

IN THE FAMILY COURT AT NEWCASTLE UPON TYNE

Date: 28/11/2024

Before :

MR JUSTICE POOLE

Re D (International SGO)

Between :

SOUTH TYNESIDE COUNCIL

Applicant

- and -

(1) E (By the Official Solicitor)

(2) F

(3) H

(4) D (by her Children's Guardian)

Respondents

Sarah Woolrich (in-house Counsel) for **the Applicant**

Elizabeth Callaghan (instructed by David Gray Solicitors LLP) for **the First Respondent**

Ravinder Randhawa (instructed by Tilly Bailey & Irvine Solicitors) for **the Second Respondent**

James Howard (instructed by Hannay Solicitors & Advocates Ltd) for **the Third Respondent**

Shona Upton (instructed by Tait Farrier Graham Solicitors) for **the Fourth Respondent**

Hearing dates: 11th to 14th November 2024

JUDGMENT

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

1. D is a baby under the age of one whose parents separated months before her birth and whose mother, E, has autism and ADHD and is unable to care for her. D is subject to an interim care order and has been in foster care since her first day of life. I now have to make a final welfare orders. Three couples within her family have put themselves forward to care for her. If none is considered suitable then the alternative would be placement for adoption although there is currently no application before me for such a placement. The three couples are:
 - (i) Her father, F, and his partner G.
 - (ii) Her maternal grandmother, H and her partner J.
 - (iii) Her maternal uncle K and his wife, L.

2. F has put themselves forward to care for D supported by G but, in the alternative, as sole carer. F and G live together and have been in a relationship for about one year. H has been assessed but on the basis that she will be supported by J. H and J each have their own homes but stay with each other overnight on average 5 nights a week. They have been in a relationship for about two years. Both F and G, and H and J, live in the locality where D was born and E lives. F and G and, separately E and H, have been enjoying family time with D for ninety minutes twice a week. K and L have been in a relationship for several years and married in 2023. They do not have children. They live and work in the United Arab Emirates (“UAE”).

3. The Local Authority has concluded negative assessments of F and G and of H (supported by J). It would not support D being placed with either couple nor with F alone. The Guardian agrees. The Local Authority proposes placement with K and L in the UAE. Again, the Guardian supports that proposal as does the Independent Reviewing Officer (IRO). E does not have capacity to conduct this litigation and is represented through the Official Solicitor who does not oppose the placement of D with K and L. The Local Authority invites the Court to make a Special Guardianship Order (“SGO”) in favour of K and L but accepts that such an order cannot be made at the current hearing.

4. The circumstances are unusual. There are no other family members in the country where K and L live. Due to various reasons discussed in this judgment, it is extremely unlikely that E, F or G could visit D in the UAE. Any SGO that the Court might make could not be enforced in the UAE and were D to move to live there then this Court’s powers to enforce contact or protect D’s welfare in any other way would effectively be lost. There has been virtually no period in which to test K and L’s care of D. Practical issues and the desire to avoid delay mean that when K and L next visit this

jurisdiction, in early December 2024, then if an SGO is to be made in their favour it ought to be made then so that they would return to the UAE with D without further delay in these proceedings.

Legal Framework

5. Placement with F and G would be under a Care Order or Supervision Order. Placement with H and J or K and L would be under an SGO.
6. In considering any care order, supervision or SGO, D's welfare is my paramount consideration. I apply the principles set out at Children Act 1989 ("CA 1989") s1 and I must have regard to all the circumstances and in particular those set out in the welfare checklist at CA 1989 s1(3).
7. CA 1989 s14A provides:

"14A Special guardianship orders

(1) A "special guardianship order" is an order appointing one or more individuals to be a child's "special guardian" (or special guardians).

(2) A special guardian— (a) must be aged eighteen or over; and (b) must not be a parent of the child in question,

and subsections (3) to (6) are to be read in that light."

CA 1989 s14(A)(11) requires the court to consider a report from the Local Authority which addresses the matters prescribed in the Act and in regulations.

8. By CA 1989 ss14B and 14C:

14B Special guardianship orders: making

(1) Before making a special guardianship order, the court must consider whether, if the order were made—

(a) a child arrangements order containing contact provision should also be made with respect to the child,

(b) any section 8 order in force with respect to the child should be varied or discharged.

14C Special guardianship orders: effect

(1) The effect of a special guardianship order is that while the order remains in force—

(a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and

(b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

9. In the present case E and F have parental responsibility for D. There is no application to change D's name. The Local Authority has not proposed any child arrangements order containing contact provision.
10. The purpose of an SGO would be to give D a permanent family. The SGO gives parental responsibility to the SGs for them to exercise at the exclusion of others. It does not extinguish but strictly limits the parental responsibility of the parents. It lasts until D is 18 but may be varied or discharged on application.
11. The Public Law Working Group produced its Best Practice Guidance on Special Guardianship Orders in March 2021. The guidance includes the following in relation to international SGOs:
 - “ 34. In identifying potential long-term carers for the child within the family, it is not uncommon for this to include those who are either resident in or nationals in overseas countries. Special guardianship can therefore be considered in placing a child outside of the jurisdiction. Consideration must be given to how assessments are carried out in a legally compliant and culturally relevant manner. Further thought should be given to:
 - i. the status of special guardianship in that country and other legal matters;
 - ii the relevant matters associated with the care of children in that country: permanent, stable and secure family life; safeguarding; education and health; and specifically how all of these relate to the personal living circumstances of the host family and their need for support services, including financial and therapeutic support and contact between family members including those resident in the UK.

35. In advance of the child being placed, a plan will need to be agreed about how the placement will be supported and what the contingency arrangements are.”

The Hearing

12. At the hearing I heard oral evidence from R, the original Allocated Social Worker, S, Family Worker who did a piece of work with H, T, social worker who carried out viability assessments and full assessments, and V, the current Allocated Social Worker. I heard from F, H and J, and from the Guardian.
13. I have been provided with contact records, which cover family time variously involving F, G, H, and C with D. I also have records of time spent by K and L with D, including during the week of the hearing. I have received written legal advice from Mr Edge, a barrister, addressing the enforceability in the UAE of any Court orders made in this jurisdiction. I have written assessments:
 - a. A viability assessment of H (supported by J) dated 12 March 2024, carried out by T.
 - b. A viability assessment of K and L, dated 23 May 2024 by T.
 - c. A viability assessment of F and G, dated 4 June 2024 by another social worker.
 - d. An SGO assessment of H (supported by J) dated 31 July 2024 by T.
 - e. A full assessment of F and G, dated 6 August 2024 by V.
 - f. An SGO assessment of K and L dated 28 August 2024 by T.

I also have a capacity assessment of E by Dr Swart, viability assessments of the paternal grandmother and paternal aunt, and some medical records including a discharge summary regarding G.

D and E

14. D is described as a beautiful baby girl with big blue eyes and a small amount of strawberry blond hair. She is healthy, robust and has chubby cheeks. She is a happy and contented baby who is sociable and loves to be around people. She has met her expected milestones so far and no additional needs have been identified. She has a healthy appetite. She has not yet uttered any words. She is generally smiley and can giggle but she has shown some distress and has been difficult to settle during family time with E and her mother and H sometimes struggle to settle her during those moments. D is white British. Neither parent practises religion but they do celebrate the main Christian festivals including Christmas.

15. E is aged 24. She has a diagnosis of Autism Spectrum Disorder (Asperger's Disorder) and Attention Deficit Hyperactivity Disorder. It has also been suggested that she may also have Pathological Demand Avoidance, which is a further complexity around her ability to communicate. She was living with her mother, H, and in a relationship with the father, G, when she became pregnant with D. Initially, F (who was soon to become E's ex-partner) and H each hoped that E would be able to care for D once she was born. I have read Dr Swart's capacity assessment of E and have had regard to the evidence of how E handled D shortly after her birth, and how she has managed during family time. It is surprising, in the light of that evidence, that there could have been any confidence that E might be able to care for D as her parent. E was said by Dr Swart to have "extreme difficulties with communication." She is quick to become distressed when under what to others would be regarded as mild stress or pressure. She is not now putting herself forward to care for D.
16. E would struggle to travel to the UAE, indeed I think I must proceed on the basis that she would not manage the flights there, nor staying in a hot country. She might be able to travel a shorter distance to a third country. E's strong wish is to maintain contact with D and she is fearful that she will lose all meaningful contact, and therefore her relationship, with D were she to be placed with K and L in the UAE. During the hearing, K and L met up with E on two successive days and they had an enjoyable time together. K and E were close during E's childhood.

F and G

17. F has a large family with numerous siblings and half-siblings including a sister who lives nearby. He has suffered from mental health difficulties in the past including anxiety and depression. He had a brief relationship with E lasting about three months. E was living with H at the time and she and F never lived together. They broke up shortly after E found that she was pregnant with D. This, together with other matters including a painful back, caused F's mental health to deteriorate and he stopped working.
18. G has had a very troubled personal history. He has multiple diagnoses and health issues. He has been diagnosed with Borderline Personality Disorder (BPD) Emotionally Unstable Personality Disorder (EUPD), Post Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). He had a long period of treatment as a voluntary in-patient from October 2021 to March 2022 after an intentional overdose. He has epilepsy with seizures that, although I was told they have reduced in number recently, are not fully controlled by medication. He has grand mal seizures, currently

about once a day, and petit mal seizures, currently about two to three times a day. He has a functional neuro-disability requiring him to use a wheelchair when out of the home and when travelling over longer distances. He sometimes needs prompting to use the toilet and to eat. He was born female but now identifies as male and goes by a male name. He was due to give oral evidence at the hearing and I was advised that he was fearful that he might become non-verbal when giving evidence and requested to answer by typing answers into a device which would then “speak” his answers. In the event he did not give evidence – no party sought to call him and I did not require any party to call him.

19. Prior to living with F, G was effectively homeless, spending time with friends. Two particular friends allowed him to stay with them for a number of months. F’s evidence persuaded me that he and G have a mutually supportive relationship but that F is G’s carer – he is registered as such. With F’s help and advice G has found ways to mitigate the effects of some of his conditions. For example, previously he was particularly prone to seizures in the hour or so before he was due to take his medication at about 7.30 to 8.00 pm. Now they create a calm atmosphere in the house and the number of seizures has diminished.
20. Mindful of the Local Authority’s negative assessment of F and G as carers together, F has made an alternative case that he could care for D alone. He told me that this would involve him ending his relationship with G who, they had discussed, would probably then go back to live with friends provided that they would allow him to stay with them.
21. F and G have contact with D twice a week for ninety minutes each time at a contact centre. F and G have had positive family time with D who has been seen to respond well to each of them. The Local Authority agree that they are attuned to her needs. To their great credit they have committed to family time with her and have engaged openly and well with social workers and with their assessment. They have discussed their personal issues and I commend them for their openness. When giving his evidence, F was precise and showed that he had thought through for himself, and with G, the concerns of the Local Authority and Guardian about the prospect of them caring for D, or F caring for her alone. He told the Court that he would fully support D having contact with E, with H and J, and with K and L and other members of the wider family. He told me that he would have support from his sister and friends. I found F to be honest although anxious to put the most positive gloss on the issues that have caused concern about his ability to care for D either with G or alone. However, I found aspects of his evidence, or his reasoning, including in relation to his preparedness to separate from G, to be unrealistic and naïve.

H and J

22. H has three adult sons – K is the middle son - and one adult daughter. Her daughter is E for whom H has had to be an advocate and supporter throughout much of her life. H attends with E for contact with D twice a week for ninety minutes each time at a contact centre. Until the end of April 2024 contact was at E's home but an incident on that day, caused the Local Authority to move contact to the contact centre. The contact officer who was covering for the usual officer who was on leave, arrived with D almost one hour late. E could not manage her emotions and said she would not allow D to be returned to her foster placement. E was not responding to cues from D and would not take advice or guidance. Part way through the contact session, H left. It is fair to say that E calmed down and that H had previously been advised to try to step back to allow E to develop her own parenting without too much prompting. However, the Local Authority has suggested that H's departure was surprising given the very difficult circumstances at the time. E made a video call to H later in the session by which time thankfully all was going well.
23. H, her now ex-husband, M, and the family moved around a few times largely because of M's work. H describes M's conduct during the relationship as emotionally abusive. E was born ten years after the youngest of the three sons. H left her husband when E was about six years old. Just before the separation H, M, K and E had moved back to Scotland where they had previously lived. Her other two sons remained in England. On separation, K and E remained with their father until H secured a residence order in relation to E, and K then decided to stay with E and move to live with his mother.
24. In her SGO assessment, before learning of the references given by her sons, H said that she "has always had a really good relationship with the children." She did refer to some issues having arisen in the past but that "she does not hold grudges and that her younger two sons were "a tower of strength". However, the assessor had to discuss her sons' references with H:

"I mentioned that their view of their experience being parented was a different narrative to H's, to which she responded, "they would be" and her demeanor [sic.] changed immediately.

H's sons had alleged that she had physically punished them when they were children, causing injuries such as a burst lip, but she denied this. They reported her having called them "thick", "stupid" and telling them to "fuck off and die". On being told of these reports, H "because quite upset at this and was sitting forward, shaking her head and 'scoffing'." As a result of what her sons had reported in their references, H accepted that on one occasion she had thought her husband had been cheating on her

and she slapped him. He pushed her aside and the police had been called. She had not referred to this incident previously during the assessment. One of her son's had reported that H had chased her husband with a knife but H denied this saying that there had been an incident when her husband had chased a man out of their house with a knife. H denied ever having left the children without notice, as they had alleged. H accused her ex-husband of having poisoned their sons and having made up lies about her. However at a later session with the assessor, H did then speak of an incident where she had left the home for a few days because of difficulties in the marriage and had relied on the boys' father to tell them.

25. The assessor records,

“There was a significant discussion with H about the information provided by the boys, which H is clear the information was untrue. I raised with H my concern of her understanding of what her sons are saying and the impact this has evidently had on them, for bringing up as part of their reference. H told me that she would not agree to something that did not happen. H was advising during this interaction that I had “pissed her off” and that it was “bullshi*”.

Towards the end of this session, J, H's then partner, became part of the discussion. H relayed the information to him and J felt that if something had happened, it would have been reported. Before I could respond to this, J noted that regardless, he understands why it would concern the Local Authority. H became quite frustrated and raised that she does not understand why the information was relevant as it was “20 years ago” and “not true”. H told me that it was not relevant a number of times during this discussion to which I advised it was and that it gave us an understanding of her parenting and the relationship and lived experiences of her children, however, H denied this was true and therefore did not feel it was relevant. J was more balanced with this and advised it would “not matter if it was 20 years ago or 5 minutes” and that it would cause concern for professionals if the information was being reported.

H asked me to leave the session and was very teary and swearing, but it is acknowledged that this was a really difficult and emotive session. J told H not to swear, and I agreed to leave for H to digest the information and come out for the next session. H then slammed the door behind me.

Positively, H did reflect on this and sent me a text message the day after to apologise:

I'd like to apologise for being rude and using offensive language yesterday. I was & still am very upset at the allegations made about me from my sons. It was very difficult hearing what they had said & I reacted the way I did because I felt betrayed by them. I hope you understand."

26. H told me that she believes that K and his brothers have made up allegations about her as a means of enhancing K's chances of having an SGO for D made in his favour. I have seen text messages sent by H to K shortly after he and L had put themselves forward to care for D. K did not reply to these messages. In them H is scathing of K and accuses him of not caring about the effect he is having on E. When K's younger brother responded to H, rather than K himself, H texted,

"Stop running to your brother ... have you not got the back bone to message yourself."

K's younger brother asked H to leave K alone. He tried to explain why K and L should put themselves forward to care for D. It is fair to say that the tone of the exchange between H and her young son is confrontational on both sides. During the exchange, H wrote,

"Your full of shit ... you know fuck all as usual". She also wrote, "[E] is my main priority and always will be."

27. In his own SGO assessment, K reported that when he was about nine years old his mother started to disappear randomly. This continued for some years. In his reference for H's SGO assessment, K said that on one occasion he came home from school to find the house locked. H had left and all the boys had to wait for their father to come home. H had left a note in the house. K remembers H washing his mouth with soap as a punishment. He feels that his mother was not at all supportive of her children developing and could not accept that they would not just do as she told them. He recalls many arguments between his parents and that his mother had "an obsession with lying and playing the victim" and was very short tempered.
28. In August 2024 the Local Authority was trying to arrange family time at the request of H's youngest son. H was very opposed to this occurring unless she could also be present as, she maintained, E wanted. H took time out of her own family time to contact a solicitor for advice.

29. H was invited and then uninvited to the weddings of both K and his younger brother. Currently neither of those sons has any communication with H.
30. The references from her sons for H's SGO assessment, which have not been shared with H or the Court but were relayed verbally to H and are reported in her assessment report, are not supportive of her becoming D's Special Guardian. As was emphasised during the hearing, I have not been asked to conduct, and have not conducted, a finding of fact exercise in relation to H's sons' allegations against her. I have not received statements setting out their allegations. However, I can take into account the fact that the sons are unsupportive of H caring for D, the reasons they have given, and H's responses.
31. The father of H's children is M who is Scottish and lives in Scotland. Their first child was born in 1984 and they married a year later. They had two further sons and then, after a gap of ten years, they had E. In 2006 they moved back to Scotland but by then the relationship was unhappy. H has not given entirely consistent reports of M's conduct in the relationship when providing information for her initial viability assessment in March 2024 and her later SGO assessment. She has, however, reported what she regards as abusive behaviour by M, including threats, verbal abuse, control and coercion. M refused to provide a reference for H for the SGO assessment citing a desire to avoid a "backlash".
32. The SGO assessment includes details of H's subsequent relationships after the breakdown of her marriage and before she started a relationship with J. She married a man, N, in 2010 but the relationship did not last to the first wedding anniversary. She describes herself as being on the "rebound". H then had a relationship with a man who was physically abusive to her. In December 2012 Fife Council noted that E was placed in the Child Protection register as at risk of neglect with concerns about her presentation and H's relationship with "unsuitable males and introducing them to E early on in the relationship, and the lack of boundaries." E was removed from the register in May 2013.
33. In 2016 H had a relationship with a man who she discovered took drugs and who screamed at her and called her "all the names under the sun." In 2021 she was in a relationship with another man whom she met online. In March 2021 two domestic incidents were recorded by the police when it was noted that they had been in a two-month relationship and were set to be married. In 2022 a child concern notification was made with a report of a verbal argument following the end of a relationship with another man.
34. H met J in November 2022. J gave evidence before me and he and H have told the Court that they have an ongoing, healthy, and mutually supportive

relationship. In the SGO assessment, H reported that she and J became engaged in April 2023 and that in late 2023 they decided to move in together. H had a two bedroom bungalow, J had a three bedroom house. They moved into J's house but H kept her bungalow. On 11 July 2024, H contacted the author of the SGO assessment, T, to advise that she and J had separated and that she had moved back into her bungalow. E was by then living in her own supported accommodation but had come to stay with H for a few days and had been a "tower of strength." The contact record for 15 July 2024 records that H had said she had told T that she had separated from J. T visited the bungalow on 16 July 2024 and saw both H and J there together. She reported that H had told her that they were "getting on better now they have some space and are apart." As reported by T, H said that she "threw her toys out of the pram" and had left but they "do think they will get back together at some point."

35. In her statement of 10 September 2024, H told the Court that on 8 July 2024 (subsequently confirmed to be 9 July 2024) she had unexpectedly seen her son, K, who had recently put himself forward to care for D. This "threw" her. J had some ongoing problems with his elderly and ill father, and H did not feel that J was present for her. They had words and she took the decision to go back to her bungalow. "In the heat of the moment, I felt our relationship was over and I picked up the telephone and told the Social Worker. The following day J came round and we talked things through... we got our relationship back on track and indeed as far as J was concerned the relationship had never been over."
36. In his own oral evidence J told me that prior to the incident in July 2024 he and H had lived together at his house. H had moved some of her furniture in. After the incident on 9 July 2024 H's furniture was moved back to her bungalow and they now spent time together, perhaps five nights a week on average, but they lived in their own homes and their shared time was divided between his house and her bungalow.
37. In my judgement, the incident in July 2024 does not indicate an unstable relationship. My impression was that the relationship between H and J is ongoing and that they both view it as positive. However, H's account of the incident provides an example, amongst several others, of when her evidence has discrepancies which raise questions as to her credibility, as I shall discuss later in this judgment.

K and L

38. K is the second of H's four children. He remains close to his brothers and his father, although geographically they all live far apart. His father lives in Scotland, his younger brother in Wales, and his older brother lives in another Gulf State. K was close to E when she was growing up. He was 14 when E was born and is now aged 38. He has said that for most of his teenage years he was E's carer. He is described as quiet, shy and somewhat introverted, but caring and supportive. He is a graduate whose career has centred around support for children with additional needs. He is involved with working alongside others who care for children. He has lived and worked in the UAE since 2015.
39. L hales from South Africa where her family remain. She is a graduate and has a Masters degree. Like K, she works in the sector concerned with care and support for children with additional needs. She was previously married, at the age of 21, for five years. Her husband was serially unfaithful. They did not have children. She came to the UAE for work in or about 2017. She is described as a very empathic person. In her youth she enjoyed sports. She is more outgoing than K, they have friends with whom they socialise but they live a relatively quiet life in the UAE.
40. K and L started their relationship in 2017, having met through mutual friends, they began living together in 2018, and married in 2023. They have been very open during their assessment, as to the difficult relationship between K and his mother, H, and the impact of the references for H made by K and his brothers. They have been used to travelling to the UK at least once a year and they have said they would be committed to maintaining D's relationships with E and F and the wider family including H and D's paternal grandfather and other uncles. They would continue to visit the UK at least once a year. They would bring D up knowing about her family in England.
41. The assessment of K and L is very positive. Whilst they do not have parenting experience, K has experience of caring for his younger sister during his teenage years, and they have both studied and/or worked in the area of childcare, including parenting. They live in a rented two bedroom apartment in the UAE which is assessed as being suitable for them to live in together with D.
42. It must be noted that no social worker has travelled to the UAE as part of the assessment of K and L. They have provided photographs and details of their accommodation and information about their other circumstances, but the assessment has been made largely at a distance. K and L have travelled to England for family time with D and indeed with E. Relations with H are such

that they have not had any direct contact with her in England over recent months. Reports on family times spent by K and L with D are very positive. More recently D has begun to reach out to them – as she does with F, G, and H – and she appears comfortable in their care. No concerns about their ability to care for her have arisen and they have engaged fully in the assessment process.

Option of Placement with F and G or F alone

43. Positively, F and G appear to have a mutually supportive relationship. They have fully engaged with social workers in the assessment process and have been very open about their health and other matters. They have established a relationship with D who responds well to them. No concerns have arisen from their family time with D and they have been committed to it.
44. I was a little concerned when F gave oral evidence about a typical day in his and G's lives. They live rather limited lives spending a lot of time on computer games and what F described as "downtime". They do not have experience of parenting nor of caring for children to any extent relevant to assessing their skills as potential carers for D. Their relationship is mutually supportive, but it is relatively recent, having begun about a year ago. G has many needs and heavily relies on F for care and support. One of his requirements is a quiet settled environment in the early evenings. This is designed to prevent him suffering seizures at that time of the day. He needs structured routines for toileting and eating. He has had very significant mental health challenges in the not too distant past. F himself has suffered mental health difficulties including at the time of the breakdown of his relatively short-lived relationship with E. Of course, he knew that she was pregnant at that time and so the end of the relationship would have been difficult for him. He was unable to work at that time and has not since returned to work. F and G have found much to gain from each other but their relationship and their own health would be jeopardised by the introduction of D into their family. A baby or young child is not conducive to the peaceful, structured home and limited lives that are beneficial to each of F and G.
45. G does not respond well to stressful situations. I was advised that he was fearful that he would become non-verbal if he had to give oral evidence, for example. He took an overdose in 2021 and spent the next five months or so in hospital. He has considerable needs himself and it is difficult to conclude other than that his conditions, which have improved with F's support, could well deteriorate were D to be introduced into the family. F would have less

time to support G, and the wonderful disruption that a young child brings into a family would not be conducive to his health.

46. The very fact that F has proposed, as an alternative, that he could care for D alone rather demonstrates his own awareness that G's needs would be an impediment to them caring for D together. I am afraid that I found F's evidence about how he could end the relationship and how G would leave their home so that D could move in with F alone, to be wholly unconvincing. His alternative plan would leave G, the person he loves, homeless and without F's day to day care which has been so beneficial to him. F could not stand by and see G suffer, as would almost inevitably be the case. D would effectively be the cause of the end of what appears to be the most positive relationship F and G have each ever experienced, which would give rise to all sorts of potentially harmful emotional dynamics in which D would be embroiled as she grew up.

Option of Placement with H supported by J

47. The assessment of H is difficult. On the one hand she is an experienced mother who has advocated for her daughter E who has significant additional needs. She appears to have a supportive relationship with J and they have the financial and practical means to care for D. H already has an established and positive relationship with D. Family time together has not given rise to any concerns and H is clearly more than capable of providing the practical care that a baby and growing child needs.
48. On the other hand her three adult sons do not support her being D's Special Guardian, her assessment is negative with concerns raised by the Local Authority about her ability to prioritise D's needs and interests over E, concerns have previously been raised by or with authorities about E's welfare when in H's care, and the Guardian is not supportive of D's placement with her.
49. H is 62 years old. Her self-assessment was recorded in the SGO assessment by T:
- “H described that she has a “heart of gold” and that she would do anything for anyone. Whilst H described herself as outgoing, she also said she is very private and “100% reliable, honest and trustworthy”. H tells me that her then-partner, J, would describe her as too soft sometimes, but she agrees with the saying ‘to not mistake kindness for weakness’.”

H told the Court that she avoids confrontation.

50. In fact, having regard to all the evidence, it is clear to me that whatever qualities H may have, she is impetuous, she is very defensive and prone to confrontational, angry outbursts when she feels she is being disapproved of or that others do not share her convictions. H does not readily take responsibility for her own actions and behaviour: she finds it difficult to face uncomfortable truths and becomes evasive and sometimes dishonest in order to gloss over her own mistakes. At times in the past she has dealt with difficult situations by walking away. Her sons say they experienced this to their detriment. She showed the same tendency again in July this year when she reported that her relationship with J had ended. She was absent when D and E needed her when the Local Authority was considering removing D from E on the first day of D's life. She left E during a family time session at home when E was clearly heightened and acting in a way that was potentially harmful to D and caused the Local Authority to move contact to a contact centre. She walked away from difficulties in her relationships with her middle and youngest sons during the course of these proceedings cutting communications with them rather than dealing with emotionally difficult issues.
51. I have already referred to H's evidence about what she has told the Court was a two day blip in her relationship with J in July 2024. In fact, she moved out of the house in which they had been living together. She took the trouble to call a social worker to announce that the relationship had ended. Six days after she had moved out, she was still reporting to the Local Authority that the relationship had ended, and when T visited on 16 July, she was given the clear impression that whilst H and J were prepared to work on their relationship, they had not yet reconciled. H had moved her furniture out of J's house. It has not yet been moved back. The pattern of their relationship changed. I am sorry to conclude that H has sought to gloss over what was clearly an event in the relationship of more significance that she is prepared to admit.
52. Similarly, H had given an account of her parenting of her sons, and her relationship with them that was significantly at odds with the contents of their references about her. When the references were introduced in discussion with her and she was told that her sons' accounts of their childhood were different from her own, she said, "they would be." In her later text exchange with her younger son she was scornful of him, writing that he knew "fuck all as usual". The evidence points to longstanding tensions in the relationships H has had with her sons, of which she was very well aware, but which she sought to dismiss or minimise. She has exhibited considerable anger against her sons during these proceedings which is consistent with their claims about her parenting. She shouted at the social worker who raised their references with

her and, T reported, she slammed the door on her. In oral evidence H said that she pushed the door hard and did not slam it. She did however write to apologise to T for her “rude and offensive language”. Later, she verbally lashed out at her sons by text, as discussed.

53. H had agreed to support E during her labour and she did so even though she had been up in the early hours of the morning because of a health crisis affecting J’s father. She was very tired after the birth and went home. Very soon hospital staff were sufficiently disturbed by E’s handling of D that they contacted the Local Authority and they then made contact with H. At that point H knew that there were significant concerns and a risk that D might be removed from E’s care. Arrangements were made for her to attend a meeting in the afternoon of the first day of D’s life. I need not repeat the detailed evidence but in short H missed that meeting and D was removed from E. The Local Authority’s position is that even though H must have been very tired she did not prioritise D by ensuring she was present at the hospital when very important decisions were being made about D’s care. On this issue, H has given what I regard as inconsistent evidence. For example, she has said she feared she might have Covid and did not want to risk infecting staff at the hospital but has given different evidence about taking a Covid test. During cross-examination, when it became apparent that she would have known from taking a test that she did not have Covid, she said that the lines on the test kit were faint and so she thought the test was equivocal. She had never said anything of the kind in her witness statements or in discussions with social workers. She appeared to be making up her evidence on the spot. I found her evidence on the issue to be evasive and not credible. As with her evidence about the difficulty in her relationship with J that arose in July 2024, it is the lack of credibility of H’s account that is as troubling, or even more troubling, than the substantive event itself. She gave the Court the clear impression that she was glossing over or covering up the truth because it was uncomfortable to her or because she thought it would cast her in a bad light and harm her case.

54. Not long before the hearing, J asked to be considered as sole carer for D. This was a surprising application because he and H have told the Local Authority and the Court that they remain as a couple. In his evidence, J accepted that it had been a mistake and he would only be a support for H. However, when giving her own oral evidence earlier at the hearing, H said if J became D’s carer, then he would stay at home and she, H, would go out to work (reversing the current position) and that she would support him as D’s main carer. This was not credible. I conclude that H was anxious to say what she thought would prevent D from being placed abroad rather than to be frank and realistic. J has only met D on two occasions despite ample opportunity to

become more involved during the proceedings. J was honest with the Court that he was not proposing to be the sole or main carer for D. H was not so honest.

55. H has been a trenchant advocate for E in recent years but the Local Authority has expressed deep concern that she will prioritise E's needs over D's welfare. It is right to note, as was accepted by the Local Authority's witnesses, that during family time with E and D, H has prompted E in various ways to help her to learn how to meet D's needs. Their concerns were said to be wider. In the future, would H be able to regulate E's time with D. Would she keep D safe even when E wanted to look after D alone? Would her focus be in protecting E? It became abundantly clear to me, from the written and oral evidence, that the primary reason why H is so vehemently opposed to D being placed with K and L, is the effect on E, not the consequences for D. That is understandable – she is E's mother and E is a vulnerable person – but it does underline the Local Authority's position that E rather than D is H's priority. H considered that E's pregnancy and then motherhood would be "the making of her". Given E's conditions, the capacity assessment, and her behaviour since D was born, H's optimism appears to have been very misplaced. It reflects her focus of motherhood on E rather than the likely consequences for the baby, D.
56. It is of significance that the three of H's children who have capacity do not support her as D's Special Guardian. I make no findings about specific allegations but I cannot ignore the content of their references as reported by T, nor H's response to those references. I acknowledge that H has not seen the references and cannot conduct a forensic exercise in response to them, but she told me that some of the claims they made are wholly untrue and that she regards them as motivated by the desire to support K and L as Special Guardians for D. None of the evidence in this case suggests that K and his brothers would together concoct serious allegations against their mother for that purpose. Nor does any of the family history suggest that they would lie so callously in order to hurt their sister. H had already had a negative viability assessment before K and L put themselves forward to care for D and they appear genuinely to want to keep her within the family. Sadly, H's responses to the references, show that she cannot see beyond her own narrow perspective. She has allowed what is an admittedly very difficult and sensitive situation to drive a wedge between her and her sons. Her texts to them, her conduct when her younger son was due to see D for the first time, and her response to seeing K on 9 July, show that she cannot manage her emotions when it comes to this dispute within the family.
57. This is not a case for a *Lucas* self-direction but I do bear in mind that H's lack of candour about various matters does not mean that other aspects of her

evidence are untruthful. I do not conclude that her denials of the claims made by her sons are dishonest. However, she appears to have expected that they would give a different account of their childhood than her own which shows, at the very least, that this was not the first time she had become aware of their feelings about her parenting. The text exchanges give the same impression. H also told me that she had a “very difficult” relationship with K: that comment tends to show a longer history which is not linked to his desire to become D’s Special Guardian.

58. I acknowledge the evidence of S that H engaged with her and made progress regarding work to address her need to prioritise D over E, but S’s involvement was limited and she never observed H, D and E together. Also, I have other evidence which shows that H retained a determination to put E first, for example in her text exchange with her youngest son.
59. J is a supportive factor for H and he struck me as plain-speaking and well-meaning when he gave evidence. However, H has had many relationships since the end of her marriage to the father of her children, and her behaviour in and out of relationships is not always predictable. She has not been fully candid about the difficulties in her relationship with J in July 2024. J has only met D twice. Having a baby full time within their relationship would be testing and I do not have full confidence that H would continue to have J’s support in the longer term.
60. In my judgement, there is a significant risk that were D to be placed in H’s care, she would lose contact with other family members. I am sure that H would promote D’s relationship with E, but H might very well use E’s views, however ill-thought out, to stop or to fail to encourage contact with F and G, with the maternal uncles and grandfather, and with the paternal family. H’s actions when her younger son was due to see D for the first time and her treatment of him and K in the text communications contribute to this conclusion.
61. Taking an overview of the evidence, the positive aspects of H as a potential Special Guardian for D remain, but the negative assessment by the Local Authority has its roots in H’s relationships with her sons, her prioritisation of E over D, aspects of her character and behaviour which render her unreliable and prone to anger and confrontation, and her lack of candour which, together, understandably give the Local Authority insufficient confidence that H would meet D’s emotional needs, ensure she was kept safe, and act in her best interests.

Option of Placement with K and L under an SGO

62. K and L only put themselves forward to care for D when the initial viability assessments of others were negative. K's younger brother also wanted to be considered at one stage but then withdrew. He and their elder brother support K and L being made Special Guardians for D. The Local Authority, the IRO, and the Guardian also support them. The Official Solicitor acting for E does not oppose an SGO in their favour. The core reason for the support for placement with K and L is that they are a couple in whom there can be confidence that they will commit to D's best interests throughout her childhood.
63. K and L impressed in their SGO assessment as thoughtful, sensitive, empathic, and practical in their approach to becoming SGs. They have engaged fully in the assessment process. They have taken the opportunities available to spend time with D and they have also spent time with E more recently which is a positive step for them and E to have taken. Their family time with D is very encouraging. They do not have direct parenting experience, never having had a child, but they do have relevant experience and skills from their training and work and K spent several years being a carer for E when she was a young child. They have the means to look after D and they have a network of friends in the UAE as well as K's elder brother living a short flight away. Their relationship is now longstanding and is clearly loving and stable. They have been eager to commit to maintaining D's relationships with her mother, father, and wider family. They intend to bring D to the UK at least once a year and they will arrange indirect contact between visits. They will provide films and photographs of D for E, F and G, and H. They will ensure that D also has a relationship with her maternal grandfather.
64. However, there are obvious drawbacks with the proposal that they should become SGs for D.
- a. They live in the UAE and so far away from where D has been living, from her mother and father, and from her maternal grandmother.
 - b. It will be very difficult if not impossible for E, F or G to visit D in the UAE. For E, the journey would be virtually impossible due to her conditions. For F and G they would be fearful of visiting a country whose culture and laws are hostile to gay couples and transsexuals. For all three there are financial considerations also. They have very limited financial resources and could not afford flights and accommodation.
 - c. It will be difficult for H to visit the UAE both because of the financial implications but also because of the state of her relationship with K.

- d. I have received expert legal opinion on the relevant law in the UAE. It was prepared by Ian Edge, barrister and is very helpful to the Court. I hope I do not do him a disservice by summarising very briefly that once D travelled to the state in question and resided there, the Court's orders in this jurisdiction would have little to no effect. Furthermore, the courts and authorities in that state would then govern any disputes about D's upbringing. It would be possible to invite the courts in the UAE formally to record an agreement or consent order – in effect a private law order. It appears to me that any such agreement or consent order would not exactly mirror an SGO but could record agreement as to contact, for example, and record the parties' acceptance of parental responsibility. However, E does not have capacity to enter into any such agreement or to give her consent and I do not know if F, G, or H would be willing to do so. Thus, if the SGO is made in favour of K and L, and D travelled to the UAE to live with them there then, in reality, this Court would lose control over D's welfare and any contingency planning would be unenforceable.
- e. Similarly, this Court could not realistically compel K and L to visit the UK as they say they intend to do. If K and L were to choose to stay in the UAE and not to leave, there would be very little this Court could do to secure D's travel here for family time.
- f. I note L's connections to South Africa. It is of course possible that in the future, K and L might not stay in the UAE. They could move to South Africa or another country.
- g. No-one from the Local Authority has visited K and L's home in the UAE.
- h. K and L have had only limited family time with D.
- i. There has been no opportunity to test the placement with K and L because D cannot be taken to and from the UAE or be observed there for that purpose, and K and L work in the UAE and cannot spend long periods in this jurisdiction.
- j. There is limited practical support that the Local Authority could give K and L once they are caring for D in the UAE.
- k. K and L are in employment and their proposal is for both to be in full time work after an initial settling in period. That is not unusual in families but it does mean that D would be cared for by professionals for periods of time, at least in the pre-school years. In contrast she could be looked after by her father or maternal grandmother themselves in this country.

Conclusions

65. There is no dispute that the threshold for making public law orders is met in this case. It is a realistic option which I must consider to place D with F and G under a Care Order, Supervision Order, or Child Arrangements Order. It is also accepted by all parties and I am satisfied that I have jurisdiction to make SGOs in favour of H, supported by J, or in favour of K and L. If none of the options under consideration are considered acceptable in D's best interests then the only realistic alternative would be adoption. Even with open adoption, contact between the parents and D, and wider family members and D, would be much reduced below the levels that a family placement would allow, including placement by way of an SGO in the UAE.

66. There are therefore three realistic options for me to consider. McFarlane LJ in *Re G (A Child)* [2018] EWCA Civ 965 at [50] said that.

"...the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare..."

67. In considering D's welfare I have had particular regard to the matters set out in CA 1989 s1(3). I have also had regard to the Article 8 rights of all those involved including the children. In particular, placement in the UAE will constitute a serious interference with the Art 8 rights of D's parents but that interference will be lawful and justified if it is in the best interests of D.

68. D is a healthy baby who is meeting her developmental milestones but she is vulnerable, her parents having separated before her birth and she having been removed from her mother's care on the first day of her life. She is in foster care. She needs capable parenting within a loving, stable home, ideally within the family setting. She needs to be supported to maintain ties with her family members, and to enjoy healthy development physically, mentally, and emotionally.

69. I have endeavoured to evaluate each of the options available for D's future upbringing. I recognise the disadvantages for making an SGO in favour of K and L, as set out above. These difficulties mean that there has to be a high degree of confidence in K and L before the Court could contemplate making an SGO in their favour. As it is, assisted by the Local Authority's very detailed and positive SGO assessment report, and with the support of the IRO and Guardian, I do have a high level of confidence that K and L will meet D's

needs and provide good care for her and will support her family connections and family time (within the unavoidable geographical and practical restrictions). I accept their commitment to retaining contact with E, F and G, and H, and to overcome the difficulties in that respect as best they can. They will also ensure D has contact with other maternal uncles and her maternal grandfather. I am confident that they will provide good parental care to D within a stable and loving family. They will meet her needs during her development.

70. I agree with the negative assessment of F and G as potential carers for D and regard it as unrealistic for F to propose that he cares for D alone. F and G have their own needs and vulnerabilities that make them unsuitable as carers for D. The introduction of her into their family would risk creating instability making her long term care in that setting unsustainable. In any event there would be a serious risk that she would suffer harm as a result of the need for F and G to care for each other rather than focusing on her welfare. I acknowledge their emotional commitment to D and am not at all critical of their approach in these proceedings.
71. H, supported by J, could certainly give practical care to D. At present she is emotionally warm to D and she has an established relationship with her. Placement with H under an SGO would allow for more family time with her parents than D would have were she to move to the UAE. There are therefore important factors in favour of placing D with her maternal grandmother. Nevertheless, the Local Authority has concluded that these are outweighed by negative factors. H's relationship with her sons is very troubling. Were D to have an experience of childhood similar to those which H's sons now report, then it would be a harmful experience. H's response to the references of her sons and to K and L putting themselves forward to care for D, only underlines the concerns about her impetuosity, her quickness to anger, and her lack of insight into her own conduct and its consequences for others. There is no evidence of a recognition of her sons' experiences of her parenting nor any indication of a desire to change her parenting or conduct. D has had a history of relationships since the end of her long marriage to M, which have adversely impacted E when she was a child. There is evidence of a tendency to avoid difficulties by running away from them. D could not afford for her to do that in the future. It is also clear that she puts E first and, despite her protestations, would be likely to continue to do so. E now has a degree of independence but remains close to H and emotionally demanding, in particular in relation to D. Even in the context of communicating with her youngest son about D's future, H wrote that E is her "main priority and always will be". Whilst H has had the opportunity openly to confront these issues and engage with them, she has chosen instead not to be frank with the

Local Authority and the Court in some important respects. That leaves the Court unable to accept the broad reassurances she gives about prioritising D and maintaining family ties with F and G, and with K, his brothers, and the wider family. There would be a significant risk that in her care D would lose contact with other family members. I also conclude that there would be a significant risk that D would suffer emotional harm in H's care.

72. Mr Howard, Counsel for H, pointed to various supportive and protective measures which he says the Local Authority has failed to consider to assist a placement with H. These might include therapy to help H with her anger problems. But H does not believe she has any problem with anger. Other measures might include unannounced visits but that would, in my judgement, afford little real protection to D. The claims by her sons do raise the possibility of a risk of physical harm to D in H's care, but unannounced visits would not effectively guard against that relatively low level of harm and in any event the greater risk is of emotional harm which visits would not protect against at all.
73. Moving to the UAE and to the care of K and L will mark a very significant change for D but it is better for her to undergo that change now than to delay the decision further. D is in foster care and that is not a long term option for her. Delay will be detrimental to her best interests.
74. An SGO in favour of K and L will keep D in the family albeit geographically remote from her parents.
75. I accept the recommendation of the Local Authority, supported by the IRO and the Guardian. I have concluded that the option that best meets the duty to afford paramount consideration to D's welfare throughout her upbringing is to make an SGO in favour of K and L. It is not a perfect solution because it will cause D to be removed from this jurisdiction and from frequent contact with her mother, father and maternal grandmother, but it will meet her needs to be placed in a stable, loving family with a couple who will be able and committed to supporting her needs during her upbringing. It is the best option available.
76. At the conclusion of the hearing I announced my decision so that the further work needed to be done prior to the making of an SGO in favour of K and L, could begin. I said that I would give full reasons for my decision in a written judgment. An SGO could not be made at the conclusion of the hearing because K and L were about to return to the UAE but to return in early December 2024. I have given directions for further evidence from the Local Authority as to what support they can give, from a distance, to K and L as Special Guardians, and any contingency planning. I have asked to be provided with any draft consent order that might be reached and which could

be entered into a form of order in the UAE, even without E being able to give her consent. There is also an outstanding DBS check on K and L to be completed. I have listed the case for a further, final hearing at which I intend to make the SGO in favour of K and L whilst they are in the country and able to attend at Court. The plan will be for D to spend time with them and to return with them to the UAE. The expert legal advice is that she will be permitted to travel there and stay with them and that, with the assistance of their employers, she should swiftly receive permission to reside with them. As recommended by the Guardian there will be no reduction in family time with E, F and G, and H in the meantime but the plan does mean that D will leave this jurisdiction only three weeks before her first Christmas. She will therefore be able to spend it with K and L, her new carers, and that will be important for her but she will not be able to spend it with her parents or H. I recognise the sadness that that will cause but it is in D's best interests for the Court's decision to be acted upon without delay. Were she not to return with K and L in December, it could be several weeks before they could travel back here again. At her age, and given all the circumstances, a protracted departure would not be in her best interests.

77. I thank F and G, H, supported by J, and K and L for putting themselves forward to care for D. The desire of family members to care of her is a positive feature of this case for D's future, but it has made for an emotionally difficult process for all concerned. I thank them all for their active engagement and I wish D and all her family the best for the future.