



Neutral Citation Number: [2024] EWFC 170 (B)

Case Number: RG22C50119

IN THE FAMILY COURT SITTING AT SLOUGH

The Law Courts
Windsor Road
Slough
SL1 2HE

Heard on 1-4 July 2024
Judgment given on 4 July 2024

Before

HIS HONOUR JUDGE RICHARD CASE

Re E (a child)(Care and Placement Orders)

Between

BRACKNELL FOREST COUNCIL

Applicant

and

MOTHER (1)

FATHER (2)

E (THE CHILD) (3)

PATERNAL GRANDMOTHER (4)

Respondents

Representation

For the Applicant: Paul Murray, counsel, instructed by the Applicant Council

For the Respondents: Andrew Bond, counsel, instructed by the First Respondent Mother
Christian Mitchell, counsel, instructed by the Second Respondent Father
Oliver Powell, counsel, instructed by the Third Respondent child by their
Child's Guardian, Natalie Irwin
Nairn Purss, counsel, instructed by the Intervener, the Paternal
Grandmother

This judgment was delivered in private. The judge has given permission 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

JUDGMENT

This judgment was handed down remotely at 12 noon on 4 July 2024 by circulation to the parties or their representatives by email.

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Summary

1. The Local Authority want me to place the Child for adoption and the Mother does not disagree with that plan. The Paternal Grandmother wants to care for her. The Father supports the Paternal Grandmother. The Guardian supports the Local Authority.
2. The parents and Paternal Grandmother love the Child very much and in their different ways have demonstrated that in contact and in what they are asking me to do.
3. I have decided I must make an order placing the Child for adoption. I consider that would be better for the Child than being placed with the Paternal Grandmother. Although she has put forward a heartfelt case for caring for the Child there are things that she cannot change about her life in the time that is available; her physical health, her past trauma and her lack of appreciation of the risk that the Father may pose to the Child. If a placement with her broke down it would cause very serious harm to the Child. Whilst an adoption placement is not perfect it is a much less risky prospect and offers much greater permanence and security to the Child.

Parties

4. I have anonymised this Judgment (including in quotations from documents in the bundle) and apologise to the parties for the resulting impersonality.
5. The Child is a toddler, currently subject to an Interim Care Order and in the care of foster carers.

Background

Chronology

6. The following background is taken from the Local Authority case summary; I do not understand it is in issue:

2. The Child was first placed in Local Authority foster care on 4 August 2022 when an Emergency Protection Order was granted. An ICO was subsequently granted on 9 August 2022.

3. On 27th July 2022, the Mother contacted 111, on the advice of her support worker, to report that the Child had not been weightbearing on her arm, there was swelling and a small bruise on the right elbow. Upon attendance at hospital, it was confirmed that The Child had a 'right elbow undisplaced lateral supracondylar fracture'...

...

9. A fact-finding hearing took place from 6th June 2023 with the following findings made:
 - a. On 27th July 2022 the child presented to hospital with a bruise to the right elbow and a supracondylar fracture to the distal right humerus.
 - b. The fracture was caused by significant excessive force applied to the bone, untypical in a child of this age.
 - c. The age of injury was no older than 20 July 2022 and between 20 and 27 July 2022 the child was in the care of the Mother, Father and Paternal Grandmother.
 - d. None of the relevant adults have provided an explanation as to the causation of the injury.
 - e. In relation to cause of the injury:
 - i. The Mother or the Father inflicted the injury; or
 - ii. The child suffered an unwitnessed or unrecalled accidental injury when removed from the cot by the Mother or Father in circumstances where the Mother or Father should have been supervising but recklessly failed to do so by reason of drug misuse

f. At the time of the fracture the child would have been in pain and showing signs of distress and thereafter her carer would have been aware of pain when the arm was moved or handled

g. The adult caring for the child at the time of injury would have been aware of the existence of the injury and need to seek medical advice

h. There was a delay in seeking medical attention:

i. The Mother delayed in seeking medical attention from lunchtime on 26 July 2022 to 12:06 on 27 July 2022; and

ii. The Father delayed in seeking medical attention from lunchtime on 26 July 2022 to 12:06 on 27 July 2022

i. On 18 July 2022 the parents had a verbal argument whilst the child was held by the Mother, the Father blocked the Mother from gaining entry to her flat

j. In relation to kicking the cot:

i. The Mother kicked the child's cot whilst in hospital on 29 July 2022; and

ii. The Father kicked the child's cot whilst in hospital on 29 July 2022

k. On 29 October 2022 there was an altercation between the parents in which the Mother hit the Father and Father grabbed the Mother. The Father pushed the Mother to the ground "aggressively" and "very harshly", this was not done to calm the situation.

l. Both parents have a history of drug use:

i. On 9 October 2020 and 8 April 2021 police found the Father in possession of cannabis;

ii. Whilst attending hospital on 1 August 2022 the Father dropped a bag containing cocaine;

iii. The Father tested positive for the use of cocaine in the period June 2022 to September 2022;

and

iv. The Mother tested positive for the use of cannabis and cocaine in the period May 2022 to August 2022.

10. Assessments have been undertaken during proceedings of the parents and family members. The Local Authority filed and served its final evidence on 6th November 2023. The final care plan was for The Child to remain in the care of her Maternal Grandfather and his partner under a Special Guardianship Order.

11. The Child had transitioned to the care of her Maternal Grandfather on 9th September 2023. On 17th November 2023, the Maternal Grandfather, informed the Local Authority that his relationship with his partner had ended and he was returning to Bracknell. Later on 17th November 2023, the Local Authority met with the Maternal Grandfather to discuss if support could be provided.

12. On 20th November 2023, the Maternal Grandfather confirmed that the placement was not going to work, he felt he could not meet The Child's needs and it was in The Child's best interests to return to the care of the Local Authority.

13. The Child was placed back in her original foster placement on 22nd November 2023.

Parental responsibility

7. This is shared between the parents and the Local Authority.

Positions

Local Authority

8. The Local Authority seeks Care and Placement Orders bi-annual direct contact with the Mother and the Maternal Grandmother and the Father and the Paternal Grandmother together with annual letterbox contact and consideration of video contact with the Paternal Grandmother. There is a plan for step-down contact in the event of a Placement Order and they agree the Paternal Grandmother can attend with the Father.

Mother

9. The Mother, no doubt after very careful soul searching and to her enormous credit, does not oppose the Local Authority applications, she opposes long term foster care and placement with Paternal Grandmother.

Father

10. The Father opposes the making of a Placement Order but, again no doubt after very careful consideration, supports placement with the Paternal Grandmother under a Special Guardianship Order or long term foster care under a Care Order rather than placement with him.

Paternal Grandmother

11. The Paternal Grandmother opposes the making of Care and Placement Orders and invites an adjournment with placement with her in the interim to allow extended time for assessment of the Child in her care. In the alternative she seeks a Special Guardianship Order on the current transition and support plan but with further support provided under a Child in Need plan or Supervision Order so the "structural scaffolding she needs" can be put in place (housing and

assistance with supervising contact with the parents). She opposes the making of a Care Order with a care plan of long term foster care; again I acknowledge this position will have been reached after significant reflection and to her credit.

Children's Guardian

12. The Guardian supports the Local Authority applications but invites the Local Authority to explore higher contact with potential adopters than that proposed suggesting direct contact twice a year (now agreed) with letters at birthdays and Christmas.

Evidence Summary

13. I have considered the lengthy bundle generally and the following evidence specifically:

- a) Final threshold [A212];
- b) Lisa Denton, Independent Social Worker (ISW), assessments of the Paternal Grandmother [C359] and [E246];
- c) Sarah Toll, Social Worker and family finder, Adopt Thames Valley, statement [C517];
- d) Sharon Javanda, Social Worker, Local Authority, final statements [C424] and [C447];
- e) Final care plan [D27];
- f) Family Group Conference Minutes [C514];
- g) Proposed transition plan [C468];
- h) Special Guardianship Support Plan [C473];
- i) Mother's final statement [C503];
- j) Father's final statement [C500];
- k) Paternal Grandmother's statements [C480] and [C506];
- l) Guardian's final analysis [E261];
- m) Special Guardianship medical report; and
- n) Personal Independence Payment (PIP) assessment.

Law

14. I remind myself that the burden of proving the need for a Care Order and Placement Order rests with the Local Authority on the balance of probabilities.

Threshold

15. I must consider if the Local Authority has proved that the threshold test set out in section 31(2) Children Act 1989 is met. It provides:

- (2) A court may only make a care order or supervision order if it is satisfied –
 - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

16. The relevant date for the purposes of making the assessment is the date on which the Local Authority initiated the procedure (*Re M (Care Order: Threshold Conditions)* [1994] 2 FLR 577) but subsequent events and behaviour are capable of providing relevant evidence about the position before the relevant date (*Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050).

Welfare

17. So far as the law on welfare issues is concerned my paramount concern is the child's welfare. In assessing whether to make an order I must take account of the matters set out in section 1(3) Children Act 1989 (welfare checklist) and section 1(4) Adoption and Children Act 2002. I must then have regard to the realistic options put forward taking a holistic and balanced as opposed to linear approach to them consistent with the guidance given in *Re B-S (Children)* [2013] EWCA Civ 1146.

18. In reaching a final decision I must start from the position that the least interventionist alternative is to be preferred applying section 1(5) of the Children Act and section 1(6) of the Adoption and Children Act; I must not make an order unless I consider that doing so would be better for the child than making no order.

19. I remind myself I must also have regard to Article 6 and 8 ECHR rights. Pursuant to *Re B (Care: Interference with Family Life)* [2003] 2 FLR 813 I must not make a Care Order unless I am satisfied it is both necessary and proportionate and no other less radical form of order would achieve the need to promote the welfare of the child.

20. If I am to make a Placement Order I note that section 21(3) of the Adoption and Children Act 2002 requires parental consent or parental consent to be dispensed with. Pursuant to section 52 Adoption and Children Act 2002 I may only dispense with the required parental consent to a child being placed for adoption if the welfare of the child requires it. In the words of Baroness Hale in the Supreme Court in *Re B* [2013] UKSC 33 it must be that, "nothing else will do" or in the words of Lord Neuberger it is seen, "as a last resort-when all else fails".

21. If I make a Care Order I must consider the permanence provisions of the care plan pursuant to section 31(3A) Children Act 1989 and the contact provisions pursuant to section 34(11) Children Act 1989.

22. By section 27(4) Adoption and Children Act 2002 I must consider the arrangements proposed to be made for allowing any person contact with the child.

23. The consideration of a Special Guardianship Order under section 14A Children Act 1989 engages the welfare checklist (section 1(4)(b)) and it must be proportionate. I can only make such order if there is a report before me (section 14A(11)) and before making such an order I must consider if I should make a Child Arrangements Order (section 14B(1)).

Threshold

24. Threshold is agreed based on the findings set out above.

Welfare checklist

25. I now turn now to the considerations under section 1(3) Children Act 1989 and section 1(4) Adoption and Children Act 2002.

Wishes and feelings

26. The Child is too young to express a view save that she appears to enjoy seeing both parents during family time. Although I do not think this has expressly been stated there is nothing to suggest she does not also enjoy spending time with the Paternal Grandmother.

Physical, emotional, educational needs and age, sex and background

27. The Mother is white British and the Father white British/other west European.

28. The Child is living with foster carers and attending nursery. She is having regular family time with her parents and grandparents. The foster carers describe her as “non-stop from the moment she wakes until the moment she gets into bed” (Guardian’s analysis [E267/25]). She is currently engaging in play therapy and the Guardian identifies a potential for emerging attachment difficulties due to her life experience of confusion, trauma and loss. The Guardian says she “requires better than average parenting to [support] her [to] navigate the coming changes she is likely to endure” [E268/25].

29. The Social Worker reports that, “She has been described by her foster carer as ‘ritualistic’ with her routines and her play therapist has suggested this could be due to the instability and adverse childhood experiences she has faced.” [C450/1.8] and in more detail:

[C457]

4.2 She is a resilient child however there have been concerns raised by her carer and medical professionals she is able to settle in her new environment quickly and has normalised moving home. The foster carer and Maternal Grandfather shared she did not talk about her previous carer when she moved. There is a possibility she is internalising difficult feelings and her behaviours need to continue to be monitored by her carers. Play therapy is supporting her to 'let go' of this hypervigilance and develop deeper meaningful attachments in her life.

4.3 She is experiencing some disturbed sleep since returning to her foster carer. She has also been described as becoming distressed if she is not able to control her environment. For example, she has a set routine and certain steps to carry out tasks. If these are disrupted, she can become upset. The play therapist has shared she needs to feel in control to feel safe and this could be as a result of the instability she has experienced.

30. That said, she has adapted well to nursery.

Likely effect of change in circumstances/throughout her life of ceasing to be member of family and becoming adopted person

31. There will inevitably be a change of carer whatever order is made: to the Paternal Grandmother, to an adoptive placement, to a long term foster carer and in the event of an adjournment to one of those placements but deferred.

32. A Placement Order will sever the Child's legal connections with her birth family but the care plan is for direct contact with the birth family, including the Paternal Grandmother. Whilst that is not a substitute for being in the care of the birth family it may mitigate against some of the adverse consequences of growing up outside her birth family in terms of identity and heritage, including the Father's mixed heritage.

Capability of parents: Mother

33. The Mother does not put herself forward to care for the Child. She "struggles with her mental health...she reports to still suffer with anxiety and finds some situations very difficult" [E264] (Guardian's final analysis). The Guardian says:

[E265/14]

She loves the Child dearly but does not feel she possesses the necessary skills to provide her with what she deserves. While the Mother has taken some positive steps; she no longer misuses cannabis or cocaine to the previous levels and is no longer in a relationship with the

Father, so as such she feels better about herself, but she has some way to go before she would feel adequately equipped to manage the day to day care of a young and active child.”

[E266/17]

The Mother advised me on the 2nd of April 2024, that she is still using cocaine socially but no longer daily, and that she now only smokes cannabis in the evenings.

Capability of parents: Father

34. The Father does not put himself forward to care for the Child. He misuses substances and “has not engaged with domestic violence work or secured appropriate housing” [E265] (Guardian’s final analysis). The Guardian says:

[E266/17]

In November 2023 the Father provided a sample for a HST, the results evidenced he was still misusing cocaine, cannabis and methamphetamine.

Capability of others: Paternal Grandmother

35. I will consider this aspect of my analysis below under a number of interrelated headings but before doing so acknowledge, as the Guardian did, that contact between the Paternal Grandmother and the Child was generally positive.

36. I also note the 4 broad criticisms of the ISW assessment of the Paternal Grandmother:

- a) Not considering the Paternal Grandmother’s views on the findings I made;
- b) Making judgments on through generation cycles of trauma when she was not qualified to do so;
- c) Not observing the Paternal Grandmother on her own with the Child and more generally, limited observations; and
- d) Misreading the medical report.

37. I will consider each of these as appropriate below.

Physical

38. The Social Worker commented that when the Paternal Grandmother was observed in contact on 25 January 2024 she “was observed to find it difficult to manage the Child and physically struggled to keep up with her” [C450/1.6] although in cross-examination could not point to the primary evidence, there being no contemporaneous supervised contact note of a session on that

date. She thought it came from a contact session the ISW observed. She also acknowledged that in another contact record from 20 days previously the Paternal Grandmother was observed moving around, ensuring the Child was safe and playing alongside her [L387]. She also acknowledged she had not considered an extended period of assessment of the Paternal Grandmother with the Child in her care.

39. The ISW notes that the foster carer “emphasised her own dependence on her partner and adult children, who play an integral role in the placement, participating in caring for the Child and the pressure she would be under, if she did not have their collective support” [E249/3] and applying that to the Paternal Grandmother concluded:

[E249-E250/4]

4. Whilst the Paternal Grandmother was to some extent, engaging in the physical activities the Child demanded during the contact session, my concerns remain regarding her sustained capability to provide appropriate care for with the Child throughout her minority and majority as evidenced within this addendum. [sic]

5. While she reports that her fibromyalgia and high blood pressure are presently well managed with prescribed medication, it is important to acknowledge that documented triggers for fibromyalgia include both physical and emotional stress. These factors have to be taken into consideration when considering long term care plans for the Child, who is evidently very active and demanding of attention, throughout the entire day.

40. The criticism of the ISW not seeing the Paternal Grandmother caring for the Child on her own has merit but needs to be viewed in the context of the wider canvas in relation to physical ability to care for the Child on which theme the ISW said:

[E251]

9. I was not privy to [the] medical report from 8th September 2023, when I completed the above assessment. The report confirmed and detailed the chronic health conditions that the Paternal Grandmother suffers from, namely high blood pressure and fibromyalgia, as well as the long term implications of her BMI which was at that time, 52.6. This positions her in the obese range and is an indicator [of] increased future health risks of type 2 diabetes and cardiovascular disease.

10. These long term conditions affect her sufficiently enough to be entitled to monthly PIP (Personal Independence Payment) of £272.00.

11. The medical report concluded that concerns regarding these significant health issues render her unsuitable as the long term carer for the Child.

12. She self-reported that medication is helping to manage her medical conditions of fibromyalgia and high blood pressure and attested to being in good health to the extent that she has been able to return to part time employment as a carer for adults.

41. In fact the medical report (which was not in the bundle) does not clearly say that the Paternal Grandmother is rendered unsuitable from a medical point of view. It says (my emphasis):

...her GP has significant safeguarding concerns arising from housing problems.

Fibromyalgia affects people differently; the impact on the Paternal Grandmother will need to [be] established.

Outstanding safeguarding concerns would render the applicant unsuitable as a carer.

42. It seems the reference to outstanding safeguarding concerns related to housing and the impact of fibromyalgia was to be assessed. The Guardian asked for the Paternal Grandmother's Personal Independence Payment (PIP) assessment to attempt to address this lacuna. The document (which was not in the bundle) is dated 2 November 2022 and is brief, it effectively amounts to scoring against various activities with no key to the scoring scheme. The Paternal Grandmother scored 2 out of 8 for "Preparing food...You need an aid or appliance to be able to prepare or cook a simple meal", 2 out of 8 for "Washing and bathing...You need an aid or appliance to wash or bathe" and 2 out of 8 for "Dressing and undressing...You need to use an aid or appliance to dress and undress". Given that all the other questions were scored as "0" I infer 2 out of 8 is a relatively low effect on day to day life. It is also relevant to note that it is dated November 2022 and the Paternal Grandmother's oral evidence was of an improvement in symptoms since then with the assistance of medication (see below) although I do note that she is still in receipt of PIP and still accepted pain at a level of 3 out of 10.

43. The medical report also comments (my emphasis):

Paternal Grandmother's BMI is 52.6 which is in the obese range. Her GP used the QRisk algorithm to calculate her risk of a heart attack or stroke in the next 10 years to be 9.5%. Her

waist to height ratio is 0.82 indicating increased health risks (particularly type 2 diabetes and cardiovascular disease). She has been prescribed for a weight management programme. Her blood pressure was found to be raised.

This will be monitored.

...

Severe obesity is a very serious health problem. It limits mobility and increases the risk of heart

disease, stroke, diabetes, cancer, respiratory disease, orthopaedic disorders and other conditions linked to being overweight. These may lead to functional limitation and reduced life expectancy.

44. In closing submissions counsel for the Guardian characterised this, accurately as I find it, as being a dual risk of (1) limited mobility aggravated by the Child's energetic presentation and consistent with observations from contact and (2) future risks to health (heart attack or stroke) aggravated by the additional uncertainty of fibromyalgia flare ups. This second risk is particularly magnified by the Child's history of 4 placement moves since birth (see under the heading Harm suffered or at risk of suffering below).

45. In cross-examination the ISW conceded that she did not "discuss with the Social Worker... what the Local Authority could do to allow the Paternal Grandmother to address these matters of concern" but I confess to not really understanding what more could be done that the GP had not done (a weight management programme and monitoring of blood pressure) and the prescription medication for fibromyalgia.

46. A more general criticism of the care plan, put to the ISW in cross-examination, was that there was no suggestion of putting the Paternal Grandmother to the test for an extended period of caring for the Child to see if her physical condition might be a problem. Whilst I can see there may have been some merit in that it would not have addressed the longer term concerns identified in the medical report nor the risk of the fibromyalgia worsening on occasions. In relation to the latter the Paternal Grandmother's evidence in cross-examination was that the last flare up was before the medication was regulated (initially she said this was "by June or July 2023") although that did not seem to be consistent with the report to the ISW that it may have been September 2023 [E251]. When I asked her about that she thought the pain condition only plateaued in January 2024 at which point she said she could not remember the dates. Counsel accepted the only sensible way of interpreting her evidence was of a regulation through medication in June or July 2023 before a flare

up in September 2023. This evidence suggests there may be a risk of future flare-ups notwithstanding the medication regime.

47. In any event I asked her if it was realistic to have told the ISW that if there was a flare up she would just carry on through the pain when she had told the Guardian’s counsel that at its worst the pain had been 12 out of 10 (ie beyond the most severe imaginable); she said “Yes, but I’d ask one of my family group to assist”. I struggle to accept the reality of this answer, I felt it demonstrated a minimisation of the likely effect of the pain on her ability to care for an active toddler if there was a flare up. That was echoed by the Social Worker’s evidence in answer to questions from the Guardian:

Q What had she told you
A We had a frank conversation after ISW completed, I went through it with her and she made optimistic statements that she was fine and would cope and didn’t have any concerns about her own health and no concerns in managing the Child
Q And you saw that as unrealistic
A Yes and lacking insight of day to day realities of managing a very active [toddler]

48. The ISW commented on the Paternal Grandmother’s decision to limit her working hours and “not do all the hours I used to do and end up ill” [E252/18]. I note from the FGC minute that she is working just 2 hours per week with occasional additional “cover” although in cross-examination she said she was “extended and every now and again I get a live-in 7 days 24/7”. I am not sure this equates to full time work but I accept it is more than 2 hours per week. The ISW observes that caring for the Child will be full time without respite “given the very limited network of support” she has which “will likely present a significant challenge” [E253/19]. She thought the challenge may be greater if the Paternal Grandmother had to move to other accommodation that was not local [E257/40]. I will return to the issue of respite assistance below.

49. Following the observed contact the ISW said that the Paternal Grandmother had “apparent difficulty...managing her basic needs such as a nappy change and getting her to eat her packed lunch” [E255/33] and could not explain how it would be different if she had care of the Child, especially given the foster carer’s similar report of behaviour. She also directly observed what she described as “sweating, breathing heavily, flushed, struggled bending down, struggled chasing after the Child throughout” at a contact session. In cross-examination she accepted it was a hot day; whilst this may explain the sweating and flushed appearance it does not appear to be an explanation for the other observations.

50. The conclusion was that there was no way to mitigate the health concerns [C422]. She was asked about the support network available to the Paternal Grandmother and said that this was originally identified as a long-standing friend, the friend with whom the Paternal Grandmother was living and her daughter (the Child's Paternal Aunt), "each had their own needs and not in a position to fulfil a great support network". She said she had reviewed the FGC report and that had not changed her views. The minutes identify 2 additional individuals: another friend and her employer. All confirmed "24/7 availability" although 2 were "in emergencies" as they work full time. The family finder's evidence was that in the case of a solo adopter she would be "looking to ensure that network was very strong" which does not come across from the FGC minutes. In any event, when it was later put to her that there could be "structured respite" based on the network identified at the FGC her evidence was quite compelling that "Respite is not what the Child needs, she needs consistency and stability with one primary care giver, not one where she's being moved to respite to give the primary care giver respite".

51. The Paternal Grandmother says she sometimes cares for her under 2 year old grandchild (Paternal Cousin of the Child) and has not struggled with that.

52. The Guardian says:

[E266-7]

19. The Paternal Grandmother has a diagnosis of fibromyalgia and high blood pressure and is clinically obese. The Child's energy as reported by her foster carers is non-stop, so she needs a carer with reasonable mobility and energy, as well as a carer who can spot risks before they might occur. Crucially, the medical report completed as part of the Paternal Grandmother's assessment does not recommend she should be carer to the Child.

53. Whilst there are shortcomings in the medical evidence (it is rather limited and "contentious") and limited observation of the Paternal Grandmother (in terms of duration and alone) what is uncontentious is a significant risk of future serious health complications for the Paternal Grandmother, a present risk of fibromyalgia notwithstanding medication and an apparent lack of insight on the part of the Paternal Grandmother into how she might manage an active toddler like this Child.

Past trauma

54. In the initial Special Guardianship assessment the ISW set out the Paternal Grandmother's personal history, in particular I note most previous relationships "were characterised by abuse", physical, verbal or coercive with one in particular resulting her being abandoned overseas with two

young children [C392] (by Mr S, the relationship ended in 1999). A later relationship (with Mr M which ended in 2019) appears to have involved punishment of her children (step-children to Mr M) which she did not protect them from as she was back in the UK working [C393].

55. The Paternal Grandmother told the ISW “she felt she had resolved the historical trauma” [E252/17].

56. The ISW concludes:

[C395]

Considering her recurrent pattern of engaging with partners who have been abusive in one way or another leads me to conclude she may well continue to struggle with effectively assessing risk meaning there are legitimate worries about the Child’s safety and emotional well-being if placed in her care permanently.

57. I accept the evidence the Paternal Grandmother has not been in an intimate relationship since 2019 let alone an abusive one. It remains a “red flag” on the Guardian’s evidence but the more pertinent concern was:

[C401-C402]

It is plausible that she has developed coping mechanisms that downplay the severity of her past traumas as a means to manage her emotional distress, particularly when she minimised the abuse she suffered within historical adult intimate relationships.

There could also be a similar explanation given for the inconsistencies in her account of the physical punishments that the children experienced while she was working in the UK, however the downplaying of past trauma cannot be ignored. One would have to take these factors into have serious consequences for the Child insofar as her ability to assess risk effectively around the individuals she allows into the Child’s life and how she teaches the Child about the nature of intimate relationships, in the future. [sic]

58. The ISW thought therapeutic counselling and a domestic violence programme could support the Paternal Grandmother in mitigating the risks [C422].

59. The Paternal Grandmother says that she has undertaken 90 minutes of Talking Therapies but they did not consider it was necessary to continue as she did not appear anxious, depressed or agitated [C507/3a]. She can join live online sessions but has not been able to fit that around her

work [C507/3b]. She says she self-referred to Women's Aid but does not "qualify" as she is not a current victim and has not yet heard back from them [C507/4b].

60. As to the criticism that the ISW lacked qualification to assess through generation cycles of trauma it seemed to me the real point under this heading was current insight into past harm and that is something an independent social worker is well able to assess.

61. The Paternal Grandmother was asked about being abandoned in Spain and agreed she did not report Mr S to police. She could not understand on reflection why she had not done so.

62. In cross-examination there was an exchange about the abuse of her children by Mr M. She told the ISW his "discipline of the children would be to shout at them...adding she had never seen him hit the children" [C400] yet at [C401] she described "having to physically get in the middle of her teenage sons and Mr M as they fought" (my emphasis). When challenged on the apparent inconsistency she said "I've only seen verbally, that's violent" which did not appear to make much sense so I asked her about the inconsistency between not regarding being slapped and straddled by Mr S as domestic abuse (see below) yet viewing Mr M's shouting as violent. She said "I don't know".

63. In similar vein there was an exchange about whether she had read the ISW's report (see below under the heading Honesty/Work with Professionals) which left me with the impression she had not really reflected much on what happened in these relationships and it was a struggle to read about them in the ISW's report which chimes entirely with the ISW's assessment and what the Guardian says:

[E266-7]

21. Within the assessment the Paternal Grandmother demonstrates lack of recognition or reflection regarding the impact from all of the changes the Child has experienced, and how these might play out in her future. Regarding the Paternal Grandmother's own historical trauma from being in abusive relationships, she believes these are no longer relevant as they remain in the past. She is relatively young...so there is a chance she might form future relationships and my concern is that without developing her understanding of domestic abuse, or how it impacts children, the Child could still be at risk of neglect or physical harm...

64. The Social Worker's oral evidence was that the issue was "very significant, it would be significant to identifying the risks, safeguarding the Child and making decisions in her best interests" and agreed that if that were the only concern it would be "sufficient to rule her out".

65. I accept that evidence and am very troubled by the apparent disengagement with historic abuse.

Honesty/Work with Professionals

66. At [C407] the ISW comments on the Paternal Aunt being a vulnerable young mother living with a child at a mother and baby unit. When she questioned the Paternal Grandmother on how the Paternal Aunt would cope without the Paternal Grandmother's support (if it was directed to caring for the Child under a Special Guardianship Order) she "whispered [the father] was living with her but intimated secrecy by putting a finger to her lips" which suggested she "does not work in an open and honest way" and her "inability to adhere to rules and limited capacity to successfully guide or implement boundaries" with the Paternal Aunt.

67. There was also a concern raised in cross-examination of the ISW that the Paternal Grandmother, when questioned about her fibromyalgia, had alluded to getting up from a low chair being a problem with mobility ("Insofar as mobility, the Paternal Grandmother said the condition does not impact on her moving about but she can struggle to get up from a low chair." [C402]) yet the other issues identified in the PIP assessment were not mentioned. In answer to my questions in cross-examination the Paternal Grandmother said she no longer needs the aids that were required at the time of the PIP assessment, they had been returned and she now only suffered pain at 3 out of 10 in the backs of her legs, lower back and shoulders but it does not stop her doing anything. I do note that the next PIP assessment is not due until next year and the Paternal Grandmother's case is that her symptoms are largely controlled now so this may not be an inconsistency.

68. However, there were other concerns about her honesty highlighted through cross-examination:

- a) When commenting on the relationship between the parents to the Initial Viability Assessor in January/February 2023 she said she "was not positive about the history between them [the Mother and Father] and raised concerns about issues in the relationship" [C71] and in oral evidence said this was because of arguments. Yet to the ISW in August 2023 she said "she felt their relationship was fine, both were managing well. [They] "argued like any young couple"" [C394]. When that apparent inconsistency was pointed out she said she thought the comments were saying the same thing. It is quite plain they were not;

- b) She was taken to the ISW assessment at [C400] in which she is reported to have said that her former partner Mr M was registered as the Father's birth father even though he was not the biological father and that this was done "to exert even more control over her". She denied saying that although it seems a very odd comment for the ISW to record if it was wholly inaccurate;
- c) She was taken to a report the ISW made following an interview with another of the Paternal Grandmother's sons who said "he knew the Paternal Grandmother was aware of the Father using cocaine and cannabis as he himself told her" [C411]. The Paternal Grandmother's evidence was that this son was lying, notwithstanding he was in support of the Paternal Grandmother putting herself forward to care for the Child; she could give no possible explanation for the lie;
- d) She said that she had never seen Mr M hit any of her children yet in the ISW report it is recorded that she remembered "an occasion when Mr M hit one of the children in the street, but could not remember which child" [C401]. Again she asserted she had not told the ISW that. Again, it seems an odd comment for the ISW to record if wholly inaccurate;
- e) The ISW recorded the Paternal Grandmother initially telling her that the partner before Mr M, Mr S, had no issues except infidelity but then later saying "he had me on the floor, then straddled me" [C399]. Aside from the initial failure to volunteer this incident in her oral evidence she said he had also slapped her around the face. When I asked her if the initial comment to the ISW was therefore inaccurate she said "He wasn't physical", I asked her if she was saying the slap and straddling was not physical and she said "Is that physical?". Whilst I acknowledge within an abusive relationship it may not be possible to see acts as objectively abusive it is hard to understand a slap being characterised as anything other than physical;
- f) Finally, there was apparent obfuscation about why these alleged inaccuracies in the ISW report were not previously raised. Initially the Paternal Grandmother said she had not read the report thoroughly because she had not "had time", when challenged how she would have time to care for the Child and related documentation she said "I was in a lot of pain", then when it was put to her the report post-dated her evidence of the medication regulating her pain she said "I was not living in my own home and it's difficult to get out the paperwork" and when I asked her how I could have confidence in her ability to care for the Child if she cannot get out paperwork relating to this case she said "I don't know if I got this [report]" which she plainly had done as she comments on it in her written evidence. Finally she said she had not got round to reading it which was a return to the initial position.

69. When the Social Worker gave evidence she said that the Paternal Grandmother had told her that “she had surrendered her tenancy and was on the housing register and waiting to be rehoused” when “in fact she was not on the register, she was declared intentionally homeless”; I accept this may have been a misunderstanding on her part. There was also evidence about her using a mobility scooter (which would be relevant to her physical capacity) I do not find this was in fact because of capacity limitations given the absence of reference to this in any other document (the PIP assessment and the medical report) and the absence of any other corroborating evidence in circumstances where the Paternal Grandmother says it was being used to keep up with a client (also using a scooter) in her capacity as a carer.

70. Whilst I do not make express findings of dishonesty and whilst I make allowance for the stress of these court proceedings I do not have confidence, based on the evidence given by the Paternal Grandmother herself and set out above, of her ability to work openly and transparently with professionals, I find her evidence demonstrated a tendency to obfuscate and confuse rather than speak plainly, fully and frankly. Further, I can have no confidence in her ability to address complex issues for the Child if she has not demonstrated that in relation to the ISW report.

Housing

71. The Paternal Grandmother currently lives in a one bedroom apartment with a friend; she sleeps on the sofa. She accepts she has been declared intentionally homeless. She says that if the Child is placed with her she would take steps immediately to find a 1 bedroom property.

72. The Guardian says:

[E266-7]

20. The Paternal Grandmother does not have her own accommodation, and while this should not be a barrier to a child returning home, it is just another indicator that she is unable to manage her own lifestyle needs, therefore I would be concerned as to how the Child might fit in.

73. In submissions the Local Authority relied on this situation as indicative of the Paternal Grandmother not addressing the situation and draw a parallel with her not addressing past trauma (above). I find that criticism unfair, her circumstances in relation to housing appear to have sprung from naivety about the entitlement to state support with housing and then to fibromyalgia limiting her ability to work and fund alternative accommodation.

Insight

74. In examination in chief the ISW confirmed that she was saying that “better than good enough parenting” was required. On emotional needs she said:

[E250]

8. Whoever is deemed to be her long term carer, will have to work hard to develop the Child's capacity to form healthy attachments. The individual will need to possess a comprehensive understanding of how to respond effectively to her emotional needs that will ensure the Child's emotional healing and overall wellbeing, as she grows. Sadly, I do not believe these are skills which the Paternal Grandmother has demonstrated.

75. Towards the end of the Paternal Grandmother's oral evidence there were a series of questions relating to her insight into the facts as I found them and as set out in the Background section above (my emphasis):

Q Is Father a risk to the Child

A No, he is a very loving father

Q Do you believe he hurt her

A I'd like not to, I don't know, I wasn't there

Q You believe he's not a risk

A I believe not, I've seen him with Child and can't see him ever hurting her, even by accident

JQ I found that Father delayed seeking medical attention for the Child, does that give rise to a risk

A Yes

JQ Do you agree with my finding

A I have to accept it

JQ I also found that Father kicked Child's cot in hospital, do you accept

A I can't see that happening

JQ Do you accept Father is a risk to the Child

A If the Child was not showing signs of pain...

JQ I found that she was

A That I didn't know

JQ So is he risk to her or not

A I'd like to think not

Q The Judge also found Father and Mother caused emotional harm because of arguing

A I wasn't aware

Q Drug use gave rise to a risk of harm, those were findings of fact, do you think Father poses a risk to Child

A He has changed, has made an effort in not misusing, he's keeping fit, changed his diet

JQ You're not answering the question

A The answer is no, whilst taking drugs yes

Q Can you see how that would give professionals concern

A Yes, I do

Q How would you know if Father went back to using drugs if Child in your care

A Hopefully he'd disclose it

JQ He didn't previously and you weren't aware of it

A No but I didn't see him often

76. Whilst I do understand it is difficult for a parent to accept a child is a risk to their grandchild I have made findings against the Father, if in her care the Paternal Grandmother will need to guard against risks related to those findings. Her ability to do so was not demonstrated by this evidence. The absence of an assessment by the ISW of the ability of the Paternal Grandmother to mitigate the risk was criticised by the Paternal Grandmother and the Guardian agreed it was a startling omission but I note that the Paternal Grandmother was joined as an intervener before the Fact Finding Hearing as she was in the pool of potential perpetrators and she has been aware of my findings since they were handed down over a year ago. In the circumstances her lack of insight into the risk is a significant worry.

Contact with parents

77. There was a discussion with the ISW about parental contact and the Paternal Grandmother was reported to have said that if the parents were separated then it would be separate contact otherwise together and observed the Child does not understand the concept of them being together or apart which the ISW thought showed "little understanding of the potential adverse effects of inconsistent family contact time on the Child" [E254].

78. The social worker says that the Mother's new address is on the same road as the Paternal Grandmother (where she is staying with a friend) which may give rise to "further volatility and confusion" [C455/3.4].

79. Finally, when being cross-examined the Social Worker said that she had concerns about the Paternal Grandmother facilitating contact with the Father because of the dynamics of their relationship. She evidenced this by reference to contact records suggesting the Father becoming frustrated with the Paternal Grandmother giving him advice and said “it was about the attention being on their relationship rather than being on the Child” and she was “very concerned as it means potential exposure to harm for the Child.” She pointed to specific examples at [L401] and [L441].

Harm suffered or at risk of suffering

80. I will not repeat the findings I previously made nor labour the point about multiple placement changes; looking to the future risks of harm the Guardian’s assessment is:

[E267/22]

Should the Child return to either parent, in my opinion, the risks of exposure to drugs and alcohol misuse, domestic violence and poor mental health remain high. Should she move into the care of Paternal Grandmother, I would be concerned her needs would be neglected. She requires a carer whose health and mobility would not prevent her from having the active childhood she requires, and that she is provided with the security of safe adult relationships around her, in a secure home environment.

81. I must also address the risks associated with a future placement breakdown. The family finder was asked to comment on the impact of a placement with the Paternal Grandmother breaking down and said:

It would be another broken attachment, loss again, possibly feelings of rejection in her again, ability to securely attach to a care giver, not knowing where she is going next, it depends what age and stage of development but it would just be a repetition of what she has experienced over the last couple of years and could have real long term negative outcomes for her in terms of how she forms adult relationships, understanding of herself and her identity, across all development needs.

82. The Social Worker said there is no guarantee the Child could return to the current foster carers even after a period of testing with the Paternal Grandmother, that would “catastrophic but less catastrophic” than a breakdown after a permanent placement under a Special Guardianship Order and “it’s hard to know what the impact would be but some of the concerns have been she takes it in her stride and it’s like that’s her normal, it would make her feel that relationships don’t last long”.

Range of powers

83. The family finder identified the risk of placement breakdowns in long term foster care and resultant moves of school, social networks etc [C520/2.5]. She identifies the Child's needs as including a main carer who will remain at home for 12 months, with significant childcare experience and demonstrated skills in parenting therapeutically. There are 128 families nationally who may be a match, including in relation to direct contact and expressions of interest from 2 potentially adoptive families.

84. The Paternal Grandmother's evidence is she would accept a Supervision Order in conjunction with a Special Guardianship Order if I felt it was necessary and the Social Worker acknowledged there might need to be a further period of consideration of the Support Plan if a placement with the Paternal Grandmother was considered in the best interests of the Child in order to address contact issues.

85. She was asked to consider the possibility of an adjournment and she thought it could be done "very quickly" but could not "put a timeline on it, it would depend on how it was going".

Relationship with relatives, prospective adopter and their wishes and feelings (if placement)

86. I have in part addressed this. On contact in the event of a Placement Order the Guardian says:

[E268/28]

My view for the Child is that just one contact a year is limiting and does not really contribute to any meaningful relationship. There is increasing research to evidence maintaining relationships between parents and children who have been adopted can have a positive influence on the stability of that placement. I would invite the local authority to explore with any potential adopters a slightly higher level of contact between the Child and her parents, this might include 2 times a year face to face, with letters at birthdays and Christmas.

87. When the family finder gave evidence she said that an increase in the planned direct contact would not change the available potential adoptive families because the question was whether they were open to direct contact and the extent of that contact would form a further discussion once a Placement Order was made.

88. In the event of Care and Placement Orders being made the Social Worker agreed that there was no reason the Paternal Grandmother could not attend the Father's twice yearly direct contact and indirect contact with the Paternal Grandmother would be considered in the search for a placement but in principle letterbox contact around the Child's birthday was agreed for the parents and the Paternal Grandmother. It was also agreed the Paternal Grandmother could attend the Father's stepdown contact in the event of a Placement Order being made.

89. In the event of a Care Order being made with a plan for long term foster care the Social Worker considered, albeit with little time to reflect, that 4 times per annum contact with parents would be her recommendation. The Guardian suggested 8 times per annum.

90. In the event of a Special Guardianship Order being made the Guardian recommended supervision of the Father's contact other than by the Paternal Grandmother but with an assessment within 1-2 years of how that could resolve to supervision by the Paternal Grandmother.

Holistic balancing exercise

91. I come now to consider the balancing exercise that is required by B-S.

Realistic Option 1: Care and Placement Orders

Factors in favour	Factors against
Permanence	Legal severing of family ties, mitigated to some degree by direct contact proposed
Safe care in short and long term	Effect on identity throughout the Child's life
Long term needs met	Risk of breakdown of adoptive placement
End of Local Authority involvement	

Realistic Option 2: SGO to Paternal Grandmother (with or without a Supervision Order)

Factors in favour	Factors against
Family placement	Risk of breakdown in placement by reason of physical limitations
	Risk of significant emotional harm to the Child on any breakdown in placement
	Risk of emotional (and to some extent physical) harm to the Child from unresolved past trauma
	Risk of emotional and physical harm to the Child from a lack of openness and engagement with social work concerns
	Risk of not protecting the Child from physical and

	emotional harm from the Father
	Risk of emotional harm arising from poor management of contact with Father
	Housing not resolved

Realistic Option 3: Adjournment for assessment of Paternal Grandmother with the Child in her care

Factors in favour	Factors against
Allows further assessment of the Paternal Grandmother's capacity	Risk of breakdown in temporary placement and harm for all the reasons give in option 2 above
	Delay in reaching a final decision

Realistic Option 4: Care Order with long term foster care

Factors in favour	Factors against
Safe care in short and long term	Risk of breakdown and multiple placements for minority with risk of harm
Long term needs met	Remains looked after child for minority
	Lacks permanence
	Care leaver at 18

Comparison of Options

92. Counsel for the Guardian observed that the merits of a rigorous testing of evidence in court were amply demonstrated in this case. I wholeheartedly agree. At the conclusion of the Local Authority case there were very real concerns in my mind that there had been insufficient exploration of the Paternal Grandmother's physical limitations which, in circumstances where I must be satisfied that "nothing else will do" in order to make a Placement Order might have necessitated an adjournment in the best interests of the Child. However, all of the multi-faceted concerns of the ISW, Social Worker and Guardian came to be demonstrated through the cross-examination of the Paternal Grandmother.

93. I am quite certain it was a horrible experience for her and it is to her enormous credit she put herself through it for the Child's benefit. But it gave very real support to the written concerns identified by the ISW. This is not a case solely about the Paternal Grandmother's physical limitations (or not); it extends to future care concerns, lack of insight (especially of the risk posed by the Father) and open and frank working with professionals. It may well be the case that with time and support those risks could be sufficiently ameliorated to make a placement with the Paternal Grandmother good enough but that would bring with it risk of emotional harm through delay in achieving permanence and in a break down in a temporary, testing, placement. Because of the concerns, the advantages of making a Special Guardianship Order now are outweighed by the risks of harm. As to long term foster care the risk of future changes of placement for this little girl are high, she would be in care for well over 10 years. She may well suffer multiple placement moves each bringing with it further emotional harm to a Child already seemingly suffering from past placement breakdowns. It is simply not a realistic option.

94. I am afraid I have to conclude that it is necessary and proportionate to make a Care Order and it is in the Child's welfare interest for me to dispense with parental consent.

Conclusion

95. In light of the above analysis I make a final Care Order pursuant to section 31 Children Act 1989. Having concluded that the Child's welfare requires me to dispense with the parents' consent to placing for adoption I do so pursuant to section 52 Adoption and Children Act 2002 and make a Placement Order pursuant to section 21 of the Act.

96. I direct the Local Authority to file an amended care plan in respect of contact arrangements as agreed and in relation to the position if the Child cannot be placed for adoption then invite them to agree the Guardian's recommendation for ongoing contact, namely 8 times per annum.

97. In due course the Child may come to read this judgment and I want to end by saying that in their different ways the Mother, Father and Paternal Grandmother have focused on what is best for the Child. I give them credit for that and I know they love her very much. Through counsel I was invited to note the Paternal Grandmother's commitment to care for the Child and I have no hesitation in doing so. She has stuck with the process which evidently she found difficult and at times upsetting. She did not shy away from offering the Child a home, she has been committed to contact. I want to reassure her that on her behalf Mr Purss said all that sensibly could be said and as powerfully as it could be said, she has given it her best shot, nothing more could be asked of her.