



IN THE CENTRAL FAMILY COURT

[2024] EWFC 192 [B]

Courtroom No. 1

First Avenue House  
42-49 High Holborn  
London  
WC1V 6NP

11 July 2024

**RE A (A CHILD): CONTESTED ADOPTION AND**  
**LOCAL AUTHORITY CONDUCT**

Before:  
HER HONOUR JUDGE LYNN ROBERTS

BETWEEN:

LB LEWISHAM represented by Ms Diaz

and

MS R who did not appear and was not represented

and

MR Q represented by Ms Baruah

and

MR AND MS X represented by Mr Wilson

and

Z CC represented by Ms Ramadhan

and

THE CHILD represented by Mr Church instructed by  
Children's Guardian, Ms P Bryant

## **JUDGMENT**

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

1. This is a very difficult case.
2. At the heart of the case is a much loved little girl who has turned 3 years of age during this hearing: A is of African heritage on her mother's side, and of African heritage on her father's side. She is the first child of Ms R and Mr Q. It was agreed half way through the hearing that A prefers to be called A and that is how I will refer to her in this judgment. A was made the subject of a Care Order and a Placement Order on 20.4.2022. The two applications before me are for the Placement Order to be discharged, an application dated 8.9.2023 and brought by the LB Lewisham who hold the Placement Order, and an application for A to be adopted. The applicants for A 's adoption are Mr and Ms X , and theirs is a private application, in other words, A has not been placed by the LB Lewisham with Mr and Ms X pursuant to the Placement Order; rather, Mr and Ms X are the foster carers who have cared for A since she left hospital, and who now wish for her to become their child. I gave permission to Mr and Ms X to apply to adopt A on 20.11.2023 and their application is dated 20.11.23. Mr and Ms X are a British couple of Caribbean heritage.
3. The representation before me has been Ms Diaz for LB Lewisham

Ms Baruah for Mr Q

Mr Wilson for Mr and Ms X

Ms Ramadhan for Z Council

Mr Church for the Children's Guardian Ms P Bryant

and I am grateful to counsel for their assistance in this case.

A's mother, Ms R , has chosen not to be part of these proceedings though we know that she wants A to be with Mr Q. At the PHR on 10.6.2024 I discharged Ms R 's solicitor from the proceedings and was told that Ms R did not want to participate.

4. Z Council, who were joined as intervenors to the adoption application by my order of 18.12.2023, and who have prepared the Rule 14.11 report in the adoption application, and who had previously written to me to tell me they would not be represented in the proceedings, changed their mind AFTER the PHR which took place a week ago, and informed my clerk late on Thursday last week that they would be represented.

5. I have read much of a full bundle of documents which include statements and reports prepared for these proceedings, and documents from two previous sets of proceedings concerning A and her brother B .

On each of the first 4 days of the hearing, there was a large amount of disclosure by the Local Authority, most of which had been ordered to be disclosed before the FH began; in circumstances to which I will return, I had to order that a senior manager in LB Lewisham disclosed a signed but possibly draft statement by the IRO who was off sick or attend court on the third day of the hearing; on the fourth day Ms Baruah for Mr Q asked to put in additional statements by the father and his sister, some of which answered points made by the Children's Guardian but otherwise covered areas which the original statements had so obviously failed to do. I allowed these to come in to save time. Also I think on the fourth day LB Lewisham provided a report from Kirsty Dunne, the systemic therapist working with Mr Q, and A it appeared, on the work she has done so far.

6. As a result of all the additional information, and the time the parties needed to read it, the carefully calibrated time estimate for this hearing was exceeded which has put a great

deal of pressure on myself, and on the Central Family Court where there are so many cases waiting to be heard.

7. I have heard evidence from Ms T, the social worker in LB Lewisham who assessed Mr Q in April 2023; from Dr Willemsen, clinical psychologist, who has prepared two reports within these proceedings in April 2024.

I heard from Ms J, the social worker in Z Council who prepared the Rule 14.11 report in April 2024; from Gillian Nash, A's current social worker at LB Lewisham whose statement is dated May 2024 and who had been involved in advising the previous social worker Mr K. I heard from Mr Q and from his sister Ms P.

From Mr and Ms X and from the Children's Guardian Ms P Bryant, who had been the Children's Guardian in the care and placement proceedings concerning A but asked not to be involved in B's proceedings.

**The background:**

8. There is a relevant and complicated background which I need to set out. A is Ms R's second child. Her first child lives with his father. Her third child B lives with Mr Q ; her

fourth child by another father is the subject of a Care Order and a Placement Order. There are various assessments of Ms R, not all of which reach the same conclusions but for the purposes of this hearing it can be summarised that A's mother had a significant learning disability so that at times the Court of Protection have made decisions for her, and that she also has autism and traits of an emotionally unstable personality disorder. The Local Authority did not think that Ms R could raise a child, even with support, and thus the Local Authority commenced care proceedings when A was born; much less was known about Mr Q and both parents were assessed during the proceedings. A is Mr Q's first child.

9. Mr Morson was the assessor and he found that Mr Q was not able to make up for the deficits in Ms R's parenting capacity and was not a protective factor, in part because he was either unable or unwilling to grasp the realities of Ms R's conditions. Mr Morson flagged up the possibility that Mr Q's skills were greater than how he was able to talk about and present them, but concluded: ““Mr Q cannot provide safe good enough care at present for A due to concerns regarding his poor parenting knowledge and skills that go beyond those that would be expected for a first time parent.””

10. Mr Morson had serious doubts about Mr Q's honesty during the assessment and also told me about two particular concerns, and I accepted his evidence. On one occasion during an interview Mr Q had an earpiece through which his then solicitor was advising him as to his answers; indeed another social worker had the same experience with Mr Q ; on another occasion Mr Q was hiding in the room when Mr Morson was conducting an online interview with Ms R , and he was trying to tell her how to answer the questions.

11. I found that Mr Q did not give me honest evidence on many occasions in his written and oral evidence. I found that he, along with Ms R, put A at risk on the day of her birth, and that he was unable to prioritise A over Ms R at an incident in August 2021 when Ms R became angry at contact. I found that he was in a loving relationship with Ms R but that he lacked the parenting skills at that time to care for A and that “ his dishonest attitude gets in the way of him working with professionals and accessing the help he will need to make the necessary changes. He has been unable to make the very difficult decision, which would have been to break with Ms R with a view to being considered as a



potential carer on his own. He presents himself to the court both as a man living on his own but also as a man who intends to live with Ms R and A and the new baby. He cannot see the difficulties. He has not accepted, when speaking with the guardian quite recently, that Ms R has the difficulties we know she has. He has told me in evidence that he accepts she has these difficulties, but he very much underplayed them at the same time.”

12. On 20.4.2022 I made a Care Order and a Placement Order for A, dispensing with the consent of each of Ms R and Mr Q because I found A’s welfare required this.
  
13. It is common ground that adoption of A by Mr and Ms X was in the Local Authority’s contemplation from the beginning of those proceedings and Mr and Ms X were aware of this and very interested. In the judgment I mention that A’s current foster carer wished to adopt A, and possibly the new baby whom Ms R was carrying at the time. Soon after the conclusion of A’s proceedings, Ms R gave birth to B on 7.7.2022, also Mr Q’s child. The Local Authority commenced care procs on 10.7.2022 and when B left hospital

he was placed w Mr and Ms X where he was cared for along with A . Again, the Local Authority were open with Mr and Ms X that they hoped that they would be able to adopt B alongside A. Mr and Ms X were approved as adopters but this plan never got to matching panel; it was at this point that Mr Q separated from Ms R . Mr Morson prepared a further assessment report in September 2022 on Mr Q on his own. He found that Mr Q had taken in very little of the detail of the issues which Mr Morson had found Mr Q needed to address in his previous reports. However, Mr Morson believed that the parental relationship was over; he again identified a disconnect between Mr Q's observed parenting skills and his ability to answer questions designed to explore his understanding of parenting. He was still concerned about Mr Q's ability to take on board professional advice due to his tendency to challenge any contradictory feedback almost as a default position. He concluded that there needed to be further work done and recommended a residential unit, which is what happened next.

14. Mr Q was placed in a residential unit with B and he excelled there. When B's case came to final hearing, it was agreed that there was no need for any public law order, and the court made a Child Arrangements Order to Mr Q on

16.3.2023. The LA then decided to commission an assessment outside proceedings as to whether Mr Q could parent both B and A and this was carried out by Ms T at the Meliot Centre and was positive. It was very much an assessment of the ability of Mr Q and his sister Ms P with whom he was living to care for the two children together, though the assessor comments that in her view Mr Q could parent both on his own. It is dated 19.5.2023. The Local Authority made this application nearly 4 months later, applying to revoke the Placement Order. Their initial plan had been to move A to Mr Q without going to court first.

15. The first hearing was on 4.10.2023 and soon after that Mr and Ms X started their proceedings. A has remained in the care of Mr and Ms X – she has been in Ms Mr and Ms X’s care for nearly 3 years now;

B has lived with Mr Q since October 2022 and with Ms P more recently. During these proceedings I ordered that the two applications be heard together but not consolidated. I gave permission for the parties to instruct Dr Willemsen to carry out a psychological assessment of A and Mr and Ms X and Mr Q, focussing on A’s attachments with Mr and Ms X, and with her father, brother and aunt. I have that report dated 17.4.2024 and an addendum of 30.4.2024. I have the

Rule 14.11 report by Z Council – the area where Mr and Ms X live - and I have answers by Ms T to questions put to her on behalf of the Children's Guardian. I have evidence from LB Lewisham , from the father, his sister and from Mr and Ms X, and a final analysis from the Children's Guardian . During the hearing I received a report from Kirsty Dunne, and a “draft” statement from the IRO and a statement from her manager, Ms Rogers.

**The position of the parties:**

16. In essence, LB Lewisham and Mr Q seeks A’s return to his care and therefore support the application for the Placement Order to be revoked, and they oppose the application by Mr and Ms X to adopt her. LB Lewisham and Mr Q both agree that A should continue her relationship with Mr and Ms X in such circumstances and that the court could and probably should make a contact order. LB Lewisham do not agree with Dr Willemsen’s proposals for contact and suggest visiting contact between A and Mr and Ms X about 3 times a year, such contact to be in the presence of Mr Q . LB Lewisham does not agree with Dr Willemsen’s opinion that the transition to Mr Q should be extended to 6 weeks and prefer that this happens in 4 weeks. Mr Q’s Position Statement says that he supports contact

taking place with Mr and Ms X as recommended by professionals.

17. Mr and Ms X do not oppose the revocation of the Placement Order but legally it is irrelevant to them; A was not placed with Mr and Ms X for adoption pursuant to the Placement Order and the LB Lewisham do not intend to match A with Mr and Ms X and thereafter place A with them for adoption. The key application for them is their own adoption application which I gave them leave to make on 20.11.2023. They needed leave because they had not been able to give formal notice to the Local Authority of their intention to apply to adopt A 3 months before making their application. That was all dealt with in November 2023 and the two applications have run alongside since then. If I make the adoption order to Mr and Ms X, the Placement Order ends automatically pursuant to s21 (4) (b) of the Adoption and Children Act 2002; the Care Order on A would also be ended by the making of an Adoption Order pursuant to s46(2)(b) of the ACA 2002. Mr and Ms X agree that A should continue to have contact with her father and the paternal family if she is adopted by them and are proposing monthly staying contact together with an

additional contact for Mr Q on his own. It is common ground that there should be a contact order.

18. Z Council, who are the Local Authority in which Mr and Ms X reside, do not recommend that an Adoption Order is made, not because they have any concerns about Mr and Ms X but because they understand that there is a birth parent ready and able to care for her.

19. A's IRO is off sick but a statement has been put forward on her behalf and then I saw the statement she had prepared herself. I believe that the IRO supports the making of an adoption order to Mr and Ms X .

20. A's Children's Guardian Ms P Bryant has been A's Children's Guardian in these proceedings and in the previous proceedings concerning A. It has been very helpful to have the same Children's Guardian. She supports A remaining in the care of Mr and Ms X and supports their application to be adopted by them. Her position regarding the revocation of the Placement Order is the same as Mr and Ms X . Her position on contact is that there should be a

contact order for A to spend time with Mr Q, B and Ms P and thinks that once a month staying contact over a weekend is in A's interests.

## **The Law**

21. I have already referred to some of the technical aspects of the legal provisions which apply. I also have Mr Wilson's helpful document on the law and agree with all that is in that. If I agree with the case of the Local Authority and Mr Q, the right order will be to revoke the Placement Order pursuant to s24 of the ACA and to dismiss the app by Mr and Ms X to adopt A. section 1 of the ACA 2002 applies to these decisions and it is A's welfare throughout her life which is my paramount concern. I would then make a CAO to Mr Q which would serve to discharge the current Care Order on A and section 1 of the CA 1989 applies with A's welfare being my paramount consideration. I deal later with the practical and legal difficulties as it transpired that the Local Authority, and I do not believe the father demurs from this, are wanting to postpone any move from Mr and Ms X's care to Mr Q's.

22. If I agree with the case of Mr and Ms X , I would make the adoption order they have applied for, which would by virtue of the statutory provisions I have already mentioned end the Placement Order and the Care Order . To make an Adoption Order I would need to determine that the consent of each of Ms R and Mr Q should be dispensed with on the grounds that A's welfare requires me so to do. I would apply S47 and S52 of the ACA 2002. These decisions must be made with s1 of the ACA 2002 in mind and A's welfare throughout her life is my paramount consideration. If I make an adoption order I could then make an order arranging for A to have contact with her father pursuant to S8 of the Children Act 1989, and applying S1 of the Children Act 1989. Each part of the checklist in S1(4) of the ACA falls to be considered .

23. The former President, Sir James Munby, dealt with a case with some similar aspects in 2017: In the matter of Re W (A child) 2017 EWHC 829 Fam. In that judgment he set out the law very fully and this has been my guide:



“The law

58. This case is, on any view, most unusual, and there have been certain disagreements between counsel as to the proper principles to be applied. I need, therefore, to deal with the law in more detail than would usually be either necessary or appropriate.
59. I start with section 1 of the Adoption and Children Act 2002, the material provisions of which are as follows:
- "(1) Subsections (2)-(4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
  - (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
  - (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
  - (4) The court or adoption agency must have regard to the following matters (among others) –
    - (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
    - (b) the child's particular needs,
    - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
    - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
    - (e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,

(f) the relationship which 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 otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

60. Against that general background, the key principles which I have to apply are to be found in four authorities, the decisions of the Strasbourg court in *R and H v United Kingdom* (Application No 35348/06) [\[2012\] 54 EHRR 2](#), [\[2011\] 2 FLR 1236](#), and *YC v United Kingdom* (Application No 4547/10) [\[2012\] 55 EHRR 33](#), [\[2012\] 2 FLR 332](#), the decision of the Supreme Court, applying the Strasbourg jurisprudence, in *In re B (A Child) (Care Proceedings: Threshold Criteria)* [\[2013\] UKSC 33](#), [\[2013\] 1 WLR 1911](#), [\[2013\] 2 FLR 1075](#), and the decision of the Court of Appeal in *Re W (A Child)* [\[2016\] EWCA Civ 793](#).

61. Even though there is no longer any placement order in force, and the local authority is no longer seeking any public law orders, the parties are, correctly, agreed that these are the principles to be applied: compare *Re S and T (Intercountry Adoption: USA)* [\[2015\] EWHC 1753 \(Fam\)](#), [\[2016\] 1 FLR 1011](#), and contrast *Re P (Step-parent Adoption)* [\[2014\] EWCA Civ 1174](#), [\[2015\] 1 FLR 1327](#), and *In re JL and AO (Babies Relinquished for Adoption)* [\[2016\] EWHC 440 \(Fam\)](#), [\[2016\] 4 WLR 40](#).

62. I start with *R and H*, para 81 (citations omitted):

"In assessing whether the freeing order was a disproportionate interference with the applicants' Article 8 rights, the Court must consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention ... The court would also recall that, while national authorities enjoy a wide margin of appreciation in deciding whether a child should be taken into care, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed. For these reasons, measures which deprive biological parents of the parental responsibilities and authorise adoption should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests."

63. I turn to *YC*. The two key paragraphs (134, 135, citations omitted) require to be set out in full:

"134 The court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and second, it is in the child's best interests to ensure

his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under Art 8 to insist that such ties be maintained.

135 The identification of the child's best interests and the assessment of the overall proportionality of any given measure will require courts to weigh a number of factors in the balance. The court has not previously set out an exhaustive list of such factors, which may vary depending on the circumstances of the case in question. However, it observes that the considerations listed in s 1 of the 2002 Act broadly reflect the various elements inherent in assessing the necessity under Art 8 of a measure placing a child for adoption. In particular, it considers that in seeking to identify the best interests of a child and in assessing the necessity of any proposed measure in the context of placement proceedings, the domestic court must demonstrate that it has had regard to, inter alia, the age, maturity and ascertained wishes of the child, the likely effect on the child of ceasing to be a member of his original family and the relationship the child has with relatives."

64. The judgments in *In re B* are long. I start with the anthology set out in *In re B-S (Children) (Adoption Order: Leave to Oppose)* [\[2013\] EWCA Civ 1146](#), [\[2014\] 1 WLR 563](#), [\[2014\] 1 FLR 1035](#), para 22:

"The language used in *Re B* is striking. Different words and phrases are used, but the message is clear. Orders

contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option", a "last resort – when all else fails", to be made "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do": see *Re B* paras 74, 76, 77, 82, 104, 130, 135, 145, 198, 215."

65. For present purposes it suffices to go first to the judgment of Lord Wilson of Culworth and then to the judgment of Baroness Hale of Richmond. Having set out what the Strasbourg court had said in *YC*, para 134, Lord Wilson commented (para 33) that:

"Although in that paragraph it did not in terms refer to proportionality, the court had prefaced it with a reference to the need to examine whether the reasons adduced to justify the measures were relevant and sufficient, in other words whether they were proportionate to them."

66. He continued (para 34):

"In my view it is important not to take any one particular sentence out of its context in the whole of para 134 of the *YC* case: for each of its propositions is interwoven with the others. But the paragraph well demonstrates the high degree of justification which article 8 demands of a determination that a child should be adopted or placed in care with a view to adoption. Yet, while in every such case the trial judge should, as Judge Cryan expressly did, consider the proportionality of adoption to the identified risks, he is likely to find that domestic law runs broadly in parallel with the

demands of article 8. Thus domestic law makes clear that:

(a) it is not enough that it would be *better* for the child to be adopted than to live with his natural family (*In re S-B (Children) (Care Proceedings: Standard of Proof)* [\[2009\] UKSC 17](#), [\[2010\] 1 AC 678](#), para 7); and  
(b) a parent's consent to the making of an adoption order can be dispensed with only if the child's welfare so requires (section 52(1)(b) of the Adoption and Children Act 2002); there is therefore no point in making a care order with a view to adoption unless there are good grounds for considering that this statutory test will be satisfied.

The same thread therefore runs through both domestic law and Convention law, namely that the interests of the child must render it necessary to make an adoption order. The word "requires" in section 52(1)(b) "was plainly chosen as best conveying ... the essence of the Strasbourg jurisprudence" (*Re P (Placement Orders: Parental Consent)* [\[2008\] EWCA Civ 535](#), [\[2008\] 2 FLR 625](#), para 125)."

67. Baroness Hale said this (para 195):

"It is well-established in the case law of the European Court of Human Rights that "the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by article 8 of the Convention" (*Johansen v Norway* [\(1997\) 23 EHRR 33](#), among many others). However, such measures may be justified if aimed at protecting the "health or morals" and "the rights and freedoms" of children. But they must also be "necessary in a democratic society". The court has recently summed up the principles in the

context of an order freeing a child for adoption, in *R and H v United Kingdom* (2012) 54 EHRR 2, [2011] 2 FLR 1236 at para 81."

She then set out para 81 in full.

68. At para 198, she said this:

"Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do. In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions. As was said in *Re C and B* [2001] 1 FLR 611, at para 34,

"Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child."

69. She returned to the point at para 215:

"We all agree 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."

70. I end with *Re W (A Child)*, where the main judgment was given by McFarlane LJ. The primary issue in that case was identified by McFarlane LJ as follows (para 1):

"The approach to be taken in determining a child's long-term welfare once the child has become fully settled in

a prospective adoptive home and, late in the day, a viable family placement is identified."

71. So far as material for present purposes, McFarlane LJ's analysis begins with this (paras 64-66):

"64 ... Placing a child for adoption is an act of altogether higher significance than arranging a foster home under the umbrella of a care order. Foster carers will seldom expect permanence and, indeed, will have been trained so as to be able to support the child moving on if required to do so in time. Whilst undoubtedly foster carers and fostered children may achieve a fondness for each other, the establishment of a firm and secure attachment is not one of the primary aims of the placement, in contrast with adoption. One of the principal benefits of adoption is to achieve a secure, stable, reliable, permanent, lifetime placement for the child in the adoptive family as the adoptive son or daughter of the adopters.

65 Where an adoptive placement has been made and significant time has passed so that it can be seen that the looked for level of secure, stable and robust attachment has been achieved, the welfare balance to be struck where a natural family claimant comes forward at this late stage to offer their young relative a home must inevitably reflect these changed circumstances. At the earlier time when a placement order is being considered, that side of the balance, which must now accommodate the weight to be afforded to the child's place within the adoptive family, simply does not exist. The balance at the placement stage, therefore, naturally tilts towards a family placement where the relatives have been assessed, as these grandparents have, as being able to provide good, long term care for a child within their family. At the placement order stage, the



other side of the scales (against a family placement) are likely to be populated by factors such as the risk of harm and the need to protect the child. The question of harm to the child occurring as a result of leaving their current placement will normally not arise as a factor at the pre-placement stage given that such a child is likely to be in temporary foster care and will have to move in any event either on to an adoptive placement or back to the natural family.

66 In a case such as the present, where the relationship that the child has established with new carers is at the core of one side of the balancing exercise, and where the question of what harm, if any, the child may suffer if that relationship is now broken must be considered. The court will almost invariably require some expert evidence of the strength of the attachment that exists between the particular child and the particular carers and the likely emotional and psychological consequences of ending it ..."

72. He then turned to consider, and set out *in extenso* (para 67), his own judgment in *Re M'P-P* [\[2015\] EWCA Civ 584](#), paras 47-51. For present purposes it suffices to quote only a little (paras 50-51):

"50 In the context of 'attachment theory', the wording of ACA 2002, s 1(4)(f), which places emphasis upon the 'value' of a 'relationship' that the child may have with a relevant person, is particularly important. The circumstances that may contribute to what amounts to a child's 'status quo' can include a whole range of factors, many of which will be practically based, but within that range the significance for the child of any particular relationship is likely to be a highly salient factor. The focus within CA 1989, s 1(3)(c) is upon the 'likely effect on' the child of any change. The focus in ACA

2002, s 1(4)(f)(i) is upon 'the value to the child' of any particular relationship continuing.

51 It is not my purpose in this judgment to express a view upon the relative importance of attachment/status quo arguments as against those relating to a placement in the family. Each case must necessarily turn on its own facts and the weight to be attached to any factor in any case will inevitably be determined by the underlying evidence ..."

73. Turning to what Baroness Hale had said in *Re B*, para 215, and specifically the phrase "nothing else will do," McFarlane LJ said this (paras 68-69):

"68 ... The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase "nothing else will do" is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s 1). The phrase "nothing else will do" is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons ...

69 Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase "nothing else will do" can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that

outcome that falls to be evaluated against the yardstick of necessity, proportionality and "nothing else will do."

74. McFarlane LJ then turned to consider the question of the natural family's rights. He summarised the correct approach in homely but compelling terms (paras 70-71):

"70 ... Putting the correct position in lay terms, the existence of a viable home with the grandparents should make that option "a runner" but should not automatically make it "a winner" in the absence of full consideration of any other factor that is relevant to her welfare; the error of the ISW and the Guardian appears to have been to hold that "if a family placement is a 'runner', then it has to be regarded as a 'winner'.

71 The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged. In *Re H (A Child)* [2015] EWCA Civ 1284 [the appeal from Russell J in the present proceedings] this court clearly stated that there is no presumption in favour of parents or the natural family in public law adoption cases."

75. He concluded as follows (para 73):

"It may be that some confusion leading to the idea of there being a natural family presumption has arisen from the use of the phrase 'nothing else will do'. But that phrase does not establish a presumption or right in favour of the natural family; what it does do, most

importantly, is to require the welfare balance for the child to be undertaken, after considering the pros and cons of each of the realistic options, in such a manner that adoption is only chosen as the route for the child if that outcome is necessary to meet the child's welfare needs and it is proportionate to those welfare needs."

76. He spelt out the corollary as follows (para 75):

"... in proceedings at the stage prior to making a placement for adoption order the balance will rightly and necessarily reflect weight being afforded to any viable natural family placement because there is no other existing placement of the child which must be afforded weight on the other side of the scales. Where, as here, time has moved on and such a placement exists, and is indeed the total reality of the child's existence, it cannot be enough to decide the overall welfare issue simply by looking at the existence of the viable family placement and nothing else."

77. There is, if I may say so, nothing in the least novel or surprising in McFarlane LJ's analysis. As a matter of domestic law it has long been quite clear that, in the final analysis and if there is a conflict between them, the child's welfare, which is paramount, takes precedence over the claims and rights of even an unimpeachable parent: *J v C* [1970] AC 668, *In re KD (A Minor) (Ward: Termination of Access)* [1988] AC 806, [1988] 2 FLR 139, and *In re G (Children) (Residence: Same-sex Partner)* [2006] UKHL 43, [2006] 1 WLR 2305, [2006] 2 FLR 629. And this applies as much where the case involves adoption as in any other context. As Arden LJ said in *Re C (A Child) v XYZ County Council* [2007] EWCA Civ 1206, [2008] 1 FLR 1294, para 15, referring to section 1 of the 2002 Act:

"The result is that s1 is child-centred. It is not 'mother-centred'. The emphasis is on the interests of the child

and not those of the mother. As the European Court of Human Rights (the Strasbourg court) expressed it in one case, adoption means 'giving a family to a child and not the child to a family' (*Fretté v France (Application No 36515/97)* ([2004](#)) [38 EHRR 21](#), [[2003](#)] [2 FLR 9](#) at [42]). The interests of the child will include the child's interest in retaining its identity, and this is likely to be important to the child in adulthood. But identity is only one factor in the balance that has to be struck. Section 1 does not privilege the birth family over adoptive parents simply because they are the birth family."

78. There are many illustrations of this principle in the books. *J v C* is, at one and the same time, the classic formulation and the classic application of the principle. I was also referred by Mr Feehan to some words of Lord Templeman in *In re KD* where, shortly after the famous and much-quoted passage beginning "The best person to bring up a child is the natural parent," he said, referring to the facts of the case (page 812):

"In November 1986 the welfare of K required that he should no longer see [his mother] because at the age of 3 years he could not cope with two competing mothers. By November 1986 K had been integrated into the family life of his foster-parents who had become mother and father to him; the family life of K and [his mother] was lost beyond recall."

79. In *YC*, para 141, the Strasbourg court said this:

"... once K was placed with a prospective adopter, he began to establish with her new bonds and his interest not to have his de facto family situation changed again became a significant factor to be weighed in the balance against his return to the applicant's care."

24. I have also reread the case of *Re M a child : leave to oppose adoption* 2023 EWCA Civ 404; this case is not on the same point as it concerns an application for leave to oppose an adoption application which is not the situation here. However, the decisions I have to make are analogous with the second stage of the decision to be made when considering an application under S47 of the 2002 Act, in other words, if the court has found a change of circumstances since the Placement Order was made, taking into account all the circumstances and giving paramount consideration to this child's lifelong welfare should the court revisit the plan for adoption that it approved when making the Placement Order? Peter Jackson LJ said that asking this question in this way ensures that the court focuses firmly on the individual child's welfare in the short, medium and long term with reference to every relevant factor.

25. I have reread the case of *Re M'P-P children* 2015 EWCA Civ 584, a case where the decision the first instance judge had to make was not that different from the one before me save that the alternative carer to the foster carer was not a father but an aunt unknown to the children. the CA found that that judge had failed to give any regard to the effect on

the children of removing them from the care of their primary attachment figure, when it was common ground that this was a strong and entirely positive relationship, and likewise, failed to attribute any value, from the children's perspective, to the continuation of that relationship.

26. I have reread the case of *Re E-R (Child Arrangements Order)* 2015 EWCA Civ 405. In this case the dispute was between those people who had been caring for the 5 year old child during the child's mother's last illness, and the father who had not been part of the child's life for much of her life. Lady Justice King said:

“In the same way that the fact that a person is a natural parent does not in itself create a presumption in favour of that person in the proceedings, neither does (as Balcombe LJ observed), the fact that a child has been living with a party for a significant period of time; each are factors of significance which will be taken into account and given appropriate weight by a court when determining the best interests of a child Whether any such factor is determinative of a particular case will depend on the unique facts of that case.....

In the present case, the fact that there is a natural father wishing to care for his child, that the status quo may appear at first blush to point to T remaining where she is and that the mother's dying wish was for T to stay with SJH, are each features of this case. Those features make the case sensitive, difficult and distressing,

but none of them, individually or together, affect the essential approach of the court which is, and is always, that T's welfare is paramount. As Lord Hope said in *Re B*:

"In common with all other factors bearing on what is in the best interest of the child, it must be examined for its potential to fulfil that aim."

27. Ms Baruah went through the relevant parts of re B-S in her submissions which I have reread. When assessing future risk I have adopted the approach set out by Peter Jackson LJ in *Re K (Children:Placement Orders)* 2020 EWCA Civ 1503 where he said this:

1. "the questions that the court should ask itself when assessing risk of future harm and setting it in context:

(1) What is the type of harm that might arise?

(2) What is the likelihood of it arising?

(3) What consequences would there be for the child if it arose?

(4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?

The answers are then placed alongside other factors in the welfare equation so that the court can ask itself:

(5) How do the overall welfare advantages and disadvantages of the realistic options compare, one with another?



(6) Ultimately, is adoption necessary and proportionate – are the risks bad enough to justify the remedy?

28. The authorities remind me to have in mind the Article 8 rights of those involved in the case, but to my mind each of Mr Q, Mr and Ms X, A and B have the right to have their family life respected and there is no hierarchy of rights in this case.

## **THE EVIDENCE**

29. In my consideration of the background, I referred to some of the evidence in previous proceedings. I have reread not only my judgment in the care and placement order proceedings concerning A, but also some of the key documents such as the parenting assessment by Mr Morson. I will now consider the evidence which has been prepared and which I have heard within these proceedings.

### **The evidence of Ms T**

30. Ms T is a social worker specialising in parenting assessments in LB Lewisham and works out of the Meliot Centre. Her report is dated 17.5.2023. It appears she was not provided with my judgment from A's care and placement

proceedings which is extremely unhelpful. She was therefore unaware of the findings I made; it was necessary for her to challenge Mr Q on some of those findings to see how he now responded to those matters but she could not do so without knowing what those findings were. She had also not been directed to look at Mr Q's insight into how A may feel if she is moved to his care or his ability to address A's likely trauma.

31. She notes that Mr Q's immigration position is no longer an issue which she considers a major step forward. She describes A and how well she is doing: exceeding her developmental expectations in all areas. She understood that Mr Q lived with B in his sister Ms P's flat – housing had always been a grey area and was no clearer here.
32. The assessor finds Mr Q to be a gentle parent who was able to manage both children making demands on him at the same time; he and his sister worked well together. She says that both children appear at ease in his care and she has observed Mr Q talking and singing with the children and playing with them. She believes the children were beginning to develop a bond at the time she completed her report.
33. She mentions a concern that B has too much TV time but thinks that Mr Q is able to enforce boundaries and is

beginning to identify things which he might find challenging when parenting A .

34. It was clear that Mr Q struggled to appreciate that A considered other people (Mr and Ms X) to be her parents but the assessor considered that Mr Q was adapting to that idea; she agreed with A's IRO that Mr Q may need assistance to recognise A's non-verbal communication of her emotional needs with regard to her missing her foster carers. She said:

“In my earlier discussions with Mr Q, he found it difficult to accept that A might be anything other than happy to be in his care. He expressed such love for her and believed that she feels the same to the exclusion of any other carer. As the assessment has progressed, Mr Q has been able to acknowledge the bond that A has with her carers.”

35. Her observations were that A was becoming more at ease with Mr Q as time passed so that by the fourth session she appeared more settled, made regular eye contact with Mr Q, involved him in her play and sought his help where needed. She also was becoming more accepting of his physical affection.

36. Ms T did not think that B would particularly struggle by having A join him in his home. She had observed that A was becoming more accepting of Ms P. The assessor had not received consistent information about Ms P's status, whether she was married, divorced or separated but thought that Mr Q was confident in having her long term support. She found that Mr Q was still unclear about Ms R's various conditions but she did believe that the relationship was over.
37. Positively the assessor spoke with B's health visitor who had given Mr Q advice about feeding B and Mr Q had acted on that advice. She thought he could benefit from attending a course on child safety. This has not happened as far as I am aware which became apparent in this hearing when I learned that Mr Q has been leaving B alone in the flat for short periods of time.
38. She noted that Mr Q was sometimes guarded in his answers; she thinks he understands what good enough parenting looks like. She says: "At this time, the evidence suggests that Mr Q would be able to meet the children's basic needs however I must note that parenting two children for two hours a week is an easier task than having care of them all the time. ...I have observed Mr Q to comfort, to stimulate, and to reassure the children during their time with him. He

has at times needed advice to manage the children's emotional needs and the jealousy between them. He has acted on this advice and the children's relationship with each other and their general comfort during Family Time sessions has improved with each week. It is likely that Mr Q and Ms P would be able to continue to meet the children's needs if A was in their care, but they may need support with the period of transition and initial settling in."

39. Ms T concludes that Mr Q has the capacity to meet the needs of both children at the same time, with or without the support of his sister, whom she notes, does not have the right to be in this country. That situation has changed since then and Ms P can stay and work in this country with conditions.
40. She makes various recommendations of work to be carried out with Mr Q, for example work on understanding issues of child safety. I am told that none of the work she recommended has been carried out.
41. In answer to questions posed on behalf of the Children's Guardian, Ms T prepared a further report dated 7.5.2024. She did not meet any of the people involved again but read the recent documentation including Dr Willemsen's report.

She learned that A was finding the current arrangements – whereby she saw her father several times a week, including in his home, confusing and she was regressing. Having considered Dr Willemsen’s reports, Ms T thought that with the recommended support, Mr Q could meet A’s needs in the short, medium and long term. She gave an example of an incident when A was distressed in April 2024 when she wet herself and noted that Mr Q was able to meet A’s emotional needs without support or prompting by professionals. She says: “ This indicates that he would be able to do so in the future if she were to become distressed following her separation from her foster carers. Furthermore, I note that A did not ask for Mr or Ms X at this time, and this indicates that she felt confident that she could rely upon her father to meet her needs at this time.”

42. She thought that Mr Q was engaging with the recommended work – learning to develop insight into A’s emotional needs and her potential feelings of loss and the impact this may have on her behaviour. She felt the evidence showed that Mr Q was able to recognise and support A with her emotional needs; that he could easily move between the two children. There was evidence that Mr

Q understands his children's behaviour and can help them to understand each other. She says this: "The evidence I have set out shows the ways in which Mr Q is already adapting to the children's emotional and behavioural needs and, with support, it is my opinion that he can build on this and continue."

43. Ms T addresses whether Mr Q would be able to promote the contact between A and Mr and Ms X going forward; she notes the difficulties in the relationships which she assumes results from both wanting to care for A. She says she did not address this issue in her assessment, presumably being unaware of the expectation of Mr and Ms X that they would be adopting A. More recently she notes that the therapist Ms Dunne recognised that Mr Q wanted the relationship to improve as he knew that Ms X was looking after A well and a better relationship was in A's interests. She hopes that mediation will take place.
44. Ms T confirms that her recommendations remain the same and she says: "Although I recognise that there are vulnerabilities for A in terms of the support that she will need for the transition and the support that Mr Q will need to increase his attunement, I do not see evidence of

safeguarding concerns that would warrant severance of the legal ties to her birth family. I recognise Dr Willemson's position that A's foster carers are currently better attuned to A's emotional needs. I think it is important to consider the support she might need in the future, in her adolescence for example, if she remains with her current carers. "

### **The oral evidence of Ms T**

45. Ms T explained to me that she had not had anything to do with the family for 14 months, other than answering questions from the Children's Guardian in the last couple of months, without seeing any of the people involved to do so. She acknowledged as suggested in her report that she had not been provided with the transcript of my judgment in the care proceedings; she had subsequently read it but was not sure if it had been before or after her addendum report; certainly it is not referred to in the addendum so I think it is fair to conclude that it was more recently, in preparation for this hearing.

46. The failure of LB Lewisham to provide the assessor with my judgment to my mind has resulted in the report of Ms T



being fundamentally flawed. She was not able to explore with Mr Q the various findings, and not able to challenge him when he repeated the same lies as he had given in the first set of proceedings.

47. It is also apparent to me that this assessment does not challenge Mr Q sufficiently on the many issues which became apparent during the several assessments by Mr Morson in the previous proceedings, about A and about B.

48. Ms T agreed with Mr Wilson for Mr and Ms X and Mr Church for the CG that in the circumstances as she now understood them, A would need better than good enough care if she was moved to Mr Q, that she would need therapeutic parenting. She had understood from Ms Dunne, the therapist working with Mr Q that he is starting to understand things from A's point of view but that there was a long way to go. She thought that a transition to Mr Q's care should not happen until some more work had been done with Mr Q .

49. The assessor was concerned at the Children's Guardian's recent experience of B having been left alone in

the flat for some 10 – 12 minutes. She stood by her recommendation that Mr Q could care for both A and B .

50. I am able to attach little weight to this assessment or to the recommendations of Ms T in circumstances in which the assessor did not understand the factual matrix against which she was assessing Mr Q and failed to challenge him robustly at any point, and in circumstances in which Ms T acknowledged various vulnerabilities in Mr Q which she had not fully addressed, or addressed at all, but did not question her conclusions. It is also the case, of course, that Ms T was only considering one side of the equation, and therefore her recommendations must be seen as limited in that way.

### **LB Lewisham: Mr K**

51. Mr K was A's social worker at the time the decision was made to apply to revoke the Placement Order. His statement is dated 31.8.2023. He sets out how Mr and Ms X have been completing the assessment process with Adopt London South to become A's adopters, having cared for her since she was born.

52. He gives the background about B's case which lead to B being placed with Mr Q after an overwhelmingly positive final residential assessment of Mr Q with B . He set out that Mr Q's sister Ms P came to live with him, how she has separated from her partner and how she is a support to Mr Q in caring for B .
53. In these circumstances the assessment of Mr Q to care for A was commissioned, which is the report by Ms T I have already discussed. Following the positive assessment it was decided that A should be returned to Mr Q's care (though it transpired during the hearing that the decision had already been made, that if the assessment was positive, A would be placed with Mr Q ). He does not identify any of the flaws which I have mentioned in the Ms T report, in particular, her inability to go through with Mr Q the findings in my judgment. He does not attempt to make up for that by challenging Mr Q himself on these matters. He says: "The care of Ms. X and her partner was recognised, however the fact that Mr. Q has worked tirelessly for his daughter's return was undoubtable. In order to provide A with a link to her family and heritage it was felt that it would be in her best interests to return to her father's care."

54. He does not appear to consider that it would be possible for A to continue to live with Mr and Ms X but maintain her relationship with Mr Q and B thus protecting her from what the social worker considers the main risk in this case, that A will grow up and not understand or agree with the decisions which meant that she was not raised by her birth family, and that her identity needs would not be met.
55. In his plan Mr K does not suggest ongoing contact between A and Mr and Ms X although he refers to the likely trauma A will go through in being separated from them.
56. Mr K no longer works for LB Lewisham and has not been called to give oral evidence. The statement is woefully inadequate in terms of analysing A's situation and the options, including the possibility of staying with Mr and Ms X who had been told that she was to be adopted by them; indeed Mr K does not really consider any option other than his plan to move A to live with Mr Q . There is evidence, and it is agreed, that he had not seen A in her placement for at least 10 months before he wrote this statement. He also misunderstands the law as he puts emphasis on the right as he understands it to be raised within one's birth family as opposed to the child's welfare being paramount. He says in his statement: "Therefore, the priority that is given in law to

the birth family has been the guiding feature in any decision-making and that is why I make the recommendation that A returns to her father's care.” He also applies the wrong welfare checklist – the one in the Children Act and not the one in the Adoption and Children Act. Unfortunately it appears to me that a decision has been made about A's life, presumably at a managerial level, and this social worker has failed to apply his own training and thinking. I attach very little weight to this evidence.

57. As I have found the first two pieces of evidence of the Local Authority so unimpressive, the evidence of the current social worker needs to be considered very carefully. The situation I have is that once B had been rehabilitated into Mr Q's care, LB Lewisham commissioned an assessment by their employee at the Meliot Centre, Ms T, to assess whether Mr Q could care for A as well as B; as I have said, her report was poor and it concluded that if Mr Q could manage B, he could manage B and A without properly analysing A's situation or properly examining whether this premise was reasonable; the plan was therefore formulated by the late spring of 2023; the LB Lewisham social workers who then took on the case followed the plan without at any

time properly weighing up the options for A ; the Z Council social worker based her assessment on what the plan for A should be on the plan of LB Lewisham and on their reports, and did not properly weigh up the options either.

### **Gillian Nash**

58. Gillian Nash became A's social worker on 28.11.2023 and has prepared the LA's final statement. However she told me that she also advised A's previous social worker in respect of the transition plan which was put forward – but none of us have seen – in June 2023. She sets out in her statement of 17.5.24 the steps LB Lewisham have taken to implement the advice of Dr Willemsen. Ms Dunne, Systemic Family Practitioner at Lewisham's Meliot Centre was engaged to provide weekly family therapeutic support with Mr Q, planned for 24 weeks, with a view to help Mr Q develop insight into A's emotional needs and her potential feelings of loss and the impact this may have on her behaviour– it started in April I believe and Ms Nash spoke of progress with Mr Q. Her interpretation of what she terms Mr Q's reluctance to acknowledge loss and adversity in his own life, and A's experience if she loses her primary attachments is as follows: “there has been to some extent a

coping strategy as he has had to navigate an unfamiliar state intervention in his life within a different cultural context to that in which he grew up. His commitment to proving that he can meet A's needs within her birth family has made him understandably anxious about focusing on past adversity and potential future difficulties.”

59. Ms Nash goes through the proposed support services and transition plan; as is normal, CAMHS would not commit to helping A so Ms Nash has obtained funding for private psychotherapy for A for up to a year. Ms Dunne would continue to work with Mr Q for up to 9 months after a period of transition. The LA would remain involved for about 9 months under a CIN plan.

Ms Nash describes a deterioration in the relationship between LB Lewisham and Ms X whom she says does not appear to trust the decisions or working practices of the LA. She also says that it has not been possible for Ms X to develop a positive working relationship with Mr Q. She does not address the possibility that the fault may lie with Mr Q and his sister, or that it is a result of both sides being under enormous stress at this time.

60. Mediation between Ms X and Mr Q is to take place: it has not been helpful that A has not been able to spend time

with them together; ideally she would want Mr Q to be able to visit A in Ms X's home; she thinks it is critical for the adults to work together so that A can have positive and meaningful contact with the other party and for any future placement not to become destabilised.

61. She sets out two possible transition plans, one which involves Mr Q visiting A in Mr and Ms X's home, and one which is centred only at Mr Q's home; clearly the adults would have to agree which plan took place.
62. When Ms X gave evidence she said that her research had revealed that the model which Ms Nash used to guide her in devising the transition plan was for children moving from a fostering placement to an adoptive placement. I asked Ms Diaz at the end of the evidence to find out if that was the case and indeed it was. I conclude that Ms Nash was using an inappropriate approach to transition planning, an approach which failed to take into account many things, in particular that A would be moving from what she had been raised to consider was her long term family to the care of a parent with whom she was already very familiar but with whom she had never lived.



63. She recommends ongoing contact with Mr and Ms X IF the adults can form a good relationship AND if Mr and Ms X can support A in what she terms “her deepening attachments within the new placement.”

She does not agree there should be staying contact however and thinks contact should be in Mr Q’s discretion. Otherwise, if there was to be an order she proposes a visit involving A and all the adults three times a year. In this she is disregarding the view of Dr Willemsen who recommends staying contact with Mr and Ms X to maintain her relationship with them. She sets out that she thinks it would be problematic for Ms X to maintain contact between A and her birth father if there is an adoption and points to the current difficult working relationship. She is much more sympathetic to Mr Q in relation to the same issue, saying:

“Mr Q appreciates the care and commitment which Ms X and Mr X have given A since birth and the depth of her attachment to them as her secure base for her all-round development. He is increasingly attuned to the loss A would experience if separated from Ms X and Mr X, and to their ongoing significance in her life both now and in the future if she moves to his care. Even in the oppositional arena of court proceedings he has been able to

acknowledge that Ms X is a good person, and when informed last October that Ms X had applied to adopt A he understood that this was because she had fallen in love with his daughter. Nevertheless, he has experienced the removal of his child into foster care, and now also has to contest an adoption application, so it is understandable that he may have struggled previously to appreciate the benefits to A of ongoing direct contact with Ms X and Mr X if A comes to live with him.”

64. She recommends that Ms R should see A 6 times a year, though Ms R has not been attending contact and has a minimal relationship with A .

65. Ms R ‘s fourth child will be adopted and Ms Nash proposes that contact with him is also arranged. At no point does Ms Nash go through with Mr Q the findings of the court in A’s care and placement order proceedings and explore with him why he behaved as he did at that time. However, when it was raised at the hearing on 10.6.2024 that Mr and Ms X ‘s lawyer wanted to see any case notes relating to such conversations, it appears that it was then that Ms Nash thought it appropriate to discuss with Mr Q and Ms P his dishonesty in the previous proceedings. For the first time

she discussed the matters raised in the judgment with them on 12<sup>th</sup> June 2024 but seemed to accept what they said, despite the lies continuing. She notes his explanations which really are very weak. She explores with Ms P her marriage, and explores Mr Q's but not Ms P's immigration status. He said he did not suspect that B has any additional needs and that Ms X and the Children's Guardian interpret things unfairly against him. There is no considered welfare analysis of the different options available for A. Ms Nash applies the wrong welfare checklist to analyse.

### **The oral evidence of Gillian Nash**

66. I wrote a few moments ago that in the light of the inadequacy of the other Local Authority evidence, the evidence of Ms Nash is particularly important. Ms Nash however candidly admitted in her evidence that she knew that the plan was to place A with Mr Q and she did not at any point apply her own assessment. This is one of the remarkable things about this case: the adherence by the four social workers, three of whom have given evidence, to the LB Lewisham line without at any point in their written evidence considering A's welfare and needs in a holistic way. In their oral evidence they were to a greater or lesser extent

able to see the benefits to A of staying with Mr and Ms X but were not prepared to revisit their recommendations.

67. Another remarkable thing is how each of the social workers who gave evidence found excuses and justifications for failures and actions of Mr Q which, if these had been care proceedings, they would have highlighted as reasons for the court to make a Care Order and or a Placement Order . For example, Ms Nash and her colleagues explained that Mr Q's dishonesty in the first set of proceedings could be put down to his lack of understanding as a new arrival, indeed an overstayer, in this country of how things worked; the fact that A showed herself to be less relaxed in his care was put down to the presence of observers, rather than to his struggles to build a relationship with her. I could go on.

68. Ms Nash spoke of Mr Q being flexible throughout her work with him but a moment later told me, and it is not in her written evidence, that A had been denied the opportunity to go abroad on holiday with Mr and Ms X because Mr Q wanted to be the person who applied for a passport for her and wanted to be the first person to take her abroad. This was despite the social worker learning from Mr and Ms X that A was very interested in aeroplanes and that Mr and Ms X wanted to take her on one to stimulate that

interest. Mr and Ms X then asked if they could take A on a plane to Edinburgh instead but when Mr Q objected, it was the Local Authority decision to refuse to allow the prospective adopters to take A to Scotland because, as Ms Nash accepted, they wanted to support the father's position in every way. A's welfare does not appear to have been a consideration.

69. Since taking on the case Ms Nash has never spoken with Mr Q on his own, she has always seen him with Ms P present and we know that Ms P both prompts Mr Q as to what to say and speaks for him. In Ms Nash's statement, and in the emails which were finally disclosed between her and Mr Q and Ms P, it became apparent that Ms Nash was of the view that the difficulties between the adults at handover were caused primarily by Mr and Ms X; a careful analysis of the primary evidence however showed that this was not true and that Mr Q, maybe for understandable reasons, struggled to be polite or friendly with Mr and Ms X. Ms Nash opined that A was not affected by Mr Q and Ms P examining her and putting in the contact book on each occasion of contact any marks or bumps. However, the primary evidence was clear that A was indeed affected by this, with her sleep disturbed, and

she was very conscious indeed of what her father and aunt were doing and was worried about it.

70. Ms Nash confirmed that the decision was made by LB Lewisham to place A with her father if the assessment which Ms T was to carry out was positive, in April 2023. This was before her involvement and she conceded that it would have been better to wait until the assessment had been carried out. Ms Nash told me: “I inherited the plan that A should move to Mr Q and my focus has been to pursue that plan”. Unfortunately this meant, and Ms Nash accepted, that at no time did she properly think about whether the alternative plan might be better for A . Indeed it seems that only the IRO considered what might be best for A in the round as I will discuss later. Ms Nash accepted that the LA ‘s approach since April 2023 was to support the plan to place A with her father and they did not at any point re-evaluate whether the plan was the right one for A .

71. There is a case note which has been disclosed which purports to be an account of a meeting between Ms Nash and Mr Q and his sister from 10th January 2024, the first time Ms Nash had met Mr Q since she took on the case in November 2023. Ms Nash conceded in cross examination that she had written that up just before this final hearing so in

June 2024. It suggests that Mr Q had developed quite a lot of insight by that time. However, it was pointed out to her that the case note shows it was written up on 7<sup>th</sup> June 2024 and when asked about this Ms Nash told me she wrote this from memory. I very much doubt that Ms Nash has much of a memory of this meeting and consider that Ms Nash was trying to bolster the Local Authority's and Mr Q's case with this note; she acted in a similar way when, after the pre-hearing review before me the week before the final hearing began, when it became clear that the LA's failure to consider any changes Mr Q had made in the context of my judgment was going to be a relevant factor, Ms Nash went to see Mr Q and Ms P on 12<sup>th</sup> June 2024 to belatedly go through such issues with him. Before she visited them she emailed them and said: "Before we meet tomorrow I thought it would be useful if I outline a couple of things I'm likely to be asked about in court and which I want to discuss with you first. You may be asked about these things too."

72. She set out three things that the Children's Guardian wanted to know about – the lack of clarity about the tenancy, why Ms P had not come forward before in A;'s care proceedings, and whether the findings about Mr Q's dishonesty in the first proceedings had been discussed with

him and how he explains this. She had never discussed the findings in the judgment with Mr Q before June 2024. She accepted that Mr Q repeated some of the same lies to her, namely that the social worker had threatened him and Ms R to have him deported and the baby adopted, even before A was born.

73. He repeated the denial to Ms Nash that he had worn an earpiece during his assessment with Mr Morson through which he had received instructions from his then solicitor as to how to answer the questions. His version to Ms Nash was that he was wearing an earpiece and took a call from his solicitor and did not realise that he should not be talking to his solicitor whilst talking with Mr Morson. He also denied being in the room when Ms R was being assessed and prompting her as to how to answer the questions from Mr Morson when he was remote: he said to Ms Nash that he went in to calm her down. Ms Nash did not press Mr Q on the fact that the court had found that he had lied about these things.

74. Mr Q was unable to give Ms Nash any of the real reasons why A was made the subject of a Care Order and Placement Order when Ms Nash discussed this with him belatedly on 12<sup>th</sup> June 2024 and she agreed in cross



examination that this was a worry. Ms Nash accepted that the 11<sup>th</sup> June email was an attempt by her to coach Mr Q, and that she had not offered coaching in that way to Mr and Ms X . I think it is likely that the coaching went further than the email.

75. The disclosure of the emails between Ms Nash and Mr Q and Ms P during the hearing proved illuminating. On 14.2.2024 Ms Nash emailed Mr Q because the Children's Guardian had complained that his hostility towards MsX was bad for A . Ms Nash's approach was to say: "In order for them not to have any grounds for complaint, please can you acknowledge Ms X by looking at her and saying hello Ms X, how are you in a friendly way, so that A does not pick up on any hostility and feels less torn between you.....you need to show that you can put A 's interests first and be positive towards Ms X..."

76. I find the approach of the social worker, which I presume has been guided by her managers, to be astonishing. I expect a Local Authority involved in proceedings on behalf of the state to act fairly and to bring to the court's attention those matters which support their case and those matters which do not support their case. I expect them to apply the

correct legal principles. I expect them to be even handed. The approach of LB Lewisham in this case cannot be described in this way. Indeed Ms Nash accepted that by the time she filed her statement she had not spoken to Mr Q on his own, she had not gone through the judgement with him, she had not gone through Dr Willemsen's report with him, she had not discussed the options with Mr and Ms X , she had not discussed the narrative which could be provided to A with Mr and Ms X, she had not discussed with them contact if A moved or if A stayed, she had not discussed a transition plan with Mr and Ms X; she did not look at any mitigation which could be put in place if A stayed with Mr and Ms X ; Ms Nash agreed that her statement was a one sided document in support of the Local Authority case.

77. Ms Nash accepted that she had not asked any searching questions of Ms P or put to Mr Q why he was oblivious about his sister's marriage having ended, or why he had not mentioned her at all in the earlier proceedings.

78. Ms Nash agreed that the court had to look at the risks to A and what mitigation could be put in place but said that the Local Authority's position was that if you could place in the birth family and thereby avoid issues about identity developing, there was no need for mitigation. She opined

that she did not think that keeping A with Mr and Ms X and providing contact for Mr Q would work because of the difficulties between the families, but accepted that she had never discussed contact proposals or their approach to contact with Mr and Ms X .

79. She accepted that research shows that an adoption is most likely to be successful where the child is very much loved, and where the adoption is openly spoken about. However she thought in this case an open adoption would not be likely to work because of the poor relationships but, again, had never discussed these issues with Mr and Ms X . She had only observed one contact handover. She accepted that Mr and Ms X were doing all that they could with regards to A's identity such as referring to Mr Q as Q, by having photographs of A's parents in their home and by giving her an age appropriate narrative at this time.

80. Ms Nash conceded that Mr and Ms X are doing their best and that the difficulties in the relationship stem from Mr Q being uncomfortable , to use as neutral a term as possible, with Mr and Ms X , and that the difficulties in the contact relationship in the future would not emanate from Mr and Ms X . She further accepted that the difficulties in the future regarding contact would be more likely to be if A was placed

with Mr Q and he was to provide contact, than if A lived with Mr and Ms X and they had to provide contact.

81. The report of Ms Dunne which had been produced that morning was put to Ms Nash and she agreed that it showed that Mr Q was in the very early stages of attuning to A , and that Ms Dunne had recommended that more work should take place before A could be placed with Mr Q; however Ms Nash also had heard Dr Willemsen say that it was not sensible to delay the transition process any longer if it was to take place. She understood that Dr Willemsen 's worry was that A would be feeling alone with her loss but said that whereas Mr Q lacked the ability to verbalise things, he had a more intuitive understanding of the loss A would experience and she thought his empathy would come from love.

82. It was pointed out to Ms Nash that Mr Q persisted in calling A an alternative name in contact even though he was aware that she was called A at all other times and she agreed that would be confusing for A .

83. The very recent contact which the Children's Guardian had observed when A had wet herself and Mr Q had been

unable to console her over 20 minutes at which point the Children's Guardian had to leave was put to Ms Nash – she said that Mr Q had told her that A had calmed down soon after the Children's Guardian had left and opined that Mr Q's ability to calm A down might have been affected by the Children's Guardian's presence. I reject that opinion.

84. She agreed that at times Mr Q could manage B and A together but at other times he struggled, particularly when Ms P was not there. She also agreed that theirs was not yet an established sibling relationship.

85. The incident when the Children's Guardian visited on 10.6.2024 and described Mr Q leaving B alone in the flat concerned her, especially if it had happened before.

86. She accepted that there were many more uncertainties for A if she moved to live with Mr Q but said there was a big uncertainty if she stayed with Mr and Ms X as to how they would manage at adolescence as they were not her birth family. She said that if her birth family can be supported to care for her, that is in her interests; she said that knowing who you are and where you come from and having those

connections brings something that cannot be replaced in even the best adoption.

87. Ms Nash answered the questions put to her frankly. I cannot rely on her professional opinion in this complex case however for many reasons: she has not done the work I would have expected to be done before preparing the Local Authority's main statement in this case as I have already set out; she has not done it since; she has not considered all the evidence; she has accepted the Local Authority's position and at no point appears to have considered whether it is the right position for this little girl; Ms Nash told me that the statement contained her view; I am not sure that I accept that : - if these are her views then it is not possible to understand how she formed them other than applying a simplistic and misunderstood version of the law which is that if a child has a birth parent who can care for her, that is where she should be; overall she has not acted fairly or considered A's best interests in a holistic way; I do not think she knows this child.

### **The evidence of the IRO and the evidence of Victoria Rogers**

88. As if this case was not complicated enough, we have had the confusion about the views of the IRO. A's IRO is Pervin Khan who is unfortunately on long term sick leave. It was known that the IRO had strongly held views about A's case and it was ordered on 6<sup>th</sup> June that the LA do file and serve a statement on behalf of the IRO by 11.6.2024. This resulted in a statement by Victoria Rogers who is head of safeguarding and quality assurance at LB Lewisham. She has managerial responsibility for A's IRO, Ms Pervin Khan, and filed a statement she said to represent what she believes is Ms Khan's views as Ms Khan is on long term sick leave.

89. However it then became clear that Ms Khan had prepared a statement on the day before she went off sick and that finally emerged on the third day of the hearing, but only when I ordered Ms Rogers either to file it or to attend court with it. It is a signed statement although the paper has the word draft running through each page.

90. The two statements are rather different. Ms Rogers' statement says as follows: Ms Khan had been A's IRO for 2 years to May 2024 and had full knowledge of A's case and situation. Ms Khan reported her observations of A in her foster placement where she found her confident and bubbly;

the nursery said she was happy and sociable and functioning above her age. On 8.4.2024 Ms Khan observed A in the care of her father and aunt and found her to be subdued and anxious. She noted that B appeared happy with good attachment to his father and aunt. Ms Khan recorded that she held concerns about Mr Q's capacity to meet A's emotional needs, particularly in respect of any loss and trauma she may experience, and noted a strained relationship between Mr and Ms X and the Q and P family. Ms Khan believed there was a discrepancy between her observation on 8.4.2024 and the description given by the contact supervisor and she wrote about this in an email to the Meliot Centre which sets this out clearly.

91. She further noted that Mr Q did not attend A's review meetings and that he denied receiving any invitations but she had sent them; she noted that in 2023 Mr Q had made calls to the LA referring to the letter from the IRO but claiming to be Ms R. Ms Khan had raised concerns about the relationship between Ms R and Mr Q with Mr K and that Mr Q may have misled Ms R about his intentions as when Ms R had her 4<sup>th</sup> child – not by Mr Q – she seemed to think that she and Mr Q were going to live in Africa with all 3 children. Moreover Ms Khan ascertained from Ms R and her friend Ms



W that Ms R was receiving money from Mr Q as recently as March 2024.

92. Ms Khan was doubtful about the relationship between Mr Q and Ms P, particularly because Ms P had not even been mentioned in A's care proceedings, by Mr Q or by Ms OK and Ms OP who were assessed.
93. She knew of the report of Dr Willemsen and the proposed transition plan but doubted that this would be achievable within A's timescales because of the acrimonious relationships between the adults. She shared the concerns raised by Dr Willemsen about Mr Q having unresolved issues from his childhood and she was worried that this may impact on his ability to meet A's changing emotional needs, including how he supports her to make sense of the 3 years she has been cared for by Mr and Ms X .
94. Ms Khan did not doubt Mr Q's love and commitment to raising A but did not think he was sufficiently attuned to A's emotions or had adequate insight into her present or future needs to mitigate any potential emotional dysfunction or mental health problems.

She did have confidence in Mr and Ms X 's ability to promote and maintain positive connections with A's birth family. She thought that Mr Q and Ms P continued to hold negative views of Mr and Ms X and still found it difficult to hold a basic conversation, and that Mr Q remained quite negative about social care involvement, and had a history of not being transparent, open and honest at times.

95. Whilst recognising Mr Q's ability to provide good care in many respects she noted "Mr Q would struggle with the fact that A's past must be kept alive for her to make sense of her life journey, and that it is equally important for her to witness positive connections with all the adults in her life."

96. Turning now to what the IRO herself wrote: Ms Khan's statement starts with a section which is omitted from Ms Rogers' statement. She refers to her report for A's 2.4.24 CLA review and her observations of A at the father's house on 8.4.24. In the report referred to she says:

"As her IRO for the last 2 years, I have watched A blossoming into this beautiful little girl who has bundles of energy and despite her young age, has an excellent vocabulary to hold a meaningful conversation with others.

She always greets me with a huge smile on her face and gets very excited to share her toys and books and very proud to show her bedroom. Therefore, I was really sad to see a subdued and withdrawn A when I visited her at her dad's house to observe their interaction on 8th April 2024.

Although it was clear she recognised me as gave a little smile but did not interact with me at all during the whole hour I was there. She appeared anxious and nervous and sat on her dad's lap most of the time apart from when she was in a high chair to eat lunch (around 2.45pm) - sausage, baked beans and few broccoli, which she ate very little of and only just nibbled. A did not speak or make any noise and kept very little eye contact. She did not engage with any play activities or interacted with B despite dad trying his best to encourage her. Even when B tried to snatch her lolly or a toy she was holding, A did not protest or got upset. She was watchful of her aunty and I noted her cling to dad more when she came in the room. I observed aunty to be doing most of the practical tasks, such as making A 's lunch, giving her a lolly and writing in her communication book.”

97. She says that her report was then challenged by the social work team manager Ms Williams and she then sets out

the terms of the dispute: Ms Williams did not accept that A had been placed with a view to Mr and Ms X adopting her and accused Ms Khan of imposing her “own values and class biases” both of which Ms Khan rejected and explained why.

98. Ms Khan set out that because of the difficult and strained relationship between Mr and Ms X and some of the staff at the Meliot Centre recommendations had been made to hold the contact elsewhere with a different supervisor, and that the venue should be nearer to where A lived as is normal. This did not happen. None of this appears in Ms Rogers’ statement.

99. The two final paragraphs of the two statements are subtly different. Ms Khan says:

3.1. “In conclusion, the court will need to be making a decision for A ’s long-term permanent living arrangement, whether it will be in her best interests to continue to live with the carers she knows since birth as her parents, where she is loved and nurtured or return to her father where she will have the opportunity to grow up with her birth family. This is not going to be the easiest decision to make but hopefully will be the right one for A .

3.2. I do not doubt Mr Q’s ability to provide a good level of care in terms of meeting A ’s health, education and her

cultural and identity needs, but cannot wholeheartedly say he will be able to meet her emotional needs now or in the future or can mitigate the trauma of loss, grief and separation that A will experience. I fear that he will wipe out A's memory of her early life with the people she had known and loved. He will struggle with the fact that the past is something that must be kept alive for A to make sense of her life journey and that it is equally important for her to witness positive connections with all the adults in her life.

“

100. Ms Rogers however says:

“3.1 In conclusion, the court will need to make a decision for A's long-term permanent living arrangement, whether it will be in her best interests to continue to live with the carers she has lived with since birth, where she is thriving, or return to her father where she will have the opportunity to grow up with her birth family. This is not going to be the easiest decision to make but hopefully will be the right one for A.

3.2 Ms Khan noted she did not doubt Mr Q's ability to provide a good level of care in terms of meeting A's health, education and her cultural and identity needs, but held some

concerns about his capacity to meet her emotional needs now and in the future, including whether he would be able to mitigate the trauma of loss and separation that A will experience. Ms Khan noted Mr Q would struggle with the fact that A 's past must be kept alive for her to make sense of her life journey, and that it is equally important for her to witness positive connections with all the adults in her life.”

101. I only obtained the statement which Ms Khan had signed by making an order for Ms Rogers either to disclose it or to attend court. The statement was accompanied by this email from Ms Rogers: “Ms Khan, Independent Reviewing Officer, provided a draft statement on her last day at work (24.05.2024) prior to going on extended sick leave as a result of a serious health condition. She confirmed that any changes to this should be agreed by her own line manager. Had Ms Khan been working following this, her line manager and myself (as her second line manager) would have discussed edits to the draft statement with her and discussed with Ms Khan removing some of the sections we felt to be unnecessary. I felt I was unable to amend Ms Khan’s original statement without her working, and so filed a separate

statement using all the relevant information that Ms Khan provided in her draft statement.”

102. What has happened here is shocking and disgraceful on so many levels. Ms Rogers has removed from Ms Khan’s statement matters which were relevant for the court to know but which, as far as I know, are not set out clearly in other documents and therefore would not have been otherwise known. She has watered down Ms Khan’s statement. She has, it appears to me, decided to censor Ms Khan’s views in order to make them less critical of the LA’s case.

103. The point of the IRO is that she is independent. It appears that in LB Lewisham the independence has limits on it. In LB Lewisham the IRO may be critical of the Local Authority’s position, but within constraints set by her management.

**The report of Kirsty Dunne**

104. During the hearing a report was produced from Kirsty Dunne, the systemic practitioner who is working with Mr Q and with A .

105. In essence Ms Dunne explains that the purpose of her work was to help Mr Q develop insight into A's emotional needs and her potential feelings of loss if she comes back into his care, and the impact this may have on her behaviour. The work had started in April and on 19<sup>th</sup> June when this report was written Ms Dunne said that the work was in the very early stages but she thought Mr Q will continue his ability to understand and support A.

106. I had not appreciated until the hearing began that Ms Dunne's work had involved A from the start; I do not think it right that work has been done with A to prepare her for a move to Mr Q when the decision has not been made.

**Z Council: the report of Ms J**

107. I have read the report prepared on behalf of Z Council by Ms J dated 7.5.2024. she describes A and her current interests and stage of development which is advanced for her age. Ms J describes her as content and settled, confident and relaxed, in the care of Mr and Ms X . She concluded that Mr and Ms X have a strong secure attachment to A . She reports that Ms R wants A to be placed with Mr Q .

Mr Q told her that he has no communications at all with Ms R and that the LA had helped him realise that theirs was not a



healthy relationship. She found him to be open and honest but that he struggled to answer her questions with any detail. She observed him comforting A who responded well to this. A was a little more cautious of Ms J's presence at Mr Q's home but she saw that Mr Q was able to comfort A and she said it was evident that A and Mr Q have a positive attachment and that Mr Q loves her very much.

108. Mr Q told Ms J that he was keen to work in partnership with Mr and Ms X and would support ongoing contact as he recognises they are very important people in A's life; He expressed gratitude for their care (though mentioned various injuries he thought she had incurred) and was in agreement with a staggered transition process. He also wanted A to continue to see her mother.

She emphasises the potential of the sibling relationship between A and B and says:

“Mr Q is able to provide A with a safe care within her birth family and ensure that A grows up with her full sibling. A will feel that she is wanted and her identity and belonging needs will be met”

109. She also recognises that A will see Mr and Ms X as her family and so advises that A should be able to continue to see them and their extended family to whom she is also close.

She does however identify some difficulties in the relationships between the adults.

110. It is a concern to me that in her report Ms J deals with the harm which A is at risk of suffering IF SHE IS ADOPTED and quotes Dr Willemsen as follows:

“The transfer may have short-term trauma as a consequence of the transition, but I think the effects may extent well into her adolescence with questions not only about her first three years of life but also about the relationship between her biological father and mother, the reasons for not being together, and not being able to look after her together .”

This is harm which Dr Willemsen worries about IF A IS MOVED TO MR Q’S CARE.

It is deplorable that Dr Willemsen’s opinion is misused in this way.

111. Ms J weighs up the pros and cons of the two options but says that LB Lewisham have concluded that if A is adopted she is likely to lose connection to her wider birth family and Ms R which will negatively affect her identity needs with long term effects.

112. She also points out that it will be difficult for A later to understand that she could have been raised by her father;

she is likely to miss out on her birth heritage and culture and will miss out on being raised with her brother B . She thinks that this could cause long term trauma; she thinks A is at risk of suffering emotional harm if placed with Mr Q because of her strong attachment with Mr and Ms X but that this could be mitigated by implementing a robust transitioning plan and therapeutic support.

113. The report goes on to talk about Mr and Ms X and is positive; Ms X's supervising social worker spoke of her child centred approach but did think she would find it hard to work with Mr Q . However the writer noted that Mr and Ms X said that their hope is that A is able to grow up with both families: "us as adopters" and also "birth family" and they wanted A to have a good understanding about her life story. They proposed monthly contact with A's birth family with possibly an additional one to one with Mr Q . They also said they would promote contact between A and her mother and brothers.

114. Ms J recommends regular and consistent time between A and whichever set of adults she does not live with. She recommends that there is not an adoption order but that A moves to live with her father. The move , she says, is "a critical and complex task. It needs to be carefully

considered that A has never lived with her father and that her father's parenting will be different from parenting of Mr and Ms X . All those involved in A's care will play a central role in ensuring the well-being and safety of A during the transitions. Her feelings about the move would be considered and responded to sensitively with a flexible transitioning plan and therapeutic interventions.”

### **The oral evidence of Ms J**

115. I heard lengthy evidence from Ms J; she pointed out that she had had a limited role in the case in preparing the report for the adoption proceedings and was reluctant to be drawn into giving opinions on matters which she had not assessed, but was persuaded to do so. She had observed A to be more comfortable with Mr and Ms X than at Mr Q's home; she thought that A may have been affected by the number of professionals who were visiting her at that time; she had only seen the siblings for 15 minutes together but thought it highly likely that they will develop a secure relationship. She had only seen A with Mr Q for 15 minutes.

116. Ms Baruah put various contact notes to Ms J and sought her agreement to various points – from her reading of the notes she agreed that Mr Q could manage the two children in contact without his sister, and there were occasions when A wanted to do things with B. In relation to the tension between the adults, she said all 4 are in a very difficult situation. In relation to the detailed examination of A which Mr Q engages in at each contact, she thought Mr Q was wanting to be sure no one blamed him for marks; she did not agree that Mr Q avoided involving A in this. She had observed Mr and Ms X referring very respectfully to Mr Q. She believed Mr and Ms X when they told her they also talk about B and promote A's identity needs. She knew that Mr and Ms X were making an effort to find out and make African food for example and to buying African clothing. She accepted that A's identity needs would not be met as well as if she was in Mr Q's family unit, sharing experiences with B.

117. When she was asked questions by Mr Wilson she said she had no criticism of Mr and Ms X : A was receiving an excellent level of care and was exceeding her developmental milestones; they were attuned carers providing therapeutic

parenting. A was completely integrated into their family and Mr and Ms X are her primary attachment figures.

118. Ms J recognised that a move to Mr Q will be very difficult for A ; she accepted it would be traumatic when pushed; she referred to her experience of moving children into adoptive placements and thought it might take 6 months for a child to settle. She recognised that this case is different both because it had been in effect a placement for adoption with Mr and Ms X but also because she knows the birth family to whom she would be moving. She thought that with a robust support plan the attachment to Mr Q could develop but she accepted that there were risks.

119. She accepted the success of the move would depend on how A coped, how effective the psychotherapy would be, how well Mr Q could attune to A's emotional needs. She agreed that A needed more than good enough parenting and thought Ms P could help with this. She accepted that Mr Q was not there yet in terms of meeting A's emotional needs. She accepted the risks to A as identified by Dr Willemsen . She had not really explored these things with Mr Q as he found it hard to express his views. She accepted that she had barely analysed the risks to A in her report.

120. Ms J said there were risks to A in both situations but her recommendation was based on the risk to A of long term trauma of not being with Mr Q who had had a positive assessment and was caring for A's full sibling. She agreed that one of the factors which would make a move successful would be that A is given an accurate and honest narrative which must include why A was not cared for at home for her first three years. Ms J said she had had sight of the judgment in the first set of proceedings.

121. I thought that Ms J was being disingenuous when she tried to find reasons why A would present as less comfortable with Mr Q than with Mr and Ms X, reasons to do with the number of visitors for example. It is plainly the case that at this time A is more confident and relaxed with Mr and Ms X and it would be remarkable if that was not the case. This was a further example of a social worker who had not carried out a proper analysis of the two options for A but appears to have followed a policy that birth family is always best if they have been positively assessed.

### **Dr Willemsen**

122. The evidence of Dr Willemsen, clinical psychologist is contained in a report, and addendum and in his oral

evidence. In his report of 17.4.2024, Dr Willemsen starts with a summary of his opinion:

“Having given considerable thought and attention to this case, and acknowledging what I think may be a difficult and disturbing transfer for A to Mr Q, keeping in mind she may not have the same quality of attunement she receives now in the care of Mr and Ms X, which may cause emotional distress and an avoidant manner of dealing with trauma and distress as observable in the father, I consider, nevertheless, that a placement with her father will meet her needs adequately.

2. Based on attachment and emotional needs alone, A is in a placement where these are met well. The father, however, will allow A to attach to him, she will be with her brother, and she will feel loved. I am not sure that because Mr Q parents very differently – based on his childhood experiences, but knowing also there are no concerns about his care for B – A should not be placed with him. This is, of course, a matter for the court.

3. Recommendations to support A in her transition, should she be placed with Mr Q, are made.”

123. Dr Willemsen is clear that in A’s mind, it is Mr and Ms X who are her carers and her parents. She has formed a strong attachment to them. Dr Willemsen said they



functioned as a family. He observed her behaviour as being different when in the company of Mr Q – she was a more reserved child who remained anxiously close to Mr Q. “The confident child I had met when I was with Mr and Ms X was less present and she was now clingier. A did not seek contact with Mr Q and there was hardly contact between B and A.”

124. He felt that A presented as more anxious when with Mr Q and she soothed her anxiety by being close to Mr Q. Mr Q generally was gentle. A wanted to leave at the end of contact. He thought she was also anxious when with Mr and Ms X and thinks that it relates to her confusion about the situation she finds herself in.

125. He described Mr Q’s emphasis on the biological connection and says this:  
“Mr Q’s focus on biology and his wish to have his children with him is on the one hand important. When remaining with Mr and Ms X, A may, as she grows older, wonder why she does not live with her father. It would be a difficult to answer question, certainly now that her brother, B, is placed with their father. She could have an experience, a disappointment, that there was a life she could have led but did not. These are complex feelings, against a background of an early separation

from both her father and her mother. Keeping the biological line intact will help A in her sense of identity and of reality. In this scenario Mr and Ms X formed a – important – bridge from A’s birth to her placement with her father. On the other hand, the argument of biology, I thought, stood in the way of thinking about the serious consequences of a transition for A from Ms and Mr X to Mr Q. As the social worker points out should A stay with Ms and Mr X: A will maintain a relationship with someone she knows as her primary caregiver and maintain a strong and stable attachment. There will be a significant loss of this relationship and attachment when A moves from Mr and Ms X to Mr Q. The strength of the attachment of A with Mr and Ms X was also noted in the LAC Chair’s report. “

126. Dr Willemsen thought Mr Q was not really able to think fully about these consequences though his sister was better able to do so. Dr Willemsen said “The transfer may have short-term trauma as a consequence of the transition, but I think the effects may extent well into her adolescence with questions not only about her first three years of life but also about the relationship between her biological father and

mother, the reasons for not being together, and not being able to look after her together.”

127. Dr Willemsen was aware of my findings about Mr Q including the lack of openness and also found Mr Q’s narrative difficult to follow and incomplete. He says: “There was a general positive outlook on life without addressing trauma, losses, and transitions in his own life. I refer to his education, the murder of his father, the early loss of his mother in his life, and a general lack of narrative of his childhood experiences. It is particularly this lack of narrative, an ability to reflect on his life’s experiences, the lack of accessing emotions and affect, that is concerning when thinking about A’s possible transition from Mr and Ms X to Mr Q. I think it likely that A will be loved but she may feel alone with her experiences and understanding of being with her father, while being with him.”

128. Mr Q repeated some of his allegations which I had found to be false when assessed by Dr Willemsen such as that at the time of A’s birth the social worker threatened to have Mr Q deported and A adopted; he thought the lack of an interpreter had skewed his assessment; he told Dr

Willemsen that he had not recognised Ms R's cognitive limitations and autism. Dr Willemsen felt that both Mr Q and his sister avoided thinking about the difficult issues and Mr Q's own limitations but focused on a general positive view of the family as if all will be complete when A is placed with Mr Q: "The negativity is placed elsewhere" Dr Willemsen is therefore concerned that A will not be given an accurate account of why she was removed from her parents' care.

He goes on to say:

"The emerging picture of the father also includes a lack of reflection and life narrative, particularly trauma and loss, about his own life, that would support an ability to reflect on A's life and her transition, not least the importance of Mr and Ms X in her life. In other words, due to a lack of attuning to his own life experiences, he may have difficulties attuning to A's life experiences, particularly the adverse and traumatic life events.

As A grows older, she is likely to forget much of her early life experience. She will rely on others to keep that part of her narrative alive.

The concern I raise, when a transition takes place, is that A may not be adequately supported in the trauma she will suffer when losing Mr and Ms X, who A sees as her parents. I foresee, to some extent, that this trauma may be exacerbated by a sense of loneliness accompanying her experiences when Mr Q's focus is on the positive and cannot be adequately directed at the inevitable void that may develop when she loses the attachment with Mr and Ms X and has not yet fully bonded with Mr Q .”

129. He says that the strong attachment to Mr and Ms X will cause the trauma of the loss of Mr and Ms X to be intense while the strength of the attachment organisation may make coping with this loss and reattaching to her father possible and, hopefully, this negates the loss.”

130. Dr Willemsen factors in that moving to Mr Q will allow A to live as a sibling with B but at the moment says their relationship is minimal.

131. Dr Willemsen goes on to advise on the support which would be needed for A if she moves to Mr Q's care, including that A should be supported therapeutically by a

child and adolescent psychotherapist with Mr Q also receiving support. He has raised concerns about Mr Q's ability to attune to A's transition and the trauma that will ensue. He says "I think he will generally be warm and affectionate and able to look after many of her needs, but I am concerned that the attachment to her emotional needs when encountering adversity may leave her feeling alone." He says that Mr and Ms X are attuned to A's needs and need no interventions because there are no relevant shortcomings in their care.

132. He says:

"I think it likely that she will suffer trauma. I am not sure if this would be referred to as harm but rather, I would refer to the child's adaptation that can cause her significant emotional distress because of not understanding the transition that is taking place. A is not three years old, and gaining an understanding of her experience is difficult, although it is clear she is more anxiously attached to Mr Q. I am concerned that she may need to adapt to a (paternal) narrative that is positive without there being adequate attunement to what she has lost. Mr Q, as stated, would like A with him, because he is the biological father; he does not fully appreciate that A has parents, in her mind. When he says she

has two fathers, for example, that is his perception, not A's. There is a risk that her trauma following the transition is not addressed and becomes repressed or dissociated, not unlike, I think, the manner in which Mr Q has not worked through some of the difficulties in his life. A will develop not necessarily like her father, but the consequences of not being able to work through some of difficulties she will encounter when she moves to the father may have an adverse impact and her emotional wellbeing. As stated, I think she may feel alone, when she had an experience of being attuned to her needs by Ms X and Mr X. It is difficult to know how this adverse impact may affect her adolescence and adult life, because she received good care in the first three years of her life, while also having suffered the loss of her mother, and then Ms X and Mr X.”

133. He goes on to consider the implications for A's psychological health if she grows up outside her birth family in the current circumstances : he sets out how she may question the decisions and wonder what may have been but does not identify any harm; he considers that Mr and Ms X would take care to ensure to promote her cultural heritage.

134. He addresses A's contact needs:

If she is placed with Mr Q he thinks that A should spend a weekend with Mr and Ms X every 6 weeks; if A stays with Mr and Ms X he suggests a longer weekend with Mr Q and B every month.

135. In conclusion he says:

“Having given considerable attention to this case, and acknowledging what I think may be a difficult transfer for A to Mr Q, keeping in mind she may not have the same quality of attunement she receives now in the care of Mr and Ms X, which may cause emotional distress and an avoidant manner of dealing with trauma and distress as observable in the father, I consider that a placement with her father will meet her needs adequately. Based on attachment and emotional needs alone, A is in a placement where these are met well. The father, however, will allow A to attach to him, she will be with her brother, and she will feel loved. I am not sure that because Mr Q parents very differently - based on his childhood experiences, but knowing there are no concerns about his care for B – A should not be placed with him. This is a matter for the court.”



136. On 30.4.2024 Dr Willemsen answered written questions: He repeated that Mr Q alone will not be able to manage A's distress if she is moved to his care and refers to the therapeutic support which will be necessary. He believes Ms P may need to be involved in the work with Mr Q . He believes Mr Q will engage but his avoidance may make his use of the therapy limited. He thinks that Mr Q needs to be clear in raising A whom everyone is so as not to confuse her as to the role of the various adults in her life.

### **The Oral Evidence of Dr Willemsen**

137. Dr Willemsen said that Mr Q was keen to engage but Dr Willemsen was not sure that Mr Q could take a psychological approach with A. He said his default position is that A should be with him and he was not sure that he can do it. On the other hand, his deep love for A can compensate. He was encouraged by how Mr Q had managed B's transition to him, though he recognised that the circumstances were very different. He thought there were cultural issues at play because it would be unheard of in Igbo culture for someone else to look after your child. Dr

Willemsen was concerned as to how A will manage and confirmed that the risks for A were low self esteem, a fragile sense of self and high anxiety. On the other hand, adopted children have a higher level of mental ill health though in this case there was less risk because of the very good care and attachment. He did not think the identity issues should be underestimated – such existential questions carried a risk in terms of mental health and personality, though recognised that contact as proposed by Mr and Ms X would help to reduce the risk.

138. Dr Willemsen clarified that his view is that A is more anxiously attached to Mr Q, he had not described the relationship as an anxious attachment. He recommended that the psychotherapeutic work with A should start a couple of months after she was moved to allow a new routine to be established. He thought that the move should not be delayed whilst Mr Q did more work. He reiterated his view that there could be a move and thought the main argument against this was that A saw Mr and Ms X as her primary carers but he thought there were the beginnings of an attachment to Mr Q. He did not agree with the contact proposals of the LA.

139. He thought that A could perhaps see Mr and Ms X in the school holidays; he did not think indirect contact was a good idea. He agreed that it would be good for Mr Q to have some time on his own with A and therefore for B to spend more time in nursery; he had observed only a minimal relationship between A and B.

140. He thought that if A was with Mr Q there would be less of a need for her two worlds, the one with Mr and Ms X and the one with Mr Q, to integrate. He thought cultural issues were very important in this case and, whatever Mr and Ms X's efforts, he worried that A would question what are my roots, what would that life have been, if she remained with Mr and Ms X, she might wonder what her place in the world is; he said such issues can be quite difficult for some adults and there was a limit to what adopters could do to mitigate this risk .

When asked questions by Mr Wilson Dr Willemsen said he had been very impressed by Mr and Ms X who were skilled parents, who loved A and who were well aware of A's cultural heritage, and he accepted that there were risks in the proposed move too.

141. He thought wherever A is, the narrative is very important and will come from the judgment which the Judge is to give. The narrative which Mr and Ms X had given A to date was appropriate and he had confidence in them providing a fuller one as A grew older. He agreed that it was unusual in this type of case for the proposed adopters to be offering more contact than the professionals were proposing and he did not doubt that Mr and Ms X find contact important. He was confident that Mr and Ms X would allow A to grow up as a child with two families. He agreed that Mr and Ms X would provide as much mitigation as possible for the risks he had identified relating to possible confusion as A grew into her adolescence. He said he had come down on balance in favour of biology, as he put it, but he agreed he did have reservations as to whether Mr Q could deal with A's trauma, and as to whether B could adapt to A joining the family. It was encouraging though that he had attuned to B. He said that if Mr Q did not allow contact with Mr and Ms X to continue she would experience a loss and the loss would be forgotten.

142. The evidence of Dr Willemsen was very important and helpful and I have thought about it a great deal. He rightly

acknowledged that he was not aware of all of the evidence and that in any event, it was the court which had to make the decision which he acknowledged was a difficult one.

### **The evidence of the two families**

#### **Mr Q**

143. Once again Mr Q has not been well served by his solicitors. His statement does not provide the information which would be useful to the court but reads more like a lawyer's position statement. I very much doubt that this document reflects what the father's instructions were. There is nothing in the statement about Mr Q's background or current circumstances; there is nothing to explain to me why he behaved as he did during A's care and placement proceedings or how and why the changes have come about. I do not need a statement from the father which sets out all the professional evidence, in terms which do not reflect the way Mr Q speaks.

144. In relation to Mr and Ms X the statement says:  
"I appreciate and acknowledge the way A has been cared for by his current carers (sic). While, I have some concerns around various injuries to A particularly the frequency of these injuries when she attends family time. There has also been some misunderstanding between Ms X and I, where I

felt that she was been deliberately uncooperative and looking for faults. Overall, I believe that Mr X and Ms X have done a great job with A. During this time, A has experienced a safe and calm home environment and she has created a positive and secure attachment with her carers. I am willing to work in partnership with Mr X Ms X and would support any recommended contact between them and more (if necessary )as I recognise that they are very important in A's life. I am grateful for the care they have provided to A. I fully support staggered transition and ongoing family time between A and her current carers. I am open to accept recommendations and advice provided by Lewisham Council as I want A to know that we are all working in partnership to provide the best care for her. “

He disagrees with the professionals that the existing relationship between A and B is minimal and says they are creating a strong attachment.

145. The statement in so much as it does contain Mr Q's views is confusing. I made some of my concerns about this statement known in the first part of the trial, and was then asked to admit a further statement from Mr Q on, I think, the fourth day of the trial.

146. With this statement, he produced evidence from September 2022, and therefore available for his earlier statement, that he had obtained permission to stay in the UK for 30 months, and to work and claim benefits, and was on the parent 10 year route to settlement. The new statement gives some information about Mr Q's tenancy but that remains obscure to me. Mr Q then sets out his plans if A is moved to his care which involve B spending more time in nursery, and Ms P taking some time off work when A is moving to Mr Q and then regularly thereafter. He sets out his account of the incident on 10<sup>th</sup> June 2024 when the Children's Guardian describes finding out that Mr Q had left B alone in the flat for what she thinks would have been over 10 minutes. Mr Q said this was for no more than 4 minutes and describes having a baby monitor app on his phone. There is no acknowledgment by Mr Q that it is not appropriate to leave B in an upstairs flat and go down to meet people in the street, leaving a baby alone in the flat.

147. He then, very unwisely, decides to set out his version of communications with the Children's Guardian in relation

to June 2024 visits. All this illustrates is how easily Mr Q misunderstands communications.

### **Mr Q's oral evidence**

148. Mr Q gave evidence partly in English and partly using the [redacted] interpreter who attended for this purpose. He told me that Mr and Ms X look after A very well but they want to keep her. He said she sees Mr and Ms X as her parents. It transpired that there is no word for “trauma” in Mr Q’s language so the English word was used. Mr Q said A will be quite upset as she will not understand exactly what has happened but with help from the people who will work with him and A, we will be able to fix it. He said she will feel angry and not happy but if she moves to his care, it will be a benefit to her as he is her father.

149. He said he would contact Mr and Ms X to arrange contact. He did not have his own view about the frequency of contact. He told me he had been calling his daughter A since May 2024 because she wanted him to call her that. He said the work with Kirsty Dunne was going well. He agreed to have mediation with Mr and Ms X. He thought



A's relationship with B was developing, and he thought with help he could manage two children.

150. He thought that if A was unsettled at the beginning he would take her out and distract her but if that did not work, he would call Ms X to speak to her on the video phone.

151. I noted that Mr Q struggled to refer to Mr and Ms X by name and used terms such as those that she stayed with. When he did refer to MsX he called her another incorrect name each time as opposed to Ms X which is her name. He denied knowing their names though it was clear from the messages between Ms Nash and Mr Q and Ms P that Ms Nash was using their names from November 2023. Mr Q did not appear to accept that the examination of A for injuries and the reporting of any bump or scratch was unhelpful. Mr Q was asked why A had been removed from his care and said it was because he did not have permission to stay in the UK and did not have funding and that meant he did not have anywhere to stay which lead to people saying he did not tell the truth. He repeated his claim that the previous social worker had threatened to have him deported and A adopted. He said he would give A a version of this whilst also telling her she has two families.

152. It is a concern that Mr Q still is unable to set out the reasons why A was removed from the care of himself and Ms R, and that he repeats allegations which I have found to be untrue.

153. Mr Wilson went through with Mr Q how he came to leave B on his own in the flat on 10<sup>th</sup> June when he went downstairs to meet Mr and Ms X , the contact supervisor and A . Mr Q told me that this was the only occasion when he had left B on his own. He also said that the contact supervisor came up to his flat before the others arrived and then came down with him. He said that she had seen him with B. The implication here is that it is hard to criticise Mr Q for leaving B when the supervisor was with him and must have thought this was alright.

154. On this latter point, Mr X, MsX and the Children's Guardian all gave evidence that when they arrived the supervisor was waiting outside the building on her own. I believe them. I find that Mr Q has lied about the supervisor being with him, in an attempt to make his actions look less negligent. I cannot find any reason why the Children's

Guardian or Mr and Ms X would lie about this and in any event I have no doubt that each of them is a truthful witness.

155. Mr Wilson put to Mr Q that he had also left B on 3<sup>rd</sup> June and he accepted that and said he had made a mistake when he said it had only happened once. He repeated that he had a monitor and I formed the view that he did not see anything wrong with what he had done. He did not say he would not do it again and in my view he is likely to repeat this as he was convinced that his use of electronic devices was an acceptable approach.

156. Mr Church went through some of the evidence with Mr Q. It was apparent to me that Mr Q did not understand some of his own statement and I have already given my view about this aspect of the conduct of this matter by his solicitors. Mr Church asked Mr Q about his discussions with Mr Morson, the parenting assessor in B's proceedings and Mr Q told me that he had not thought more recently about the reasons why A was not placed with him in 2021- 2022. It was pointed out to him that he had given Ms T an inaccurate account of the court's reasons when she assessed him in 2023 but he told me that he had read the judgment. He told me that he accepted the judgment but that there had been

changes because at the time he was new to this country and did not know a lot.

157. He was then asked about the earpiece through which I found his then solicitor was attempting to give him the right answers during his assessment with Mr Morson. Mr Q told me that he had been talking to his legal representative on a separate telephone call at the same time as he was talking to Mr Morson. He said he did not know at the time that this was wrong. He also continued to deny that he had been trying to give Ms R the right answers during her online interview with Mr Morson and told me he was trying to calm her down. He then appeared to accept that this was what he had been doing and told me that he did not know at the time how things worked in this country.

158. Mr Church gave him every opportunity to add to his account of what had happened at contact in late 2023 when he and his sister met with the Children's Guardian. This was the occasion where Ms P has said in her statement that the Children's Guardian said that she and Mr Q looked horrible. Mr Q did not say anything about the Children's Guardian saying such a thing.

159. I then heard evidence about what was clearly a misunderstanding by Mr Q of the date when the Children's

Guardian was planning to visit him but which he goes through in great detail in his statement for obscure reasons. He agreed with me that it was possible that he had misunderstood when the Children's Guardian was going to visit (it being very unlikely that the Children's Guardian would arrange a visit for when she was on holiday).

160. Mr Church went through with Mr Q his reason for refusing to allow the LA to apply for a passport for A which was that he wanted to apply for it himself. He also said he did not agree when he was told that “somebody” wanted to take A going on an aeroplane within the UK. He agreed that “somebody” was Ms X and said he did not allow it because he wanted to do that with A.

161. He told me that he had no problem with A maintaining a relationship with Mr and Ms X because she has lived with them for so long. It was put to him that it was recorded in the CLA review of October 2023 that: “Mr Q is reluctant for A to maintain any future relationship with the carers and this again highlighted his lack of knowledge of attachment and the importance for A to have a clear understanding of her lifestory and the adults that were part of that journey.” He agreed that that was an accurate record.

162. He agreed that after the Children's Guardian met with him on 12.6.2024 and that her record was accurate; she wrote: "In my opinion Mr Q does not consider that there will be any difficulties with A moving to his care. He remains of the view that, as his daughter A will settle after a period of upset which will lessen over time. Mr Q has maintained this position and narrative since my meeting with him in November 2023, despite him currently engaging in therapeutic work. "

163. In re examination Mr Q confirmed that his view as put to Dr Willemsen in April 2024, which had been that he was against A maintaining a relationship with Mr and Ms X, had changed when he read the report and he now wants her to have a good relationship with Mr and Ms X but to be with him.

164. I formed the view that Mr Q was still not able to be honest about the past or about some aspects of the present. I could understand that in 2021- 2022 his lack of understanding of how things worked in this country, and the role of the state in safeguarding children for example, might well have contributed to his dishonest and evasive approach

at that time. I remain concerned that Mr Q is still prepared to be dishonest however. The relevance in this, I find, is that this is likely to have implications with how he works with professionals, through any transition process and beyond. In addition, I do not think he is always able to put A's actual needs as opposed to his perception of her needs before his own needs as I have not seen sufficient evidence that he is able to see her as an individual as opposed to his biological daughter.

165. I could see that Mr Q has progressed in many ways since he was before me in A's proceedings, for example in being able to care for B, generally well I understand : the issue is whether the progress is sufficient to enable him to meet A's needs.

### **The statement of Ms P**

166. Ms P's statement is dated 13.6.2024. She describes herself as the senior and immediate sister of Mr Q. She was a trained nurse and midwife in [redacted] Africa and currently works as a nursing assistant in London hospitals. She explains that she was not involved in A's care proceedings as she was still awaiting the result of her

immigration app at the time but that now her focus is on assisting Mr Q to care for the children.

She explains that she has tried to take a backseat throughout the last year so that Mr Q and his relationship with A can be seen.

167. She then embarks on a long catalogue of complaints about Ms X and then the Children's Guardian. The statement is in very odd language so it is hard to understand. Ms Q believes that A and B are forming a good bond, and she has no concerns about B's behaviour. She lists injuries and marks which she says she and Mr Q have found on A and refers to their frequency but then says that she and Mr Q fully appreciate the care given to A by the carer. She makes allegations against the Children's Guardian including the bizarre one that the Children's Guardian said that she and Mr Q looked horrible when they arrived at the contact centre, an allegation which I completely dismiss.

168. I note that as MsX points out in her statement, Ms P does not refer to the carers by name at any point. This statement was of very little use to me: I do not know Ms P's immigration or marital status or anything about their home or



the hours she works or why, as I have read, B sleeps in her bedroom, to give just a few examples.

169. On I think the fourth day of the hearing Ms Baruah asked to submit fresh statements for both Mr Q and Ms P.

No other party objected as their view was it would save time in cross examination. I therefore had a further statement from Ms P to consider.

170. The second statement : Ms P states that she was granted permission to stay in the UK on 11.12.23. She says that she has to continue to renew her visa until she qualifies for indefinite stay and says there is no limitation on her visa and that she can work. This is inaccurate as the document Ms P exhibits shows that, she cannot apply for public funds (benefits and services). Her permission lasts until 10.6.2026 but she is able to apply for it to be extended.

171. She tells me about her work (or rather some of it) and that she plans to take more time off work and to increase B's time in nursery. She says that B is entitled to 30 hours a week for free, which I do not think is the case.

## **The oral evidence of Ms P**

172. Ms P attended to give evidence. She repeated several times that she meant no criticism of Mr and Ms X or of the Children's Guardian whilst at the same time standing by the many criticisms in her statements. I concluded that it was indeed her intention to try to make the court believe that Mr and Ms X were not careful carers of A, whilst trying to come across as cordial towards Mr and Ms X. She had come with a clear plan in mind as to what she wanted to say and was not that keen for the questions to get in the way of that. She said it was true that she and her brother arrived at the contact centre and met the Children's Guardian for the second time and the first words the Children's Guardian said to them were "you look horrible". I reject this. It makes no sense to me at all that a professional woman who has devoted so much time to A and B's cases would speak in this way, and of course the Children's Guardian denies it. Mr Q does not refer to this in his evidence and was given every opportunity by Mr Church for the CG to add to his account of that meeting but did not.

173. I formed the view, from all the evidence as well as from listening to Ms P give evidence that she is the dominant one in the sibling relationship with her brother. Most if not all of the emails which have been disclosed between Mr Q and P

and Ms Nash for example were written by Ms P : she told me she wrote what her brother wanted her to write but in my judgment it is much more likely that Ms P devised each email albeit the siblings would have discussed them. Mr Q appears to be passive by nature whereas Ms P comes over as much more confident and in command.

174. Ms P was not honest about her marital status. When she was being assessed in B's proceedings in September 2022 she told the social worker who was conducting the viability assessment about being engaged and played down the importance of the relationship. It emerged during the full SGO assessment in January 2023 that Ms P had married the man in August 2022. I do not accept that Ms P did not regard this as a real marriage because there had not yet been a traditional marriage between the two. Ms P knew that her husband would not wish to participate in any assessment and therefore chose to obfuscate.

175. The legalities of the tenancy of the flat where Mr Q , Ms P and B live remains unclear as the documentation, as in A's first set of proceedings, does not make sense.

176. Ms P said that she was committed to A maintaining the relationship with Mr and Ms X if A moved to live with Mr Q and herself.

I am not confident that that would happen. I do not find Ms P a person whose word I can rely on. I think her true feelings were contained in her first statement and she is not well disposed towards Mr and Ms X and will not be committed to maintaining the relationship between them and A .

177. I have no difficulty dismissing the somewhat bizarre allegations Ms P makes against the Children's Guardian which make no sense to me as I have confidence in the professionalism of Ms Bryant who has clearly dedicated a great deal of time and attention to this case, and behaved properly throughout.

178. I also consider that Ms P's ability to help Mr Q with caring for two children will be limited as she will have to work full time and is not entitled to benefits. At present the evidence that Mr Q can manage two children is very limited.

## **The evidence of Mr X**

179. Mr X has also provided a statement: he sets out his background and about their family life. He describes A's relationship with the wider family. He sets out their concerns that B may have additional needs and describes the behaviour they have noticed. This appears now to be being acknowledged by the LA.

180. He sets out their commitment to ongoing meaningful contact with Mr Q and B, how they are guided by Dr Willemsen's report but hope that contact will develop over time. He does not agree that if A moves to Mr Q that their contact should be in Mr Q's discretion and he does not think it will take place. He emphasises how much he thinks it is in A's interests for the adoption order to be granted. He exhibits delightful photographs of A engaged in many activities and with different people who are important to her.

## **The oral evidence of Mr X**

181. Mr X described A to me, from her intelligence to her humour to her compassion. He told me of her love of aeroplanes and how they had taken her to the airport to watch

them. He set out how there were photographs of Mr Q, Ms R and of B throughout the home. He told me that A has two families; he thought after the court case ended there would need to be support for contact a first but that it could be made to work. He was critical of the transition plans of the LA which barely mentioned him. However whatever the plan was they would do their best to make it work for A which included allowing Mr Q into their home.

182. He described the start of contact at Mr Q's home on 3<sup>rd</sup> and 10<sup>th</sup> June 2024: on both occasions when they drew up in the car Stephanie the supervisor was outside on the street; on 10<sup>th</sup> he saw the Children's Guardian walking up to Stephanie. On both occasions Mr Q came down after they had parked.

183. Mr X is in agreement to mediation and told me that handovers had not improved; he said he uses the handover to convey information but there is no sign of the information being received; there is nodding of heads but no eye contact. When A is returned, no information is proffered. Mr and Ms X are suggesting that when Mr Q's contact moves to overnight that it is from Saturday to Sunday as he did not think that it would work on Friday nights as the distances between the homes are too great though he could see the

benefit to A of Mr Q occasionally picking her up from school. He explained that Mr Q does not drive and Friday night public transport would take a long time and be packed. If A moved to Mr Q he could see Dr Willemsen's point about overnight contact not starting immediately. He reiterated that he thought moving A to live with Mr Q would be too traumatic for her.

184. He explained that it was upon the making of the Placement Order that the social worker told Mr and Ms X that they could start to integrate her into their family, and they were aware that whilst she remained fostered, she could still be removed, as Ms X was an experienced foster carer. He explained that they had not wanted to meet with Kirsty Dunne as they only had a little information about what that work was, but it appeared to be to prepare A and Mr Q for a transition into Mr Q's care and they had not wanted to contribute towards a transition before the court had made such a decision; he feared that work would have to be done with A to undo that work, if the decision was that A should not move to Mr Q.

185. He was asked many questions about the relationship with the Meliot Centre which I will address later. He told me about A's closeness to Ms X's mother, and that she also has

an endearing relationship with his mother; that A loves the two adult former foster children, in particular the older young man whom she talks about all the time. He feared that if A moved she would not understand where these people have gone.

### **The evidence of Ms X**

186. MsX describes A (whom she calls A) and her abilities, interests, relationships, including with two former foster children of Ms X whom A regards as her siblings. She gives me a very good picture of a delightful child, confident and happy in her home, nursery and out and about. She expresses worry at what she has read about how differently A presents when with her father even though A has been having three times a week contact with Mr Q since December 2023 (2 x a week from June 2023), including in Mr Q's home. Ms X sets out her experience, as a foster carer and otherwise working with children. She tells me how she has helped move babies to their birth families or to permanence outside the family, and that adoption has been considered previously. They cared for B from 3 weeks of age to 4 ½ months and have kept B in A's mind since he moved to his father's care. When A was placed, and I do not think this is



in dispute, this was on the basis that the plan was that they would adopt her. The minutes of the LAC reviews support this. Indeed the report of the chair of the review for the April 2024 meeting refers to A having been placed with a foster to adopt plan by the Local Authority and that both Mr and Ms X have been through the adoption assessment and are now approved. In September 2021 they were told that the care plan was very likely to be adoption and were asked to make an expression of interest. They were also told in the same meeting that Ms R was pregnant and that the baby's care plan would also be adoption. In Nov 21 they registered their interest in adopting A and her unborn sibling. Their approach thereafter changed as they then started to think of A as their daughter, and this increased after the Care Order and Placement Order were made in April 2022.

187. As Ms X points out, they were referred to as prospective adopters and treated as such by the Local Authority. I think this is significant evidence because although Mr and Ms X were never matched with A, in all other ways they were treated as A's adopters and their care of A was necessarily informed by this, and I am sure that A's sense was that they were her parents.

They did not understand that the position was any different until considerably later; in October 2022 the social worker told them that Mr Q had separated from Ms R and was being assessed to care for B and soon after B moved to be assessed in a residential unit with Mr Q . However the social worker told them that there was no change in the plans for A .

188. Mr and Ms X only discovered by accident in March 2023 that Mr Q was being assessed to care for A. In April 2023 they learned that Mr Q had been positively assessed to care for A but in May 2023 Mr and Ms X were approved as adopters; Ms X understood this meant for A but matching in fact has not taken place. Ms X says that the transition of A into Mr Q's care was planned to start in early July 2023 but in fact did not. They were told that there would be no ongoing contact between A and themselves after the transition. They were not aware of any support for Mr Q during or after the transition.

189. Ms X sets out how difficult the relationship with Mr Q and his sister has been and how that has not been of their choosing and gives strong examples of this. She considers that the Local Authority have not assisted by their approach. The fact that Mr Q has, unnecessarily it appears, recently

started to raise concerns about injuries to A has made things worse and she particularly deprecates how at each contact Mr Q inspects A and makes notes in the contact book in front of A. However, Ms X believes firmly that she will make the relationship work, regardless of the outcome, for A's sake. Ms X says: "We are concerned the local authority's plan for A does not consider her as an individual, but as a biological daughter to Mr Q and a sibling to B. It does not take account of her life with us from birth and her lived reality and experiences as our daughter. We are very concerned that if she was placed with her father, then her relationship with us, .....our whole extended family will be erased over time."

190. She raises concerns about Mr Q being to a great extent untested and the risks this will expose A to. Having read and considered Dr W's report, She believes it is best for A to remain living with Mr and Ms X and to have weekend staying contact with her father. She points out that the LA plan does not say whether psychotherapeutic help for A has been booked and they note that the LA do not plan for such work to start until A is settled with her father which worries her as to the impact on A in the meantime. They are willing to sit down to agree with the birth family how things

will work going forward and are committed to maintaining A's cultural identity and her relationship with her birth family.

191. She proposes weekend contact from Saturday to Sunday (she suggests that geography would make a Friday afternoon start too difficult), and also proposes regular one to one meetings between A and Mr Q . it is clear from what she says that she understands the importance generally, and for A in particular of maintaining the relationship with the birth family.

192. Ms X sets out her commitment to make it work if the court decides to place A with Mr Q ; she thinks more work needs to be done on the transition plan however and wants there to be a plan for mediation and for therapy for A in place first. She thinks the contact for Mr and Ms X should be the same as her proposal for Mr Q if A was to live with them.

### **The oral evidence of Ms X**

193. I am mainly going to set out those matters which Mr X has not dealt with. Ms X told me that no social worker from LB Lewisham had discussed the practicalities of the birth

family having contact if A is adopted by Mr and Ms X. The previous social worker, Mr K had not visited A since about October 2022 (his statement is dated August 2023). She would want there to be support after the adoption order to include mediation with Mr Q so that there can be conversations between the adults for A's benefit. She also wants some form of supervision for the period immediately after the decision because emotions will be very high on both sides and there will be a need for a professional to support the handovers.

Ms X said that she and her partner had completed a 2 day course on early permanence and adoption. She explained that the contact book was something she introduced and was not a requirement of LB Lewisham.

194. A's cultural background in Ms X's view is vital for her and she explained how she has worked to provide this, and A is learning about her father's culture as well as Ms R's as Ms R is half [redacted].

Her descriptions of the start of contact on 3<sup>rd</sup> and 10<sup>th</sup> June were the same as Mr X's. In answer to questions from the Local Authority, Ms X said she would work with a decision to move A to Mr Q and she reiterated that it is not her plan to cut Mr Q out of A's life. She pointed out that the Local

Authority's original plan to move A to Mr Q in the summer of 2023 without any preparation of Mr Q or A or any proper planning would, in her view, have been likely to have failed. She accepted that some work was now underway but she was worried that A would experience trauma; she was worried that Mr Q would not be able to supervise her properly whilst caring for 2 children based on what she now knew about him leaving B unsupervised. She said that A knows who her birth family is but regards Mr and Ms X's family as her family.

195. She had considered the two transition plans and noted that the model the Local Authority were proposing was usually used when moving a child from a foster home to an adoptive home: she said that the nuances in this situation were different as A had been told that she was in her adoptive home.

If A is to move she thinks a longer more child centred transition plan should be devised; she was prepared to have Mr Q in her home. She would engage in the work with Kirsty Dunne as she said she would do whatever is necessary for A's benefit. She pointed out, which greatly surprised me, that nobody from LB Lewisham had discussed the transition plan with Mr and Ms X since the original one was

discussed in June 2023. They had asked at that time to meet with Mr Q so that he had a better understanding of A but this was never organised by LB Lewisham. Ms X considers that the Meliot Centre have been very biased, which is the view of the Children's Guardian.

196. Handovers have improved as Mr Q now acknowledges Mr and Ms X but they are still not beneficial for A as there is no conversation. Contact is a good experience for A and she is rarely upset and rarely says she does not want to go. If A lives with Mr and Ms X she could see no reason why, with the help of mediation, contact would not move relatively smoothly to overnights. Ms X explained that in the early contact books she provided information for Mr Q to use about what A was interested in at the time, for example. However she stopped doing this as the information was not welcomed by Mr Q. This was challenged by Ms Baruah for Mr Q as the later books which counsel have seen do not contain this information but I accept Ms X's evidence both because she is a witness of truth but also because it accords with her approach to caring for A.

197. Ms X explained that she has parented A on the basis that she will be adopted and explained that it is a very different approach to parenting a child who is fostered.

She said that her two adult former foster children see her as their mother, but that is their choice. A has been told her life story which includes that she will be adopted by Mr and Ms X : A sees Ms X as her mother. If she needs comfort, she runs to Ms X and, I quote: “ for her to understand that someone else will provide that comfort, she will crumble. You are asking her to understand that I have lied to her for the last 3 years as I have told her that I am there forever. She has only had honesty from us.”

198. The implications of A learning that adults have lied to her worry Ms X a great deal and she feared that the negative effects which Dr Willemsen said might happen would happen.

199. I found the evidence of both Mr and Ms X to be very impressive. It was thoughtful, balanced and with A very clearly at the centre of all their thinking and decisions.

### **The evidence of the Children's Guardian Ms P Bryant**

200. The Children's Guardian's initial analysis is dated 18.12.2023: She reminds me that she has been involved since she was appointed A's Children's Guardian on 5.7.2021



in the care proceedings. She sets out the background which had lead to the two competing plans for A .

201. She set out that the concerns which arise from the Local Authority's application to revoke the Placement Order are: "the emotional harm which A could experience arising from separation, attachment disruption from parental figures and the parenting capacity of Mr Q . A's age and experiences to date mean that any decision made during these proceedings could be detrimental to her short to long term welfare and will need to be very carefully considered. Whilst A has had regular contact with Mr Q, and there is a bond, her primary attachments are with Ms X and her partner Mr X. Any change to A's care arrangements needs to be expertly assessed to avoid the possibility of her experiencing immediate and longer-term emotional harm prior to any determination of her long-term care arrangements by the court. "

202. She visited Mr Q in the flat he has occupied since the latter part of A's proceedings – he told the Children's Guardian it was his sister's but the situation was unclear to the Children's Guardian. He explained to the Children's Guardian his love for A and strong wish to care for her, and

how he had separated from Ms R so that he did not lose B . He told the Children's Guardian that he did not think it would be difficult for A to move to his care. His view was “ she would be upset initially but as she knows him and they have a close relationship, A would settle in his care easily.” He described a close and caring relationship with B which he thought would help.”

203. The view of the Children's Guardian was that Mr Q is committed to caring for both of his children, and can provide basic care. However she said this:

“ I have some reservations that he is able to see A as an individual and not an extension of him as his birth child, which he considers would facilitate a relatively easy transition into his care.”

204. She recommended an expert assessment so that there was careful consideration of whether A could be moved without being emotionally harmed with possible long term consequences. She had observed positive contact but observed A to be quite reserved. She was aware that each of A and B were used to being the only child in their

respective homes so was not overly concerned at the rivalry between them for attention.

205. She was concerned that the records kept by the contact supervisors were biased in favour of Mr Q, and that the contact supervisor was negative in what she said about Ms X, in both of the contacts which the Children's Guardian observed in late 2023. The Children's Guardian was concerned that this contact supervisor's notes may have had too much of an impact on Mr Q's parenting assessment.

206. She was also concerned that the parenting assessment of Ms T was very much reliant on self reporting and that it does not sufficiently inform of Mr Q's capacity to parent both A and B especially when A may experience separation anxiety and emotional difficulties resulting from the move, and a possible impact on B of A's arrival.

207. The Children's Guardian met and observed A in Mr and Ms X's home and discussed her progress with Ms X; there is no doubt that A is doing exceptionally well in all areas of her development. The Children's Guardian recommends in this analysis that there is a psychological assessment of A to assist in understanding her attachments and her needs, and to

consider the risk of harm. She recommended a change of contact centre and did not support any contact moving into Mr Q's home at this time because there was a risk of A being confused.

208. The Children's Guardian's **final report** came in on the eve of the final hearing. As I read on the first morning of the first day, the parties had that time to consider this important document.

209. The Children's Guardian set out that A prefers to be called A which is a diminutive of her middle name. She sets out that the Local Authority has been satisfied that A is receiving an excellent standard of care from Mr and Ms X. In the Children's Guardian's view, the only risk she can see to A if A remains with Mr and Ms X is the possible emotional impact of having been adopted when she becomes older. She thinks that this risk would be reduced as Mr and Ms X are fully supportive of regular ongoing contact with the birth family.

210. She set out the test which in her view the court has to consider: are the risks to A of moving her from the care of

Mr and Ms X manageable in terms of emotional harm and trauma; and if so, does A's welfare throughout her lifetime demand that such a step is taken?

In the Children's Guardian's view, the risks for A if she is moved to the care of her father would largely become unknown whereas her current placement caters for all her needs including birth family contact.

She identifies the obvious risk of emotional impact and trauma on A "of leaving a safe home with adults that she has secured a positive attachment with and moving to a home where at present the attachment is described as anxious."

She points out that A would also lose the extended and wider family and friends with whom she has relationships.

211. She opines that Mr Q does not consider that there will be any difficulties with A moving to his care and that she will settle after a period of upset. Ms Bryant points out that his view has not shifted since she first discussed it with him in November 2023 despite him currently engaging in therapeutic work. He also thinks that being placed with B will support A in this move and the Children's Guardian remains concerned that: "Mr Q has not been able to think beyond this position thus in my opinion not having regard for A as an individual separate from him as her birth father.

She has her own lived experiences and strong attachments to Mr and Ms X which are being minimised in terms of the impact of her on those connections being disrupted. Further it is my view that Mr Q maintains a very simplistic view regarding the potential loss A no doubt will feel and experience losing her close and secure relationship with Mr and Ms X. I remain worried that the contact being proposed if placement with Mr Q is approved, again minimises the relationship A has with Mr and Ms X and given the difficulties which have arisen within proceedings I am not convinced contact would be promoted.”

212. Ms Bryant considers Mr Q’s parenting capacity: she considers the report of Ms T and reports that some of the information within the report about Mr Q remains confusing. She refers to an occasion which Ms T reports on when Mr Q was able to comfort A when A had wet herself; However, the Children's Guardian observed contact the week before the final hearing, and when A wet herself, she was so distressed and asking for Ms X that Mr Q was not able to soothe her though he tried to do so.

213. She has observed Mr Q struggling in contact to manage the competing needs of the two children when Ms P has not been present. She noted that Mr Q left B alone in the flat when he came down to collect A and the Children's Guardian – a period of some 10 minutes, and this was last week.

214. The Children's Guardian points to the positives in Mr Q's contact, his affection towards A which demonstrates his love for her, and he is engaging. However the Children's Guardian has significant concerns; she refers to Mr Q's lack of insight regarding A's potential loss of what she considers to be her family, alongside her understanding of where she fits in within the Mr and Ms X family and her lived experiences to date. A may be predisposed to mental ill health because of her mother's mental ill health and the Children's Guardian worries that her experiencing significant emotional distress has the potential to have long term implications for her mental wellbeing and her emotional health. The Children's Guardian fears that :  
“a move from her carers to whom she is attached, comfortable and confident in their care could also result in A shutting down emotionally, given she is at a crucial stage in her development.”

215. She sets out some of the difficulties she experienced in working with Mr Q which raises similar concerns to those which I identified in my first judgment. She found Mr Q and Ms P defensive when she tried to explore what Mr Q had learned from Dr Willemsen's report, and when she tried to explore with them any issues which may be developing with B as she had noted some aspects of his behaviour which she thought might be significant.

She noted that Mr Q had in his statement that he would support contact between A and Mr and Ms X as recommended by LB Lewisham if A was placed with him, but she did not think Mr Q understood the importance of those relationships for A. The Children's Guardian thought the Local Authority's recommendation of such contact being in Mr Q's discretion as wholly inadequate and therefore worried that Mr Q appeared to agree with this.

216. In fact she doubts that Mr Q would support ongoing contact given his apparent negative feelings towards Mr and Ms X which were made the day after Dr Willemsen's report was filed, and also contained, surprisingly, in Ms P's statement.



217. The Children's Guardian deals with Ms P's ill judged statement and dismisses the various criticisms made by Ms P of the Children's Guardian. I have no doubt that the Children's Guardian's account is the correct one and Ms P has misrepresented what has happened and what has been said. The Children's Guardian is an experienced professional whose sole concern in these proceedings is A's welfare. Ms P's allegations are not credible.

218. The difficulty is however, as the Children's Guardian points out, it raises worries as to how the family would act if challenged by other professionals when openness has been a historical issue.

219. In contrast the Children's Guardian has found working with Mr and Ms X to be straightforward and focussed on A's welfare. She notes that Mr and Ms X are in favour of mediation with Mr Q as they want the relationships to be improved for A's sake, regardless of the outcome.

220. The Children's Guardian accepts that Mr and Ms X have been careful to raise A with an understanding of who

everyone in her life is and she has seen photos of B and A[‘s birth parents prominent in their home. They spoke positively of A’s contact with her father which usually goes well and they very much see contact as part of A’s life going forward, including monthly staying contact, and a separate individual time between Mr Q and A .

221. The Children’s Guardian says: “ In my opinion Mr and Ms X’s proposals for contact keeps A as their central focus, acknowledges the birth family connections, and will undoubtedly support A to continue to develop her relationship with her birth family so that she has an understanding of her birth family history which will help to boost her positive identity and self-esteem. “

The Children's Guardian’s view is that the local authority staff both the previous social worker Mr K and the contact centre staff have exacerbated rather than reduced the difficulties between the families.”

222. The Children's Guardian thought that Mr and Ms X had understood Dr Willemsen’s report and shared the worries that Dr Willemsen had set out about the impact on A of the proposed move. The Children's Guardian is confident if A

stays with Mr and Ms X , that Mr and Ms X will promote her identity as a child with two families. She describes the positive relationships A has with Mr and Ms X's family and friends which would be lost if A moved. She has observed A in the presence of Mr and Ms X to be actively engaged in conversations and activities, as a happy, confident, intelligent, social little girl who is curious and playful. When observed in contact she saw a more reserved and cautious child who was wary of Ms P 's presence.

Unfortunately the confusion which the Children's Guardian feared may happen if some contact moved to Mr Q's home appears to have happened. Mr and Ms X reported that her sleep became more disturbed from that point in December 2023.

223. It is her view that A, if she understood these proceedings, would want to live with Mr and Ms X but maintain contact with her birth parents. She notes that Mr Q is a practising Christian whereas A is not being raised in a religious way by Mr and Ms X ; Mr and Ms X are not of the same cultural heritage as A's parents, but A is being

introduced to aspects of her heritage by all the adults involved in her life.

The Children's Guardian identifies that A has not to date experienced harm but is at risk of emotional harm if the LA plan is put into place as a result of a change of carer and because “Mr Q may not be able to meet A’s emotional needs, arising from his own repressed emotional needs”.

224. The Children's Guardian considers the possible impact on A of a change in her circumstances:

She says that if A is moved to Mr Q’s care “she would experience a significant change and loss and need to be supported through this with emotionally attuned care that I do not consider Mr Q is able to provide, despite his wish to do so.” In contrast if A remained with Mr and Ms X there would be a loss of the legal link with her birth family but it would be an open adoption and A would maintain her knowledge of an an active connection with her birth family.

225. Ms Bryant spoke with A’s key worker at her nursery which she has attended for 2 mornings a week since February 2024. She learned that A chats about Mr and Ms X and was described as “an amazing, clever and happy little girl.”

The Children's Guardian concludes in this section of her report that like all children, “ A requires safe, consistent and attuned care from carers able to meet her needs both in the immediate and longer term, while also supporting her in achieving her full life potential.”

226. The Children's Guardian goes through the welfare checklists in s1 of the ACA 2002 which she has not already addressed:

She recognises that A is likely to experience confusion if she ceases to be a member of the Q and P family and becomes a part of the X family but she thinks on balance this can be alleviated by direct contact and an agreed narrative on A’s life story.

227. She considers A’s relationships and concludes that A’s welfare needs are best met with an adoption order for Mr and Ms X which will be most likely to enable A to maintain all the relationships which are important to her. She thinks both Mr and Ms X and Mr Q could meet A’s needs but her overall welfare needs would be best met by placement with Mr and Ms X as she does not think that Mr Q would be able to meet the needs of both A and B consistently.

She has considered whether an SGO would be preferable for Mr and Ms X but she has discounted this option as not being sufficiently secure and not giving recognition to A's placement with Mr and Ms X which she thinks A needs; she does not think the sharing of PR would work in this case.

228. Finally Ms Bryant carefully balances the two options for A against the backdrop of the two welfare checklists, in the Children Act and in the Adoption and Children Act. I will not repeat all she says but it is a carefully thought out analysis.

The central point is that Ms Bryant “does not think that a placement in Mr Q's care meets A's holistic/emotional needs to a good enough standard now and in the future....I am not confident he can meet A's short to long term emotional needs and in this context nothing else but adoption will do for A “ She believes that Mr and Ms X will promote contact with Mr Q and also with Ms R, and that the risk of A being confused in the future and possibly harmed by knowing that she could have been raised within her birth family could be mitigated by ongoing birth family contact together with careful life story work and an agreed narrative.

The Children's Guardian believes that the alternative plan – to move A to Mr and Ms X –“ presents too many unknown risks for her, would disrupt her current routines drastically and would cause her harm.”

229. If A is to move to Mr Q she recommends an order for monthly staying contact with Mr Q and a longer transition plan. Her final recommendation is however for an adoption order for Mr and Ms X with the consent of Mr Q and Ms R to the making of that adoption order being dispensed with; she recommends a contact order be made in favour of the birth family.

#### **The Children's Guardian's oral evidence**

230. Ms Bryant told me about what was – I find – Mr Q's misunderstanding about the date when she was planning to meet with him and then observe his contact. She was, I have no doubt being truthful about this and it is a concern to me that Mr Q thought it was the right thing to do to try to undermine the Children's Guardian's evidence by suggesting that she had set up a meeting and did not turn up. The Children's Guardian was on holiday when Mr Q says he was expecting her: Mr Q, or maybe his solicitor, has wasted

everyone's time by making out this was anything other than a mistake by Mr Q.

The CG dealt with the incident on 10<sup>th</sup> June 2024, set out in her report, when she found that Mr Q had left B alone in his flat for several minutes and I accept her evidence. Mr Q has not denied it, he has just suggested the time was much less than the Children's Guardian says, and he has justified his actions by saying he uses digital devices. I prefer the evidence of the Children's Guardian on this point – she has no reason to lie and Mr Q lied to me about this very thing as he said that it had only happened that one time but then had to accept it had happened the week before.

It is likely in my view that Mr Q has done this before and it is also likely that he will do it again as he did not accept at any point that this was unwise. He does not seem to have thought through how it would be for B to wake up and find himself on his own, or what would happen if a fire broke out when Mr Q was outside the building, or if Mr Q was unable to get back into the flat for any reason.



231. The Children's Guardian told me she was clear as to what was the right option for A . She was sure that A should be adopted by Mr and Ms X. She said:  
“If she moves there will be emotional harm, she will suffer significant loss, confusion, feelings of abandonment. She will struggle to comprehend that her whole world for the last 3 years is not as it has been.

Given the child I have got to know, she would be really confused as to where Mr and Ms X are, why she has lost her friendships, nursery friends, her extended family in her view.”

232. Ms Bryant expanded on why she thought Mr Q had not moved on since she discussed matters with him on 17.11.2023; on that occasion he had said that A would be upset for a little while and then be ok and that remained his narrative on 12.6.2024 when she had a facetime meeting with him. She had been very concerned that he had been unable to console A on 11<sup>th</sup> June 2024 when she was very very distressed and was crying for about 20 minutes, calling for her mama. This was one of the occasions when Ms Bryant was taken aback by the contact supervisor’s note which does not evidence what happened at contact: B had been swinging round a bag and throwing balls around the room

and was also upset; Mr Q did not notice that A had wet herself and was then inconsolable for 20 minutes at which point the Children's Guardian had to leave. She had specifically asked the supervisor to note down that Mr Q could not comfort A but she did not.

233. Mr Q does not disagree about this contact. I have seen the note which does not describe what happened. I have been given no reason why the supervisor has chosen to distort what happened.

234. The Children's Guardian knew that if A was placed with Mr Q she would have the benefit of being with her biological father and the opportunity of growing up with her brother but her concern was that Mr Q lacks insight into A's needs, and she worries about the impact on A now and in the long term; she has also not seen a relationship between the siblings. She has observed B being aggressive to A and that they do not look at each other and do not play together. She considers that when Ms P is not present, Mr Q struggles to manage both children's needs.

235. Ms P's odd allegation that the Children's Guardian had greeted her and Mr Q by saying "you look horrible" was put to the Children's Guardian who said it had not happened and she wonders why it had not been raised at any time in the

previous 7 months. She also completely disagreed with Ms P's account of the contact in the park which Ms Bryant had observed. She also confirmed that she did not say to Ms P and Mr Q in November 2023 that she wanted A to stay with Mr and Ms X - she was not in a position to say such a thing as she had not carried out her assessment at that stage.

236. I accept Ms Bryant's evidence – she is an experienced professional with no reason to lie. Ms P however, seems to be under the misapprehension that smearing the Children's Guardian will help her brother's case. It does not.

237. Ms Bryant considered that the risks of A, if she stays with Mr and Ms X, asking one day why she did not grow up in her birth family will be greatly reduced by it being an open adoption, and because Mr and Ms X is raising A to understand that she has two families. She did not agree with Dr Willemsen that A may question her place in the world if not placed with her father who was raising her brother and thought that with ongoing contact A would know her place in the world. She thought that there may be a risk of difficulties in adolescence as set out by Dr Willemsen but equally, the breaking of A's attachment to Mr and Ms X now might affect her ability to form and maintain

attachments in the long term. She had great confidence in Mr and Ms X 's emotional attunement to A.

238. Ms Bryant did not think she had underestimated the importance of biological roots, which Dr Willemsen set great store by, and pointed out that A would also not be growing up with her mother; she had confidence in the ability of Mr and Ms X to deal with all the issues that might arise from A not being raised by her birth parents. She said that Dr Willemsen had accepted that he was not a parenting expert which was her area of expertise: she said: "I feel very strongly about her future and her ability to form relationships and to be able to be emotionally contained and able to express her emotions," and that she was concerned about Mr Q's abilities in relation to this.

239. She was confident that A would be exposed to aspects of her heritage if living with Mr and Ms X and thought that A would not lose out if she was brought up as a British child with different experiences of her heritage both when with Mr and Ms X and with Mr Q .

240. Ms Bryant accepted that Mr Q had done well with B but thought that the two situations were very different. She

did not think that at present A had much of a relationship with Ms P. She acknowledged that when Mr Q gave evidence he was able to articulate a deeper understanding of what A would experience if she moved to his care but found it surprising that he had apparently made so much progress within a week when he had not moved in 7 months. She accepted that Mr Q loved A very much but questioned whether A could attach to him if her attachments are disrupted.

When asked by Ms Baruah for Mr Q , Ms Bryant agreed that she had made her decision about her recommendation when she saw Mr Q and his family including A in the week before the Final Hearing. She said she had been concerned about the quality of the contact notes and biased reporting throughout the proceedings and this had been raised at court in December 2023 but LB Lewisham had not taken any action despite what was contained in the preamble to the court order.

241. She was asked about the lack of balance in her report as she had said little in her report about the benefits to A of moving to Mr Q , and she said that she had considered both options carefully but said: “I don’t think there are any benefits to moving to live with Mr Q other than the biological link and being raised with her sibling.”

242. She thought the LA had failed both families by not arranging for photographs to be provided to Mr Q and by not supporting the relationship between the families and trying to improve the communications between the adults. It was not for Mr and Ms X to provide photographs or to sort out the relationship. She thought the Meliot Centre staff had behaved terribly to Mr and Ms X and to herself, leaving A in the middle.

243. In answer to questions from Mr Wilson for Mr and Ms X Ms Bryant said that a carefully produced life story book and an agreed narrative will help with any issues arising out of A being adopted. When she is a bit older, in Ms Bryant's view, there can be a conversation with A as to why she is not living with Mr Q but at this time, living with Mr and Ms X and having an open adoption with regular contact with Mr Q is the best plan for her and will meet her emotional needs. She had absolute confidence in Mr and Ms X 's ability to fulfil this plan.

244. She wanted mediation to take place but ideally not involving the LA, and she wanted assistance with contact at the start, but not involving Meliot Centre staff. Contact needed to be built up and could not move to overnights

immediately. A had had disrupted sleep and her toileting went backwards when contact moved to 3 times a week with one contact at Mr Q's home. This all should have been in an adoption support plan but could still be produced. A's possible genetic susceptibility to mental ill health was a concern which had not been addressed sufficiently and in the Children's Guardian's view, the inevitable trauma which would result if A moved to Mr Q was not in her interests.

245. The Children's Guardian did not have confidence in Mr Q's ability to recognise and deal with A's trauma. The LA were now suggesting that the transition to Mr Q's care should not start until Kirsty Dunne had made more progress with Mr Q and until there had been mediation and she was worried that so much remained unknown and unpredictable if the decision was for A to move. She thought that Mr Q would ideally like to wipe Mr and Ms X out of A's history, and he does not like them so she had reservations as to whether Mr Q would provide contact if A lived with him; she had more confidence in Mr and Ms X providing contact for Mr Q. The probability of harm is much higher in the short and medium term if A moved to Mr Q and there were more mitigating factors to protect A from any risk arising if she remained with Mr and Ms X.

246. I accept the evidence of the Children's Guardian who has applied her great experience and training to this case with dedication. She, alone amongst the social work professionals, has considered the case carefully and has carried out her function which is to look at the options from A's point of view and to tell me what she considers will best meet A's holistic needs throughout her life.

#### CLOSING SUBMISSIONS

247. I am not going to go through the closing submissions because this judgment is already very long but I listened carefully to them, and read the ones I received in writing. I also went through the bundle of authorities provided to me for which I am grateful. However I will go through a few matters which came out of the submissions which I think need to be recorded and some commented upon.

248. The LA accepted that they had had to accept many criticisms in this case. Their final position was that A should move to Mr Q's care but that the transition could not start yet and they did not know when it could start; first there needed to be mediation, there needed to be further



work done with Mr Q by Ms Dunne; the work which A needed to do I think they plan to start after the move. The various pieces of work which Ms T had recommended for Mr Q to do could be done. There would be a professionals meeting.

249. The LA's position on contact to Mr and Ms X if A moves was still that it should be 3 times a year, despite what Dr Willemsen had said on this. The LA were unable to tell me what order I should make as they had not thought about s20 or discussed this with Mr Q, even though they were now saying that A should not move for an indefinite period of time. When I asked they suggested that Ms R's contact with A would be monthly which appears to be what she is offered for B - which is not the plan I approved in those proceedings.

250. I was told that Ms R has not attended since March and LB Lewisham had no plan, for example, to ensure that Ms R confirmed her attendance before the children were brought to contact.

251. If my decision was that A should be adopted, the LA were unable to tell me what their recommendation for Ms R's contact should be, for example, how often it should be, where it should be, who would supervise it; they made no

suggestions as to what contact should take place between A and her father if A is adopted; they were unable to tell me who would supervise the early stages of Mr Q's contact with A or how Mr Q's travel expenses would be paid, or where such contact would take place. There had been no discussions with Mr and Ms X and no discussions with Z and no adoption support plan thought about: the different responsibilities of Z Council and LB Lewisham had not been discussed. The Z Council social worker had not sat through the hearing and was therefore not aware of the issues. It became clear to me that there would be a dispute between the Local Authorities as to who would do what if I made an adoption order. Again, the lack of planning and thinking ahead is breath taking.

252. Mr Wilson and Mr Church agreed with me that a Family Assistance Order may assist if A is adopted. If A is to move to Mr Q, LB Lewisham are proposing that there be a CIN plan for 9 months.

## **MY ANALYSIS**

253. I began this judgment by saying what a difficult case this is. It is so because at the centre is a much loved little girl whom two very different families very much want to care

for her and both of whom strongly believe that their option is the right one for her. The circumstances are such that the court is being asked to conclude by each side that the other option is likely to cause A very serious damage, in circumstances whereby to date A has not been caused any harm at all.

254. It is difficult because it is impossible not to feel a great deal of sympathy with her father on the one hand, and Mr and Ms X on the other; her father because whilst A was rightly made the subject of a Care Order and a Placement Order he has worked hard to improve himself and make himself a viable option to care for his daughter and might not have expected to find himself now in this position, and because he loves A very much and wants to raise her; Mr and Ms X because the Local Authority lead them to believe that A was to be their daughter and did not keep them sufficiently informed until late in the day so that they continued to parent her as such and expect that outcome, and because they love A very much and want to raise her.

255. My task has been made more difficult by the following factors:

- The Local Authority's misunderstanding throughout these proceedings of the relevant law which pervades their evidence
- Their failure to consider A's needs in the round
- Their failure to be frank and fair with Mr and Ms X and with the court
- Their failure to obey court orders for disclosure
- The inadequacy of the witness statements filed on behalf of the father and his sister
- The failure of all the advocates, other than Mr Wilson, to provide me with their PD documents in a timely manner even after I emphasised at the PHR the week before how particularly important this would be in this case (though I recognise that Mr Church for the Children's Guardian could not produce one until the Children's Guardian's report was filed.)
- The decision of Z Council not to be represented in this case and their volte face two days before the hearing has been unhelpful; if they had been more engaged in the proceedings we may have had, for example, an assessment of the support Mr and Ms X might need if an adoption order is made.

256. Some of these difficulties have had an impact on the evidence but generally I have not allowed them to distract me from my central task which is to make the right decisions for A.

257. The Children's Guardian describes A as a very lucky little girl because she has two families who love her and could care for her. I agree with this description up to a point, but she is also unfortunate because circumstances have caused her to already show signs of confusion at the situation she is in, and, whatever I decide, her future wellbeing will be to a greater or lesser extent determined by how the adults in her life respond to the challenges presented by my decisions.

258. A 's personality and current life has been brought to life for me by the evidence of Mr and Ms X . She is a child with great potential for a happy and successful and fulfilled life. Unlike the vast majority of children who come before this court in public law proceedings, A has never experienced any harm, though she did experience being separated from her mother and father when she was 5 days old which Dr Willemsen factors into his assessment and had

a bad experience when very young when both parents behaved very poorly at contact, when Mr Q was holding her.

259. I accept the evidence that the two sets of adults parent in very different ways but also that generally A's needs can be met in the two homes; the central issue which has been identified and which I agree falls for me to consider is the potential of A's emotional wellbeing being damaged by removing her from Mr and Ms X and placing her with Mr Q and whether that risk can be managed and is a risk which should be taken or alternatively the potential of A's emotional wellbeing being damaged by being adopted and not brought up by her father and with her brother when she has a father who is able to care for her, and whether that is a risk that should be taken. I must take into account those factors which can mitigate the risks. Overall it is A's welfare throughout her life which is my paramount concern.

260. Turning therefore to the two plans and the risks to A : The LA are seeking to place A in the care of Mr Q who will be supported by his sister, and she will be with her brother. The evidence is that it is extremely likely that A will suffer great distress if she is moved and that this will amount to

trauma and that this will cause her emotional harm in the short and medium term. She would lose those people she regards as her parents, and also the regular interaction with people she regards as her close family; she would lose all aspects of her current routine, including the nursery she attends, the swimming pool she goes to, her home. The impact of having her attachments cut in this way may be life long. In the short term she would be likely to express her distress in various ways including challenging behaviour. The emotional harm may be exacerbated by feeling alone and in a void if her father is unable to cope with her trauma.

261. The Local Authority 's case is that Mr Q is in the very early stages of gaining insight into A's emotional needs; my impression of his evidence accords with that. I accept the Children's Guardian's evidence that she saw no progress in the father from November 2023 to mid June 2024 and I therefore am not convinced that the increased insight which some of the father's answers in the witness box seemed to suggest were genuine; Ms Nash admits to coaching the father and she specifically visited him on 12<sup>th</sup> June to go through some of the difficult aspects of the evidence. Even

if Mr Q has gained a bit more insight, there is much further to go.

262. Dr Willemsen thought that his great love for A would make the crucial difference and that there should be no delay in the transition taking place. That is not the Local Authority position and there is no clarity as to when the move should take place or what the practical or legal position should be in the meantime. The impact on A and on all the adults of such an outcome has not been considered by the Local Authority.

263. Work with the father may achieve the level of insight necessary but it is likely that if A moves in the next 3 months, Mr Q will still not be able to manage her distress sufficiently in my judgment. He told me that if he could not console A he would distract her by taking her to the park or would call Ms X for help. These ideas, though understandable perhaps, are not realistic and do not show that Mr Q at this stage will be able to deal with A's distress.

264. His great love for A will, there is no doubt, help her and will mean that he will go on trying to make things better for her. I do not think, for example, that there is a risk that



the placement with Mr Q will break down. That is both because of Mr Q's love for and commitment to A , but also because I think it extremely unlikely that Mr Q would let professionals know how badly things were going if that was the case, and he would never ask for A to go back to Mr and Ms X . However A is already at the age of 3 a child who is articulate and who will want and need to talk about her feelings. What is very clear from all the evidence and from all professionals' and Mr and Ms X observations of Mr Q is that he finds talking difficult: he is guarded, the professionals say and that is how he comes across in the witness box. He is also reserved. He is not a person who finds talking about emotional matters easy. Dr Willemsen thought Mr Q would engage but was unsure whether he would benefit from the work.

265. Dr Willemsen also said that Mr Q did not have to have get to the stage in terms of attunement and insight that we would all want him to and that A could be placed now. No other professional in the case agrees with him, and nor do I. One of the difficulties however is that the LA has given no thought whatsoever to what should happen before the

transition starts, and how it will be decided that Mr Q has reached a stage at which it is safe for A to start the transition.

266. The work with Ms Dunne, which in part is designed to change this, will continue after the move, and A will then start psychotherapy. The local authority suggests that a family support worker will also go in to assist though there is nothing in writing about that either.

267. I am very concerned that if A moves, she will be involved in the work with Ms Dunne, her own psychotherapy, work with the family support worker, visits from the social worker under a CIN plan. This work may go some way to mitigate the emotional harm; however, for a child who currently lives a life with minimal involvement from professionals to go to this amount of interference in her daily life brings its own difficulties and I do not think this is in her best interests.

268. A may be able to transfer her attachment to Mr Q but it is very hard to know if that will be successful. Dr Willemsen thought the fact that B had transferred his attachment to Mr Q was a good pointer of future success. B

was only 4months old at the time. If she cannot, there will be long term consequences for her ability to form relationships. I was struck by Ms X's evidence that she worries how A will feel if she decides that Mr and Ms X have been lying to her up to now because they told her that they will always be there for her. I think the risks to A of not trusting adults in future are high because A is a particularly bright child who is likely to have understood from Mr and Ms X exactly what they wanted her to understand from what they were telling her.

269. If A moves to her father's care, in time she will understand that she is living with her biological family. This will bring many benefits to her in terms of identity and having self confidence in who she is. She will be able to develop her relationship with her brother B and these are factors which could reduce the emotional harm caused to A in the long term. Mr Q will have the assistance of Ms P who appears to have some more insight than Mr Q does into how it will be for A. She will also at times be able to provide practical help and support and will concentrate on B when she is there so that Mr Q can concentrate on A. I think that Ms P's presence will make a positive contribution

when she is there because Mr Q will be able to spend more time with A without B to distract his attention; however in other ways I do not think Ms P can help; my impression was that Ms P was the dominant character of the two and her evidence was disingenuous and, I thought, hostile to Mr and Ms X as well as being dishonest in parts. I do not have confidence in her adhering to the advice Mr Q receives as it seems to me that she is likely to think she knows better. The presence of B may assist in the long term but in the short term I think it will add to the risks to A's emotional well being. She is used to being the only child in her home, as B is in his. Their relationship is, I find, not well developed and A's overtures to B are often rejected. They play in a parallel way rather than together. B is naturally jealous of having to share his father. I note that B sleeps in Ms P's room so it may well be that he will also not like to share Ms P's attention with A. The evidence is that Mr Q sometimes struggles to manage both children during contact, particularly when Ms P is not there and I therefore think it likely that he will struggle to manage both if he has two children to care for. He has never taken two children out on his own into the community. His reliance on electronic

monitoring shows that his knowledge of child safety needs addressing urgently.

270. I think it likely that in the short term A 's emotional and other needs are likely not to be addressed as Mr Q will have to attend to B whose physical demands on him are likely to take precedence because he is younger. For A the impact of not having her needs addressed and met at this crucial time may be long term in my judgment and negatively affect her developing personality and future relationships.

271. All the professionals have identified the importance to A of having a true narrative about her early life. If she moves to Mr Q she will need to understand why she was not with him from birth, as well as issues about her mother which may be less controversial. If she is given a distorted version, she will no doubt be confused, but there is a serious risk that she will develop a sense of injustice. I have to say that I have no confidence at all that Mr Q will give A a true account of her early years and the reasons why she lived with Mr and Ms X for 3 years. At no point since my original judgment has Mr Q been able to articulate to any professional or to the court the reasons why A was removed from her parents and why a Care Order and a Placement

Order were made. I do not think that is likely to change if A is returned to his care.

272. Mr Q's inability to engage in a pleasant way with Mr and Ms X, illustrated by the way he referred to them even in this hearing, and the way that he and Ms P tried to suggest that Mr and Ms X were causing her injuries by being careless or worse leads me to conclude that if A moved to Mr Q, neither Mr Q nor Ms P would be likely to speak positively about Mr and Ms X to A when professionals are not present. I do not think it likely that a positive picture of A's early years will be given to her. This risk is unlikely to be mitigated.

273. Tied to this risk is the risk that A will not be enabled to have ongoing contact or meaningful contact with Mr and Ms X if she moves to Mr Q. This contact I find would be very important for A because of the importance in her life to date of Mr and Ms X and their wider family. The shock of them disappearing from her life will be very damaging for A.

274. I could make a contact order to try to ensure that the contact takes place and I think it is likely that Mr and Ms X will take steps to enforce the order if necessary. The

mediation which is likely to take place I am told should assist in ensuring contact takes place, but it is likely to focus on the relationships and the transition plan. I recognise that in his evidence Mr Q said that he would offer whatever contact the court suggested; in his written evidence I think he said he would follow the Local Authority advice. The difficulty with that is, for reasons which escape me completely, the LA's final position is that such contact should take place only 3 times a year. There is no plan as to how or where that contact would take place. Dr Willemsen and the Children's Guardian think there should be staying contact and Dr Willemsen ranged from saying that should be monthly to saying it should be 6 times a year in the holidays. Even the Local Authority social worker agreed that it was more likely that Mr and Ms X would promote contact than Mr Q and I have already set out my doubts arising from Mr Q's attitude towards Mr and Ms X.

275. I think there is a reasonable risk that in practical terms contact will not happen or will be made very difficult as I am not convinced that Mr Q sees the benefit to A of it happening, and I think Ms P's hostility to Mr and Ms X will have an impact on his thinking. Although Mr and Ms X may attempt to enforce the contact, I anticipate difficulties

with that as the Local Authority will no doubt report, if asked, that contact should either cease or be no more than 3 times a year in accordance with their approach throughout this case. A will once again be in the midst of proceedings and will not understand the reasons for what is happening to her. I will have retired so will not be able to reserve future applications to myself.

I do not think that contact three times a year between A and Mr and Ms X will meet her needs. This risk remains therefore.

276. In summary therefore the risks of emotional harm to A are many and some are very likely to happen; the consequences for A would be serious and could be long term. The mitigating factors are unlikely to safeguard A.

277. The alternative plan for A is for her to stay where she is and be adopted by Mr and Ms X. I will now look at the risks arising from this course of action in the same way.

278. Dr Willemsen said that if A is adopted the risks to A are around identity but go wider: she may not only have issues about identity but existential feelings about her place in the



world. These feelings may come out in adolescence or start to trouble a child at an earlier stage. He said that such feelings can be quite difficult right into adulthood. Dr Willemsen said there may not be any issues but in adoptive placements children may go through a difficult time as they start to break from their parents and it would be important to have a clear narrative for A and to keep a close eye as to how it is playing out in her psychology.

279. I agree that this is a risk for A if she is adopted and I can see that it may be more of a risk for A than for other adopted children because she will also be aware that her father is caring for her younger brother. The mitigating factors are many however: A would be raised in a loving family where adoption and her birth family are spoken about easily and comfortably. The overwhelming evidence is that Mr and Ms X are very sensitive parents who are attuned to A's inner world. I have every confidence in Mr and Ms X providing meaningful contact with Mr Q, my only doubt being how this will be managed in the early days with neither local authority having formulated any plans. If A is spending time with Mr Q and B regularly, including staying over, she will, in my judgment, be much less likely than

other adopted children to get confused in years to come about her identity or her place in the world. As I also have every confidence in Mr and Ms X providing a true and age appropriate narrative to A about what has happened to her and why she is living with Mr and Ms X, I also do not think A is much more likely to face the issues which Dr Willemsen is concerned about than any other child. She is such a clever child who appears to be developing good emotional intelligence, she is likely to ask the questions which Dr Willemsen is worried about, but in my judgment she will get the answers she needs from Mr and Ms X , and will form her own view about the reasons for the court's decisions.

280. It is inevitable that A will need to understand about her birth parents and the decisions which have been made for her and I am confident that Mr and Ms X will be able to ensure that as she grows and her understanding develops, she will form an honest and sensitive view which will help her sense of identity. Mr and Ms X have the skills and the commitment to form an age appropriate narrative which will develop as does A .

281. Another risk which has been identified is that A's cultural needs will not be met. A has mixed British and African heritage, and the adopters are of a different heritage. She is a black child and all the adults involved are black with Ms R being mixed race. She will grow up to be a proud black woman in either home.

282. The risk here is that A has the opportunity of being raised by a parent who reflects one half of her heritage and that if she is adopted she will not be immersed in that culture which will be a loss to her and a possible risk to her emotional wellbeing. I have every confidence that Mr and Ms X will promote contact with Mr Q so that A will during contact be able to experience his [redacted] culture, but I recognise that that is not the same as being raised in a home where the [redacted] language is spoken and various customs are followed, for example.

283. On the other hand there is evidence that I accept that Mr and Ms X consider this to be important and are already taking steps to make sure that A experiences aspects of her heritage and I have confidence that they will continue to do so.

284. I do not consider this as a significant risk to A's emotional wellbeing or developing sense of self. I am sure that she will know exactly what her heritage is and take delight in it through the efforts of Mr and Ms X. I also struggle to see why this is considered a risk to A by the local authority if it would not have been a risk to A when they planned for Mr and Ms X to adopt her.
285. The two local authorities have quite clearly in my judgment followed an approach which is that birth family trumps any other option if the birth family can provide good enough care. The fact that that is not the law has not troubled them. Both authorities seem ill equipped to deal with a case where that basic tenet is challenged. I fail to see how a placement which is seen as providing for all of A's needs at a time when her father is judged as incapable of caring for her becomes a placement which will expose her to various risks because her father is now judged as able to provide good enough care.
286. There is a risk that contact between A and Mr Q will not happen if she is adopted but I do not think this is likely. If it happened it would be very harmful to A as she would not

be able to know her father and brother, to know that she is very loved by her father, and to experience his culture and get to know, albeit by video as they all live abroad save for Ms P, the wider birth family. She would be at risk, as are other adopted children, of having skewed ideas of her birth family which could be unsettling and affect her sense of identity and pride in herself.

287. I have, as I have said, every confidence in Mr and Ms X promoting contact with Mr Q and with B. They have ensured that A attends contact three times a week since December 2023 although the journey each way is 1 to 1 ½ hours. They have experience of working with birth families and most of all they are committed to doing the best for A and they are both convinced that that includes regular contact between A and her father and B. They have offered more contact than Dr Willemsen has suggested because they think it will benefit A to have individual time on her own with Mr Q. I do not have confidence in either local authority doing what will be necessary in the early stages of contact after this hearing when there will need to be assistance to supervise the contact until peoples' emotions are less high, and to assist Mr Q with the costs of travel to contact for example. I

believe the commitment on both sides for contact to happen however will mean that this difficult early period will be worked through, somehow, and that in time there will be a regular pattern of contact including staying contact.

288. Ms Baruah for the father suggested that there would be a risk to A if she remains with Mr and Ms X that she might seek out her extended family or they may seek her out, and that they may not follow the agreed narrative which would result in confusion. I find this submission incomprehensible. It is much more likely that A will have contact with her extended birth family if she is living with her father. The chances of her being confused by a false narrative by these relations is that much greater if she moves to her father. If Ms Baruah for F is right and the extended family are in contact with A as she gets older and do give her a false narrative, I am confident that Mr and Ms X will be able to talk this through with A and reinforce the narrative which they have given her.

289. With these findings in mind, I now turn to the welfare checklist as set out in s1 of the Adoption and Children Act

2002 whilst bearing in mind that my paramount consideration is A's welfare throughout her life.

290. Section 1 Adoption and Children Act 2002 checklist:

The court or adoption agency must have regard to the following matters (among others)—

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

I think that A's current wish would be to live with Mr and Ms X and to be adopted by them. She is a very happy little girl and would not wish to be taken from people she regards as her parents. She would want to remain involved with the wider family and friends and nursery friends. She would not want to suffer the trauma and distress which I find she is likely to suffer if she was moved to live with Mr Q.

At the same time, she would want always to be in touch with her birth family and to spend quality time with her father and brother. She will want to know her mother but would want to be protected from her changeable moods. She would want to understand her

history and to receive an honest account of it, and for the narrative to develop as she grows older.

(b)the child's particular needs,

A 's mental health needs to be protected as her mother's mental ill health may mean she is predisposed to becoming unwell. In my judgment to achieve this A needs not to experience the inevitable trauma of being moved to live with her father, where her emotional needs may not be met, and she needs to be nurtured carefully as she will be by Mr and Ms X through the years when she will be questioning why she is where she is.

A is a particularly bright child who needs attuned parenting I am told by the experts and I find. Being moved to her father is unlikely to meet this need, a need which would be much greater as a result of the move. This need is likely to be met at all times by Mr and Ms X .

(c)the likely effect on the child (throughout her life) of having ceased to be a member of the original family and become an adopted person,



In my view A, if adopted, unusually for an adopted child, will experience a lesser amount of loss than most adopted children because she will be seeing her birth family regularly. It is the case that she will not be raised within an Igbo family but she will not lose the opportunity of knowing her birth family and her cultural heritage. Any confusion she is at risk of feeling will be ameliorated both by having contact with her birth family but also by the open and honest approach of Mr and Ms X .

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

I think I have covered this area elsewhere.

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

I have set out the harm which A is at risk of suffering if she is adopted or if she is placed with her father and the risks of serious short term, medium term and long term emotional harm are in my judgment significantly

greater if she is removed at this time from the only parents she knows and placed with Mr Q whom I assess as not having the emotional tools to cope with her distress or trauma.

It is very significant that Mr and Ms X were encouraged to think of A as their child up to October 2022, and after that were not informed properly of the local authority's change of position until June 2023. They did not treat A as a foster child and, with the local authority's permission, raised her to think of them as her parents and her forever family. It would be hugely damaging in my view for A to now find that none of that is true. On the other side of the equation there is Mr Q who loves her dearly but has not shown insight into A's experiences to date and likely reaction to being taken from Mr and Ms X, and who is not as yet an attuned parent. I think the likely harm to A's emotional health and development is likely to be long term.

(f)the relationship which 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 otherwise to meet the child's needs,

(iii)the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

A is a child who delights in being at the centre of the lives of Mr and Ms X and also of each of their mothers; she has young adults, previous foster children of Mr and Ms X whom she thinks of as her siblings. These relationships are very important to her and she would experience a great loss if these people were not in her life any more.

But it is the central relationship with Mr and Ms X which is in my judgment the key to A's wellbeing now and throughout her life. It is being nurtured by Mr and

Ms X which is enabling A to be the confident and happy child she is and I think if that relationship remains at the centre of her world, it will enable her to grow up into a happy, confident and successful adult. The relationships with Mr Q, B and Ms P are also important to her, that with Ms R necessarily much less so. The relationships with Mr Q, B and Ms P will develop and grow; at the moment A does not have a close relationship with Ms P nor with B but I think regular staying contact will allow those relationships to become increasingly important to A. I am confident that Mr and Ms X will allow that to happen and will be pleased that it happens.

A will always be part of both families, and this is lifelong. If both families are committed to making this arrangement work, I think A will as an adult be able to have both families as important parts of her life. Mr and Ms X spoke of there being one big family and I hope that that will be possible. Importantly by being adopted by Mr and Ms X A will not lose either part of her current world. In my judgment, if A was placed with Mr Q, she is likely to lose her relationships with Mr and Ms X and their extended family and friends

because I do not think that Mr Q's commitment to maintaining the contact with Mr and Ms X is robust, nor that it would withstand practical difficulties, the Local Authority discouraging regular contact and the likely opposition of Ms P .

291. For all these reasons I think that A's welfare throughout her life is most likely to be achieved by my making an adoption order to Mr and Ms X . I do not think that the plan for adoption which I approved over 2 years ago should be changed as I think that A's welfare throughout her life still requires that she is adopted provided it is by Mr and Ms X . I recognise that this is a far reaching and very serious order, affecting A's legal relationships throughout her life, and that the order will have life long effects on A but I believe that it is the right order for A and that it is the proportionate order to make in all the circumstances which I have set out.

292. I dispense with the consent of each of Mr Q and of Ms R to the making of an adoption order because A's welfare requires me to do so. I make an adoption order.

293. I make a contact order which will be framed in such a way to say that there will be monthly staying contact between Mr Q and A from Saturday mornings to Sunday evenings, ie 12 times a year but that this will follow a short period of supervised contact to ensure that the emotions following this hearing are under control, and to allow mediation to happen, and then a period of visiting contact so that Mr Q can get used to taking A out and about along with B before the staying contact begins. There will be such other contact as Mr and Ms X and Mr Q may agree.

294. I will hear what discussions have taken place but I am minded to make a Family Assistance Order to one of Z Council or LB Lewisham for 12 months with the purpose of assisting with the development of contact. I will need to hear if Mr and Ms X and Mr Q consent to this.

295. I require LB Lewisham to organise an independent enquiry into the Meliot Centre. I am very troubled by what I have learned from the Children's Guardian and from Mr and Ms X. They tell me, and I accept, that reception staff and contact supervisors have been rude and hostile to them; they tell me, and I find, that contact notes are inaccurate and

biased. I do not see how this court can rely on contact notes from the Meliot Centre in other cases whilst this remains unaddressed. I also require LB Lewisham to review their conduct of this case in the light of the many failings I have set out in this judgment to include their failure to look holistically at any point at A's welfare needs, their failure to present the case in a fair and balanced way, and the treatment of the evidence of the IRO.

LYNN ROBERTS

SENIOR CIRCUIT JUDGE





