

Neutral Citation Number: [2020] EWHC B82 (Fam)

Case No: ZW82, 91 & 92/19

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 28/10/2020

Before :

HIS HONOUR JUDGE WILLANS

Between :

(1) APPLICANT ADOPTER X	<u>Applicants</u>
(2) APPLICANT ADOPTERS Y & Z	
- and -	
(1) THE LONDON BOROUGH OF EALING	<u>Respondents</u>
(2) THE MOTHER	
(3) – (5) THE CHILDREN (E, A & N)	
(by their Children’s Guardian)	

Ms Pauline Lloyd (Solicitor-Advocate of Ewings & Co) for the First Applicant
Ms Adele Cameron-Douglas (instructed by) for the Second Applicant
Ms Chantelle Barker (instructed by Ealing Legal) for the First Respondent
Ms Anne-Marie Glover (instructed by Morrison Spowart Solicitors) for the Second Respondent
Ms Gemma Neath (instructed by Creighton Solicitors) for the Third to Fifth Respondents

Hearing dates: 6-8 October 2020
(Handed down on 12 November 2020)

JUDGMENT

His Honour Judge Willans:

Introduction

1. This final hearing proceeds under the Adoption and Children Act 2002. I am asked by the separate and respective applicants to make final adoption orders in relation to the children, E, A and N. The applicants are supported in this application by the relevant local authority, the London Borough of Ealing, and

by the children's guardian. The applications are opposed by the children's mother.

2. The names of the applicants, children and mother in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018 having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family must be strictly preserved. All persons must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. Within this judgment I refer to the prospective adopters and children by initials and to children's mother by that title, no discourtesy is intended. I can see no reason to anonymise the identity of the professionals in the case although I will make use of labels as appropriate to simplify the judgment.
3. In reaching my decision I have regard to; (i) the documents contained within my digital bundle¹; (ii) the live evidence of Dr Katherine Craib (psychologist); Ms Ana Tamasan (ISW); Ms Victoria Mitchell (social worker for A&N); Ms Thelma Udott (social worker for E); the mother's partner; the mother, and; Ms Kathy Diamond (Guardian), and; (iii) both the written opening position documents and oral closing submissions for each party.
4. This final hearing took place over three days by entirely remote means. The mother had the support of an interpreter if required and her partner gave evidence using the interpreter. Subject to limited issues the hearing proceeded without issue and I am confident I have a full appreciation of each party's case and the evidence they would want me to have in mind in reaching this very difficult decision.

Background

5. I do not intend to set out the background in detail. In any event the background to this case can be found in my related final judgments concerning E, A & N² (18 May 2018) and their half-sibling M³ (12 March 2019). The father of E, A and N is brother to the father of M. The mother and M's father remain in a relationship. In May 2018 I made care and placement orders in respect of E, A and N. The central issue in the case was that of domestic violence and a complex and toxic relationship between the mother, the father and his brother. At the time of that decision it was known the mother was once again pregnant and it was understood the brother was father to the child to be. The second proceedings concluded with the making of a 12-month supervision order with M remaining in the care of his parents. In making this order and refusing a care plan for care

¹ With all references [i.e. C1] being to the section and relevant page number of the reference

² F16 reported at *Bailii* [2018] EWFC B91

³ F54 reported at *Bailii* [2019] EWFC B16

and adoption of M, I acknowledged the progress that had been made since the earlier hearing.

6. Pursuant to my 2018 orders efforts were made to find permanent homes for the children and it came to pass that E was placed with prospective adopter X and A and N were placed with prospective adopters Y and Z. In the summer of 2019 these prospective adopters applied for adoption orders. The applications were allocated to me to maintain continuity. There was a natural benefit in case managing the cases together, and particularly so when the mother signalled her wish to seek leave to oppose the making of such orders, however this plan of action was derailed when Y and Z indicated their application required more time.
7. In any event X's application proceeded and the mother's request for leave to oppose came before me on 28 February 2020. Having heard submissions I granted the mother leave to oppose⁴. Just prior to this hearing, but too late to re-join the applications, Y and Z restored their application. This came before me with the mother's application for leave to oppose on 6 April 2020. Perhaps unsurprisingly on rather similar facts I gave judgment⁵ and granted the mother leave to oppose this application. The basis for the leave in each case was centred on the progress made by the mother (with her partner) and the significant changes most clearly highlighted by (but not limited to) her successful defence of the care proceedings concerning M.
8. Fortunately it was possible to re-join the cases and on 30 April 2020 I conducted a directions appointment and gave directions towards this final hearing. I consolidated the two sets of proceedings; appointed an ISW (Ms Tamasan); appointed a child psychologist (Dr Craib), and; gave consequential directions. On 25 September 2020 I conducted a PTR and confirmed the format of this hearing.

Legal Principles

9. The children's individual welfare needs are paramount. In this case I assess each child's needs throughout their life and the relevant welfare checklist is found at section 1(4) Adoption and Children Act 2002. In assessing the child's welfare interests the Court should not lose sight of the fact that those interests include being brought up by the natural family, unless the overriding requirements of the child's welfare make that not possible and that the capacity of the parent to provide good enough care must take into account the support and assistance

⁴ B10

⁵ B26

which the authorities should provide to enable a parent to meet their child's needs⁶.

10. The significance of the granting of permission to oppose is that it reopens consideration of parental consent to adoption and the requirement to dispense with such consent prior to the making of any adoption order. Dispensing with consent will only be justified in circumstances in which the welfare of the child requires the same.
11. Such non-consensual adoption is a most draconian step and sits at the outreaches of interference in family life. It requires a very high level of justification to be ordered. This high test is expressed in the authorities through the language of '*last resort*' and is to be considered only '*when nothing else will do*'⁷.
12. Consideration of such an order places on the Court the obligation to properly assess the realistic options⁸ placed before the Court. This is now well understood to require a holistic assessment with an appropriate and rigorous weighing of the positives and negatives of each realistic option. It is therefore incumbent on the professional assessors to provide the Court with an analysis that applies such a rigour to the assessment undertaken.
13. The 2002 Act includes consideration of contact orders when making adoption orders. However, the 2002 Act should not be taken to have altered the previous principles governing such orders and which indicate that a Court should be reluctant, save in an exceptional case, to impose contact beyond that which the prospective adopters would agree⁹.

Discussion

14. I intend to analyse the evidence and arguments through the welfare checklist before setting out my holistic analysis and ultimate conclusions. I do not intend to outline the full range of the evidence received and heard but will instead identify that evidence which was most significant in helping me make my decisions. I have though continued to bear in mind all the evidence placed before me.

s1(4)(a): Wishes and feelings

15. The Court must when considering this factor have regard to each child's age and understanding. Whilst wishes are the first factor in the checklist it should not be thought that this factor has pre-eminence over any of the other factors. The weight to be attached to such feelings will vary having regard to the child's

⁶ Re B-S (*Children*) (*Adoption Leave to Oppose*) [2013] EWCA Civ 1146 applying Re B

⁷ Re B (*Care Proceedings: Appeal*) [2013] UKSC 33

⁸ Re S (*Care Proceedings: Evaluation of Grandmother*) [2016] EWCA Civ 325

⁹ B (*A Child: Post Adoption Contact*) [2019] EWCA Civ 29

understanding and will always be subject to the Court's obligation to ensure the welfare of the child is protected.

16. Plainly these are not older children (being aged between 3 and 8 years of age) and I will approach their wishes with real care in the light of their age. Any assessment of their full understanding of what adoption means and the severance of family life it entails must be approached with real caution. However, I do not overlook the fact that both E and A express a clear recollection of the time in their mother's care and have expressed opposition to any return, wishing to remain where they are.
17. I have a short letter from E dated 21 September 2020 in which he emphasises on more than one occasion his wish to be part of "Daddy's (X's) family". When the guardian met with E and sought to gain his views, he told her "I want to be with daddy (X) all the time and forever"¹⁰. In due course I will consider E's broader emotional needs and presentation. I consider his expressed wishes have to be considered in conjunction with the broad welfare assessment. Dr Craib told me (when considering contact with the mother) that E is clear in his views and that forcing him to engage with contact would be harmful for him. Dr Craib elaborated on this point in oral evidence. His negative attitude to his birth family should be seen as a stage of attachment. Previously he did not have a secure attachment but now he has started to build a new identity and is safe enough to move away from his previous trauma. His ability to emotionally distance signifies he feels emotionally safe to progress. This is evidence of E cutting off the link so that he can emotionally cope. To force him would be counterproductive. In an ideal world this would not be helpful, but this is like dissociation with his brain cutting off as this is all it can do. It is a survival strategy and he must not be pushed.
18. Equally A expressed a wish to remain in the care of Y and Z (given her age N's views were not sought). When speaking to the guardian she expressed the wish to remain with Y and Z as this 'would make me happy' she then spoke about not being cared for well when she was with her birth family and commented that she wanted me to make the right decision and if I didn't 'she would bong me on the nose with [my] hammer'¹¹. A spoke to her social worker (Ms Mitchell) on 17 August 2020 and is reported as saying: "*I don't want to go back to my birth mum, I love her a lot but I love my mummy and daddy here (Y and Z) and want to stay with them.*"¹²
19. E and A are not young children without memory of their earlier life within their biological family. When considering placement orders with respect to children of this age the Court often treads with care given the sense of identity the child

¹⁰ E230

¹¹ E231

¹² C219 §5

will have already established. Constructing a new permanence for such children is far more difficult than in the case of younger children whose emotions are not stretched between the old and new families. But it is clear E and A recall a time before being in care and whilst one must critically analyse whether all they remember is 100% accurate it is important to keep in mind that their memories are negative and strongly so and that they do not wish to return back to their family. It is also right to keep in mind that these early experiences are judged to have impacted on the children beyond their simple wishes and feelings.

20. I do not understand the mother to challenge the suggestion that the children hold these views (although she challenges some of the detail ‘recalled’ by the children as likely being outside of the reality of their previous life). Her case ultimately rests on the ability to achieve a rehabilitation notwithstanding this complication at outset. She is frank in accepting such a process would be challenging and of some duration.
21. In my assessment the mother is right to accept the challenge this would pose. In my assessment whilst these wishes and feelings are expressed by relatively immature children, they are in many ways the peak of an iceberg, with the iceberg being a complex set of factors which have led to the formation of the feelings. The feelings are certainly not the result of transient features or representative of a superficial assessment of the relative advantages of life with the prospective adopters. I do not accept the suggestion that these wishes may reflect false memories which have been unconsciously implanted into the minds of the children as a result of professional involvement. The evidence of Dr Craib (which I accept) was clear in this regard:

The way memory works in young children...they can remember the early years...they have some sort of recall...as get older they lose their memories but if they have held onto memories these will last longer...language may have been applied to the memories at a later date...I did not see anything that suggested the memories were scripted....[A] may have held on to the memory as it had emotional resonance

Rather, and in the case of E and A they reflect much deeper set life experiences. It should not be forgotten that in 2018 the Court considered the care provided to the children was such that their welfare required separation from their biological family. Within that assessment there was evidence of poor treatment and neglect. But as I observe above it is likely the children’s wishes and feelings cannot be compartmentalised from the broader evidence base and it is to the children’s needs that I now turn.

s1(4)(b): The child’s particular needs

22. I well recall at the leave stage considering the argument that the welfare needs of each child (the second stage test) pointed against granting leave. I recognised this argument was not without force but ultimately rejected it insofar as granting

leave was concerned. But that was not the end of the matter. It was clear there would be a need for a robust assessment of the children's needs; their experiences and attachment and the impact of all of this on the decision making for the Court. All parties agreed this would fall into the province of an expert child psychologist and this was the justification behind the appointment of Dr Craib.

23. I have a detailed report from Dr Craib¹³. In her written evidence she provides a clear and comprehensive response to those points put to her. In oral evidence I found her to be a most helpful expert witness. She was direct and clear and provided responses to all questions put. Whilst it is right to observe that she had reached a robust conclusion and did not depart from this I did not find her to be dogmatic in her approach and it seemed clear to me that her conclusions were based on a robust analysis of the evidence available to her.
24. Dr Craib's evidence has bearing on all aspects of the welfare assessment. She comments with regard to the children's needs¹⁴ as follows:

Each of the children present as having a very high level of emotional vulnerability, and all three are at risk of having longer term complications in respect of their mental health and attachments, and thus their overall development.

The three children require above-average levels of reparative parenting, with an emphasis on consistency of attachment. They require their carer(s) to have a considerable degree of the following qualities: emotional availability, including being able to regulate their own emotion, so that there is emotional space for the children's emotion; time and focussed attention – each child needs a very high level of parental involvement and attention which would be very difficult to achieve if the children are placed together; emotional attunement and sensitivity – as the children have a lot of internalised feelings that may lack a clear narrative; clear and consistent boundaries around behaviour, and good modelling; good modelling of interpersonal relating, and behaving, with effective problem solving skills evident in relationships; above average levels of communication and psychological insight. I would not have confidence in all three of the children being placed together due to the very high level of need for all three of the children.

If these needs were not met, then the risks of long-term negative consequences are above the 90th percentile for all three of the children. These specific difficulties are very likely to impact on the children's abilities to form good attachments, as well as negatively impact their overall development, if these difficulties that the children have, are not effectively managed within the relational context.

E particularly has the need for clear, male role modelling and attachment.

25. The expert was very clear as to the need for reparative parenting for each child. In her judgment this was so central to a positive future for each child that it trumped the need for sibling contact (if these came into conflict). Dr Craib

¹³ E10

¹⁴ E10

considered the children gained from their sibling relationship, but their priority must be working on their ability to establish a secure attachment with their carers. Their issues could not be fixed via a sibling relationship but needed reparative work. She considered E was on a journey of recovery and was in the early stages. His trauma and attachment issues are wrapped up together. His ability to release the trauma will come with therapy and attachment building with his carer.

26. She made clear the reparative parenting she was describing was over and above the meeting of basic needs. It required active and corrective work; an understanding of the harmful dynamic the child brings; an ability not to judge the child for the behaviours presented; an ability to understand the needs that sit behind this behaviour and a level of psychological insight. It is reparative in that it seeks to repair the earlier trauma and reconstruct a positive attachment. This requires more than a token knowledge but there must be emotional attunement and real skill. This involved a two-way process but at outset the input will need to come from the carer. This requires a huge emotional investment as the results are not immediate and it feels like an investment into an empty pot. Furthermore the initial feedback may be negative and challenging as the child develops a sense of security to act out his or her feelings
27. In the case of E he would not be able to undertake this work with his mother as he is not in a place where he wants to consider her. To put him into this place would be incredibly harmful, even if the mother had the requisite skills. For E the prospects of developing a secure attachment would be remote.
28. In the case of A and N it was noted they are receiving attachment therapy. To pull them out of this process would lead to an attachment trauma. Their carer needs a high level of attunement and emotional capacity. They would need emotional and physical energy and real patience. They are unlikely to receive quick rewards, this is an investment. In a household with lots of children this is unlikely to be successful. E requires a sole placement, but A and E need a similar level of investment. The time required will be phenomenal. This will be very much harder without one-to-one time.
29. Any move would have to be to a placement which has a good attachment relationship with the children. Otherwise one would be moving the children to a placement without any attachment and this would defy logic as it would be so harmful. The mother could not be a protective factor without this level of relationship.
30. Dr Craib was willing to accept that the children's multiple moves in care would have likely compounded the issues, but E's experiences derive from his family life not from care. These moves will not have caused the issue but would have added to it. Dr Craib noted, and I agree, sight should not be lost of the fact that

these older children experienced a very unsettled life prior to removal. In any event this history emphasises the need to avoid further disruption. She was willing to engage with questions around how a move to the mother could be structured but kept coming back to the question as to on what evidential and child focused basis was there grounds for commencing such a process which would likely be harmful as set out above.

31. Dr Craib considered whether the work could be done with the mother and noted rehabilitation plans are premised on the ability to work with a parent but here the risks are very great as the children are still experiencing trauma in their everyday life and it would be very harmful to try and repair this in situ with the mother. Normally when this works the perpetrator has been removed. The expert noted the positive progress made by the mother and that this was important for M, but these children need high level reparative parenting and to pull them out from a situation where this is being received into an uncertain situation would be wrong.
32. The focus of this part of the analysis has been on the emotional needs of each child. I am conscious that needs extend to include physical and educational and other needs (see for instance section 1(3) Children Act 1989). On the facts of this case however I am confident the dominating need to consider is the emotional need/welfare of each child and that the other needs are likely to be closely and positively correlated to successfully meeting the emotional needs of each child.

s1(4)(c): The likely effect on the child (throughout their life) of having ceased to be a member of the original family and become an adopted person

33. Adoption amounts to the most severe curtailment of private life that can be ordered by the Court. It not only tends to sever all family contact but also alters the legal relationship between the child and the biological parent. Any right-thinking society approaches the question of non-consensual adoption with caution and with a humble recognition of the impact on a child of such decisions being taken by third parties premised on an assessment of what is required to safeguard the child's welfare. These are children who know their history, and this is a complicating feature. They will travel through childhood and adolescent in the knowledge of this severance and the Court needs to be mindful of the emotional baggage that can accumulate as a consequence.
34. An additional feature in this case is not only the severance of each child from their biological family but also the loosening of their cultural and identity ties. A sense of identity and being is important to ground all individuals. These children derive from the country of their parents, which itself has a rich cultural heritage. The prospective adopters do not share this background and despite their undoubted willingness to promote such heritage this is bound to fall

significantly short of what can be promoted by the mother. A simple but important point is the loss of language. The children were growing up in a household in which their mother tongue was dominant. As I understand the evidence, they no longer have a grasp of this language. This is not a criticism of the carers but a recognition that loss inevitably flows from adoption and that such loss can be lifelong in nature.

35. Understandably this point was made to Dr Craib on behalf of the mother. Notwithstanding the challenges identified above would it not be better in the long-term for these children to have the opportunity to experience family life within their biological family given in addition this would safeguard their heritage and identity needs. Dr Craib agreed this was indeed the ideal but:

...we are far removed from this situation and we cannot put them back onto that path as there are too many risks and pitfalls...are we willing to pay any price in pursuit of the ideal...the situation is tragic but they are now securing attachments and it would be wrong now to pull them out of this without confidence as to the likely outcome...such a move may enable them to have an awareness of the heritage but would not meet their attachment needs and they will have paid an enormous price for this...

36. Within her report Dr Craib commented on this factor¹⁵

Inevitably there will be a sense of loss, and this is also in relation to their...heritage. This loss can be experienced as grief. Where there has been significant adversity, this is not a grief over something they have actually lost, but rather is a grief over the loss of an idea – what they wanted but didn't have. Children can have expectations that their birth family can transform into something which they have always desired, and this expectation can compound their sense of loss. Children can experience this loss as abandonment and rejection. They can also struggle with issues around identity, if this is not actively addressed. Building reparative relationships is a protective factor

37. The evidence is therefore of a sad but inevitable trade off in which the Court has to prioritise certain features of the case but cannot maximise all features. The key to my decision making will be in identifying the aspects which have to be the key focus for these children.

38. In considering the points around heritage I do recognise the stated intention of X, Y and Z to promote the children's heritage. I heard some limited evidence¹⁶ in this regard of the carers being open as to the children's heritage; of the carers for N indicating a willingness to have N baptised into the relevant faith, and; of E's carer planning a trip to E's home country. I accept this evidence. It is clear to me the carers recognise the importance to the children of their heritage and do not see engaging with it as a threat to their own relationship with the children.

¹⁵ E12

¹⁶ From the social worker but also via submissions made on behalf of the adopters

s1(4)(d): The child's age, sex, background and any other characteristics

39. It can be seen I have already begun to analyse features found within this heading. I have noted the age and sex of the children and matters relating to their heritage.
40. A further point to note is the role of M in any assessment of the children's lifelong welfare. M is a half sibling to the children and is being brought up by their mother. There is no suggestion this will change. The local authority has closed its case in respect of M and there are no enduring concerns. This is an undoubted complexity (and may well have been considered under the last heading) insofar as the impact this might have on the children if/when they come to know M has remained in his mother's care. An obvious question is as to whether they will have an additional level of loss and regret and moreover a lack of understanding as to why they also could not have remained.
41. The position though is far from simple. As noted above some of the children have expressed a wish not to return home. Further the presence of M in part impacts on the perceived capacity of the mother to give each of the children the input they need. Furthermore there is the complication of M being the son of their uncle and it is far from clear as to the children's understanding of the relationship between their mother and uncle. It must be borne in mind that M's father was part of the dysfunctional home life that led to the children being placed into care. In the course of evidence there was suggestion the older children are not aware of M. But this is clearly not the case as made clear in the annex A reports.
42. The inter-relationship between the siblings, their mother and M was raised in evidence. I have already commented as to the evidence of Dr Craib as to the need to prioritise the relationship between each child and their carer. However, it is recognised that the children benefit from their sibling relationship. The evidence is clear that this relationship has been fully supported by the respective carers and contact (pre-Covid 19) was direct and regular. The evidence of the expert suggests that in fact the children benefit from a relationship at a distance having particular regard to the conflict that has existed between E and A in particular:

This is detailed in the body of the report. There is some friction between E and A but they can also get on well. E is unsure of his own role in relation to his sisters, given the history. It is beneficial for him to be placed separately from them as this allows him to have the focussed time and attention that he needs, and to develop as a child. It takes away the responsibility he has felt to care for them.

The[y] do seem to miss E, but not excessively. They benefit from having good levels of contact. There is some competition between A and N, but this is improving. It is positive that they have the opportunity to learn how to respond to each other, and others generally, in relationships.

Dr Craib was concerned as to the risks for the children were there to be post-adoption contact with the mother or were some of the children not to be adopted but were they to have contact with an adopted sibling. The concern was as to the traumatic relationship with the mother in some way finding its way back into the adoptive home and undermining the reparative work being undertaken. This is why Dr Craib was clear as to there being a need to focus on reparation first and foremost.

43. It must be acknowledged that the prospects for sibling contact continuing are greater if all children are to share a similar placement structure (with mother or all adopted). If this can be achieved, then it will be an important welfare positive for the children. I make this point notwithstanding the child focused decision of the mother that she would not seek to be involved in any sibling contact sessions were some of the children returned to her, but some retained in an adoptive home.
44. In considering the children's background I of course have regard to the respective time they have been in care compared to in the care of their family and to the threshold issues that led to their removal. In the case of N she has spent more of her life with Y and Z than with her own mother. She has no personal relationship or bond with the mother.

s1(4)(e): Any harm the child has suffered or may be at risk of suffering

45. I of course bear in mind the threshold findings made within the substantive proceedings. This judgment highlights (particularly through the evidence of Dr Craib) the continuing relevance of the same to the children. I of course also reflect on the significant progress made by the mother subsequently and as to what this indicates as the level of likely continuing risk. But it must and should be clear that the harm suffered by the children is not ameliorated simply because the mother has made subsequent progress.
46. Dr Craib¹⁷ considers the risk to the children were their ties to their current carers to be severed:

The risk for each of the children severing the attachments they have formed is extremely high. The children have started to stabilise, to adjust, to feel that they can start to trust adults to take care of them, to know that they themselves are 'ok' and that others place a value on them. The children have started to shift their negative blueprints of themselves, as well as of others – they are still testing these out, but they are daring to entertain the idea that they can be seen as different to how they have previously viewed themselves, and that others can be safe, caring, responsive, and protective.

To take this away from the children would undoubtedly re-traumatise them. They would likely lose their early-stages of confidence in adults, and I would expect to see a significant increase

¹⁷ E11

in their overall risk behaviours, including both the internalising and externalising of feelings. As these behaviours increase further, the behaviours will also then get in the way of the children being able to 'start again' to build a good attachment. The children may also lose hope and faith that this is possible, and so may give up.

47. Elsewhere in the evidence she pointed to the importance to the children of their current therapeutic relationships and the loss and harm to the children were these to be terminated.
48. The ISW gave evidence of relevance in this regard. It should be noted that whereas Dr Craib met the children, she did not meet the mother (the mother had argued for this at an earlier case management hearing). In parallel the ISW met with the mother (and partner) but not with the children. At final hearing it was suggested that this had a limiting effect on the evidence of the experts. However, such an approach was carefully considered and was indeed signposted as early as the leave hearing when I was considering the ability for the proceedings to go forward without undermining the children. I considered it would be both inappropriate and unnecessary for the children to be seen with their mother as part of the assessment. In the light of Dr Craib's evidence one would have to be mindful of the real trauma that might have occasioned. The older children are certainly aware of this process and this appears to have caused some level of disturbance. I judge that was the right balance to take to permit a fair assessment. It should be noted the mother did not seek for the children to be seen in her care as part of the assessment in any event.
49. However, separate criticism was levelled against the ISW by the mother. It was said her assessment was substantially flawed and does not permit the Court to assess whether a reparative approach could be accommodated in the care of the mother/partner. It is said she misconstrued the mother's position as to her own responsibility for the position faced by the children and that she wrongly viewed the progress made by the mother as somewhat superficial in nature ("talking the talk" but not internalising understanding). It was further said that insufficient weight had been given to the care being provided to M and that the ISW had become stuck on the pre-2019 assessment around risk of DV, a position that was irreconcilable with the subsequent proceedings. In substance it was said there was an over reliance on static risk factors without appropriate allowance for dynamic changes.
50. Counsel for the adopters draws attention to the following observations of the ISW:

[The mother] accepts that there have been some issues in the past as per above but not to the extent that E, A and N would have suffered trauma because of neglect, emotional and physical abuse occurred when they lived with their birth family. [The mother] attributes her children's difficulties to being removed from their mother care, being placed in numerous foster placements where their...identity and culture were not met, the children were separated and

miss each other because E was placed with one prospective adopter and A and N were placed with another prospective adopters. Furthermore, [the mother] questions if her children did not suffer any form of abuse while they were in their foster placements. [The mother] is clear that none of the children's difficulties and traumas are to be attributed to her.

During our conversation, [the mother] did not at any point focus on linking the information she read with the traumas her children have suffered when they were in her care and that is mainly because she does not accept that her children suffered any traumas in her care caused by neglect, insecure attachment, lack of emotional and physical availability to them, etc. [The mother] believes that the trauma memories, feelings and reactions the children have are caused by the numerous placements moves they had and because they have been taken from her care.

51. For my part I consider there is force in some of the criticisms. I agree the ISW failed to have appropriate regard to the developing picture with respect to DV within the mother's relationships. To an extent this was understandable as the history is complex and I have the benefit of unique insight into the changes that have occurred. But I do agree these points did not justify the weight attributed to them in the report. I am also mindful of the criticism of the mother's application of her learning. I did not understand the mother to suggest she did not have progress to make (indeed she was open to more work and to playing a role in therapy with the children), but I think it somewhat unfair, and more importantly incorrect, to characterise her progress to date as superficial. There is in any event undoubted positive progress in her care of M to be borne in mind. But I consider some of the criticisms are unwarranted. My sense of the mother's case during this part of the proceedings has been at times not so accepting of the responsibility she bears for the harm suffered:

I realise that some of [E's] experiences would not have been the greatest while in my care, but I have accepted that I needed to change and made huge progress in the changes in my life¹⁸

Further the mother has in my assessment placed greater emphasis on the impact on the children of moves in care than the proceeding home life including the multiple moves whilst in her care¹⁹.

52. The difficulty appears to me that the risks are not so much of the mother now but arise out of the harm and damage which has already been suffered. I note in significant detail above the concerns of the expert as to the trauma to the children were they to be moved now. This trauma is attachment based and is traced back to the historic care in the home of the mother. Sadly, the progress made by the mother, whilst important and worthy, cannot rewrite the children's life history.

¹⁸ C71 §20

¹⁹ For example see C113 §9 re E

s1(4)(f): the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, 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.’

53. Under this heading I have regard to the relationships with the mother and the prospective adopters.
54. The consensus of the professional witnesses is that the mother with her partner would not be able to meet the needs of the children, or indeed either E or A/N separately. I refer back to many of the points noted above. This is not through a lack of willingness or a lack of motivation. However, it is said to arise from a disconnect between what these children require and the ability of the mother to meet the same. It is deeply complicated by the identified trauma suffered by the children, their attachment issues and the need for reparative parenting in a focused setting. These needs are complex and challenging and assessed as likely beyond the ability of the mother and her partner, notwithstanding their ability to care for M. As noted above the mother has accepted that this process will be challenging and lengthy. The difficulty is that the concern is not about how long the process will take but it’s very limited prospects of success and the consequent significant harm that will inevitably be caused to the children along the way.
55. In contrast the prospective adopters have shown both a willingness and capacity to engage with the children notwithstanding the difficulties. They have successfully commenced a process of reparative work and appear to have all the components identified by Dr Craib as being required in any successful care for the children. Importantly, they are not being required to care for all the children. The evidence to date is positive and gives grounds for optimism.
56. Plainly on the evidence the wishes of each participant are clear. The mother understandably and genuinely wishes to have her children rehabilitated to her care. The prospective adopters equally wish to have the children made permanent members of their family. The children support the latter and have some real opposition to the former.
57. In considering this factor I note the role of M’s father. He is uncle to the children and did have a relationship with them prior to removal, although this was not an entirely positive relationship and is very secondary to the one they had with the parents. I have now seen M in three sets of proceedings, and he remained a quiet,

reserved individual. It is clear to me, and no criticism is intended, that he differs from the mother in terms of capacity to engage and take on advice. It is fair to observe he has engaged with work from time to time, but he appears to find such engagement more challenging. I foresee real challenges in respect of his role and his contribution were the children all to be returned to the mother's care. I am far from persuaded he would be able to step up to the high level of reparative parenting that would be required of him as well as the mother. Whilst I do not wish to diminish his role in the household, he is currently working long hours and the mother is the primary care for M. The evidence suggests that caring for M, E, A and N would likely be a challenge outside of the capacity of the mother and partner.

Holistic Analysis

58. I bear in mind the detailed assessment of positives and negatives set out within the guardian's position note for the hearing²⁰. I accept and adopt each of these points. However, I would want to set out my own independent assessment to sit alongside this:

Reunification Positives

- Were this to be successful then it would permit the resumption of family life
- It would maintain the important relationship between the mother and children
- If successful it would guard against later emotional baggage as the children look back on what might have been
- It would permit a full relationship between all the children on a daily basis
- It would permit a wider relationship, and particularly with M
- It would strengthen the identity and heritage links noted in this judgment

Reunification negatives

- This outcome is inconsistent with the wishes of the children
- In the view of the expert it would cause significant harm to the children with limited prospects of success

²⁰ §9-12

- It would not permit E or A&N the focused attention they require
- It would sever the relationship with both the adopters and therapist at a time when attachment is just being repaired
- It runs the risk of not only putting the children back in their 'recovery' but stalling it altogether
- It is questioned whether the mother has the resources or time to focus individually on the needs of each child as required
- This would require a further move
- For N this would be a move to a placement with which she has no bond and for the other children a move to a placement with concerning associations
- There are possible complications/conflicts that may arise with respect to the relationship with the uncle

Adoption positives

- It would continue the current relationships which are seen to be working for the children
- The current placements offer the best chance of successful reparative parenting
- It would be in line with the wishes of the children
- It is viewed as having the best chance to retain sibling relationships
- The placements have the time and focus to meet the needs of each child
- The carers have demonstrated the skill set said to be required by the expert
- The placement permits the progress made to be built upon
- There would be no need for a further move
- The therapeutic process can be continued

Adoption negatives

- It amounts to a continuing and most significant interference in family life

- It would likely severe in all material regards the relationship between the children and mother
- It does not permit the children to live together
- It breaks the possible relationship between the children and their half sibling
- It comes with no guarantees – at the outset of the proceedings the challenges in caring for the girls was such that the application had to be delayed
- It does not meet the cultural needs of the children

Conclusions

59. I have reached the conclusion that I should approve the applications for adoption orders in respect of each child. I do so for the following reasons:
- i) Most importantly, it is abundantly clear to me that these children remain damaged as a result of their early years and it is fundamentally important that they now have the chance to repair this damage. I accept the evidence of the expert as to the need for reparative parenting to enable the children to deal with their trauma and establish secure attachments. This is the key priority for each child
 - ii) Absent such work these children will proceed through childhood and into adulthood hampered by a lack of secure attachments and the same will have a significant impact on their ability to develop into rounded and productive adults. In simple terms this will have a life-long negative impact upon them
 - iii) The evidence makes it quite clear that the applicants have the potential to fulfil the role required to effect this change. They are demonstrating this in situ and have all the features required to take this through to a successful outcome
 - iv) Sadly, in contrast the mother is most unlikely to be able to achieve this goal. This is in part due to the history and her role in the history. This has led to the older children being oppositional to return to her and the evidence persuades me it is most unlikely such a return would be accompanied by progress. Rather it appears clear to me such a move would have a wholly negative impact on the progress made to date. But it is also a function of the other challenges and responsibilities the mother has which make her poorly placed to meet the individual needs of each child.

- v) Whilst this outcome does not fully meet the cultural needs in comparison to a return home, I agree that this would be to sacrifice the broad needs of the children in pursuit of one feature of the case. I agree that there would be a high and lasting price to pay for this achievement.
 - vi) It so happens that this outcome is also the one which is most likely to permit the children the opportunity of a sibling relationship. Whilst this does not include M I judge the sibling relationship is in principle far more important than the establishment of a relationship with M.
60. In reaching this conclusion I dispense with the parents' consent as the children's welfare requires the same.

Contact

61. I should make it clear that sibling contact is agreed to continue by consent and on a voluntary basis as agreed from time to time between the adopters. There is a clear basis for accepting this will happen given the history of their joint engagement. Whilst one cannot predict the children's emotions as they travel through their reparative process, I do in principle consider this will be beneficial for them.
62. I agree there remains real benefit in the adopters meeting with the mother. It is unfortunate, but understandable, as to why this has not yet happened. I understand the adopters are open to this, as is the mother. It is an important meeting for the children in terms of their life story understanding. I see no reason why the children should be told about this meeting at this time. It is for their benefit, but this is a different point.
63. As to contact between the mother and the children. I agree the proposals for indirect contact. I do not however intend to order direct contact. The adopters do not agree it at this time and despite the submissions of counsel for the mother I do not agree this case has anything like the exceptionality that would be required to make an order contrary to the wishes of the adopters. Furthermore, their opposition is justified in the light of the expert evidence which warns as to the potential for enforced contact to set the children back in their emotional journey. I consider it would be contrary to the welfare of the children to order such contact on the evidence available to me.
64. This will undoubtedly be a matter of deep heartache for the mother. She has fought for all her children with differing outcomes. She may wonder why it is that she can care for M but not the other children. Sadly, much of what is found in my judgment reflects the damage done prior to the birth of M. I can only hope she is able to refocus her attention on M and maintain the good care she is giving to him. I hope she can in due course take some solace in the likelihood that her

older children will successfully complete their reparative journeys and will, if and when they see her again, be better people for the opportunity that has been given to them by this decision.

65. I have sent this judgment out to all counsel. I permit them to share the judgment with their lay and professional clients. I would welcome any corrections or requests for clarification by 4pm on 5 November 2020. I intend to hand this judgment down at a mention hearing on 12 November 2020 at 10am (t/e 15 minutes). I would ask for a draft order for that hearing no later than 48 hours before the hearing. I do not require attendance at the hearing unless I am told there is a wish for an attended hearing, and if so by 10 November 2020. Any hearing will be held remotely.

His Honour Judge Willans