines with care, in particular bearing in mind that to make such an order imposes 'a statutory intrusion into the right of a party to bring proceedings before the court' and should 'be used with great care and sparingly' and 'as a useful weapon of last resort'.
 - c. I have also considered *Re T (A Child) (Suspension of Contact) (Section 91(14) CA 1989 [2015] EWCA Civ 719*.
 - d. Finally, any order made restricting a parent's ability to issue proceedings in relation to their child must be proportionate in the circumstances and the duration reflective of this.

The evidence

34. The decision I make is based upon the evidence that I have heard set against the history of decision making in the case. There has been a factual base line set by previous decisions as to the welfare of these children. Another Judge before me has heard evidence, made findings of fact and on the basis of those facts made orders in the best interest of the children. Those judgments establish the factual base line for

my assessment of the current situation but I have approached the decision afresh and looked carefully at all of the realistic outcomes for Charlie.

35. I have heard evidence from the social worker, the mother and father, Mrs A and the Guardian. I do not intend to rehearse all of that evidence. I will summarise those parts necessary to explain my decision making.

The welfare assessment

36. Charlie's welfare is now paramount. Before turning to the specific factors under the two welfare checklists I want to consider Mr F.

Mr F

37. Mr F told me that he has changed. He understands that his behaviour in the past has not been helpful and he has worked hard to change. He is able to demonstrate that over the years that his children have been in care he has indeed worked tirelessly on his anger management and parenting.
38. This case was sent to me here at East London because of Mr F's behaviour in previous hearings before HHJ Wright. He accepts that his behaviour was unacceptable and he has apologised for it. From the moment that I met Mr F I explained to him that my interest was in him as he presented to me and others now. Whilst the history has been important in providing the base line as I have said, what was important was the progress that he had made in the meantime.
39. Mr F is the sort of man that people can easily misjudge. He will forgive me for saying, I think, that he can look a little scary at times, he can be quick to respond and when he does respond he does so loudly. Sometimes it is difficult to look beyond that. However, I have looked beyond it and what I have found is a man who is actually very articulate, sensitive, caring, kind and utterly committed to his children. I am not alone in my views about Mr F. Both the G and LB have spoken of his positives; his commitment to his son, his love for him and the significance of the changes that he has made.
40. The Guardian has known Mr F for over 6 years. She told me that over that time there has been a significant change in him. She described how previously conversations would suddenly escalate to threats to harm, he would swear and everyone felt scared. Now, she told me, you are able to have conversations with him. Sometimes he misunderstands and he gets angry but all you have to do is say let me explain again. He is now able to calm himself down and give himself permission to step away. He will listen and he may not agree but now he will listen. He does have important things to say but you need to have time to listen to him.
41. LB, the independent social worker, also found him to be personable and able to listen. She noted that he was vulnerable and isolated. His home was clean, organised, tidy and well looked after. LB considered that Mr F had demonstrated commitment to getting his son back and also to improving his anger problems and his parenting skills. He demonstrated insight and was able to acknowledge that the changes he is proposing would be upsetting for Charlie but he believed that ultimately this would be ameliorated by a return to living with his natural father.
42. LB read all of the contact notes and observed contact. She was able to identify mostly positives; that contact is enjoyable for Charlie and that there are mutual displays of affection, for example, Charlie running to his father and jumping into his arms. She

considered that the quality of their interactions at these times is properly described as positive and child focused. LB highlights two negative aspects. The first was an occasional tendency on the part of Mr F to challenge rules that he did not agree with. This played out in front of Charlie and was, according to LB, likely to be upsetting for him. It was noted that he does not appear upset but the view of LB and Dr P is that he has learned to adapt to his father's behaviour when angry. The second was his tendency on occasions not to let the child lead the play. The first of those negatives needs addressing in my view. I am less concerned by the second. Again, this could be improved with some proper input. However, it does demonstrate perhaps a lack of attunement to Charlie. Overall the positives were, for LB, such that she considered that Charlie's father is an important person to him and there should continue to be face to face contact. Her written evidence, filed last year, does not endorse an increase in frequency but nor does it recommend a reduction from what I can see.

43. LB considered that Mr F was emotionally fragile and noted that he was suffering from anxiety and depression. To his credit he demonstrates an awareness of these vulnerabilities and during her assessment LB noted that he had attempted to gain a greater understanding of his emotional needs and vulnerabilities through counselling. LB also felt that he had demonstrated an ability to work with professionals through the number of interventions that he had undergone but he did struggle with social workers.
44. However, although she felt that Mr F had made enormous progress she considered that it was simply not enough for this child. She said this: *'I consider that his awareness in terms of addressing his emotional needs is progressing but is not at a place where it can be concluded that these are problem free. The evidence is that his vulnerabilities regarding his emotions continue and are seen in what he says and how he behaves with professionals and in contact sessions....should Charlie be returned to his care I would be concerned that he will be exposed to incidents when his father's uncontrolled emotions would negatively impact on his own emotional development'*.
45. This view accords with the Guardian's view. She said to me that tragically, had Mr F made this amount of progress at the beginning of the care proceedings then she would have been recommending that he be given the chance that he so badly desires to see if these last few issues with emotional dysregulation could be ironed out. However, in her view the fact that we are now 6 years on and Charlie has settled and invested in his current carers and will be distressed by any move means that it is not in his interests that we delay further.
46. That is a tragic outcome for Mr F. As he said to me, he feels sometimes that all of his progress has been a waste of time because it will bring him no benefits. I disagree of course, but I can see how it must feel that way to him.
47. Despite the many positives, my assessment of Mr F is that he cannot quite bring himself to see this from Charlie's perspective. He is holding onto a rather rigid view that the mere fact that he is Charlie's father will ensure that in time all will be well. I asked him if he thought there might ever be a situation in which a child had been placed with an alternative family for so long that no matter how skilful his parent it would be simply too hard to move that child and too damaging. He avoided answering the question by telling me that he understood of course that Charlie would have to be moved gradually and he would have to be given a lot of help to make the transition. He was unable to go on to consider if there might be a chance that it is too late for Charlie to change. In my view he has invested a great deal in that belief. I think that this is what has kept him going. I am not sure that he does not understand my point though.

48. The impact upon Charlie of being moved now will be considerable and I will turn to that now but I am also satisfied that despite the significant improvements in Mr F's behaviour and abilities he is not equipped to be able to deal with the devastation that his son will suffer as a result of a move. As LB put very succinctly in her final comments:

'The assessment reveals that although he has made changes they are untested practically and are insufficient to fit within Charlie's timescales. More importantly by removing Charlie from his current placement where he is secure and settled and has formed a significant attachment to his carers for over 5 years, cannot be considered in his best interests...'

Charlie

Age, circumstances etc

49. Charlie is now almost 12. He was born premature at 34 weeks and has global developmental delay and microcephaly. He has a learning delay and some difficulty in physical movement. He has a fusion of his neck vertebrae, abnormal brainwaves and a sleep disorder. His speech and language is delayed which means that he communicates in single words and not in sentences. His current level of intellectual functioning is at the level of a much younger child. The G in her evidence suggested he was functioning at the level of a 5/6 year old.
50. Emotionally, Dr P considered it likely that he displays anxiety through physiological mechanisms. In short, and I accept, that because he does not have the words, in order to help manage anxiety and self-regulate he rocks or flaps his hands. This is important because he has been observed doing this in contact and it is likely that this is how he copes with things that upset him – such as angry outbursts by his father. In an illuminating exchange, Mr F thought that this was behaviour that was copied by Charlie who Mr F assumed must have seen it in the foster home where there are other children with disabilities. The A's confirm that this behaviour is not displayed by the other people with disabilities in the home lending support to the assessment that it is a manifestation of his anxiety.
51. Charlie has a limited understanding of his own life story. He has lived with the A family since he was 6, which is almost half of his life. Because this has been the latter half of his life all of his memories of family life are of being with Mr and Mrs A and their extended family. It is little wonder that he has started to call them mum and dad because from his perspective, painful though it may be to his birth parents, they are his mum and dad. What mum and dad means to him is the couple with whom he has lived for so long as he can remember, the people who feed him, take him to school, take care of his daily needs etc etc. They are the people who he feels safe with and their extended family will be, to him, his family. It is to the A's and their extended family that he has his primary attachment. I know that Mr F would have gladly taken on that role in Charlie's life but the hard fact is that it has been taken on in his living memory by Mr and Mrs A. They are the people to whom he would run if he was hurt or scared or confused. They are the people he expects will protect him and keep him safe.

Wishes and feelings

52. Seen from Charlie's perspective then it is perhaps unsurprising that he expresses a wish to remain living with the A's and further not to live with his father. Those wishes were evident in the proceedings before HHJ Wright. They have been

confirmed by Charlie to the social worker who has done some work with him asking him to place himself in a house and place other people in the same or other houses. [E82/83]. I accept that through this means he has expressed a wish to remain with his current carers and not to live with his father.

53. That is not to say that Mr F is not important to Charlie because he clearly is. He has a relationship with him and he enjoys seeing him. However, I also accept that Charlie is made anxious if his father challenges the rules or becomes angry. What is even more troubling about that is that Mr F is unlikely to realise this because Charlie has, I find, adapted so as not to react to these outbursts as demonstrated in his lack of reaction to the argument about toileting.

Needs

54. Charlie has very high-level needs because of his disabilities. He needs carers who are highly sensitive, attuned and responsive to his needs. Charlie needs to continue to live in a secure and safe family home. Charlie needs security, stability, love, attention, insight and understanding. He also needs a final decision to be made as to his placement as a matter of urgency. There is clear evidence that he has been unsettled by the current proceedings coming to understand that the question of his placement with the A's is somehow in issue.

Likely effect upon him of a change in his circumstances

55. The impact upon Charlie of being moved from the care of the A's cannot be overstated. It is worth mentioning that when he was placed with them aged 6, he was placed under a care order and they were his long-term foster carers. He will have been led to believe that this was to be his home. Whilst the phrase 'forever family' may not have been used as it is generally not used in this situation, it seems likely that he will have understood that he was not to return to care of either of his parents. As time has worn on he has not seen his mother at all and his contact with his father has reduced to 6 times per annum – thus reinforcing further the essential message that his long term placement was with the A's.
56. Against that background Charlie was asked by Dr P about with whom he would like to live. This created in him enormous anxiety that he may not be able to stay in his current placement. The A's report that he has been bed wetting and displaying anxious behaviours (asking about their wellbeing) as a result. I accept this evidence and I accept that it is evidence which supports Dr P conclusion that removing Charlie from the A's 'would be likely to cause significant emotional harm that would impact on all levels of his functioning'.
57. Charlie has been living as part of the extended foster family. However, he is also one of three children in his own sibling group. He has been having contact to his brother and sister and according to the A's they have now developed a sibling relationship. Mr F has no contact with Sam or Elizabeth, and so if Charlie was to move to the care of his father it is likely that this sibling contact would cease. This would be another significant loss for Charlie.
58. If he remains with the A's under an adoption order I am invited to reduce the frequency of contact that he has with his father. I think that I have to accept that despite Charlie's anxieties currently about that contact this has the potential to be felt as a loss to him too.

Any harm that the child has suffered or is at risk of suffering

59. As set out above, Dr P considered that if removed from his carers Charlie would suffer harm. We have had a hint at how that might manifest itself in his reaction to the suggestion that he may have to leave them. That harm will be compounded by an inability to explain the situation to him by virtue of his developmental delay and extreme vulnerabilities and by his father's inability to deal with it. This is not a short-term problem; it will impact upon him throughout his life.

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 the child's needs

60. I have already dealt with Mr F's capability to meet Charlie's needs. Let me turn to the As.
61. Mrs A gave evidence over a video link. She and her husband have been assessed and there is full information before me regarding their capabilities contained in the Annex A report which I have read. There has been no challenge made to the assessment of them as excellent carers.
62. Mr F seems concerned at the number of disabled children and adults that they have around their home. He is concerned that his son might somehow be affected by this to his detriment. For example, picking up odd behaviours or perhaps not reaching his full potential. Mr F does not see Charlie in the same 'category' as the A's children who are now adults and have very significant disabilities. As I explained to Mr F, when children are brought up in a household in which there are others with disability it is almost always positive for them. They learn how to be tolerant and kind and accepting of others, no matter how they present. Had I been in the slightest concerned about this from Charlie's point of view (and I should say that I was not) then all concerns were dissipated on hearing the evidence of Mrs A.
63. Mrs A has two other adopted children. She has fostered a great number of children but Charlie is the first foster child she has ever applied to adopt. She told me about how she came to adopt her older children and I think that this information gives a very clear picture of the sort of family this is. She told me that she met her eldest adopted child when working in a care home. He was a child who arrived at the care home because his mother had been admitted to hospital. She was dying and he needed to have a family. She adopted him as a single parent and then when she married her husband adopted him. That boy is now 51 years of age. He is profoundly disabled and doesn't speak but he lives in his own place supported by friends. In a very moving exchange in her evidence she said: *'People ask what is the point of adopting someone with such disabilities, but he is a very beautiful person and when you get to know him he has great gifts. He has been a really family builder. He brings us together as a family.'*
64. Mrs A then went on to adopt a daughter who also came to the care home for respite. Her family was struggling. She too is profoundly disabled and as an adult now has her own live in carer. Significantly, Mr and Mrs A maintained contact between her and her birth family throughout.
65. Mrs A told me that Charlie has been living in that environment for 5 years. There has not been any concern that he has not thrived. As for Mr F's concerns about 'jerking of hands' she said that that is Charlie's own behaviour - it is a way he releases tension. More importantly, Charlie has learned to be very kind because he sees that modelled in front of him and he is very respectful of what people can and cannot do.
66. Mrs A was an impressive witness. In her evidence to me she demonstrated that she loves and cherishes Charlie, as do the entirety of her family. He is without doubt an integral and integrated part of their extended family unit. As a couple they have

chosen to apply to adopt him because firstly they love him. Secondly, adoption reflects the status that he has in their family now and fundamentally will continue to have after the age of 18.

67. They are concerned at the diminution in their status that will be brought about by a lack of formal, legal relationship with him post 18 if they do not have an adoption order and they understandably fear having to battle over the right to have him continue to live with them post 18 if he lacks capacity or has capacity but is vulnerable because of his disabilities. Before taking the step towards adoption they canvassed the views of grandchildren and friends. They anticipate that Charlie is likely to need to be surrounded by a loving extended family after they have gone. Their family and friends have all committed to Charlie.
68. What level of need Charlie will have at 18 is difficult to say, according to Mrs A. She told me that he has an ECHP in place until age 25 and such extensive plans are only given to children with substantial needs. In her view Charlie is learning, growing, and developing but much slower than the norm and the indications are that he will be an adult who will possibly need care in some way or other for as long as he lives. As a vulnerable adult and person at 18 he will need to be looked after and there is likely to be further involvement through either the Court of Protection or some other type of application to regulate his affairs. As his foster carers the battle to ensure that he remains with them, which she views as likely to be in his best interests, would be very hard indeed.
69. That is an appropriate point then to turn to the checklist in the 2002 Act and remind myself of the need to keep in mind that in this part of the assessment I must endeavour to stare hard into the future considering Charlie's needs throughout his life.
70. I have already considered Charlie's age, sex, background and any relevant characteristics, any harm which he has suffered or is at risk of suffering and his ascertainable wishes and feelings. I do not think that even considering those throughout his life that there is anything else that I can add.

The child's particular needs

71. I have also considered Charlie's needs but when considering his needs throughout his life, I should add that there is an imperative here in considering his needs for security beyond the age of 18. Charlie's need for stability, security and long term care will not diminish at 18 as they do with other children as they move into adulthood. As set out in the paragraphs above and recognised very keenly by the A's, his need for some form of care will likely continue throughout his life. The degree to which that support will be necessary is not easy to discern at this time but there will certainly continue to be care needs.

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

72. If adopted, Charlie will cease to legally belong to his birth family. I do not underestimate the importance of his family to him. However, in this case the severance of those ties will not be so brutal or have quite the same impact and for two reasons. Firstly, because I am quite satisfied that the actual relationships with Mr F and (if she commits) with his mother will continue post-adoption through direct contact. Secondly, given his level of functioning and his continuing relationship with his father in particular, I am satisfied that the severance of legal links will be beyond Charlie's understanding and will have little impact as a result. What matters is the actual relationship he will continue to have with his birth family and this will

continue. Similarly, the severing of those legal ties will make no practical difference to the relationship he currently enjoys with his siblings.

73. However, there will be the positive impact for Charlie of the A's and their extended family becoming his 'legal' as well as 'psychological' family. The A's children will become Charlie's brothers and sisters. I think that Charlie will gain from the ability to further cement his place in the family with the attendant benefits for his development and security extending beyond his 18th birthday.

The relationship the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including:

- (i) *the likelihood of any such relationship continuing and the value to the child of its doing so;*
- (ii) *the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and other wise meet the child's needs;*
- (iii) *the wishes and feelings of any of the child's relatives, or of any such person, regarding the child*

74. I have already set out in full the importance to Charlie of Mr F and the plan to ensure that his relationship continues. The A's are equally committed to re-introducing Charlie's mother to him provided she can demonstrate the commitment necessary to ensure that he is not disappointed. Those relationships are valued by the A's and I am satisfied that they will be supported. The same applies to the sibling relationships. I have considered the capability that Mr F has to care for Charlie and found that he cannot do so and there is nothing further that I can add regarding Mr F's desire to care for his son.

Discussion and final analysis

75. I move on now to my 'holistic analysis' of each of the 'realistic' placement options bearing in mind at all times the 'proportionality' of any order as regards the Article 8 rights of those affected. I need to step back and with reference to the factors set out above look at the case as a whole and determine the course that best meets the needs of Charlie throughout his life. There are three options for me to consider.

Return to the care of Mr F

76. To remove Charlie from his foster carers will cause him harm. It will be devastating for him. Impressive though he now is in terms of his commitment and hard work, Mr F does not have the emotional capabilities or reserves to be able to help him through that. He is not sufficiently attuned. It is not his fault but he does not understand or fully accept the full extent of Charlie's disabilities and in my view has something of an idealised view of how he could cope and how he would be able to make things right for Charlie. For example, he thinks Charlie could and should be in a mainstream school, he does not understand that the flapping and rocking are signs that Charlie is anxious. He said to me – why should he be in care when he has a dad that can look after him. The simple answer to that is that from Charlie's perspective he is loved and cared for by a family he identifies as his own and Charlie needs attuned and sensitive parenting which sadly, Mr F cannot give. Returning to the care of his father is simply not a realistic option for Charlie.

Remaining with the A's under a care order

77. If Charlie does not return to his father's care he will remain subject to a care order and he would remain with the A's as foster carers. That would mean no change in his day to day living arrangements and so the disruption brought about by a move would be avoided. However, the anxiety caused to him by virtue of these proceedings and the concerns that he clearly has about being moved could not be completely answered by assuring him that he will never leave the A's because that is simply not a promise that can be made to a child in long term foster care. Of course, as time goes on his anxieties should diminish unless there is any further application regarding his care. It seems to me that this is highly likely given Mr F's stated position that he will never give up. History shows that Mr F has indeed continuously challenged the children's placements wherever he has been able.
78. I could reduce the risk of further applications in respect of Charlie during his minority by making an order under s.91(14) Children Act 1989. However, everything will change once Charlie is 18. At that point he will no longer be subject to a care order. He will be a care leaver and likely stay with the A's because that is what they would want. However, he is also likely to need decisions made about his welfare either through the High Court if he has capacity or the Court of Protection. This brings the certainty of proceedings and a challenge, most likely, from his father. The issue then of where and with whom he should live is likely to resurface. I am satisfied that this issue will be as troubling to him at 18 as it is today. At that point the A's would have no formal 'status' in relation to him.

Remaining with the A's under an adoption order

79. If I make an adoption order to secure Charlie's placement with the A's he gains the clear benefit of not having to move, together with the added security of being told that the A's are now his 'forever family'. He will have a life long relationship with the A's and their extended family as a 'full' member of that family. Mr and Mrs A will be Charlie's parent for all purposes and there will no restrictions upon the exercise by them of parental responsibility for him as there is under a care order.
80. I am satisfied that this will bring significant benefits for Charlie in terms of his placement security and I consider that with enhanced feelings of security he is likely to settle better to his contact and have a better chance of overcoming recent anxieties. The risk of further litigation with regard to his placement is in my view removed. Further, any litigation post 18 will be simplified as the A's will have a formal and greater status with regard to him than his birth parents.
81. The negatives for him will be the legal severing of his links to his natural family. However, as I have already observed the effect of this will be significantly less than usual given the continuing face to face contact and his level of understanding. For all intents and purposes, Charlie will continue to see his father, knowing that he is his birth father. Further, I see no positive welfare benefit to Charlie in his parents retaining parental responsibility unless there are likely to be problems arising with contact to which I will turn in a moment.
82. Before making a final decision regarding the appropriate order, I must consider the situation with regard to contact.

Contact

83. Mr F seeks an increase in the frequency of contact and a relaxation of the supervision. The A's have been clear throughout this litigation that they consider contact to the birth family to be important to Charlie and particularly to his father. However, they consider that a reduction in contact is warranted largely because of the upset caused to

- Charlie by recent events in contact. I refer to the incident involving Mr F taking Charlie to the toilet and refusing to comply with the rules in that regard and also his discussions with Charlie about who is his real father and who is his real mother.
84. Pausing briefly to consider those incidents I should say that I accept that they have happened as described in the contact notes and that Charlie has exhibited some anxiety as a result. Having said that I would also comment that we do not yet know the extent to which his reaction has been heightened by his growing anxiety around his placement prompted by the questions asked by Dr P. The simple point I make is that we should not automatically assume that his distress is caused entirely by Mr F and his behaviour.
85. Further, Mr F has agreed to accept assistance in being able to identify behaviour that might impact upon Charlie and make contact less enjoyable. In her evidence the Guardian suggested Video Interactive Guidance as a means to achieve improvements. I wholeheartedly agree. Indeed, I consider that this is essential. It will enable the father to actually see Charlie's reactions and identify what he needs to look out for and what he should do.
86. Alongside this I refer back to LB's observations regarding contact. I appreciate that they came before the difficulties described by the A's but they are still valid in my view: *'I would submit that the current levels currently in place appear to provide Charlie with enjoyment and pleasure....he is aware of who his birth father is....contact has in my view maintained that important relationship with his father and has shown Mr F's commitment to seeing his son. He does things and acts without control on occasions, but this must be balanced with the impact of any significant reduction in contact on Charlie. There is also a risk that to reduce contact would disrupt the mainly positive nature of the father child relationship.'*

Frequency

87. LB could not support an increase of contact or the removal of supervision. Nor do I. The reason for this is that an increase in contact at this stage would risk giving confusing signals to Charlie regarding his permanence with the A's. Also, whether Mr F likes it or not, Charlie does not want more contact and irrespective of the reasons he is expressing anxiety about the contact at the moment. To increase the frequency of the visits in those circumstances would be contrary to his welfare.
88. For the same reasons I consider that there should be a decrease in the number of visits. I appreciate that LB did not think that this was necessary in order for Charlie to settle into permanency but as I have already described that was before the evidence emerged that Charlie had anxieties about staying with the A's. He has been there for 5 years and yet it only took a fairly innocuous series of questions from Dr P to cause him to be seriously unsettled. The message that he is to stay with the A's needs to be supported, in my view, by a commensurate reduction in his contact with his father. Contact must not be at a level which might threaten the placement or undermine his belief in the security of the placement.
89. I consider that the appropriate level would be in the range of 2-4 times per annum. I consider that if there is no improvement in Charlie's stability or in his anxieties around contact then there can be no more than 2 visits per annum. If on the other hand the VIG is successful, 3 times might be appropriate, depending upon Charlie's reaction to that. If things settle and improve, there may be scope in time for an additional visit. That I cannot predict. I think that anything more than 4 times per annum would probably not be in his interests.

90. I cannot decide the precise level. That will have to be determined on the ground and in my view exclusively by his carers. I am quite satisfied that they will make a decision based entirely upon his welfare needs.

Order?

91. The local authority and the Guardian support the making of an order. Pursuant to s.1(5) of the 1989 Act and s1(6) of the 2002 Act I must not make any order unless I consider that making the order would be better for the child than not doing so. An order can build in a level of inflexibility. It might invite further litigation and put the A's in a position where they have to apply to vary it themselves should there be problems. It is unusual to make a contact order in these circumstances.
92. I am quite satisfied that Mr and Mrs A are entirely genuine in their commitment to post adoption contact, that they will honour that commitment and ensure that contact develops and grows if it is in Charlie's interests. However, in my Judgment this is an unusual case. The contact between this father and son is unusually important. It has grown, developed and largely settled during their separation. The importance of this relationship continuing needs to be clear and secure on the face of a court order.
93. Mr F is a man who is likely to continue to litigate. Making no order does not prevent litigation. He will still be able to litigate using s. 8 Children Act 1989. He will need leave, but with a history of face to face contact I do not see the leave issue as presenting much of a hurdle unless the application is clearly without merit.
94. Importantly, my assessment of him is that he is more likely to litigate without the security of an order. He does not trust the A's motives. He has suffered the loss of contact to Sam and Elizabeth and feels that keenly. This assessment is supported by the Guardian who has had a long involvement with the father and considers that the security of an order coupled with a bar on further litigation has the best chance of offering this father the security that he requires in terms of his future relationship with Charlie and preventing further unsettling litigation.
95. I am hopeful that with the security of an order the father might be encouraged to desist from making applications. However, I cannot be certain of that and so in order to limit the risk to Charlie of further detrimental litigation, I intend to make an order under s.91(14) CA 1989 that he should not be permitted to apply to vary that order without the leave of the court.
96. I can confirm that I have considered the requirements of s.91(14) as set out under the law above and consider it entirely appropriate in the circumstances. There have been multiple applications in respect of all three of the father's children. The father has indicated he will fight on and I have every reason to believe that he might. The litigation is very harmful to Charlie as I have set out above. It has unsettled him and would likely do so again.
97. The s. 8 contact order will last until Charlie is 16 years of age. I intend to make the s.91(14) order until Charlie is 16 years of age. The minimum level of contact set out in this order would, in circumstances in which there is no progress in contact, meet Charlie's needs for contact to his father throughout his minority. There is the prospect of litigation in the Court of Protection post 16. I consider it necessary and proportionate to make the s.91(14) order to cover the entire length of the contact order so that Charlie has the security of a filter.
98. Thus, Mr F will still have to get over a permission hurdle before being able to pursue any further litigation arising out of his order. Only time will tell whether having to scale that permission hurdle rather than the permission hurdle prior to the making of the s.8 application will be more of a disincentive to litigation. I would add this. If

there is persistent and harmful litigation the court is always empowered to discharge any order.

99. Given the level of flexibility that I want to visit upon the A's, I intend to make the order for a minimum of twice a year. That means that if the A's wish it to reduce further they will have to apply. Whilst I cannot bind the hands of any future decision maker, given the comments made above and without more, I would not consider it likely that any application would succeed in crossing the permission hurdle unless the frequency of contact falls below twice per annum.

Dispensing with the parent's consent

100. It seems to me that in the circumstances of this case an adoption order is overwhelmingly in Charlie's best interests. It follows from what I have set out above that I am satisfied that his welfare requires that I dispense with Mr F and Ms M's consent, pursuant to section 52(1)(b) of ACA 2002.

POST SCRIPT

101. Following delivery of my decision, Mr F lost control in a way in which he had not throughout the hearings before me. He was angry, offensive and whilst offering no direct threats he was nonetheless threatening by this presentation – not just to me but also to his own Counsel. I am mindful that this would have been heard by the A's who may well be concerned at contact going forward. I am hopeful that this is a one off, that the delivery of this decision was just too much for him to bear and that he will settle down to accept the decision that I have made once he has had time to consider his behaviour. Behaviour of this sort in front of Charlie would be wholly unacceptable and contrary to his welfare needs.