| | |
|---|---|
| **Neutral Citation No: [2026] NIFam 8**<br><br>*Judgment: approved by the court for handing down (subject to editorial corrections)** | *Ref:* **SMY13023**<br><br>*ICOS No:*<br><br>*Delivered*: **01/04/2026** |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

_____

**FAMILY DIVISION**

_____

**Between:**

**ED**

**Appellant**

**and**

**A HEALTH AND SOCIAL SERVICES TRUST**

**First-named Respondent**

**and**

**AB**

**Second-named Respondent**

**IN THE MATTER OF ADAM, LOUISE and ANNA (MINORS)**

_____

**Ms Smyth KC and Mr Gervin (instructed by McLaughlin & Co Solicitors) for the Appellant Mother**
**Ms Simpson KC and Ms Clarke (instructed by McLaughlin & Co Solicitors) for the Respondent Father of Anna**
**Mr Magee KC and Ms McGrane (instructed by Business Services Organisation) for Respondent Trust**
**Ms Murphy KC and Ms McCausland (instructed by Paul D Thompson Solicitor) for the Children's Court Guardian**

_____

**SMYTH J**

**Nothing must be published which would identify the children or the family in this case. The names that I have given to the children are not their real names.**

*Introduction*

[1] This is a mother's appeal from a decision of Her Honour Judge McCormick KC sitting in the Family Care Centre in Belfast on 1 August 2025, wherein she granted

freeing orders pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 for Adam, Louise and Anna, now aged eight, seven and five years and refused to make an Article 53 order for contact under the Children (Northern Ireland) Order 1995.

[2] Adam's father is not currently known. A declaration of non-parentage was granted in respect of the man whose name appears on Adam's birth certificate after DNA testing. Efforts to trace another individual have been unsuccessful. Louise's father did not play any part in the proceedings. Anna's father is represented but he accepts that he cannot offer care to her and is neutral regarding the appeal.

***The background***

[3] The children were voluntarily accommodated on 25 March 2021 and have not been in the care of their mother since that date. Home conditions were concerning, the mother struggled to cope, her mental health was poor, and the children's needs were not met. The children were exposed to domestic violence in the mother's relationship and Adam was the subject of inappropriate chastisement by Anna's father which resulted in criminal proceedings.

[4] It is important to note that the mother has experienced considerable trauma in her life and did not have a family network of support to rely upon. She was brought up in the care system and lacked any role model to help her to parent her own children.

[5] Ms Nadine Sharpe, an independent social worker was instructed on the mother's behalf. She shared the opinion of Dr McCrum, Clinical Psychologist who also carried out an assessment, that although progress has been made in some areas, the children cannot be returned to their mother's care. In order to recover from her own childhood trauma and be able to care appropriately for her children, the mother would have to engage in a long process of skilled, consistent and robust therapeutic support. Such a process is likely to take several years.

[6] In recent times, the mother has made positive changes in her life, undertaking a number of courses and volunteer work which have benefitted her personally. She has however, not engaged in the therapeutic work she needs, because, like many people who have experienced childhood abuse, she feels unable to relive the trauma which therapy involves.

[7] The mother accepts that she is not in a position currently to care for the children but objects to adoption and wants the children to remain with their carers on a long-term foster basis so that at some stage in the future the family can be reunited.

[8] Apart from a short period with his respite carers, Adam has been living with his carer since he was last in his mother's care. She wants to adopt him. The two girls have lived together with their carers since 7 August 2023. They wish to adopt them.

The carers have forged a good relationship, and the children have regular contact with each other.

[9] The mother has not had direct contact with the children since July 2022. The issue of contact is at the heart of this appeal and whether the mother is unreasonably withholding consent to adoption. The chronology appears to be:

(a) In July 2022, the mother had a contact visit with Adam which ended with the mother screaming at the carer, having inappropriately brought her partner to the contact visit. Also initially denied, the mother had been involved in an abusive relationship with this man. It is accepted that Adam was extremely traumatised by the incident.

(b) The mother then disengaged between July and September 2022 and no contact took place. During that time, the mother's partner was charged with murder, and she was also under investigation. She told the Trust that she was under paramilitary threat and that it was not a safe time to have contact.

(c) On 15 September 2022, rehabilitation was ruled out at a LAC review which the mother did not attend. After being advised of the outcome, the mother indicated that her situation had stabilised and she wanted to see her children immediately. Advice from the therapeutic team was that if contact was to take place, it should be re-introduced indirectly in the form of a photograph or a card with a planned progression to direct contact.

(d) On 24 January 2023, the mother provided a photograph of herself for each of the children and a video for Adam, but they were not given to them. The explanation given to the court was that a number of indirect contact pieces had been requested upfront so that, if the mother disengaged again which she had threatened to do, there would be items that could be given to the children on a planned basis to avoid disappointment and potential emotional harm.

(e) On 2 February 2023, the mother provided cards but found it too difficult to create the videos that had been requested. These were not given to the children either.

(f) In February 2023, the children were given a narrative about their situation and why they had no contact with their mother. It related to the murder investigation and included these words:

> "Mummy made dangerous choices, mummy disagrees. The police have become involved. A grown-up got hurt. We want to make sure you are safe. Mummy has to stick to the rules and keep her and you safe."

It is accepted that Adam in particular had an extreme adverse reaction to this narrative and all of the children were subsequently heard to repeat comments that their mother was unsafe. Ms Sharpe was, understandably critical of the narrative, querying both its necessity and its content. In particular, the appropriateness of the children being told that their mother had made dangerous choices and a man was hurt, seemingly in the same sentence was questioned when ultimately, she was not charged in relation to the incident.

(g) On 4 May 2023, full care orders were made with a care plan of adoption. At that time, no contact at all had taken place since the last direct contact in July 2022. The court approved a trajectory for contact beginning with indirect and progressing to direct. Consequently, the mother was asked again to provide a photograph, in an individual card for each child. It is unclear why the initial photographs provided in January 2023 could not be used.

(h) The mother struggled to accept the care plan of adoption and disengaged until August 2023, when she did provide cards for the children. Between August and October 2023, a decision whether to give these to the children was under consideration. In November, the post adoption team recommended indirect contact twice yearly and decided that the cards were inappropriate because they were birthday cards and one of the children in particular would have reacted badly to a card with the wrong age, due to the delay that had ensued.

(i) On 15 January 2024, the mother issued a C1 for contact pursuant to Article 53 of the Children (Northern Ireland) order 1995.

(j) On 30 January 2024, the therapeutic team was involved in a further discussion about the cards, and it was decided that the wording within was also inappropriate. When challenged about the delay in progressing indirect contact, the Trust explained that it was due to the unavailability of therapeutic colleagues who were deemed necessary in order to ensure the children did not suffer emotional harm. Ms Sharpe opined that too much emphasis was placed on therapeutic input at the expense of maintaining contact.

(k) On 19 February 2024, a meeting took place between the mother and the social worker Ms Pollock who explained why a decision had been taken not to provide the cards to the children.

(l) On either that date or shortly thereafter, a further meeting took place between the mother, Ms Pollock and a senior social worker, Mrs Jean Kelly. There is a significant dispute about what occurred at that meeting with the mother maintaining that she was told by Mrs Kelly that under no circumstances would she be getting any direct contact. Ms Pollock's evidence was that the mother presented in quite a heightened manner and complained that her legal team had not provided her with information, which was a common theme. She said that it was explained that there would be no direct contact *at that time.*

(m) It is agreed that at that meeting the murder investigation was also discussed. The PSNI had confirmed six months earlier that no charges would be brought against the mother and she was anxious that the narrative provided in February 2023 would be corrected. She was concerned that the children should know that she did not pose any threat either to them or to anyone else.

(n) Ms Pollock was questioned about the Trust response to the mother's concerns. She told the court that at that meeting:

> "[she] would like to think and [she] believed that [she] would have said that "we will of course be telling the children that [she] is safe and that [she] is doing well and repeat with them that she is safe and she is doing well."

Clearly, the mother's concern was that the children had been told that she had hurt someone, which the police had accepted was not correct. Despite repeated efforts by the mother, the narrative has not been corrected in the terms that she requested.

(o) The court directed that the mother file a statement of evidence in relation to her C1 contact application which was lodged on 21 March 2024. On 8 April 2024, the Trust issued freeing proceedings. A case management decision was taken that both sets of proceedings would be dealt with together.

(p) The freeing applications and the Article 53 contact application were heard over six days between April to June 2024, with judgment given on 1 August 2024 granting the freeing orders and dismissing the Article 53 application.

(q) In the course of these proceedings, indirect contact was attempted but was unsuccessful. A video that was shared had a negative impact, with one child refusing to watch it. Dr McCartan and Ms Sharpe are currently of the view that any form of contact would be harmful for the children and whether or not it can be achieved in the future will depend on the mother's ability to accept adoption, if that is the court's decision, and their response. The advice is that the children need a break from speaking with professionals.

***The appeals***

[10] The mother's appeal raised seven grounds:

(i) The learned judge erred in applying the 'best interests' test under Article 9 of the Adoption (Northern Ireland) Order 1987 and the 'reasonable parent' test under Article 18(1) of the Adoption (Northern Ireland) Order 1987, appearing to conflate the two at para [275] of her written judgment.

(ii) The learned judge erred in determining the appellant was unreasonably withholding her consent to adoption and did not provide sufficient analysis and/or reasoning with regard to the application of Article 18(1) of the Adoption (Northern Ireland) Order 1987 to the particular facts of the case.

(iii) Whilst detailing the evidence of the various witnesses and experts, the learned judge did not reach any determinative conclusions or findings in respect of the evidence, particularly some key evidential disputes between the parties were relevant to the appellant's justifiable sense of grievance.

(iv) At para [275], the learned judge cites various matters which gave rise or may give rise to the appellant's sense of grievance. However, the learned judge erred by not determining the underlying specific facts which give rise to the appellant's sense of grievance which was essential for a proper analysis of whether the appellant was unreasonably withholding her agreement to adoption under Article 18(1) of the Adoption (Northern Ireland) Order 1987.

(v) By concluding para [275] with "However, I remind myself that the mythical objective parents treats the outcome for the children as the most important fact and would not allow any sense of grievance to cloud their judgement", the learned judge appears to inappropriately elevate welfare above all other factors in the balance under Article 18(1) of the Adoption (Northern Ireland) Order 1987. The learned judge thereby fell into error as welfare is not the sole criterion. Rather, it is one of the criteria a reasonable parent would take into account and the weight to be attached to welfare will depend on the weight a reasonable parent would attach to it in the circumstances of the particular case (see *Re E & M (Applications to Free for Adoption)* [2001] NI Fam 2).

(vi) Whilst setting out a detailed list of expectations of the respondent Trust with respect to progressing the appellant's contact with her children, the learned judge erred in failing to make an Article 53 Contact Order and/or to particularise a trajectory for contact.

(vii) The learned judge erred in determining that Freeing Orders were necessary and proportionate particularly when there are no particularised arrangements for progressing contact between the appellant and her children. The learned judge thereby failed to give adequate and/or sufficient regard to the appellant's and the children's Article 8 rights under the European Convention of Human Rights.

***Appeals from the Family Care Centre***

[11] The legal principles relating to appeals in family cases and the general approach to freeing for adoption applications are very well established.

[12] An appellate court should not interfere with the lower court's decisions unless they are wrong. Waite J in *Re CB (A Minor)* [1993] 1 FLR 920 at 924d stated that:

> "No appeal can be entertained against any decision they make ... unless such decision can be demonstrated to have been made under a mistake of law, or in disregard of principle, or under a misapprehension of fact, or to have involved taking into account irrelevant matters, or omitting from account matters which ought to have been considered, or to have been plainly wrong."

[13] This approach has been followed in this jurisdiction for many years. Keegan LCJ in *A Health & Social Care Trust v A Mother & A Father (In the Matter of an Application to Free a Child for Adoption)* [2022] NICA 63 (also a freeing for adoption case) at para [25] summed up the position as follows:

> "The appellate test ... is simply whether the judge was wrong. The judge may be wrong by misapplying the law or where he or she does not properly assess the various options for a child in a case such as this."

[14] In *AU v Belfast Health & Social Care Trust* [2024] NICA 1, at paras [25]-[26] the court referred to the Supreme Court judgment in *Re B (A Child)* [2013] UKSC 33 and more recently, *Re H-W (Children)* [2022] UKSC 17, and explained that matters of weight are not matters which the appellate court should interfere with. That is because too ready an interference by the appellate court risks depriving a family trial judge of the discretion entrusted in him or her by law.

[15] Maguire J in *SMcC v Southern Health & Social Care Trust & HJM* [2013] NI Fam 2 considered the principles applying to appeals from the County Court to the High Court at para [64]. In determining an appeal, any transcript of what occurred in the court below will be considered and in particular the High Court will consider the reasons given by the lower court in support of its decision.

[16] In this appeal, the parties agreed that the transcript of the social worker Julie Pollock's evidence along with that of the mother should be read in full, and counsel very helpfully highlighted the portions of the transcript and the authorities which were most germane to the issues.

[17] Maguire J also observed that:

> "… In considering an appeal the High Court will bear in mind that in family cases there is often no right answer. All practicable answers are to some extent unsatisfactory and

> therefore to some extent wrong and the best that can be done is to find an answer that is reasonably satisfactory."

[18] In the Family Division cases are usually heard on submissions but the court may hear evidence depending on the circumstances of a case. In this case there was no application for oral evidence, although it was acknowledged that if I accepted the appellant's submission that the judge had applied the wrong test, it would be open to me to determine the issues afresh and to hear further evidence if deemed necessary.

[19] A judge is required to explain the reasons for her decision. In *Re F (Children)* [2016] EWCA Civ 546, Sir James Munby explained the requirement at para [22]:

> "[22] … Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. … To adopt the striking metaphor of Mostyn J in *SP v EB and KP* [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to 'incant mechanically' passages from the authorities, the evidence or the submissions, as if he were 'a pilot going through the pre-flight checklist.'"

***The law in respect of freeing children for adoption***

[20] The relevant law in relation to adoption is contained in Article 9, Article 16 and Article 18 and of the Adoption (Northern Ireland) Order 1987. Parents, when faced with freeing proceedings in Northern Ireland, have a right to withhold consent and the public authority has to ensure that consent is unreasonably withheld to succeed in any freeing application.

[21] The decision whether to free a child for adoption on the ground that parental agreement is unreasonably withheld requires the court to answer three distinct questions:

(a) Is adoption in the best interests of the child?

(b) If so, is the unreasonable withholding of parental consent proved on the balance of probabilities?

(c) Is a freeing order necessary and proportionate and in compliance with Article 8 ECHR?

[22] These questions involve the application of three separate tests although they overlap to an extent. The welfare of a child is central to the consideration of whether an adoption order should be made.

***The best interests test***

[23] The best interests test has to be approached by the application of the well-known judgment in *Re B (A Child)* [2013] UKSC 33. To use the words of the Supreme Court justices, adoption is a "last resort" (Lord Neuberger) when "nothing else will do" (Baroness Hale) and when "it is really necessary" (Lord Kerr). The phrase "nothing else will do" needs to be considered with care. McFarlane LJ in *Re W (A Child)* [2016] EWCA Civ 793 at [68] said that:

> "The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase "nothing else will do" is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime."

***The unreasonably withholding consent test***

[24] When considering dispensing with a parent's consent, the test is an objective one with the court determining what a reasonable parent would do in the same circumstances.

[25] In *Down Lisburn Health & Social Services Trust v H* [2007] 1 FLR 121 Lord Carswell stated at para [69]:

> "[69] Both the judge and the Court of Appeal cited the relevant statements giving guidance to courts in deciding the very difficult and anxious question whether a parent is unreasonably withholding agreement to the adoption of a child. The starting point is the speech of Lord Hailsham of St Marylebone LC in *Re W (An Infant)* [1971] AC 682, in which he dispelled the then prevalent idea that there had necessarily to be an element in unreasonableness. He stated categorically, at 699:
>
> > '... the test is reasonableness and not anything else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the

> welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it.'"

[26] However, the mere fact that the proposed adoption would conduce to the welfare of the child is not of itself sufficient to establish unreasonableness on the part of the parent. Nevertheless, as Lord Denning MR said in *Re L (An Infant)* (1962) 106 SJ 611:

> "A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case."

There may be an amalgam of factors, possibly conflicting, which will vary from case to case and cannot profitably be placed in prescribed categories. *In Re D (An Infant) (Adoption: Parent's Consent)* [1977] AC 602, at 625, Lord Wilberforce said, in the context of a father's withholding agreement to his child's adoption by the mother and stepfather:

> "What, in my understanding, is required is for the court to ask whether the decision, actually made by the father in his individual circumstances, is, by an objective standard, reasonable or unreasonable. This involves considering how a father in the circumstances of the actual father, but (hypothetically) endowed with a mind and temperament capable of making reasonable decisions, would approach a complex question involving a judgment as to the present and as to the future and the probable impact of these upon a child."

[27] At para [70], Lord Carswell cites from the joint judgment of Steyn and Hoffman LJJ in their joint judgment in *Re C (A Minor) (Adoption: Parental Agreement: Contact*) [1993] 2 FLR 260 at 272. The concluding observations are:

> "Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some

> embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question."

***The question of grievance***

[28] In *Re E and M (Applications to Free for Adoption)* [2001] NI Fam 2, Higgins J addressed events which have happened and cannot be undone. He said:

> "Often parents feel a sense of grievance against social services for the way they perceive they have been treated by them. In some cases that sense of grievance may be justified. But the sense of grievance itself is not a relevant factor, difficult as it may be for a reasonable parent to ignore it. However, the factors giving rise to that sense of grievance are relevant and would and should be taken into account by a reasonable parent."

[29] In *Re BA* (*Wardship and Adoption*) [1985] FLR 1008:

> "a bone fide and reasonable sense of injustice may be a relevant factor affecting the mind of a reasonable parent on the question of consent even though it is difficult to visualise any circumstances in which it could be more than a subsidiary factor."

[30] In *Re E (Minors) (Adoption Parental Agreement) 2* [1992] FLR 397 at 398, and *Re E (A Minor) (adoption: freeing order*) [1995] 1 FLR 382, the court emphasised that the sense of grievance is only relevant when it is based on reason and not emotion.

[31] *In Weston Health and Social Services Trust v K and L* [2015] NI Fam 15, Maguire J observed at para [64] that:

> "….Where the court had already concluded that adoption is in the child's best interests, a reasonable parent…would bear in mind the overall context; would not overreact or react disproportionately. That parent would treat the outcome for the children as the most important factor and

would not allow any sense of grievance to cloud their judgement…"

[32] Maguire J also observed that a reasonable parent would have weighed carefully in the balance the welfare of the subject children together with all relevant factors including those related to the referral, in making their decision to grant or withhold their consent to the trust application. In that case, had the parents done so, he considered they would have concluded the case for adoption was so strong and the advantages of adoption so much greater than the disadvantages that it would be outside the range of reasonable responses not to support it.

***The proportionality test***

[33] In order to decide whether adoption is both proportionate and necessary the judge must carry out a holistic analysis of the realistic options for the child. Ultimately, that decision will be based on what is considered to be in the best interests of the child.

***Consideration***

[34] There is no dispute that the judge correctly applied the best interests test and carefully considered the advantages and disadvantages of each potential option for these young children who have been out of their mother's care since 2021 and have had no contact with her since 2022.

[35] The nub of the complaint is that she failed to correctly apply the unreasonably withholding consent test in that:

(i) She failed to make express findings in relation to the question of grievance and in particular, the factors underlying it.

(ii) She failed to appreciate that the best interests test requires the judge to consider not just the welfare of the children but also the reasons she was withholding consent.

(iii) She failed to give reasons why she had determined that the mother was not reasonably withholding consent.

[36] It is apparent from the authorities on adoption that the question of reasonableness in withholding consent requires the court to engage in a consideration of what is in the best interests of the children. It is not the only factor, and the answers to the three questions the court must answer in order to make a lawful decision will be dependent on the specific facts of each case (see para [21] above). Although a reasonable parent may have a bone fide and reasonable sense of injustice about the manner in which contact has been promoted and supported, I agree with the observations in *Re BA (wardship and adoption)* that:

> "… it is difficult to visualise any circumstances in which it could be more than a subsidiary factor."

[37] There may of course be circumstances, as discussed in the *Down Lisburn Health & Social Services Trust v H*, where a child's need for contact is such that unless it can be achieved, adoption cannot be said to be in their best interests. It depends on the facts.

[38] Since the test I have to apply is whether the judge was wrong in determining that the mother was unreasonably withholding her consent to adoption, it is important to set out some salient passages from her careful and detailed ruling. At para [20] the judge said:

> "[20] In her evidence the mother has spelled-out her sense of grievance about how she and the children were treated by the Trust. Grievance may be a factor which impacts on the mind of a reasonable parent when they are grappling with the child's welfare and best interests when addressing the question of consent. It is a factor which ought to be weighed alongside other factors and especially the welfare of the child and the advantages of adoption.

[39] It is clear from that passage that the judge was fully aware that the concepts of the child's best interests and the reasonable withholding of consent require the application of different tests with overlapping considerations.

[40] The appellant submits that although the judge correctly stated the law, she then failed to apply it, conflating the two tests and failing to carry out an analysis of the factors that she had to consider and reaching a conclusion in respect of the mother's withholding of consent. There is no doubt that the judge's primary focus was on the welfare of the children, as it ought to have been. At para [277] she said:

> "[277] I have concluded that for each of [the children] in their own particular circumstances, nothing else but adoption will do. Dr McCartan has confirmed that these children need stability. The court children's Guardian confirms that final decisions should be made. Dr McCartan has recommended that these children should be allowed to process their experiences; they need time and space and stability. Hence, her recommendation to wait until next year before assessing their functioning and considering therapeutic intervention.

She then continued:

> "[278] This court concludes that adoption is in the best interests of each of these children. Adoption will safeguard the welfare of each of these children throughout all of their lives. They need stability. Adoption will relieve these children of the uncertainty and instability which is implicit in their experience of long term foster care. Adoption will confer certainty on each child, giving each child the opportunity to become legally and socially imbedded in their forever family as demonstrated by their assuming their carers' surname respectively. Having arrived at that conclusion, this court would echo the Court Children's Guardian encouragement to the mother to avail of Next Steps Counselling and to try to take care of herself for the benefit of these children.

[41] The conclusion that the children's welfare demanded adoption followed a detailed account at paras [30] – [54] of the children's experience within their mother's care, their presentation upon removal into the care system, the mother's fluctuating commitment to contact and the impact on the children. In particular, the judge charted a harrowing history of the girls' movements between short term and emergency placements and their attachment to "intensive support foster carers" from whom they had to be parted, before arriving with carers who want to provide them with a forever home.

[42] The judge then went on to consider the question of the reasonableness of the mother's withholding of consent in view of what she considered to be the overwhelming advantages of adoption for these particular children:

> "[280] The court is always reminded of the Draconian nature of an application to free children for adoption. This court acknowledges that the fictional reasonable parents will recognise that remaining in long-term foster care allows Adam and Louise to remain as [their surname] and Anna as [her surname], preserving their identity but leaving them open to the limbo that as dozens of meetings, regular reviews and exposing them to further court proceedings. The other option, namely adoption, is the gateway towards their integration into their forever family where they will experience unconditional love and support for all of their childhood and teen years and then into their 20s, 30s, 40s and beyond into middle age.
>
> [281] Humanly, who could criticise the parents who says that they cannot consent even when they see no early prospect of them taking care of their child and where they feel they have been wronged? It is a legal test. But the need

> for permanence is clear. Adoption is in the best interests of each of the three siblings and nothing else will do.
>
> [282] Having regard to all the circumstances of each child which I have addressed and, in particular, their need for stability, and having taken account of the pros and cons I have considered in respect of each of the options, that the reasonable parent would see that the case for adoption is compelling for each child and nothing else will do. The reasonable parent would therefore conclude that adoption is in the best interests of each of [the children] and would consent to adoption so that their current carers can make the appropriate applications at the earliest opportunity. I find that these orders are necessary, proportionate and in the best interests of each of these young children and I have concluded that consent to the freeing of each of [them] is withheld unreasonably ..."

[43] It is clear from those passages that the judge was aware that notwithstanding her assessment of the overwhelming advantages of adoption, she recognised that she had to go on and consider separately whether the mother was withholding her consent unreasonably. In this regard, the judge set out in detail the history of contact and while she did not expressly say so, it is apparent that she considered the mother's grievance to be justified because she said that she attached "*significant weight to these grievance factors and the uncertainty around contact prospects*" in the balancing exercise of the relevant considerations.

[44] Whilst it might have been better if the judge had expressly set out her conclusions about the mother's sense of grievance and why it was not sufficient to outweigh the children's need for permanence, an overall reading of this careful and detailed ruling leads to the conclusion that the the judge's decision was based on the children's traumatising experiences both within their mother's care and since their removal. Even before direct contact ceased in July 2022 as a result of the mother's disengagement, concerns were raised about her ability to respond emotionally to them during visits. That is not to say that there were not positives observed also, but the point is that the judge considered that a full assessment of the quality of contact was necessary. I am satisfied not only that the judge set out the legal principles correctly but that she also correctly applied them.

[45] Whilst the complaint is made that the judge failed to resolve important disputed facts such as what occurred at the meeting between the mother, the social worker Ms Pollock and a senior social worker Mrs Jean Kelly, and specifically whether the mother was told that she would not be having direct contact, the reality is that in the absence of supporting evidence such disputes can rarely be resolved. Communication about emotional issues may result in errors of communication both in terms of what is said and in terms of what is heard. Indeed, Ms Sharpe makes a

similar observation. Where such disputes are important in order to resolve the ultimate issue, evidently the judge should express a conclusion or explain why it is not possible to do so. In this case, the judge appears to have taken the view that whether or not the mother was told that she would never have direct contact, there was ample evidence that contact had not been actively promoted and that this was a factor to which she was attaching "*significant weight*" in the balancing process. In my view, she was entitled to take that approach.

[46] The question of reasonableness has to be considered in the context of what is in the overwhelming best interests of the children. All of the experts who gave evidence or prepared reports were of the view that only adoption would do and I am satisfied that the judge was correct to view welfare as decisive in this case.

[47] The question of contact is now uncertain, even in the future. It is impossible to say how much of this sorry situation is due to the children's experience before coming into care, the mother's inconsistency for periods of time, the abject failure of the Trust to promote and progress contact, the fear-evoking narrative they were given or simply the children's need to settle and be reassured that they are safe. Taking into account the expert views of Dr McCartan and Ms Sharpe, and their vision for the circumstances in which contact might be achieved, it cannot be said that the judge's decision to refuse an Article 53 contact order was wrong.

[48] Whilst I dismiss the appeal, I observe that the appellant is still a very young vulnerable woman and it is not her fault that the abuse to which she was subjected both within her family and the care system has affected her ability to care for her own children. She needed help and practical assistance in order to provide appropriate pieces of indirect contact along with positive feedback in a timely manner. HHJ McCormick KC has indicated that any application for adoption should, if possible, come before her so that the position regarding contact can be reviewed at that time. I also note that having heard the evidence, the Trust has helpfully adopted the recommendations set out by Dr McCartan and Ms Sharpe.