



Neutral Citation Number: [2018] EWFC 76

Case No: WR0086/17 and WR0007/18

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 29/11/2018

Before :

MR JUSTICE KEEHAN

Between :

PROSPECTIVE ADOPTERS FOR BT	<u>1st Applicant</u>
- and -	
PROSPECTIVE ADOPTER FOR GT	<u>2nd Applicant</u>
- and -	
COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL	<u>1st Respondent</u>
- and -	
BT AND GT	<u>2nd and 3rd Respondents</u>
(Children represented through their Children's Guardian)	
- and -	
LOCAL AUTHORITY A	<u>1st Intervenor</u>
- and -	
GT'S ADOPTION AGENCY	<u>2nd Intervenor</u>
- and -	
F AND E	<u>3rd and 4th Intervenor</u>
(through their litigation friend the Official Solicitor)	

Ms L Reed (instructed by **Bobbetts Mackan Solicitors and Advocates**) for the **1st Applicant**
Mr G Noble (Solicitor Advocate) (instructed by **Family Law Group**) for the **2nd Applicant**
Ms S Hunter (instructed by **Herefordshire District Council**) for the **1st Respondent**
Mr M Kingerley (instructed by **Whatley Recordon Solicitors**) for the **2nd and 3rd Respondents**

Ms S Dixon (instructed by **A Local Authority**) for the **1st Intervenor**
Mr F Wilkinson (instructed by **Advocate**) for the **2nd Intervenor**
Ms S Pope (instructed by **Child Care LLP**) for the **3rd and 4th Intervenor**

Hearing dates: 19th - 23rd November

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE KEEHAN

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

The Hon. Mr Justice Keehan :

Introduction

1. I am concerned with two children, BT and GT who are twins who were born in 2010. It is almost impossible to imagine the circumstances in which it would be considered appropriate to separate twins and place them for adoption by different prospective adopters. This is, however, what occurred in this case and I have before me an application by a couple, whom I shall refer to as A and B, to adopt BT and an application by a single carer whom I shall refer to as C, to adopt GT.
2. As I shall set out in some detail, I am satisfied and find that the court is in the position of considering applications to adopt the twins in two separate homes because of the incompetence and serial failings of the local authority, Herefordshire Council, and the egregious behaviour of some of its former staff.
3. The mother of BT and GT is BM. She has played no part in this hearing of the adoption applications and failed to file an application for permission to oppose the making of orders for the adoption of the children. She has attended only one directions hearing on 18 July 2018 in Worcester. The mother had been made an intervenor in these proceedings but because of her failure to engage with the same, I discharged her as an intervenor. The father of BT and GT is BF. He has played no role in these proceedings.
4. BT and GT have three older siblings, F, E and G. They are all under the age of 18. F and E applied to intervene in these proceedings. I granted them permission to intervene on 18th July 2018 despite the opposition of all of the parties. They are represented by the Official Solicitor.
5. BF, the father, is serving a prison sentence having been convicted of multiple offences of abusing children. In 2016, he was sentenced to a term of imprisonment of 21 years. [REDACTED TO PRESERVE CONFIDENTIALITY].
6. The local authority and the children's guardian supported the applications for adoption orders in respect of BT and GT. The Official Solicitor, having considered the evidence and the expert advice, has taken the view he cannot oppose the adoption orders on behalf of E and F.
7. BT and GT have two older paternal half siblings and two older maternal half siblings. The younger of the latter two half siblings was placed for adoption outside of the family before BT and GT were born. They have never met their two paternal half siblings.

The Law

8. Section 47 of the Adoption and Children Act 2002 provides as follows:

"(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied —

(a) that the parent or guardian consents to the making of the adoption order,

(b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or

(c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that —

(a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made, [which is satisfied in this case] ...

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.

(6) The third condition is that the child is --

(a) the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, or

(b) is free for adoption by virtue of an order made under Article 17 or 18 of the Adoption (Northern Ireland) Order 1987."

9. The provisions of section 52 provide as follows in subsection (1):

"(1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that —

...

(b) the welfare of the child requires the consent to be dispensed with."

10. At all times when considering these applications for adoption I bear in mind the provisions of section 1(2) of the Adoption and Children Act 2002 which provides:

"(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life."

11. I also have regard to the welfare checklist set out in section 1(4) of the 2002 Act which provides:

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

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

(b) the child's particular needs,

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

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

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

(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."

12. I also, of course, have regard to the Article 6 and Article 8 rights of BT, GT, the parents, the older siblings and both sets of prospective adopters. I remind myself, however, that where there is a tension between the Article 8 rights of parents on the one hand and the Article 8 rights of a child on the other, the rights of the child prevail, *Yousef v. Netherlands* [2003] 1 FLR 210.

13. I have had regard to a number of authorities. The first is the case of *Re W (A Child)* [2017] EWHC 829 (Fam), a decision of the then President of the Family Division, Sir James Munby. At paragraphs 78 and 79 he said as follows:

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

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

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

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

Further at paragraph 233 the President said:

"The starting point has to be W's current reality. As far as she is concerned, Mr and Mrs A are her daddy and mummy. They are her parents, emotionally, psychologically and socially. They and their son are, and, so far as she can remember, always have been, her family. It may be that she has the implicit memory referred to by Dr Willemsen, but she has no actual memory of her birth family or of any other family. She may be familiar with the words 'tummy mummy', but she has no real understanding of what they mean or of their significance. Given her age and stage of development there is little that could be done to prepare her for a move to her father's care, nor would it be possible to explain to her, in a way which would have any real meaning for her, what is happening to her, whether before, during or after the move."

Finally, at paragraph 237 the President said:

"My overall conclusion is that there is a very high probability of fairly immediate, and significant, levels of distress and trauma and a very real likelihood – just how high it is impossible to predict – that the placement would be put under such pressure that it might break down, which if it were to happen would carry with it a more than fanciful risk of catastrophe."

14. In *Re W (A Child)* 2016 EWCA Civ. 793 during the course of giving the judgment of the Court of Appeal McFarlane LJ said at paragraph 66 as follows:

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

that regard, the generalised evidence of the ISW and the Guardian, which did not involve any assessment of A and Mr and Mrs X, in my view fell short of what is required."

Further at paragraph 71 McFarlane LJ said as follows:

"The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged."

15. In the case of *Re A and O* [2017] EWHC 1293 (Fam) the President of the Family Division, Sir James Munby said in paragraph 46 as follows:

"Pulling the threads together:

i) The Family Court has jurisdiction to hear this application for an adoption order pursuant to the 2002 Act irrespective of whether A and O are, or are not, habitually resident in England. Likewise, the Family Court has jurisdiction to dispense with the parents' consent in accordance with section 52(1)(b) of the 2002 Act, notwithstanding that they are not habitually resident in England.

ii) The application is properly made in accordance with sections 42(2)(a) and 47(2) of the 2002 Act.

iii) A and O's parents and Dundee City Council are properly joined as respondents in accordance with FPR 14.3: each of the parents as a 'parent who has parental responsibility' within the meaning of the rule and Dundee City Council as an 'adoption agency which has taken part ... in the arrangements for adoption of the child[ren]' within the meaning of the rule.

(iv) The task for the Family Court will be (a) to decide whether adoption is in the best interests of A and O, judged by the test in section 1(2) of the 2002 Act of 'the child's welfare, throughout his life', having regard to the various provisions in the 'welfare checklist' in section 1(4) of the 2002 Act, and applying the principles explained in *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 1 WLR 1911, [2013] 2 FLR 1075, and in *Re W (A Child)* [2016] EWCA Civ 793, and (b) to decide whether the welfare of A and O 'requires' their parents' consent to be dispensed with in accordance with section 52(1)(b), as that word was explained in *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2

FLR 625, para 125: see *Re W (A Child)* [2017] EWHC 829 (Fam)."

16. Finally, I have regard to what the President said in the case of *Re BS (Children)* [2013] EWCA Civ. 1146, namely that the court when considering making an adoption order must make a global and holistic assessment of all the realistic options and consider those against the test for proportionality and must not undertake a linear assessment.

Background

17. The family was known to children's services from 2003 because of the neglect of the three older children, including BT and GT's older maternal half-sister, domestic abuse and parental alcohol abuse. The hospital staff where BT and GT were born expressed concerns about the mother's ability to cope with the twins. Nevertheless, they were discharged from hospital into the care of the mother and father after children's services had undertaken an assessment of the family.
18. The past concerns about domestic abuse, alcohol abuse, poor home conditions, developmental delay evident in all of the children and the poor physical care afforded to the children all persisted.
19. In 2008 the parents separated and divorced. The mother had the sole care of the three older children. By the following year, however, the parents had reconciled and were remarried.
20. On 6th March 2014 all five children were made the subject of Child Protection plans. The maternal half sibling, the eldest of the children, left the family home to live with an aunt. On 6th May 2014 she made allegations against the father, her step-father. On 21st May 2014 BT and GT and their three older sisters, E, F and G were removed from the parents' care and placed in foster care. BT and GT did not thereafter return to the care of either parent.
21. BT and GT were initially placed in foster care with their sister G. This placement ended on 4th August 2014 because of the ill health of the foster carer. BT and GT moved to a new foster placement. There they both remained until 28th May 2016 when GT was moved to a separate foster placement.
22. On 19th March 2015 HHJ Hooper QC made all five children the subject of care orders and made placement orders in respect of BT and GT. Their court approved care plans provided for them to be placed together with a search being made for nine months for an adoptive placement and if the search was unsuccessful the following three months would be devoted to seeking a long-term foster placement for them together. There was no question of the local authority proposing, still less the court approving, a plan for the twins to be separated and placed separately whether in adoptive placements or long-term foster care.
23. On 10th April 2016, however, a team manager made the decision to place the twins separately for adoption. This plan was endorsed by a LAC Review held the following day. I shall return to consider these decisions in greater detail later in this judgment.

24. The local authority then and now records all information about a child on a system called Mosaic. This system created a form of the care plan but not in the format or detail of the care plan approved by the court. The care plan ought to have been uploaded onto the system in the documents. No one, however, was able to persuade me that this uploading of the court care plan of 19th March 2015 in fact occurred.
25. On 28th April 2016, the foster carers of BT and GT gave notice to the local authority in respect of GT's placement as they no longer considered they could meet the needs of both children. Accordingly, on 28th May 2016 GT moved to a different foster placement. GT and BT had twice weekly contact with each other until 16th January 2017 when contact was reduced to one session per fortnight.
26. The allocated social worker undertook a sibling attachment assessment. The report, approved by the then team manager, is dated 7th July 2016: some three months after the decision had been made to place the twins separately for adoption. It is asserted by the local authority that the social worker, whom I shall refer to as D, gave an oral report on this issue but I do not know when nor to whom this oral report was given. Quite astonishingly and wholly contrary to good social work practice, there is no note or minute of the manager's decision made on 10th April. Therefore, I do not know what material he considered when making his decision and I do not know the reasons or basis for the same. Thus, I do not know whether he considered the oral report of D. Moreover, I have had no explanation as to why it took D three months to write up her assessment.
27. I will return to this so-called assessment later in this judgment, but I note in the summary of her report D asserted:

“Having considered the legal, policy, moral and best practice guidance, it is essential that GT and BT have the opportunity of an adoptive family.

GT and BT's care plans have remained to be one of adoption (jointly placed) for a considerable period of time. Over the period of 12 months, family finding attempts have not been successful.”

This does not reflect the court's approved care plan which was for a 9-month search for an adoptive placement together to be followed, if unsuccessful, a by three-month search for a long-term foster placement together. I have been given no explanation as to why or how D in her assessment completely misrepresented the care plan: whether it was deliberate or just an error I do not know.
28. I am satisfied that the prospective adopters were unaware of the flawed decision making process relating to the separation of the twins until these proceedings seeking adoption orders in respect of BT and GT had been commenced.
29. In 2016 the father was convicted of multiple offences of abusing children and was sentenced to 21 years imprisonment.
30. In 2016 the mother pleaded guilty to offences of child neglect and was given a suspended term of imprisonment.

31. On 27th February 2017 H and E had a goodbye contact with BT and GT followed by a goodbye contact with F and G on 1st March 2017.
32. On 10th March 2017 BT and GT had what was termed a 'see you later' contact visit with each other prior to their respective placements for adoption.
33. C and GT were matched together in early March 2017. GT moved to live with C on 28th March 2017 and she has remained living in this placement.
34. A and B were matched with BT on 3rd April 2017. He was placed with them on 10th May 2017 and he has remained living in this placement.
35. They did not then see each other again for seven and a half months until there was a contact visit on 27th October 2017 and then no contact for over four months until a visit took place on 4th March 2018. I do not understand how, why or when the hugely important decision was taken to so severely curtail, indeed deny, the children an ongoing relationship once they had been placed for adoption. For the avoidance of any doubt, it was the local authority which determined this level of contact. I make and intend no criticism of the prospective adopters.
36. In October 2017 the local authority made a decision to end BT's placement with A and B and on 31 October served a notice on A and B pursuant to s.35(2) of the Adoption and Children Act 2002. The prospective adopters challenged the decision and the service of the notice. On 3rd November 2017 the local authority changed its decision and purported to withdraw the s.35(2) notice. I say purported because there is no mechanism or procedure in the 2002 Act for the withdrawal of a s.35(2) notice. In any event it is now accepted that the concerns about the quality of care provided by A and B were entirely misconceived and were without any foundation whatsoever. The local authority had ascribed the cause of BT's challenging behaviours to the care he was receiving from A and B whereas it is now recognised and accepted that the cause of these behaviours related to the past care BT had received from his parents and to the consequential emotional, psychological and developmental harm and damage he had suffered.
37. The application by A and B to adopt BT, dated 3rd November 2017, was later issued by the court. The application by C to adopt GT was issued on 28th February 2018. It was shortly after the issue of this second application that it came to the attention of HHJ Plunkett, the designated family judge for Herefordshire and Worcestershire, that the two applications were linked and had been made in respect of separated twins. He reallocated both cases to me.
38. The adoption agency supporting A and B and the adoption agency supporting C applied to join these proceedings as intervenors. Their respective applications were granted. Both agencies supported the making of adoption order in favour of the prospective adopters.
39. In light of the extraordinary decision by this local authority to separate twins and place them in different adoptive placements, I gave permission for the Anna Freud Centre to be instructed to undertake an assessment. They were instructed to consider a number of issues including:

- i) what were the respective needs of BT and GT and how these needs could best be met;
 - ii) whether BT and GT could be reunited in a single placement whether that be an adoptive placement or a placement for long term fostering; and
 - iii) what harm would be caused to BT and/or GT if one or both of them were moved from their current carers to a new placement or placements.
40. The very comprehensive report of the Anna Freud Centre is dated 15th August 2018.
41. At an early directions hearing before me it was intimated by the children's guardian that in light of the now admitted failings of and by this local authority, consideration was being given to bringing HRA claims on behalf of the children against the local authority. I urged the local authority to achieve a consensual resolution to these claims in terms of admitted breaches and as to the quantum and on the basis that the local authority would meet the children's legal costs of bringing a claim and of negotiating a settlement.
42. By the time the matter was listed for this final hearing claims for HRA breaches had been brought on behalf of BT and GT and by A and B and by C. All alleged breaches were agreed between the parties and the issue of the quantum of damages for each claimant had been settled. I shall return to this issue later in this judgment.
43. At the final hearing all the parties were agreed that adoption orders should be made in respect of BT and GT. I made plain that I was not yet persuaded that these were in the welfare best interests of either child. Accordingly, I proceeded to hear evidence and then submissions.

The Local Authority: Actions and Failings

44. The admitted failings of the local authority which led to breaches of BT and GT's human rights and those of the prospective adopters are set out in Annexe 1 to this judgment. These admitted failings are supplemented by further admissions of failings by the local authority, together with notes of the actions taken by or to be taken by the local authority to prevent, or at least, ameliorate the future risk of such failures of the system and of social work practice occurring. This schedule was prepared by Liz Elgar, the assistant director of children's services and is set out in Annexe 2 to this judgment.
45. The admitted breaches of human rights and the schedule of failings of the local authority are extensive and grave. They relate to the whole operation of children's services in Herefordshire. They are both systematic and the fault of individual social workers, team managers and line managers.
46. This said I commend the approach taken in this case by the new management team of children's services, including in particular the Director, Chris Baird, and the Assistant Director, Liz Elgar, for the open and forthright manner in which they have responded to the divers criticisms made. I am reassured by their expressed commitment to a root and branch reform of children's services in Herefordshire and a commitment to ensure that far more robust systems are in place to ensure compliance with good social work practice.

47. The breaches of human rights may be summarised:
- i) a failure to undertake a thorough analysis of the need to change the care plans for the children and a failure to consider appropriately the consequences of separating the twins;
 - ii) a failure to disclose in full detail the needs of, the challenging behaviours of and the past life experiences of BT or GT to their prospective adopters;
 - iii) a member of the social work team deleting references to the children's challenging violent behaviours from the Child Permanence Reports ('CPR') and the Adoption Support Plans;
 - iv) the wholly unmeritorious decision and issuing of a s.35(2) notice to remove BT from his placement with A and B;
 - v) the undue stresses and strains caused to the prospective adopters by:
 - a) the local authority's flawed decisions; and
 - b) as a result, these prolonged court proceedings which have had an adverse impact on BT and GT's experience of family life;
 - vi) the failure to consider properly the alternative plan for placing BT or GT in long term foster placements and to adhere to the court approved care plans;
 - vii) the failure to hold adoption reviews rather than LAC reviews (adoption reviews have an entirely different mandatory criteria to consider than LAC reviews: see Adoption Agencies Regulations 2005, regulation 36); and
 - viii) the failure of the Independent Reviewing Officer system to take any steps to secure any cogent care planning for the children and/or to protect them from the consequences of flawed and/or ill-considered decisions.
48. The schedule of supplemental failings set out in Annexe 2 may be summarised as follows:
- i) a failure in the original care plans to set out what the local authority would do if a placement together could not be found after 12 months;
 - ii) a lack of management oversight;
 - iii) a failure to follow the court approved care plan to a correct conclusion;
 - iv) a failure in the decision-making process to place the twins separately for adoption;
 - v) the failure to acknowledge the significance of maintaining the legal sibling relationship of the twins;
 - vi) the failure to acknowledge the legal relationship between BT and GT and their older siblings;

- vii) the failure to record the reasons why a manager made the decision to place the twins separately for adoption on 10th April 2016;
 - viii) the failure of the LAC review on 11th April 2016 to consider pursuing a plan of long term foster care or commissioning further expert report(s) on the issue of placing the twins separately;
 - ix) the failure to promote contact between the twins once they had been placed for adoption;
 - x) the failure in applying full and accurate information in the CPRs and Adoption Support Plans including the adoption team manager wrongly and inappropriately deleting information about the twins challenging behaviours;
 - xi) the failures of the IROs to take any steps to oversee and/or challenge the local authority's decisions;
 - xii) the failure of the ADM decision making process, namely to fail to consider the impact on the children throughout the whole of their lives of separating them; and
 - xiii) the failure of the local authority, as a result of poor record keeping, to provide accurate evidence to the court.
49. Most regrettably all these admitted failures were not the end of this long litany of errors and misrepresentations. On the second day of the final hearing the local authority discovered there were documents and records, which contrary to previous orders and/or the local authority's general duty of disclosure, had not been disclosed to the court or to the parties. When the disclosure was made it amounted to some 200 pages. I gave the parties the whole of the following day to read and digest the documents disclosed and to take instructions.
50. It caused the prospective adopters considerable distress to discover that within this disclosed material were matters relating to the children which had not previously been communicated to them by the local authority nor had it been communicated to the adoption agencies supporting the two sets of prospective adopters. [REDACTED TO PRESERVE CONFIDENTIALITY].
51. The emotional pressure on the prospective adopters was great enough without the added burden of having to receive and cope with the new information revealed. I do not understand the explanation offered as to why this material had not been disclosed earlier, other than it resulted from yet another error by an employee of the local authority. I received no explanation as to why the information revealed had not been previously communicated to the prospective adopters or their supporting adoption agencies.
52. It then emerged that the then social worker, D, the author of the sibling assessment had misquoted the opinions of Dr Mair Edwards, a consultant psychologist, who had prepared a report on the children for the purposes of the original care proceedings. The extract contained in the sibling assessment of July 2016 reads as follows:

“Dr Edwards concluded, “If GT and BT were not twins, I would be recommending separate placements for them as GT’s challenging and bossy behaviours do impact on BT’s abilities to express himself and he therefore tends to focus in on his love of mechanical objects and machinery, and withdraws from social interactions...Both GT and BT have significant learning difficulties and developmental delay and will have significant needs throughout their childhoods. Their long-term placement would therefore need to be fully aware of the high level of commitment that will be required, and the ongoing support that the children are likely to require from agencies and services throughout their lives””

It will be noted three dots appear about halfway down the extract indicating some material had been omitted. Counsel for the children’s guardian, Mr Kingerley referred me to Dr Mair Edwards 2014 report. The passage omitted from the above extract reads as follows:

“When observing them together there was very limited interaction (other than GT telling BT to “no talk”), and no real sense of a sibling relationship. However, they are twins, and the sense of loss in later years at being separated would almost certainly be more detrimental to their welfare than placing them together.”

53. The words omitted completely change the import and meaning of the quoted section of Dr Mair Edwards’ report. The social worker was not called to give evidence before me nor has she been given the opportunity to give an explanation. Therefore, I will not name her in this judgment. The prospects of this being an innocent omission are unlikely in the extreme. It is not an opening or concluding sentence that has been missed. It is a passage in the middle of the quoted passage from the report and the deliberate omission of some words was marked by three dots. Given also that the omitted section of Dr Mair Edwards’ report sets out an opinion wholly contrary to the ultimate recommendation of the sibling assessment, the only credible explanation for this omission is a deliberate act to mislead a reader of the assessment to conclude that the recommendation of separate placements for adoption was consistent with the opinion of Dr Mair Edwards. It manifestly was not.
54. I was informed by counsel for the children’s guardian that in another case, some years ago, the self-same social worker was alleged to have tampered with a document. I asked for the issue of the social worker’s role in drafting the sibling assessment to be referred to the Director of Children’s Services and to the Chief Executive of Herefordshire Council. The social worker had left the local authority in March 2018 but had later been re-engaged in some role on a zero hours contract. It was proposed, in the Adoption Support Plans, that this social worker would be carrying out life story work for the twins. The following day I was told by counsel for the local authority that her contract had been terminated with immediate effect.
55. The issue of separating the twins was considered by a child and adolescent therapist with the adoption team, in her report of 12th April 2016. On the issues of separation and

future contact between the twins if the decision was made to place them separately she said:

“Making the decision that twins should be separated is problematic. Although each child’s needs may be better met in separate families, they have been constant companions to date, and will find separation confusing and stressful. In addition they share a common heritage and history. The complexities of these children’s circumstances and individual needs should be considered at length and in detail, so that a decision can be made which will be of most benefit to both the children.

If they are to be separated, it would seem vital that there is ongoing contact between them. Both children would find the separation difficult in the short term especially, and would need the reassurance of frequent contact.

Ongoing contact would rely on two adoptive families both being willing to commit to this. If one child is adopted and one remains in foster care, then contact with the adopted sibling needs to be carefully considered, due to the link to the birth family.

Separation would obviously need to be done with a carefully constructed programme that takes both children’s needs into account.”

56. In light of this clear recommendation I am at a loss to understand why the local authority did the exact opposite. Prior to placement with the prospective adopters the twins had a ‘see you later’ contact session and that over the succeeding eleven months they had contact on just two occasions. The local authority was unable to explain who had made this decision for there to be very limited contact between the twins post placement or why this decision had been made.
57. The catalogue of the local authority’s errors and failings in this case is troubling and hugely lamentable. I do not minimise any of the admitted breaches of human rights and/or the other admitted failures by highlighting what I consider to be the most egregious failures, namely:
 - i) the deletion of important and highly relevant information from the CPRs and Adoption Support Plans by the adoption team manager. This could only have been done to mislead the prospective adopters about BT and GT’s respective behaviours and needs with a view to increasing the prospects of them agreeing to a placement of BT or GT with them;
 - ii) the deliberate and misleading selective quote from the report of Dr Mair Edwards in the so-called ‘sibling assessment’. I am satisfied that the social worker began this apparent assessment with the end result, that of separating the twins, already decided and wrote an assessment to support that conclusion. I do not understand why this assessment was written up three months after the decision had been taken on 10th April 2016 to place the twins separately for

adoption or why this decision was not stayed pending the completion of a sibling assessment;

- iii) the failure to give full and frank information about the twins to their prospective adopters and their respective supporting adoption agencies;
- iv) the complete and utter failure of the IRO service to satisfy any of its statutory duties in respect of BT and GT. The IROs and the IRO service did absolutely nothing to protect and promote the welfare best interests of the children and did nothing to challenge the local authority's dreadful and, at times, irrational decision making and care planning; and
- v) the failure for there to be any note or record of the matters considered, the documents read or the reasons for taking the life changing decision to place the twins separately for adoption taken on 10th April 2016. It is astonishing given the highly unusual and momentous nature of the decision.

The Anna Freud Centre

58. The Anna Freud Centre, led by Dr Morris, a clinical psychologist, provided the court with a very comprehensive assessment of BT and GT. Dr Morris and Katherine Mautner, a social worker and play therapist, attended court to give evidence on behalf of the clinical team who undertook the assessment.
59. The assessment of BT concluded as follows:

“BT presents with many of the hallmarks of a child who has experienced inappropriate, neglectful, unpredictable and abusive parenting in his early years. Despite the clinically significant emotional (regulation) and behavioural difficulties he presents with, there is not convincing evidence at this stage to support a diagnosis of any major psychiatric condition; his symptoms are best understood in the context of both specific and general developmental trauma, including neglect, and global developmental delay. His behavioural and associated relational problems serve to protect him from the impact of overwhelming feelings, at the cost of his functioning and development. [REDACTED TO PRESERVE CONFIDENTIALITY].

There are several protective factors in BT's life – he has some clear strengths and is a kind and playful boy with a great sense of humour. He has an emerging sense of self, taking pride in showing us his room, telling us about his likes and dislikes and, at times, asserting his needs. He appears to have made significant progress in his current placement, and the increasingly secure relationship we observed with the prospective adopters is, itself a protective factor. However, as we saw during the course of the assessment, the progress BT has made is very fragile and his strengths and abilities can quickly fall away when he is in touch with even fairly normal feelings of fear or vulnerability and/or traumatic memories.

It is possible that the global developmental delay observed is simply attributable to the neglect and abuse that he received in his early years, rather than a more biological explanation. Given the security stemming from benign but clear boundaries in the context of love in his primary carer relationship, and continued assessment and intensive therapeutic input (described elsewhere in this report), this delay might be expected to catch up in time. Our understanding is that there has already been significant developmental catch up since BT came into his present care setting. [REDACTED TO PRESERVE CONFIDENTIALITY].

60. The summary of the centre's assessment of GT was:

“GT presents with many of the hallmarks of a child who has experienced inappropriate, neglectful, unpredictable and abusive parenting in her early years. Despite the clinically significant emotional (regulation), social and behavioural difficulties she presents with, there is not convincing evidence at this stage to support a diagnosis of any major psychiatric condition; her symptoms are best understood in the context of both specific and general developmental trauma (including neglect) and a global developmental delay. The disconnected way she relates to herself and associated relational problems serve to protect her from the impact of overwhelming feelings, at the cost of impaired functioning and development. Her early history, combined with her current presentation, place her at a very high risk for developing a major psychiatric condition in the future without significant and prolonged intervention (described elsewhere in this report).

There are several protective factors in GT's life – she can be a warm, enthusiastic and playful girl with a quirky sense of humour. She appears to have made significant progress in her current placement and can now sometimes use others to help her understand her own internal experiences. The increasingly secure relationship we observed with her prospective adopter is, itself a protective factor. However, as we saw during the course of the assessment, the progress GT has made is very fragile and she can quickly resort to primitive defence mechanisms such as disassociation to segregate intolerable mental states when she is in touch with difficult feelings or memories. It is likely that such defence mechanisms helped her to survive her early trauma. However, their continued use had led to significant disturbance in the development of a coherent self-construct, as she appears to have an only just emerging sense of self. Lack of a coherent sense of self is a significant risk factor in difficulties in the development of personality.

It is possible that the global developmental delay observed is simply attributable to the neglect and abuse that GT received in her early years, rather than having to evoke a more biological

explanation. Given the availability of benign but clear boundaries in a context of love in her primary carer relationship, an continued assessment and intensive therapeutic input (described elsewhere in this report), this delay might be expected to reduce over time. Our understanding is that there had already been significant developmental catch up since GT came to her present care setting. However, it is impossible to say at this stage to what extent this is likely to occur, and in our view, it is quite likely that GT will retain some level of learning difficulty. At this stage we hypothesise that the autistic type behaviours observed during the assessment are primarily associated with GT's disconnected states of mind and mistrust in the world/others. However, we recommend further assessment in the future."

61. The report from the centre sets out in considerable detail the current and future needs of BT and GT, of how these can best be met, of the support services they and their carers will require and what should be contained in each child's Adoption Support Plan.
62. On the central issue of whether BT and GT should continue to be placed separately or whether they should be reunited in one placement the advice was:

"As mentioned above, while BT and GT's shared experience is important in relation to their identity, as well as their sense of continued connection, it is also marked by trauma and loss. There is some evidence that BT works to distance himself from that in the current contact and there is a history and complex and at times negative dynamics in their relationship with one another. It is likely that his would make living together and sharing resources very difficult for BT and GT and would set up the adults charged with this responsibility, with an extremely difficult task. GT and BT need to be able to regulate their experiences of connection with one another and with their early memories, which would be almost impossible if they were living as part of one family.

Placing the children separately but supporting them to maintain a meaningful and ongoing relationship allows them to maintain their connection and positive relationship with each other into the future, while allowing them to develop their own life narratives and have space away from the trauma they shared. Our assessment of the prospective adopters' ability to support the sibling relationship going forward is positive.

There is evidence that both children have made significant progress in their current placements and are forming positive attachment relationships. To remove them from their current placements would, in our opinion, constitute a further severe developmental trauma and constitute significant harm...

In summary, it is our view that the benefits of placing the siblings together is outweighed in this case by the likelihood that their high level of need could not both be met in one placement, that their separate placement but continued relationship offers them the best opportunity for recovery, and that removal from what the children have come to view over the last 12 months as their parents, their family and their home, would constitute further developmental trauma.”

63. The centre considered the issue of whether BT and/or GT should have contact with their mother and/or their older siblings. They opined as follows:

“In our opinion, BT and GT remain very vulnerable and each child’s emerging sense of safety remains fragile. Direct contact with members of their birth family who they haven’t seen since before they moved into their current homes would likely undermine this progress and of the tentative sense of safety that they are each developing.”

“While it may be that incidents of direct abuse were largely perpetrated by their birth father, the evidence in both children (of their current emotional functioning) suggests that neither parent was able to provide a consistent sense of safety. In addition, it is likely that BT and GT’s memories of their early years are of a bodily/sensory type and perhaps audio/visual but are unlikely to be coherent or autobiographical in nature. As such, there may be things that they would notice about their birth mother (such as the sound of her voice/the way that she smells) that triggers responses related to traumatic experiences, even if these actually belong more firmly to their memories of their birth father.

On this basis, we can speculate that direct contact would likely be a frightening experience. Further, the trust that they are building in their carers to keep them safe and help them to regulate overwhelming negative affect would likely be profoundly undermined by this experience.

We do not recommend that direct contact with the birth mother should be considered until the children are old enough to explore this possibility for themselves (probably in adolescence) and even then, this should be approached with caution. In the meantime, we recommend that annual letterbox contact is appropriate to maintain a link for the purposes of BT and GT’s developing identity.”

“However, our assessment leads us to speculate that GT and BT might be more able to manage direct contact with their older siblings once their primary attachment relationships (with their adoptive parents) and their relationship with one another are more firmly established. This leads us to recommend that twice a year letterbox contact should be set up at this time (to include

photographs if this is safely possible) and that the possibility of direct contact should be revisited in 2 years' time. This contact reassessment should include a review of the quality of letterbox contact in the intervening period; an update on how settled GT and BT has each become in their adoptive families (for example frequency of emotional dysregulation, how they have managed minor difficult experiences or transitions, how they have been able to make and manage new relationship); an update on the circumstances of whichever birth sibling has requested contact (how settled they are in their own relationships, their emotional wellbeing, how close their relationships are with other birth family members and how well they would be able to maintain a level of safe confidentiality for example about the whereabouts of each twin's adoptive family)."

64. Dr Morris and Ms Mautner, with the agreement of all parties gave evidence together. I wished to explore two matters with them:
- i) could BT and/or GT be moved from their current placement to be reunited in a single placement;
 - ii) in any event, would some lesser order meet their needs and have the legal consequence of preserving their status as brother and sister?
65. I am immensely grateful to Dr Morris and Ms Mautner for the clarity of the evidence they gave and for the care and earnest consideration they had obviously given to the issues in this case. At the conclusion of their evidence I was persuaded to accept the recommendations they had made and their reasons for the same.
66. Dr Morris told me that both children were receiving a very high quality of care from their prospective adopters. BT and GT feel 'ownership' of their separate families. Living apart but coming together at regular contact visits offers them the best opportunity to enable them to build a positive and enduring relationship with each other. The recommendation was that contact should occur at a minimum of six times per year with indirect contact by Skype, Facetime and/or letters and cards taking place on a more frequent basis. Ongoing direct and indirect contact is so vital for BT and GT that Dr Morris advised that the court should make a contact order. This is required to make very clear the importance of contact for the twins and not because of any lack of commitment on the part of the prospective adopters. All three of them recognise and accept the children's need for regular and indirect contact and are fully committed to ensure the same occurs.
67. On the issue of removal of BT and/or GT from their current carers Dr Morris and Ms Mautner made a number of important points:
- i) BT and GT have made surprisingly good and positive progress in the care of the prospective adopters;
 - ii) nevertheless, because of the harm and damage they each suffered in the care of their parents they are and will remain for some time fragile and vulnerable children;

- iii) both of them are now beginning to allow themselves, for the first time, to believe they are settled and secure in their family;
 - iv) if one or both of them were to be removed from their prospective adopters they would both suffer a profound sense of loss, it would compound the losses of relationships they have already suffered – in short it would be devastating for one or both of them;
 - v) it would disrupt their current attachment to their carers, it would damage their view of the world and seriously affect their ability to trust anyone in the future: it would be one trauma too many;
 - vi) the children have not yet processed their life experiences to date. They are not able to recognise or regulate their feelings about their past experiences. When placed together they re-experience the past trauma in their lives. Now living apart there has been a shift in the ability of BT and GT to deal with these issues for which they will need professional help and the continued love, care and support of their prospective adopters;
 - vii) the harm and damage suffered by BT or GT consequent to a removal would adversely affect them in the long term and it is unlikely they would be able to recover from the same; and
 - viii) now, it would be impossible for one set of carers to care for both children and meet all of the challenging and complex needs of both of them.
68. In relation to the issue of whether an order short of adoption (e.g. a special guardianship order ('SGO')) would meet the needs of the children, Dr Morris and Ms Mautner agreed it was a very difficult question. They had not previously taken into account that the fact that by being adopted separately BT and GT would lose their legal status as brother and sister (I mention this not as a point of criticism but as a matter of fact). They both reflected. They then gave a very powerful reason for preferring an adoption order. BT and GT will be likely to remain vulnerable into early adulthood. They will need a legal family to provide for and to look after them beyond attaining the age of 18. An adoption would provide this forever family. A SGO, of course, would cease to have effect when they attain their majority. The carers would then have no relationship or connection with BT or GT in law. The only people who would have a legal relationship with would be their mother and their father: the very people who had harmed and abused them and caused them profound emotional, psychological and developmental damage.
69. I found this evidence to be powerful and compelling.

Local Authority Evidence

70. Ms Elgar, the assistant director of children's services, and Ms Leader, the team manager, gave relatively brief evidence. Ms Elgar had been in post from June 2018 and Ms Leader became the team manager in July 2017. They both offered profuse apologies to the prospective adopters for the actions and failings of the local authority.
71. Ms Elgar could not explain how or why the material which had been disclosed at this hearing had not been disclosed at an earlier time or had been 'lost' by the local

authority. She recognised the local authority's serious shortcomings and sought to assure the court that action had been, and would continue to be, taken to resolve the identified and admitted failings of the local authority. She accepted the deletions from the CPRs and Adoption Support Plans resulted from a deliberate and wrongful act by an employee of the local authority.

72. It was Ms Leader who, having heard certain observations by me, checked the electronic records and discovered a considerable amount of material had not been disclosed. She readily accepted the decision to terminate BT's adoptive placement in late 2017 had been wrong and the whole episode had been badly dealt with by the local authority. Mr Noble had noted that some of the documents disclosed in the hearing related to events some months or even up to two years before but had only appeared on the local authority's computer system within days of each other in February or March 2018. When asked why this was, Ms Leader said that the previous social worker, D, had got seriously behind with her administration and had thus spent the last few days of her employment uploading two years worth of notes, records and other documents onto the system. When asked how this could have been allowed to happen, she could give no answer other than to say it was not good practice. This ranks as a masterful understatement and was a completely inadequate response. For the last seven or eight months of the social worker's employment in children's services, Ms Leader had been her line manager and had taken no effective steps to remedy this extraordinary state of affairs.
73. Finally, Ms Leader confirmed that no note, record or document had been found relating to the decision made on 10th April 2016 that BT and GT should be placed separately for adoption.

The Prospective Adopters

74. I propose to say little if anything about the circumstances and background of A and B or of C. These details are not relevant to the issues I have to determine and I would not wish to take the unnecessary step of setting out details about them which might inadvertently lead to their identification by any person. The only material issue is the quality of care and commitment they have and will give to BT and GT if they are to remain in their care.
75. I unreservedly accept the evidence of the Anna Freud Centre, the local authority's assistant director and of the guardian that A and B and C have given and would continue to give great love, commitment and superlative care to BT and GT.
76. No party wished to cross examine either A, B or C. I told counsel that I would be happy to hear from one or more of them if they wished to give evidence but I did not require them to give evidence. Unsurprisingly they did not wish to give evidence. Their witness statements were very helpful and comprehensive.
77. A and B painted the following picture of BT in their first statement:

“BT is a wonderful boy, full of kindness and enthusiasm. He wants to try everything and loves learning how to do things. He is happy and relaxed with us. We spend many days happily doing normal things that families do. Sometimes we just play and

potter around at home together. Other days we might go out riding on our bikes or visiting family and friends. Sometimes, the court proceedings and conversations with the local authority, make it seem like our family life is constantly strained by BT's behaviour and our ability to cope with it. In fact, this is far from accurate. Whilst BT's behaviour has of course been very challenging, especially in the first months, we have in more recent months actually found most of our time with BT to be the family we wanted and expected it to be when we adopted. We feel that BT is also happy and feels like he is part of a family, living a positive family life.

We think that BT needs and deserves a family life with the permanency and security that only adoption can provide. Over the last year we have developed trust and family life with BT and worked consistently to increase his sense and understanding that his new family with us is forever, and that we will always look after him. BT refers to us as a family, wants family hugs and draws pictures of us all together. He is bonding with, and embracing of, our wider families. He is excited and is starting to understand that they are now his family. BT loves playing with his cousins and chatting with aunts, uncles and grandparents. For example, one of his favourite things to do is to sing along to the radio, especially with his grandmother who he refers to as 'nan'."

But he does present challenging behaviour at times:

"The level of BT's violence was a shock to us and it was not something we were prepared for. It certainly took us a while to learn the most effective ways to respond to it (and we are still learning each day). We have tried to understand BT's behaviours and it causes, appreciating that due to his early years and his unprocessed trauma, that BT is a child who can easily be triggered into a fight or flight response. We have and continue to work hard to make BT feel safe and to distract him and reassure him as needed to reduce the times he triggers. We understand that once in the 'fight or flight' response that BT is no longer using his rational/thinking part of his brain and is lashing out to protect himself, the most basic of instincts.

We have been advised that at these times BT is functioning much more like a toddler having a meltdown and as such needs comforting, cuddling and containing. Where possible we do this with a cuddle and when necessary we wrap our arms around BT in a safe hold that keep BT and us safe. BT had always received from us the robust message that violence is not acceptable and he must not hit. He is very aware that it is not acceptable, the days when he has not hit, he will often at bedtime say 'no hitting today' and seem genuinely proud of himself."

78. In respect of their view of this local authority they said:

“Given the above, we are sad to say that we have very little trust in Herefordshire and feel apprehensive about working with them moving forwards. We are fully aware that so long as BT remains in our care, we will need to work with Herefordshire in the future. We want this to be a positive and meaningful relationship for BT’s sake. However, we think it may be necessary for work to be put into that relationship, including us and the social workers attending mediation or other type of relationship building exercise, before this can be achieved.”

79. They gave the following reasons for seeking an adoption order as opposed to any other sort of order:

“In terms of what decision we want the court to make, we are clear that an Adoption Order is what is best for BT. We have been a family for a year now and our closeness and sense of family increases with each day. We want and have always wanted to adopt BT. Quite simply, he fits perfectly with us. We want to give him that permanent security for the rest of his life. For the first time in his life he has parents who will love and look after him forever. We are clear that only adoption will enable BT to have that. We don’t want BT to miss out on being adopted and having a forever family because of the flaws in other people’s actions. That would have a devastating impact on the rest of his life.

Finally, we would like to make it abundantly clear that we do not consider it to be in BT’s interests to move to a different placement now. We cannot bear the thought of him having to go through another move, and how that would destroy his ability to form attachments and develop trust, and how much he would miss us and how much we would miss him. He is our son and we are his parents.”

80. These are all very eloquent expressions of their intense love for and the commitment they have shown to BT.

81. C described GT in the following glowing terms:

“I am concerned that, in amongst the necessary legal negotiations and discussions, as well as those regarding GT’s needs, something of her personality is getting lost. I would like to take this opportunity to tell the Court about her. GT is not a child who is ‘easy’ to parent, but alongside the challenges is a fantastic, funny, caring, curious girl, who brings a great deal of joy and love into my life.

She has a sunny disposition when she is feeling secure, and likes to see other people happy as well. She enjoys trying new things, and will take herself out of her comfort zone to get such experiences. GT is proud of her achievements, especially when

she had put in a lot of effort, and it was lovely to hear recently that she encourages her classmates to achieve as well.

Although she is sometimes hesitant to interact socially, she loves playing with other children, and frequently makes new friends at the play park. I am immensely proud of her.”

However, life can be difficult at times:

“Once GT was placed with me it became clear very quickly that GT was not a little girl who would throw a tantrum. GT would rage and these rages would last for a couple of hours. She would become physically aggressive and it can be difficult to manage these outbursts. This has resulted in me having to restrain GT, and GT’s shouting and screaming has led to the neighbours raising concerns with child protection agencies.”

82. In respect of A and B, C described their relationship as follows:

“I have only known [A] and [B] for a short period of time but feel we have a good bond and are more than able to communicate with each other in respect of GT and BT. I would consider them friends.

I am confident that this relationship will help us in the future to arrange contacts between our children. My vision for future contact is that contact should be fluid and it should feel like a normal family dynamic. I truly believe in the future [A], [B], BT, GT and I will be a quasi-family and we will be able to make contact arrangements between us.”

83. C gave her reasons for seeking an adoption order in the following terms:

“I believe that an Adoption Order is the only Order which can provide GT with the security and knowledge that I am her parent and this is her ‘forever home’.

It is crucial for GT’s development of trust with me that she feels safe and secure in my care. I feel if GT does not consider this her permanent placement she would not trust me and that her behaviour will destabilise. I fear a result of this would be that GT reverts to her defiant and oppositional behaviour which she has used as her survival mechanism previously.

This behaviour, combined with GT’s continued growth in strength and size will mean I may find it difficult to cope and manage these behaviours in the future.

Due to her learning difficulty and emotional wellbeing, GT is likely to remain a very vulnerable individual throughout her life. I am concerned that an alternative to adoption will not offer

sufficient safeguards or protection from those who have previously caused her harm. I cannot see myself in a position sharing parental responsibility with the birth parents, even if the birth parents' parental responsibility is notional.

For GT her sense of belonging is very important. She identifies as GT [X] which is central to her emerging sense of self and allows her to feel part of a family, our family.”

Children's Guardian

84. I am grateful to the children's guardian for his very helpful and thorough report. In his evidence he confirmed his opinion that given the children had been with the prospective adopters for some eighteen months and in light of the recommendations of the Anna Freud Centre, it was in the welfare best interests of BT and GT to remain in the care of their respective prospective adopters. He had carefully considered the issue of adoption against SGOs and had reached the clear conclusion that only adoption would secure the degree of permanence, security and stability which both BT and GT would require throughout the whole of their lives.
85. In relation to E and F he agreed with the recommendations of the Anna Freud Centre that they should have indirect contact with BT and GT twice per year and the issue of some direct contact should be reviewed in two years' time. He had met with E and F on a number of occasions and had been impressed with their attitude on the issue of contact and with their acceptance of the limitations that there would currently be with contact to their younger siblings. He did not consider an order for contact was necessary given the agreement of the prospective adopters to the proposed contact but agreed it would be useful for the local authority to draw up a schedule of contact.
86. There was one issue in respect of contact between BT and GT and F and E, which related to the provision of photographs. F and E wanted to receive regular photographs of BT and GT which they could keep. The prospective adopters did not object to F and E seeing photographs of the children as part of their agreed indirect contact but opposed them taking and keeping the photographs; they asserted these should be held by the local authority.
87. The children's guardian accepted there was a risk that photographs might come into the possession of the parents or might otherwise appear on social media. Given, however, his favourable opinion of F and E, he favoured them being permitted to take and keep any photographs provided.

Discussion

88. I have struggled with the concept that a court could find that it was in the welfare best interests of twins to place them separately for adoption. From the time the case first came before me up to and during the course of this final hearing I was keen to find a route by which BT and GT could be reunited in a single placement. If this proved impossible to achieve, I was keen to find a legal framework, short of adoption, which could afford them the degree of permanence, stability and security which I entirely accept they both so desperately require.

89. For the avoidance of any doubt, as I observed in the course of the hearing, in expressing these views I did not for one moment doubt the love, commitment and care which A, B and C have afforded to BT and GT: quite the reverse. I wholeheartedly commend both sets of prospective adopters for the enormous great love and devotion they have shown to BT and GT, for their unswerving commitment to them and for the superlative care they have given BT and GT. It is plain that, notwithstanding the grave harm and damage they suffered in their past lives, they are thriving beyond expectations in the care of A and B and C. The stoicism each of these adults have displayed in the course of these lengthy proceedings has been admirable.
90. Nevertheless, BT and GT are not just simply siblings they are twins. In making adoption orders in favour of two separate sets of prospective adopters, I would sever the legal relationship of BT and GT as brother and sister. Further I would sever their legal relationship with their elder siblings. Whilst the latter is very important, it is the former consequence of adoption that principally troubles me.
91. There is no question of it being a realistic option in the welfare best interests of the children for either of them to return to the care of either parent. The mother manifestly is not capable of caring for them and neither is the father. In any event, he is serving a very substantial custodial sentence and is convicted of offences of child abuse.
92. Is there any other realistic placement together or apart? On the basis of the powerful and compelling evidence presented by the Anna Freud Centre and the most impressive and persuasive oral evidence of Dr Morris and Ms Mautner, supported by the children's guardian and the local authority's assistant director, and the compelling evidence of the prospective adopters, the answer is a resounding no.
93. I am of the view that if this local authority had exercised good social work practice and exercised a modicum of child focused judgment in its decision-making processes, there was, in my judgment, a real possibility that the children could have been placed and lived together for a substantial period of their childhoods. They had, I note, lived together in their foster placement for nearly three years albeit not without presenting their foster carers with immense challenges from time to time. Whatever the possibilities of being placed together, I am completely satisfied that the actions of this local authority denied them the opportunity of this option being properly explored which is, to put it mildly, deeply regrettable and will have an impact, great or slight, for the whole of BT and GT's lives.
94. I am satisfied on the totality of the evidence before me that I cannot now contemplate moving either BT or GT, or both of them, from their placements without causing them serious harm and, potentially, lifelong grave harm. They are well settled with their prospective adopters and are plainly well integrated into what they consider to be their respective families. They are, for the first time in their lives, allowing themselves to believe they have their forever family. If one or other of them or both of them were to be moved, I accept the evidence of the Anna Freud Centre, that one or both of them would be devastated. They would suffer a sense of considerable loss, their behaviour would undoubtedly regress and they are likely never to allow themselves to trust a future carer or others involved in their lives: even if not likely, there is a substantial risk this would be the consequence of a removal.

95. To embark on the removal of the children with all the attendant serious adverse consequences cannot, in my judgment, be in the welfare best interests of either BT or GT. Accordingly, I am now persuaded and satisfied that both BT and GT must remain in the care of their respective prospective adopters.
96. The next question is under what legal framework should BT and GT live with their carers? The only realistic options are adoption orders or SGOs.
97. The adverse consequences of adoption, namely the severing of the legal status of BT and GT as siblings and the severing of the legal relationship with the older siblings greatly troubles me. It weighs heavily in the balance against making an adoption order.
98. My concerns are to some degree mitigated by:
 - i) the advice of the Anna Freud Centre that ongoing regular direct contact is essential to build and maintain a close and warm relationship between BT and GT which will hopefully endure for the whole of their lives; and
 - ii) the prospective adopters' acceptance of this advice and their strong commitment to ensure such contact takes place.
99. I recognise and take account of the fact that an adoption order would sever BT and GT's legal relationship with their mother and father. This is a serious consequence but given their wholly adverse involvement in BT and GT's past lives, it is not a consideration which weighs heavily in the balance.
100. An adoption order would bring considerable benefits to BT and GT. They would, throughout the whole of their lives, be permanent members of their new families. Importantly the order would have effect for the whole of their lives and not just until they are 18. I accept that BT and GT need and crave a permanent family where they will be and they will feel stable and secure in a loving, safe environment.
101. A SGO would confirm BT and GT's placements with their respective carers and would grant their carers parental responsibility for them. It would enable them to determine the extent to which, if at all, BT and GT's mother and/or father could exercise their parental responsibility. This order would not sever the legal status of BT and GT nor affect their legal relationship with their older siblings.
102. The singular disadvantage of a SGO is that would and could only last until the children attained the age of 18. Then the only people with a legal relationship with BT and GT would be the mother and the father (and their older siblings, of course). BT would no longer have any legal connection with A and B nor GT with C. This scenario would not be in the welfare best interests of either BT and GT. They will need to be reassured that they are safe from any future involvement with their mother or father. Such reassurance is unlikely to be engendered by them knowing they have a legal relationship with their birth parents but no legal relationship with the people whom they consider to be their parents and who are their psychological parents.
103. I accept the evidence of the Anna Freud Centre that even when they attain 18 years of age, BT and GT will be vulnerable young people who will still need the reassurance of

having a permanent, stable and secure home with their carers and a legal relationship with them.

104. Taking into account all of these competing factors, I am satisfied that making adoption orders in respect of BT and GT is the only means of securing their future care and are the only orders which are in their welfare best interests. In the circumstances of this case at this time I am satisfied that adoption orders are necessary and are a proportionate response to the overwhelming needs of these children.
105. Neither the mother nor the father consent to the making of adoption orders. BT and GT were, however, placed with their respective prospective adopters by an adoption agency, Herefordshire Council, and under placement orders. The mother and the father have not applied for nor been granted leave to oppose these adoption applications. Accordingly, the second condition of s.47 ACA 2002 is satisfied and I do not need to consider the issue of dispensing with either parents' consent to the making of adoption orders: s.47(4) & (5) ACA 2002. If I had had to consider the issue of dispensing with their consent, I am wholly satisfied, for the reasons given above, that the welfare of BT and the welfare of GT would have required me to do so: s.52 ACA 2002.

E and F

106. E and F were represented by the Official Solicitor. They did not attend court but a statement was filed on their behalf which fully set out their views. I also had the benefit of letters from E and F in which they described their love for both their younger siblings. The Official Solicitor agreed with BT and GT remaining in their adoptive placements and being made the subject of adoption orders in favour of their respective carers. The proposed indirect contact twice per year was agreed together with there being a review of the question of direct contact taking place in 2 years' time and thereafter on an annual basis.
107. The one issue in dispute was whether they should be given and keep photographs of BT and GT. I am in no doubt of the great and sincere love F and E have for their two younger siblings. I accept they are both in stable placements and, as the guardian described, I accept they have demonstrated a significant degree of maturity and insight into the limitations of their future contact with BT and GT. I further accept neither would willingly show any photographs of BT and GT to their parents or place any of them on social media.
108. In these circumstances I accept the guardian's view that nevertheless there must be some risk that these events might occur in the future. Whether significant or small this is a risk which will be borne by the prospective adopters. The consequences of any photograph of BT and GT coming into the hands of the parents or put on to social media could potentially be catastrophic. Accordingly in my judgment the issue of whether F and E should be permitted to take and keep photographs of BT and GT is for A and B and C to decide: it is not for me to impose my assessment of the risk identified upon them.
109. It may well be that once A and B and C have been able to put the distress and pressure of these proceedings behind them and have settled into a routine of indirect contact with F and E, one or both sets of carers will feel able to change their view on this issue.

The s.35(2) Notice of Termination of Placement

110. I have referred in paragraph 3 above to the local authority issuing and then purporting to withdraw the notice in November 2017 in respect of BT's placement with A and B. At an earlier stage in these proceedings an issue was raised as to whether an adoption application could validly be made by BT's prospective adopters in light of the service of a s.35(2) notice. The matter was not pursued by any party at this final hearing. Nevertheless, Ms Reed, counsel for A and B, was concerned that the issue could be raised at a later time in the context of a challenge to any adoption order made in respect of BT in favour of A and B.
111. I shared the concerns expressed by Ms Reed. Accordingly, and to put the matter beyond doubt, with the consent of all parties and sitting as a judge of the Administrative Court, I gave A and B permission to issue a claim for judicial review to challenge the decision to terminate the placement and to issue to s.35(2) notice. I then deemed them to have made an application for judicial review.
112. I considered the decision of the local authority to seek to remove BT from his prospective adopters' care to be so demonstrably unreasonable as to be irrational. This conclusion is reinforced by the local authority reversing its decision and purporting to withdraw the s.35(2) notice just two days after the decision was communicated to A and B and the notice was issued. Therefore, I am satisfied that the decision to remove and the issue of the notice was unlawful and both should be quashed.

The Human Rights Act Claims

113. The HRA claims brought on behalf of the children and by the prospective adopters were made wholly outside of the application for adoption being determined in these proceedings. They are in my judgment wholly unconnected with these proceedings. I make mention of the claims in this judgment so as to ensure it gives a comprehensive account of the circumstances and events surrounding these children and these prospective adopters.
114. As I mentioned earlier in this judgment the children's legal costs in issuing Part 8 claims and negotiating a settlement are to be met by the local authority as are the legal costs of the prospective adopters in negotiating a settlement.
115. The breaches of the human rights of the children are encapsulated in Annexe 1 to this judgment. The breaches relied upon by the prospective adopters and admitted by the local authority are in like terms: they are set out in Annexe 3, in respect of A & B, and in Annexe 4, in respect of C, to this judgment. The breaches are extensive and relate to almost every aspect of this local authority's involvement with the children and the prospective adopters.
116. The damages agreed in satisfaction of A and B's HRA claim were £5,000.00. The same sum was accepted by C in respect of her HRA claim.
117. When considering the infant settlement approval of BT and GT's respective claims for breaches of their human rights I had the benefit of advice on quantum by Mr Kingerley dated 16th November 2018. The local authority offered in settlement of the children's claims the sum advised by counsel, namely £20,000.00 each. I was satisfied in all the

circumstances of this case and having regard to recent authorities on the issue of HRA damages, that these were entirely reasonable damages to offer just satisfaction to both children. Accordingly, I approved the settlement achieved for BT and for GT. Further I made the declarations of the breaches of human rights of BT, GT, A & B and C in the terms agreed and set out in Annexes 1, 3 and 4 to this judgment.

Costs

118. The children's guardian made an application for an order for the children's costs in these proceedings against the local authority: no other party made an application for costs. The local authority did not actively oppose the application but submitted the issue of costs was a matter for the court.
119. When considering this application I have had regard to the decision of the Supreme Court in *Re T* [2012] UKSC 36, affirmed in the case of *Re S (A child)* [2015] UKSC 20, and in particular to the judgment of Lord Phillips where he said, at paragraphs 42 to 44, as follows:

“In the context of care proceedings it is not right to treat a local authority as in the same position as a civil litigant who raises an issue that is ultimately determined against him. The Children Act 1989 imposes duties on the local authority in respect of the care of children. If the local authority receives information that a child has been subjected to or is likely to be subjected to serious harm it has a duty to investigate the report and, where there are reasonable grounds for believing that it may be well founded, to instigate care proceedings. In this respect the role of a local authority has much in common with the role of a prosecuting authority in criminal proceedings. It is for the court, and not the local authority, to decide whether the allegations are well founded. It is a serious misfortune to be the subject of unjustified allegations in relation to misconduct to a child, but where it is reasonable that these should be investigated by a court, justice does not demand that the local authority responsible for placing the allegations before the court should ultimately be responsible for the legal costs of the person against whom the allegations are made.

Since the Children Act came into force, care proceedings have proceeded on the basis that costs will not be awarded against local authorities where no criticism can be made of the manner in which they have performed their duties under the Act. Wilson LJ in *In re J* at para 19 disclaimed any suggestion that it was appropriate "in the vast run of these cases to make an order for costs in whole or in part by reference to the court's determination of issues of historical fact". But, as I have indicated, there is no valid basis for restricting his approach in that case to findings in a split hearing. The principle that he applied would open the door to successful costs applications against local authorities in respect of many determinations of issues of historical fact. The

effect on the resources of local authorities, and the uses to which those resources are put would be significant.

For these reasons we have concluded that the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice and which should not be subject to an exception in the case of split hearings. Judge Dowse's costs order was founded on this practice. It was sound in principle and should not have been reversed by the Court of Appeal.”

120. My initial reaction to the costs application was that the conduct of the local authority had been so poor that it amounted to reprehensible behaviour. On reflection, however, this behaviour relates principally to conduct prior to the commencement of these proceedings. Moreover, whilst the failure to make full disclosure prior to this final hearing was deeply unfortunate, to say the least, and for reasons which the local authority has been unable to explain, their stance in this litigation could not be said to have been unreasonable: it has fallen on its proverbial sword.
121. I also take into account that the reprehensible behaviour of the local authority has been marked by the agreement to pay £20,000.00 in damages to each child for serial breaches of their human rights and the local authority has borne the costs of these claims.
122. When considering whether it is just to make a costs order against the local authority I have regard to the competing demands on the limited funds of this authority.
123. Accordingly, whilst the actions and failings of this local authority are utterly appalling, considering matters in the round, I have concluded it would not be just to make an order for costs against the local authority in favour of the children's costs of these proceedings. The local authority's funds would be better spent in securing the reforms that are so urgently needed to be implemented in the children's services' department.

Conclusion

124. I am wholly satisfied, albeit in quite exceptional circumstances, that it is in the welfare best interests of BT and GT to remain in their respective prospective adoptive placements subject to them having regular direct and frequent indirect contact with each other now and for the future.
125. For the reasons I have given, I am also wholly satisfied that only an adoption order will bring the permanence, security and stability that they both now require and are most likely to require throughout the whole of their lives. An adoption order is pre-eminently in the welfare best interest of BT and GT even when taking account of the fact that a consequence of the orders will be to sever the legal relationship between them as siblings and between them and their older siblings.
126. The high importance, indeed the imperative need, for regular direct and frequent indirect contact to take place is such that I will make a contact order in the terms sought. I do not make a contact order because I entertain the slightest doubt about the dedication of these prospective adopters to ensure this contact takes place, indeed, I am

satisfied that the prospective adopters are committed to this contact and recognise that it is in the welfare best interests of BT and GT. I make a contact order (i) to mark for the twins the importance this court places on their ongoing relationship notwithstanding they are adopted separately and (ii) to fortify the adopters in the event that one or other twin is reluctant to attend contact in the future.

127. The mother and the father do not consent to the adoption of BT and GT but the second condition of s.47 ACA 2002 is satisfied and, therefore, the issue of dispensing with their consent did not arise.
128. I make an adoption order in respect of BT in favour of A and B and I make an adoption order in respect of GT in favour of C.
129. I invite A and B and C to continue to reflect on whether now or in the future F and E could be permitted to be given and to keep photographs of BT and GT. As I have said, I consider this a decision for them to make and not for the court to impose upon them.
130. I shall not make an order for costs against the local authority.
131. I am all too aware of the financial constraints imposed on this local authority's children's services and the difficulties encountered in recruiting and retaining social workers. These difficulties do not explain, still less excuse, in this case the actions and failings of the local authority.
132. The failings of this local authority have been utterly appalling. Whilst I accept the assurances of the director of children's services and of the assistant director that significant and substantial reforms will be made and effected, no child should ever again be cared for in the manner BT and GT have had to endure at the hands of this local authority nor suffer the woeful lack of rational care planning. Further no prospective adopter should ever again have to endure the treatment meted out to A, B and C in this case.
133. I shall order that a copy of this judgment shall be sent to the Secretary of State for Education, the Senior Social Worker, Ofsted and the Chief Executive of Herefordshire Council.

Annexe 1

I. The Claimants are BT and GT who are currently the subject of adoption proceedings before Mr Justice Keehan.

II. BT and GT have a right to a private and family life in respect of their family life with one another and with their respective prospective adopters pursuant to the European Convention on Human Rights Article 8 / HRA 1998.

III. BT and GT have established a right to family life with each other and with their prospective adopters, which was established since placement with them, pursuant to the European Convention on Human Rights Article 8 / HRA 1998.

IV. The local authority is a public authority for the purposes of s6 Human Rights Act 2018, and as such any interference by them in the article 8 rights of BT and GT must be lawful, necessary and proportionate.

V. Since BT and GT were placed in the care of the local authority, by way of full care orders and placement orders at the conclusion of public law proceedings in March 2015, the local authority have interfered with the BT and GT's right to private and family life.

VI. The interference with BT and GT's Article 6 & 8 rights was not lawful and / or was not necessary and proportionate either in pursuance of the local authority's duties towards the children or otherwise.

VII. Particulars of Interference

a) In 2016 the local authority failed to give adequate consideration to the need to place the children together (irrespective of type of order) as approved in the care and placement proceedings, or otherwise preserve the family life together, consistent with their welfare and right to family life.

b) Following the making of the placement orders 19.03.15, failed to carry out adequate reviews which complied with the requirements of s36(6) Adoption Agency regulations and in particular failed to ask itself whether adoption remained the correct plan. In failing to do so, the local authority failed to analyse long term fostering versus adoption.

c) In April 2016 the local authority inappropriately concluded a change in a care plan to separate the children (and affected an immediate separation) with:

a. No reference to the care plan agreed by HHJ Hooper QC

b. No formal or approved sibling assessment at the time of separation and the subsequent assessment approved in July 2016 was inadequate.

c. No knowledge as to whether a potential adoptive match for either child was achievable

d. No assessment of the impact of the sibling (physical and legal) separation

e. No assessment of the impact or trauma of separation, reducing interim contact or the long-term contact proposal.

f. Inadequate consideration of the assessment of the children's therapist as to how any separation should be assessed, implemented and managed and monitored.

g. Having separated the children, created an opportunity loss for them residing together thereafter and significantly disrupted their sibling relationship.

d) Failed to follow due process in the adoption matching process in the following manner by:

a. Failing to disclose vital information to prospective adopters (and panel) regarding the range of behaviour difficulties exhibited by the children.

- b. Submitting CPRs which were inaccurate, incomplete and misleading when considered at panel
- c. Failing to disclose the amended CPR's to the adopters following matching panel recommendations
- d. Deliberately deleting reference to the challenging and violent behaviours from the Adoption Support Plans served on the prospective adopters.
- e) Failure to adequately assess, monitor and support the placements to an adequate or equivalent level once BT and GT were placed. This includes a failure to actively consider and meet BT and GT's changing therapeutic needs. This resulted in unnecessary strain on the placements and contributing to the carer's inability to optimally manage BT and GT's distress and behaviour. This breach has continued up to and including the date of this document as the adoption support plans remain inadequate, unapproved and unequal (between the siblings) in breach the Adoption Support Services Regulations 2005.
- f) Failure to provide full information about the BT and GT's backgrounds to their respective prospective adopters, in particular relating to the basis and impact of the separation of the twins, thereby resulting in unnecessary strain on the placements and contributing to the prospective adopter's inability to optimally manage the BT and GT's distress and behaviour.
 - i. In respect of BT his behaviours which became so serious that the local authority considered terminating the placement and exposed him to a distressing and poorly managed child protection investigation and medical examination.
 - ii. In respect of GT this resulted in avoidable referrals which resulted in police welfare visits and an unannounced social work visit (by an unknown social worker) being undertaken, causing additional distress to GT.
- g) Failed to assess advise and support the placements appropriately regarding sibling contact (both prior to placing them and subsequently), resulting in a 7 month break in direct contact, which caused unnecessary distress to both children.
- h) The local authority served notice of its intention to remove, BT, from the care of his prospective adopters. The purported termination of the placement followed a flawed decision-making process and termination would have exposed BT to a risk of further significant emotional harm was not necessary and proportionate in the circumstances, as implicitly acknowledged by means of the revocation of the notice shortly after issue.
- i) The local authority failed to consult with BT's prospective adopters about the decision to serve notice under section 35.
- j) Failure to consider BT's needs in how notice was served, and the fact it required BT to be suddenly removed from his placement, potentially causing him undue trauma and harm.
- k) The purported withdrawal of the S35 notice left BT in legal limbo a loss of clarity as to who held parental responsibility and the status of his placement and exposed his carers to the potential that they had committed offence.
- l) The actions above have caused additional strain on the placement, caused BT's prospective adopters to fear for the security of their family life and have caused

consequential psychological trauma to the perspective adopters. This has impacted on BT's family life.

m) The local authority's poor decision making prior to placement of BT and GT combined with its actions since placement have necessitated protracted and highly stressful proceedings which have further exacerbated the interference with BT and GT's private and family life, including the requirement that they undergo extensive intrusive assessment. This has had an adverse impact on BT and GT and the children's prospective adopters and interfered with the quiet enjoyment of their family life.

VIII. [This paragraph is omitted – it deals with technical legal issues]

IX. BT and GT rely upon in particular, but not limited to:

Concessions made by the local authority in the course of the adoption proceedings on 11 April 2018, in particular;

- i. That the local authority's actions have created a very difficult and complex situation that has caused immense distress to the prospective adopters but more importantly the children.
- ii. That the local authority failed to follow the care plan it presented to the court which would have included searching for foster carers who could care for both children.
- iii. That the local authority made an assumption that if the children were to be placed separately it should be in adoptive placements rather than looking at foster.

iv. That in doing so the local authority failed to properly consider:

1. The likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person;
 2. The relationship the children has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including the likelihood of any such relationship continuing and the value to the child in it doing so;
- v. The meeting that recommended separation of BT and GT took account of a sibling assessment that was unwritten at that stage. The meeting may have been led by the foster carers indicating that they could not manage the children together;
- vi. The various meeting that took place appear to have been LAC reviews rather than adoption reviews and therefore failed to take account of the relevant issues.'

b. the report of Anna Freud Centre dated 15 August 2018. In respect of the wrongful serving of the section 35 notice on BT's prospective adopters, paragraph 1.4.27 of the Anna Freud report is particularly relied upon.

c. the concession on 21 September 2018 that that the expert assessment of the Anna Freud Centre is correct and that an Adoption Order is the only order which would provide BT and GT with a sense of stability and security and which would maximise their chances to live within a family environment where they are settled and happy.

Annexe 2

1. Failures in the original court [care] plan

The original care plan dated 19th January 2015 submitted to the court did not look at what the local authority would do if a placement for the siblings together could not be found after the 12-month period. (reference CB45-CB 57 paragraph 4.1)

2. Lack of management oversight

There was a general lack of management oversight of the planning for children in particular around the placement for adoption and consideration of direct contact between the twins.

Action

- a) The local authority have recognised the need for management oversight and have created additional management positions in the form of Managing Practitioners. The LAC team have had a (agency) Managing Practitioner in post since July 2018. Previously there were periods with only one manager providing oversight of the LAC team.
- b) The AD now chairs a panel every Tuesday that looks at cohorts of children for example those placed with parents or in kinship care. This will include children who are the subject of placement orders who will be reviewed on a 6-monthly basis.

3. Failure to follow the court approved care plan to correct conclusion

The Care Plan dated 19th of January 2015 and approved by the court 13th of February stated the BT and GT would be placed together. The plan was to spend 9 months seeking an adoptive placement together and if that could not be found, three months looking for a foster placement together. The authority failed to follow this plan to its conclusion.

The case transferred to another worker and when the care plan presented to the court was then transferred into a LAC care plan on the local authority's Mosaic system that did not reflect the approved court care plan. It did not detail the planning for concurrent long-term foster placement search after 9 months if an adoptive placement had not been found. This was then not featured in any of the subsequent LAC Care Plans.

Action

- a) The authority are considering how to make sure these plans are identical.
 - b) Until a) has been resolved Social workers will be asked to file the court approved care plan along with any other documents for the LAC review.
 - c) The agenda for Adoption Reviews has been amended to reflect that the review takes place in the light of the guidance set out in section 1 of the **Adoption and Children Act 2002**, attaches the section and asks if the court approved care plan has been changed.
 - d) The legal department holds 6 monthly legal review meetings of all children under placement orders.
- ## **4. Failure of the decision-making process regarding placing the twins separately for adoption.**

Other things went wrong on this case but from my understanding this is the core of the difficulties currently facing the authority and the court.

Action

Where the local authority propose a change of care plan for siblings to be placed separately, this will be presented at panel prior to going to the ADM for final decision making. The completed sibling separation tool will be required at panel.

5. The LA failed to acknowledge significance of maintaining legal sibling relationship between BT and GT.

Action

- a) Herefordshire is introducing a sibling separation tool for managers to ensure the decision to recommendation to separate considers all relevant matters before it is presented to the ADM and is clearly recorded on the Mosaic system.
- b) The new agenda for adoption reviews does the same.

6. The Local Authority failed to acknowledge the legal relationship between BT and GT and their older siblings.

7. Failures of the Local Authority prior to the review on the 11th April 2018

The decision to separate the children was made by a manager (H27N) at a meeting prior to the LAC review on 11th April 2018 and approved at LAC review. The decision was poorly recorded on the Mosaic system and was not well reasoned and was equally based on an unwritten sibling assessment.

The decision should have been ratified by the ADM following the review.

Actions

- a. The six-monthly legal review will prevent decisions being made without ADM consideration.
 - b. The AD panel will review children under placement orders once every 6 months.
 - c. The decision-making tool will ensure such decisions are made after considering the relevant matters and recorded properly.
- 8. The failures of the local authority at the LAC Review 11 January 2016 H27A-H27V**

The meeting failed to give proper consideration to placing the children in a long-term foster placement and revoking the placement order preferring instead to search for separate adoptive placements.H20

It was unclear whether the review was an adoption or LAC review. This meant the review failed to consider the guidance set out in section 1 of the Adoption and Children Act 2002.

The LA accepts that the review meeting held on 11th April, should have considered following options

- a. Temporary separation of children while further assessment was undertaken
- b. Commissioning an updated assessment from Dr Mair Edwards regarding detrimental of children being separated and impact of this throughout their life
- c. Whether children could have been reunified in an adoptive placement together.
- d. Whether placed in foster care together
- e. Fostering apart

f. Adoption apart.

The local review on 11th April 2016 was ineffective as it ratified the care plan based on erroneous information.

The LAC review relied on a sibling assessment by D which was verbally reported but had not been written up.

Actions

- a) The Adoption Review Agenda will ensure matters are given proper consideration making it clear they differ from LAC reviews.
- b) Herefordshire is introducing a sibling separation tool for managers to ensure the decision to recommendation to separate considers all relevant matters before it is presented to the ADM and is clearly recorded on the Mosaic system.
- c) A new adoption file is created on the Mosaic system once the ADM ratifies a plan for adoption.

9. Failures following separation

The authority failed to stress the importance of sibling contact with the adopters and also respond appropriately when this was raised by the prospective adopters.

The authority failed to promote sibling contact sufficiently.

The authority failed to fully take into account the children's responses from being separated from each other.

The authority failed to fully explore and analyse during LAC visits and LAC reviews the children's contact with each other.

The authority failed to properly assess the impact on the children of being separated.

Action

- a) The 6 monthly legal review will ensure any decisions to separate follow the court care plan and promote contact as set out in the court care plan.

10. Failure in the supplying of accurate information in the Child Permanency

Reports

Prior to BT's placement his adopters were not given sufficient information about BT's behaviours and wellbeing in particular his history of violent outbursts, including physical aggression to his carers and throwing /breaking items. The initial CPR they were given in Dec 2016 did not include this information, and the subsequent version was not provided to them until after panel met on 3 April 2017. Insofar as it did include some further details of BT's behaviour those were not adequate to convey the level of difficulty (CA7 main bundle).

There were references in BT's ASP sent to the adopters on 14 March 2017 to his violence. On querying those references these were removed by Herefordshire. The January 2018 ASP reinstated this information. This misled the adopters as to the likely level of difficulty (CA7 main bundle] The deletion of this information cannot be explained but there is an issue of there being various versions of the Adoption Support Plans on BT's file which makes it very difficult to establish what went wrong.

The authority accepts the Child Permanency Reports recorded on the system are confusing and it is difficult to establish what amendments were made when. The then Adoption Team manager amended the Child Permanency report and in particular section 9.5 dealing with emotional behavioural and social development in the initial CPR dated 19/12/14 on 10/06/16. The Adoption Team Manager deleted information rather than adding information in a different text.

Action

- a) The current practice is not to remove any information but to update information in a new font. This means that changes are recorded as changes rather than deleting previous information.
- b) The authority is amending procedures to ensure tighter version controls on Child Permanency Reports and Adoption Support Plans.

11. Failures of the local authority independent reviewing officers

The Local Authority accept that the:

- a. IRO service did not oversee and challenge the actions of the local authority adequately especially regarding decisions about contact.
- b. The IRO chairing the LAC review did not ensure the sibling assessment had been written up when the meeting ratified the decision to separate the children.
- c. The IRO did not request sight of the sibling assessment.

Action

- a) All IROs have been provided with Legal Guidance for Independent Reviewing Officers on Challenging Decisions of the Local Authority by email and in a laminated hard copy. The guidance stresses
 - i. As corporate parents each local authority should act for the children they look after as a responsible and conscientious parent would act. Effective monitoring and challenge by the IRO service is essential and welcome.
 - ii. The individual IRO is personally responsible for activating the dispute resolution process, even if this step may not be in accordance with the child's wishes and feelings, but may, in the IRO's view, be in accordance with the best interest and welfare of the child, as well as his/her human rights.
 - iii. The primary task of the IRO is to ensure that the care plan for the child fully reflects the child's current needs and that the actions set out in the plan are consistent with the local authority's legal responsibilities towards the child. Their duty is to challenge poor corporate parenting.
 - iv. Where problems are identified in relation to a child's case, for example in relation to care planning, the implementation of the care plan or decisions relating to it, resources or poor practice, the IRO will, in the first instance, seek to resolve the issue informally with the social worker or the social worker's managers. The IRO should place a record of this initial informal resolution process on the child's file. If the matter is not resolved in a timescale that is appropriate to the child's needs, the IRO should consider taking formal action.
 - v. The IRO may bypass any stage and progress the dispute to the level s/he considers most appropriate.
- b) A more effective escalation process is in place.

12. Failure of the ADM decision making process

The LA accept that the recent ADM decision focused on AF report and failed to consider the impact on separating children throughout their life (reasons 19th October 2018 ,CB 1098- CB 1102 (GT))

13. Failure of evidence in these proceedings

The LA accept that in the social worker's and Ms Leader's earlier evidence they referred to the sibling assessment as being completed and presented in time for the meeting and failed to indicate that the sibling assessment that was quoted from was dated July 2016. Paragraph 10.7 and 12.3-12.15 of the statement of 30 Jan 2018 is unintentionally misleading. The statement of 8 March 2018 inaccurately asserted the sibling assessment had been completed in April 2016 prior to the LAC review (CB523 and CB526 pa 5.6 main bundle). These statements quote from the assessment, which is dated July 2016. In March 2018 the LA asserted its decision making had been appropriately made [CB529 main bundle pa 7.00]. These errors were corrected in the 6 April 2018 statement of Chris Baird [CB611 main bundle]. The local authority accept that in the social worker's earlier evidence she referred to the sibling assessment as being completed and presented in time for the meeting. This was based on the LAC minutes and was a mistake. The social worker took the case over after many decisions had been made and the record keeping of previous social workers and Managers was poor. She was trying to piece together information which had been poorly recorded. There was no intent to mislead by the authority as indicated by its filing a statement from Mr Baird correcting the information.

14. Action

- a) The new Adoption review agenda will ensure all relevant matters are considered.
- b) The AD will review children who are the subject of placement orders every 6 months.
- c) The legal review will be minuted and added to the Mosaic file.

Annexe 3

It is admitted by the local authority that it had unlawfully interfered with the A and B's right to private and family life as follows :

- a. A and B are the adopters of BT, who was placed for adoption with them on 10 May 2017 by the local authority.
- b. A and B have a right to a private and family life in respect of their family life with one another pursuant to the European Convention on Human Rights Article 8 / HRA 1998.
- c. A and B have established a right to family life with BT since his placement pursuant to the European Convention on Human Rights Article 8 / HRA 1998.
- d. The local authority are a public authority for the purposes of s6 Human Rights Act 2018, and as such any interference by them in the article 8 rights of A and B must be lawful, necessary and proportionate.
- e. Since the placement of BT in the care of the A and B by the local authority have interfered with A and B right to private and family life.
- f. The interference with A and B Article 8 rights was not lawful and / or was not necessary and proportionate either in pursuance of the local authority's duties towards the child BT or otherwise.
- g. Particulars of interference :
 - i. Failure to adequately assess, monitor and support the placements to an adequate or equivalent level once BT was placed with A and B. This includes a failure to actively consider and meet BT's changing therapeutic needs. This resulted in unnecessary strain on the placements and contributing to the claimant's inability to optimally manage BT's distress and behaviour. This breach has continued up to and including the date of this document as the adoption support plans remain inadequate, unapproved and unequal, with A and B and BT receiving far less support, in breach the Adoption Support Services Regulations 2005.
 - ii. Failure to provide full information about BT's backgrounds to A and B, in particular relating to the basis and impact of the separation of the twins and the extent and manifestation of BT's behavioural difficulties thereby resulting in unnecessary strain on the placements and contributing to A and B's inability to optimally manage A and B's distress and behaviour. BT's behaviour became so serious that the local authority considered terminating the placement and exposed him to a distressing and poorly managed child protection investigation and medical examination which placed further strain on the placement.
 - iii. Failed to assess advise and support claimants appropriately regarding sibling contact (both prior to placing them and subsequently), resulting in a 7 month break in direct contact, which caused unnecessary distress to BT placing additional strain on the placement.
 - iv. Failed to follow due process in the adoption matching process in the following manner by:
 - i. Failing to disclose vital information to A and B and the panel regarding the range of behaviour difficulties exhibited by the children.
 - ii. Submitting CPRs which were inaccurate, incomplete and misleading when considered at panel.
 - iii. Failing to disclose the amended CPR's to A and B following matching panel recommendations

- iv. Deliberately deleting reference to challenging and violent behaviours from the Adoption Support Plans served on A and B.
- v. The local authority served notice of their intention to remove BT from A and B's care. The purported termination of the placement followed a flawed decision making process and termination was not necessary and proportionate in the circumstances, as implicitly acknowledged by means of the revocation of the notice shortly after issue. The manner of notification exacerbated the distress caused to A and B (accidental voicemail).
- vi. The local authority failed to consult with A and B about the decision to serve notice under section 35.
- vii. The serving of notice followed by a purported revocation of the notice combined with earlier flawed decision making placed the legality and status in doubt, to the extent that A and B had to seek orders from the High Court in order to ensure that the placement was lawful, to ensure that their parental responsibility was not in doubt and to ensure that they were not committing a criminal offence as a consequence of keeping BT in their care.
- viii. The actions above have caused additional strain on the placement, caused A and B to fear for the security of their family life and have caused consequential psychological trauma to them. In addition, the local authority's actions has caused A and B financial loss.
- ix. The local authority's poor decision making prior to placement of BT combined with their actions since placement have necessitated protracted and highly stressful proceedings which have further exacerbated the interference with A and B's private and family life, including the requirement that they undergo extensive intrusive assessment. This has had an adverse impact on A and B and interfered with the quiet enjoyment of their family life.
- x. The local authority have failed to be transparent in their actions, decisions, and communication with A and B. This, in itself, has contributed to A and B's insecurity and psychological trauma and thus placed additional strain on A and B and BT's placement with them.
- xi. Having concluded A and B should adopt BT, the local authority have failed to provide adequate commitments of financial support to meet the family's needs and have failed to remedy or ameliorate the additional needs arising from its own conduct (as set out above).

Annexe 4

I. Particulars of Breaches of Human Rights of C :

- a. In placing GT in the care of C the Local authority failed to provide full information about GT's background to C, in particular relating to the basis and impact of her separation from her twin brother, thereby resulting in unnecessary strain on the placement and contributing to C's inability to optimally manage GT's distress and behaviour.
- b. Having placed GT in the care of C the Local authority failed to provide adequate support to C in her care of GT which resulted in unnecessary strain on the placement and contributing to C's inability to optimally manage GT's distress and behaviour. This resulted in avoidable referrals which resulted in police welfare visits being undertaken.
- c. The actions above have caused additional strain on the placement, caused C to fear for the security of her family life and have caused consequential psychological trauma to her. In addition the Local authority's actions have caused C financial loss.
- d. The Local authority's poor decision making prior to placement of GT combined with their actions since placement have necessitated protracted and highly stressful proceedings which have further exacerbated the interference with C's private and family life, including the requirement that she undergo extensive intrusive assessment which has had an adverse impact on C and GT.
- e. Having concluded that C should adopt GT, the Local authority have failed to date provide adequate commitments of financial support to meet the family's needs, and have failed to remedy or ameliorate the additional needs arising from its own conduct (as set out above).