Neutral Citation No: [2021] NIFam 18	*Ref:*	**McF11545**
	ICOS:	**19/028758 and 21/039118**
Judgment: approved by the Court for handing down (subject to editorial corrections)*	*Delivered:*	**11/06/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

_____

Between:

A HEALTH AND SOCIAL CARE TRUST

Plaintiff

-v-

A MOTHER AND A FATHER

Defendants

IN THE MATTER OF FD (A FEMALE CHILD AGED 2½ YEARS)

_____

Ms M Connolly QC (instructed by the Directorate of Legal Services) for the Trust
Mr A Magee QC with Ms T Overing BL (instructed by Donaldson McConnell & Co solicitors) for the mother
Mr G McQuigan QC with Mr M O'Brien BL (instructed by John Fahy & Co solicitors) for the father
Ms S Simpson QC with Ms C McCloskey BL (instructed by McGale Kelly & Co solicitors) for the guardian ad litem on behalf of the child

_____

McFARLAND J

Introduction

[1] This judgment has been anonymised to protect the identity of the child. I have used the cipher FD for the name of the child. These are not her initials. Nothing can be published that will identify FD.

[2] FD is now 2½ years of age. She is the child of the mother and the father who are unmarried. The mother is aged 32 and the father is 31. The mother has two older children aged 13½ and 7 years by another man. Both are the subject of care

orders and are being cared for in a long-term family foster placement, with a maternal great-aunt. The mother continues to have contact with each child.

[3] There was a degree of pre-birth planning by the Trust but there was no intervention and FD was cared for by her parents after her birth. Following several hospitalisations in the first months of her life, with nothing to raise significant concern, FD's maternal grandmother came to live in the family home in January 2019 to provide a degree of supervision and assistance. At 6 weeks, at the beginning of February 2019, FD was presented at hospital having stopped breathing. Further investigations revealed that she had suffered five fractured ribs. On her discharge from hospital, FD was placed in the care of her paternal aunt and her partner. This was a placement agreed with the Trust and the parents, and FD has remained there ever since. (An explanation by the mother that she performed cardiopulmonary resuscitation on FD has been accepted by the Trust.)

[4] The Trust applied for a care order on 20 March 2019, but the matter continued without any court order because of the voluntary arrangement. Because of the intention of the Trust to apply to free FD for adoption, an interim care order was put in place on the 12 March 2021. The Trust applied for the freeing order on 28 April 2021, and the matter came on for hearing as a consolidated hearing on 1 June 2021.

[5] The Trust's application is for a care order, with a care plan of permanency by way of adoption, and for an order freeing FD for adoption, dispensing with the consent of both parents. The proposed adopters are the paternal aunt and her partner. The Trust's applications are supported by the guardian ad litem (the "GAL"), but opposed by each parent. The parents are no longer presenting as a couple. Their individual positions are that they are generally in support of a permanent placement with the paternal aunt and her partner, but they are of the view that this can be best promoted by a residence order and not by a care order. Should a care order be required, it would be an order based on a care plan which was essentially 'wait and see' to allow the situation to stabilise. This in turn, could lead to permanency by placement with the paternal aunt and her partner as a foster placement, but not as an adoption.

[6] Prior to the hearing the court had received statements of evidence and reports, including a note of a conversation between a social worker and the paternal aunt and her partner. At the hearing, the issue of threshold had been agreed, and the core issue for the court related to the proposed care plan for adoption. Evidence was given by the social worker in court and the GAL remotely. Neither parent gave evidence, relying on their written statements.

Threshold

[7] The parties had agreed a statement of threshold as at the date of intervention in this case (20 March 2019) and it was presented to the court on the 1 June 2021. It stated:

*"**Mother***

1. *The mother has suffered with poor mental health for a number of years. She has suffered a chaotic and abusive background in her own childhood. In March 2016 she was diagnosed with attachment disorder and emotionally unstable personality disorder. In December 2016 she underwent a psychotherapy assessment. The complexity of the mother's mental health compromises her ability to satisfactorily care for her children.*

2. *The mother has a history of personal relationships which were abusive and volatile and placed her and her children at risk of harm. Both the mother's older two children aged 13 and 6 were removed from her care in 2016 and are subject to full care orders made in November 2017.*

3. *The mother had a longstanding cannabis addiction for a number of years up to 2018 after her older children were removed and described it as a coping mechanism.*

4. *The mother failed to disclose the fact that the father was misusing drugs after [FD] was taken into care.*

Father

1. *The father had an extensive criminal history and served custodial sentences including a four year sentence for arson.*

2. *The father had suffered poor mental health over a number of years and has had a number of incidents of serious self-harm. He was diagnosed with a personality disorder in 2012.*

3. *The father has long standing drug and alcohol addiction issues, including after [FD] was born.*

4. *The mother and father had a fraught personal relationship."*

Care Planning

[8] As both parents have accepted that it is not realistic to consider FD in either their joint or separate care in the foreseeable future, I do not propose to set out the attempts made by the Trust, and the parents, to facilitate rehabilitation of FD into their care. It was not successful for a variety of reasons, but the Trust has used all its endeavours to promote rehabilitation. The core issues with regard to the lifestyle

and mental health of both parents have persisted and are evident from their current presentation.

The law in relation to familial adoption

[9] It is very well established that for the court to sanction care planning which involves any severance of family ties by adoption there must be very compelling circumstances. Kerr LCJ in *AR v Homefirst Community Trust* [2005] NICA 8 at [77] said that:

> "*the removal of a child from its parents is recognised … as a draconian measure, to be undertaken only in the most compelling of circumstances.*"

[10] These comments were echoed in the case of *Re B (A Child)* [2013] UKSC 33, and in particular by Lady Hale in the expression, which has now achieved seminal status:

> "*only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do*." (at [198]).

[11] More recent judicial utterances, whilst acknowledging the strength of the exhortation that "*nothing else will do*" have emphasised the need for a proper balancing exercise to be carried out when assessing proportionality, with no presumption in favour of the natural family (see, for example, *Re P (Care Proceedings: Balancing Exercise)* [2013] EWCA Civ 963 and *Re: H (a child)* [2015] EWCA 1284.)

[12] The court must also adhere to the provisions of Article 8 of the ECHR, which sets out the right to respect for private and family life, the articulation of which in the context of adoption of children is set out by the ECtHR in *YC v United Kingdom* (2012) 55 EHRR 33 at [134]:

> "*The Court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed*

> *in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."*

[13] However, when the proposed adoptive placement is with a family member or members there are two considerations. Firstly, the consideration of any Article 8 ECHR rights is nuanced, because the child is not being removed entirely from the birth family and being placed in a 'stranger' family. Secondly, it could have the potential to lead to a distortion of family relationships. This is sometimes referred to as a 'skewing' of the child's relationship as the child's new adoptive carers from the wider family will become the legal parents of the child although the birth parents will still a remain a feature of the child's life.

[14] Courts have been dealing with this issue both before and after the *Re B* case. In 2007, the English Court of Appeal was considering the impact of the creation of the 'special guardian' under the provisions of the Adoption and Children Act 2002. There is no equivalent to the special guardian in this jurisdiction. Special guardian orders are private law orders which permit a non-parent to have greater permanence than under any other private law order, which includes exercising parental responsibility to the exclusion of the birth parents. Hedley J in *S v B and Newport City Council* [2007] 1 FLR 1116 commented that the order was introduced predominantly to provide long-term familial placements that did not require to be secured by a care order or where adoption was not suitable. (A full analysis of the difference between a special guardianship order and an adoption order is set out in tabular form in *Re AJ* [2007] EWCA Civ 55 at [54]). The relevance of the special guardianship order is that it is a significant factor mentioned in the modern case-law from England. But the basic principles have remained constant. The approach still requires the application of a proportionality test but as the impact of a familial adoption would normally be less than the impact of a 'stranger' adoption, the emphasis referred to by the Supreme Court in *Re B* is of reduced significance.

[15] In three cases, bearing sequential citations, the English Court of Appeal gave certain guidance in relation to adoption by family members, particularly in the context of the availability or existence of special guardianship orders – *Re S* [2007] EWCA Civ 54, *Re AJ*, and *Re MJ* [2007] EWCA Civ 56. *Re S* is of particular relevance as the facts and background have striking similarities to this case. It was an application for adoption under the Adoption Act 1976 (which has near identical provisions to the current Northern Ireland legislation). The child was removed from the parents care when it was 6 months old and placed with a paternal aunt and uncle and a final care order was made with a care plan for long-term fostering. Three years later, the aunt and uncle applied to adopt the child and the parents did not consent. The main argument on behalf of the parents was that the special guardianship order was available, although Wall LJ rejected the notion that special guardianship orders had replaced familial adoptions. The test remained the same – namely the consideration of the best interests of the child on the particular facts of

the case (see [44]).

[16] Maguire J in *LC and RC v BMcK* [2014] NIFam 12 dismissed an appeal by the maternal grandparents against a decision to refuse their application for adoption. The two children had been the subject of a care order, but this was discharged in 2011 when a residence order was made in favour of the grandparents. Maguire J distinguished *Re B* relying on the Strasbourg court in *Soderbank v Sweden* (1998) 29 EHRR 95 and the judgment of McFarlane LJ in *Re D* [2014] EWCA Civ 1174, particularly at [47]:

> *"By way of example, in a child protection case where it is clear that rehabilitation to the parents is not compatible with their child's welfare, the court may be faced with a choice between adoption by total strangers selected by the local authority acting as an adoption agency or adoption by other family members. There is a qualitative difference between these two options in terms of the degree to which the outcome will interfere with the ECHR, Art 8 rights to family life of the child and his parents; adoption by strangers being at the extreme end of the spectrum of interference and adoption by a family member being at a less extreme point on the scale. The former option is only justified when 'nothing else will do', whereas the latter option, which involves a lower degree of interference, may be more readily justified."*

Soderbank was an application for adoption by a step-father (who was living with the child's mother), and the Strasbourg court distinguished it from a case of the severance of links between a parent and a child being taken into public care.

[17] The English Court of Appeal allowed the appeal of a maternal grandmother and her partner against the refusal of an adoption order in their favour in *Re T* [2020] EWCA Civ 797. It approved the earlier comments of Wall LJ in *Re AJ* , particularly in relation to the potential for 'skewing' of family relationships which should be approached on a very fact specific basis (see [51] in *Re AJ* and [38] in *Re T*). Keehan J gave the judgment of the court and referred to the superior benefits of an adoption order as opposed to a special guardianship order at [58]:

> *"i. reflect the reality of C's life with his grandparents now and throughout the whole of his life;*
>
> *ii. it would provide C and the grandparents with the security and reassurance that C's future life was securely and permanently with them in fact and in law;*
>
> *iii. it would sever the mother's legal relationship with C which is a Draconian step for any court to take, but it*

would remove the mother's ability to interfere in his life whether by making applications to the court and/or requiring and demanding information about C's life;

iv. *it would remove the obligation on the grandparents to seek the mother's consent for certain steps to be taken in C's life (eg remove him from the jurisdiction for a period in excess of three months);*

v. *it would enable the step-grandfather to be C's legal father as well as his emotional, social and psychological father in circumstances where the identity of C's biological father is unknown; and*

vi. *it would send the clear message to the wider world that C was lawfully the grandparent's child*."

This guidance is of relevance to FD's case as each of these points apply, and in some instances with more force, given the lesser powers granted to the carer under a residence order compared to a special guardianship order.

[18] This guidance in *Re T* should also be read in conjunction with the general observations of Black LJ in *Re V* [2013] EWCA Civ 913 at [96]. These comments are of some significance as the hearing in *Re V* was a week after the published judgment of the Supreme Court in *Re B*, and they put some context on how courts should continue to deal with adoption applications:

"i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.

ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.

iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course,

be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.

iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example)."

[19] In summary, although the statutory provisions apply to all types of adoption, the approach directed by the Supreme Court in *Re B* that adoption is only necessary when 'nothing else will do' primarily relates to 'stranger' adoptions. In family member adoptions, which would include aunts, uncles, grandparents, great aunts and great uncles, as well as one natural parent and a step-mother or step-father, the same proportionality exercise should be conducted based on the individual facts of the case, but when doing so the court should be mindful of the degree to which the two types of outcome will interfere with Article 8 ECHR rights. Stranger adoptions are at the extreme end of the spectrum, and family adoptions are elsewhere on the spectrum. As to where the case sits on the spectrum will depend on the facts, particularly the relationships within the family.

[20] Before leaving the issue of the legal principles to be applied, the well-established principles relating to adoption generally and the withholding of consent by parents will apply. There is a two-fold test. First the court considers whether adoption would safeguard and promote FD's welfare through her childhood and secondly, as each parent is not consenting, whether the parents are withholding their consent unreasonably. Whether the withholding of consent is unreasonable is an objective test and requires the court to consider the circumstances of the parents in this case but endowed with a mind and temperament capable of making reasonable decisions (to adopt the description of Lord Wilberforce in *Re: D* [1977] AC 602 at 625). But the ultimate test is 'reasonableness' in accordance with the speech of Lord Hailsham LC in *Re W (an infant)* [1971] AC 682 at 699C:

"It is clear that 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."

Evaluation

[21] The parents' main arguments focus on what they say is a stability in the current arrangements, and an acceptance by each parent of those arrangements. They argue that there is no need for legal certainty in the relationship between FD and her aunt and uncle, because the situation within the aunt's home is that the organisation of FD's life is satisfactory and there is no real impediment to the aunt and her partner exercising *de facto* parental responsibility. The parents say that they were able to do this during the period of the voluntary arrangement up to March 2021, and then under the interim care order.

[22] These assertions by the parents are not well founded in reality. The relationship between the father and his sister are not well-grounded. This is exemplified by the fact that because of the nature of the communications by the father using his mobile telephone, his sister has blocked his number. It has not been suggested, on behalf of the father, that this action has been inappropriate. It is therefore very difficult to envisage a situation of people in a private law setting of a residence order, attempting to share parental responsibility, when they are not capable of normal communication and social interaction. The mother's relationship with the carers is virtually non-existent. Even when she was living with the father in the same locality as the paternal aunt, there does not appear to have been much in the way of social interaction. Since her separation from the father there is no real channel of communication with the aunt.

[23] It is also instructive to consider how contact between the parents and FD has developed over the two year period when FD has been in the care of the aunt. The father lives in the same locality as his sister, and the mother lives 80 miles away. A very regular and intense contact regime was put in place with supervised contact in Trust premises, twice a week for each parent, a total of four contacts per week. During the Covid-19 restrictions, physical contact was curtailed but was maintained by Zoom.

[24] It has been impossible to move contact forward to enable contact to take place outside the auspices of Trust facilities and Trust supervision.

[25] Since the moving of FD into her current placement in April 2019, the mother has missed approximately 35% of contact sessions and the father has missed 50%. The mother is faced with some logistical problems in managing the geographical issues. The father does not. Each parent has their own personal difficulties, but whenever one weeds out the individual excuses for non-attendance, and some have limited merit, there remains a significant number of missed contact sessions. Ultimately the issue remains – what are the priorities of the parents? The parents have other distractions in their lives and they make their own decisions about their priorities.

[26] Missed contacts allow a court to assess a parent's priorities and the

underlying commitment of the parent towards the child. They also cause disappointment for the child and disruption to the child's routine. The carers then bear the responsibility of dealing with any ramifications from the failure of a parent attending contact.

[27] The parents speak of a stable environment, but it is not reflected in the situation surrounding contact. The parents are required to contact the Trust on the morning of each contact to confirm their intention to attend. The evidence suggests that this does not happen on a regular basis, and the Trust staff have to attempt pro-actively to contact the parent. Unless the parent can indicate an intention to attend, the contact for that day is cancelled. A residence order regime, without Trust assistance, could not operate this type of system. The failure of both parents to engage meaningfully with any contact regime both in relation to basic planning for, and attendance at, contact, would soon lead to a complete fracturing of the relationship between the parents and the carers.

[28] This would then spill over into all aspects of the exercising of parental responsibility. One bizarre piece of evidence before the court is that FD was only able to get her hair cut for the first time earlier this year, when she was 2 years of age. The reason suggested by the carers was the lack of agreement. The court did not explore this in much detail as no direct evidence was presented, but the mere fact that FD did not have a haircut suggests either a lack of confidence on the part of the carers to take simple decisions about the child's life; a perception of the carers that should they ask for permission from the parents it will be refused; or there was a failure on the part of the parents to agree.

[29] Each parent has expressed a view in their written statements that they would not interfere in the day to day decision making of the carers if they were exercising parental responsibility for FD but that they would like to be kept informed. Neither parent availed of the opportunity to explain to the court exactly what they meant in their statements.

[30] Both parents continue to suffer from the problems present at the time of FD's birth and up to the Trust intervention. It could be categorised at certain times as living a chaotic lifestyle. Neither has appreciated the extent to which a carer, be they a natural parent or otherwise, has to commit to the day to day obligations of parenting a child. Decisions flowing from parental responsibility require to be made by people who have a stability in their own lives and have a well-rounded appreciation of the child's welfare. They also need to have a commitment to the well-being of the child and not just at an aspirational level.

[31] Both parents suggest a form of self-denying ordinance. This has not manifested itself, for example, in a written undertaken to the court as was offered in *LC* (set out at [27]). It is more in the form of a promise. Parental responsibility attaches to the mother and the father (as he is named on the birth certificate). The court could, in extreme circumstances, remove their parental responsibility. It could

grant parental responsibility to the carers by a residence order although parental responsibility will then be shared, and cannot be exercised to the exclusion of the parents. When undertakings are made to the court then a potential contempt of court avenue is open to enforce the undertaking. Undertakings or promises not to undermine a placement or interfere with or challenge decisions made do not in themselves obviate the need for the carers to consult and inform the parents about important decisions about FD. A more structured parental responsibility arrangement (see Article 5(8) of the 1995 Order), whereby the parents agree in advance to permit the carers to carry out some parental responsibility decision making, could be put in place. However, given the state of affairs between the parents and the carers it is highly unlikely that such an agreement could be reached and adhered to.

[32] The potential for further court involvement to disrupt the placement could be addressed by an Article 179(14) order preventing further applications to the court without leave of the court. The route suggested by the parents is a residence order coupled with an Article 179(14) order. The court must consider not only the potential of such applications being made, but also the psychological impact on the carers should applications be made, even if they could be categorised as hopeless applications. In a situation where the carers and the parents have no contact and are basically unknown to each other it may not matter. This is not the case here, and as Wall LJ observed in *Re AJ* at [47] when commenting about the English statutory equivalent:

> *"In our judgment it is no answer to assert that any application to revoke a special guardianship order and / or to seek a residence order requires the court's permission, or that any application for permission to apply for contact and other section 8 orders can be regulated so as not to disturb the child or his carers by filtering them through section 91(14) of the 1989 Act. In situations where the parties are not in contact – where, for example, parties do not know where their former partners and their children are living – it may well be possible to direct that any application under section 91(14) shall not, in the first instance, be served on the resident parent, and that the application can thus be resolved by the court without the resident parent and the children concerned even being aware that it has been made. Such considerations do not, however, in our judgment, apply in cases such as the present where the parents of the child are having regular contact. In such cases it is unreal to suppose that Mr and Mrs T will be unaware that AJ's parents had made an application to the court. Even if that application stood no prospect of success and was, in the event, dismissed, the threat of disruption and disturbance would remain."*

[33] An analysis of the available evidence as contained in the various reports and statements of evidence clearly suggests that rehabilitation to either parent is not a feasible option. The parents are no longer presenting as a couple and are totally estranged from each other. The mother still presents with mental health difficulties. The father is in a similar situation. Both started the process of an assessment of their parenting capabilities. The mother completed her assessment but the Trust do not consider her to be capable of parenting FD. The father disengaged with his assessment. Both parents acknowledge their inability to parent, although the father clings to the hope that possibly in 5 – 7 years' time he would be in a situation to be considered as potentially capable. His counsel describes this as aspirational rather than realistic. No basis has been advanced to show how the time frame of 5 – 7 years is calculated. There is nothing within the evidence presented to the court to suggest that this time frame is either realistic or aspirational. In any event, FD is now 2½ years and cannot wait that long.

[34] The welfare of FD requires that she be placed outside the parents' care. In keeping with the normal approach, a kinship placement is regarded as the first option. FD has lived with her paternal aunt and her partner since she was very young and she has now established a very strong attachment to them. A child was born to the couple in November 2019, and the four individuals have developed into a very good cohesive family unit. This is a stable arrangement, and it is clearly in the best interests of FD that she remains within this family structure. In fact, it is inconceivable that she be placed anywhere else.

[35] The parents' suggestion that we have a sort of 'wait and see' placement does not meet FD's needs in any form. She is 2 ½ years and the time for waiting and seeing is long past. The various options open to the court are clearly identifiable, as are the pros and cons of each one. The court can conduct any proportionality exercise now from the evidence available to it. Any delay serves no purpose and will have an impact on FD's well-being.

[36] Much of the discussion in this case has focussed on the nature of the placement, with the parents preferring a residence order, and failing this, a foster placement. The Trust and the GAL favour an adoption placement.

[37] I do not consider that a residence order meets FD's needs. It has the advantage of being the least interventionist order, but the relationships between the adults in this case are not on a footing that would allow for a private law solution. The carers speak of needing a 'buffer' between them and the parents, and see the Trust fulfilling that role under a care order. Should a freeing order followed by an adoption order be made, the legislative provisions will provide the 'buffer' they desire. Clearly, the evidence suggests that there is a lack of communication between them and each of the parents. This may be a result of certain inadequacies on the parents' part but it is a reality, and without any such meaningful relationship, even leaving aside the issue of sharing the exercise of parental responsibility, it will not provide a workable solution. In any event, the paternal aunt and her partner have

not expressed a wish for such an order, and the court should respect their feelings in this regard. They are fully committed to FD and to FD's future within their family, but they do not feel that a residence order can give them the certainty and confidence to cement the relationship they desire. I therefore consider that the residence order suggested by the parents is not in the best interests of the child.

[38] Having decided that the child's best interests are not served by a residence order (or other private law order), the court has considered whether the proposed permanence away from the parents' care should be with the current carers in a foster placement or by adoption.

[39] I have referred to the comments of Black LJ in *Re V* and Keehan J in *Re T* above. These set out in general terms the potential differences in the two types of orders. The main positive feature in this case is the desire for permanence, security and reassurance. FD is too young at this stage to appreciate these issues, but they are key factors for the paternal aunt and her partner. An adoption order will provide permanence, security and reassurance to a much higher degree than any foster placement. As FD grows older and begins to appreciate her circumstances and background, it will also provide her with reassurance.

[40] Such an order will sever the legal relationship between the parents and FD but it will not interfere with the emotional relationship, should it be the parents' desire to maintain it. The proposal is for contact to be reduced to once per month for each parent. Should an adoption order be made then it would be anticipated that contact will be reduced further. The reduction will be significant but could be seen in a positive light given that the parents are struggling to manage their priorities around contact with FD. With the mother struggling to maintain attendance at 65% of contact sessions and the father 50% of sessions, a reduction may well benefit them. A degree of consistency in parental engagement will clearly benefit FD.

[41] I have also considered the potential of an adoption order and its legal consequences in the context of the family relationships. There is no evidence to suggest that the family relationships are 'skewed' in this case. Obviously a careful narrative will be required for the future when FD is older. She will be placed in the parental aunt's family, with all the emotional and legal security that that entails, but she will still continue to know and have contact with her father and mother, and will know them as her birth father and birth mother. An adoption order will not distort or 'skew' this relationship or understanding.

[42] For all these reasons I consider that adoption is in the best interests of FD.

[43] Finally, in relation to the withholding of consent, the court appreciates that providing a written consent for one's child's adoption is a very difficult issue for any parent to consider. In the circumstances, I acknowledge the strength and validity of the approach taken by each parent. However, the court is required to approach this matter in an objective fashion, and ask what decision a parent, being aware of the

full circumstances of the case, and endowed with a mind capable of making a reasonable decision would decide.

[44] The first and foremost thing that such a reasonable parent would consider is the welfare of the child, its age and the length of the period the child had lived with the proposed adopters. There would be other factors. They would consider what the prospects of rehabilitation into their care were, the level of the current and proposed contact that they have, or will have, with the child and the level of the commitment they can give to contact. The reasonable parent would, in addition, consider their own role particularly in relation to the circumstances the child now finds herself in and whether there is any genuine sense of grievance, and the reasons for that grievance.

[45] When considering all of these factors, in light of the evidence that is set out in the various reports and statements, and to which I have made reference above, I am driven to the conclusion that each parent is withholding their consent unreasonably.

Conclusion

[46] I am satisfied that it is in the child's best interests that a care order be made in favour of the Trust, such order being based on a care plan of permanence away from the birth family in an adoptive placement with the paternal aunt and her partner. I approve the proposed contact arrangements set out in the care plan, as I consider them to be adequate both for the child and for each of the parents.

[47] I also free FD for adoption as it is in her best interests and with both parents not consenting, I consider that they are withholding their consent unreasonably. In the circumstances, I dispense with their consent.

[48] As these proceedings are now concluded the GAL shall be discharged.

[49] There will be no orders as to costs between parties, but there will be the usual taxation orders in respect of the costs of legally assisted parties.