'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.' [3]

IN THE ST HELENA SUPREME COURT **NO 510/2013**

IN THE MATTER OF THE WELFARE OF CHILDREN ORDINANCE 2008

AND IN THE MATTER OF R d.o.b. 25 March 2013

BETWEEN:

THE HEALTH AND SOCIAL WELFARE DEPARTMENT

Applicant

and

SB

First Respondent

and

SP

Second Respondent

and

R

(A child acting by her Lay Advocate Mrs Ivy Ellick)

Third Respondent

JUDGMENT

INTRODUCTION

The Parties

a) The Applicant

The Applicant is the Health and Social Welfare Department of the Government of St Helena

b) The Mother

The First Respondent mother was born in the United Kingdom on 6th August 1987. She is white British and is 26 years of age. Culturally she had no connections to St Helena until she entered into a relationship with the Second Respondent father in or about 2005 when resident in the UK. Subsequently the Mother was to have four children by the Father - CB, LB, AB, and R the Third Respondent in this case, d.o.b. 25.3.13. The first three children were all born in Bristol, UK. R was born on St Helena.

For reasons which I will deal with in due course, the Mother and the Father travelled to St Helena in 2010. In 2011 she married the Father although they have now separated. It was R's conception and subsequent birth which has given rise to the present proceedings.

c) The Father

The father is St Helenian and was born on St Helena on 17th September 1975. He is therefore 38 years of age. In 2002 he left St Helena for the UK. As already related, he met the Mother in 2005 and the subsequent birth of their children is recited. Although the Father has remained on St Helena since 2010, he made it clear at the outset of these proceedings that he wished to take no part in the proceedings themselves. He has nevertheless been kept informed at every stage of these proceedings and indeed has given evidence before me.

d) The Third Respondent

R is the youngest child of the mother and father and is the principal subject of these proceedings. She spent the first days of her life in hospital with her mother but was then removed under an interim care order into the care of foster parents. She was then placed with a second set of foster parents before, in June 2013, being placed with the family who have fostered her ever since, Mr and Mrs Y.

e) The Fourth Respondents

Mr DP and Ms NC presently reside on the Falkland Islands. Mr DP is 40 years of age having been born on 2nd May 1973. Ms C is 32 years of age having been born on 18th September 1981. Mr DP and Ms NC have been in a continuous relationship for some 14 years. Mr DP is the Father's uncle.

Mr DP and Ms NC came late to these proceedings. Mr DP had returned to St Helena on vacation from the Falkland Islands in August 2013 when he learnt for the first time that R had been born and was the subject of proceedings by the Applicant. In September 2013 he approached the Applicant indicating his interest in caring for/adopting R. He was the subject of an initial assessment which found him to be unsuitable - something I shall deal more fully with in due course. Undeterred and with the assistance of Lay Advocate Mr Eric Benjamin, he issued a Special Guardianship Application, effectively on the first day of what had been listed as the final hearing of these proceedings. With the agreement of all parties his application was treated firstly as an application jointly made by himself and Ms NC to be joined

as parties to the proceedings; and secondly for an adjournment so that they could be assessed for the purposes of a Special Guardianship order in respect of R.

BACKGROUND

The mother has a mild learning difficulty. To quote from the report of Dr Bryn Williams, the psychologist instructed jointly by the parties for the purpose of these proceedings: "the verbal and non verbal learning skills were assessed as being consistent with the first centile of the population, indicating that 99% of (The mother's) peers are cognitively more able. There is a homogeneity in her results suggesting her performance is pervasive and affects all areas of her cognitive function. There are some relative strengths in her speed of processing however these fall at the 8th centile suggesting that 92% of her peers are more able"

The mother told me that she had been brought up in Bristol, in essence by her mother, AB. She had no recollection of her natural father. Of her childhood, and in evidence, she simply said that she had been through a rough patch. Her statement gives more detail where she recalls:

"I was bullied as a child. I was unhappy much of the time. When I was 11 my mum had another baby, my half brother, BB. Her partner was unkind to me. I did not like him. Social Services were involved with our family for a while."

A preliminary assessment of the mother reads: "It has been reported that [the mother] was a "difficult child" and was referred to Social Services for "developmental checks, delay in speech and language, personal/social behaviour" On 8th February 1990 the mother's name was placed on the Child Protection Register.

The conjunction of her unhappy childhood, and the overwhelming impression is that it was miserably unhappy, and the mother's learning difficulties have had a profound impact upon her as a person as will become apparent during the course of my judgment.

The mother attended school in Bristol, a school for those with learning difficulties. She left school when she was 15 years of age. She cannot recall whether she left with qualifications. She nevertheless went on to attend college, undertaking a course in catering which lasted some 2 years and which she tells me she successfully completed. She then obtained a job at McDonalds in Bristol where she met the father.

The relationship that the mother had with the father was to be characterised by violence of which, I accept, the mother was the principal victim. Indeed it seems plain that the Local Authority in Bristol had been involved with the family since the birth of the first child., CB, in 2006 - see the Viability Report of Tessa Duffy, Ron Bloomfield and Lucy Berry dated 31st October 2008. On 20th February 2008 the child LB, then some 4 months old, was taken to Bristol Children's Hospital with facial bruising and a probable subarachnoid haemorrhage. When he was discharged, he was discharged initially into the care of his paternal aunt who was also living in Bristol. He was subsequently moved to a foster carer until May 2009 when he returned to the paternal aunt. He has remained in her care ever since under a Special

Guardianship Order, made in December 2009.

The injuries suffered by LB prompted lengthy proceedings before the High Court in Bristol (the Bristol proceedings) the outcome of which, simply in respect of LB has already been alluded to. It is necessary to dwell a little on the detail of those proceedings as they are of importance in the context of the evidence I heard in these proceedings.

The Local Authority had issued Care Proceedings. At a hearing conducted over 17th and 18th November 2008, Coleridge J made interim Care Orders in respect of all three children. The Learned Judge also directed that the mother and father, CB and AB who had of course only very recently been born, should undergo a residential assessment to be conducted by Symbol UK. LB remained in foster care.

The detail and the circumstances of the cessation of that assessment are contained in the full judgment it is only necessary for the purposes of this judgment to record as follows:

The final Symbol assessment report dated 21st April 2009 concludes:

"We consider that both Mr SP and Ms SB have had the opportunity of a very comprehensive and specialist assessment and sadly, the view of the assessment team is that CB and AB cannot be safely cared for by their parents".

CB and AB were placed into foster care. The Local Authority's application was the subject of a final hearing in December 2009 before HHJ Barclay, sitting as a High Court Judge. By the date of that hearing the Father's mother, Ms AR, who lives on St Helena had put herself forward as a carer for CB and AB. Assessment had been undertaken both in respect of Ms AR and her partner DM and both had been deemed suitable as carers. By order dated 21st December 2009 a Special Guardianship Order was made in favour of Ms AR in respect of CB and AB. So far as LB was concerned a Special Guardianship Order was made in favour of LB's aunt, PR. In January 2010 AR returned to St Helena with CB and AB; and in December 2012 I made Special Guardianship Orders on St Helena in favour of AR and DM in respect of CB and AB.

In April 2010, the mother and father came to St Helena to reside on St Helena permanently. So far as the father was concerned he of course was returning home. They took the decision to come to St Helena to be close to their children, and in the mother's case to be close to CB in particular. It seems clear that the relationship of the First and father remained a stormy one but they nevertheless married in 2011. The mother explained to me that she and the father had been through so much together that it seemed to be the right decision at the time. Unhappily their relationship failed to improve and they have since separated. I understand that the mother has since entered into a new relationship which she tells me is a stable one.

In the middle of 2012 the mother became pregnant. R, the Third Respondent was duly born on 25th March 2013. There was initially some doubt about paternity but a DNA test has established that the father is indeed the father of R.

Prior to R's birth the Applicant initially took the view that the Mother's parenting

skills should be assessed at the Family Centre on St Helena. Following R's birth the Applicant underwent a change of view. An interim care order was sought and obtained in the Magistrates Court and at 10 days old R was placed with fosterers, Mr and Mrs Wastell. Contact arrangements were made which permitted the Mother to have contact with R three times per week, each originally of two hours. In June 2013 R was placed with new fosterers for a week before finally being placed with her current fosterers who have indicated a desire to adopt R.

In May 2013 I ordered that this matter be transferred to the Supreme Court. In June I made orders providing inter alia for the joint instruction of Dr Bryn Williams, psychologist, to undertake an assessment of the mother; the appointment of Mrs Alison Blunt to conduct a PAMS assessment of the mother; and I directed that the matter should be listed for final hearing before the Supreme Court at the next sitting in October/November 2013. For the purposes of that hearing the Applicant filed a Final Care plan dated 18th October in which the Applicant indicated its support for R's adoption by the current fosterers. To that end the Applicant also issued an application for a freeing order.

The mother has been consistent throughout in opposing the Applicant's care plans, maintaining that she loves R, is capable of caring for her with support and that she should be given the opportunity of caring for her.

The Father acknowledges that he is not capable of caring for R. However he supports the Fourth Respondents in their application since he feels strongly that R should be cared for within the family.

WITNESSES

During the course of the hearing held on St Helena I heard from the following witnesses. The mother, the father and the Fourth Respondent, Mr DP. On behalf of the Applicant I heard from Ms Claire Gannon, Senior Social Services manager, Mr Martin Warsama, Social Work Trainer and Manager, and Ms Claire Yon, Social Care Officer. I also heard evidence from Mrs Alison Blunt who conducted the PAMS assessment and Dr Bryn Williams, psychologist.

EVIDENCE

The Mother

When giving evidence on St Helena the mother described her childhood in the terms I have already outlined. She then described the love that she has for her daughter, R, and I make it clear that I do not question for a moment the sincerity of those feelings.

The mother told me of her feelings for her three elder children. Speaking of LB, the child with whom she has had least contact, she said that she felt guilty that she had not done more to protect him. She described how LB had been injured by the father in February 2008; she said that LB had always been an unsettled child. On the occasion in question, LB had been crying for some time; that the father had lost his

temper and had "squeezed" LB's face before thrusting LB's bottle into LB's mouth causing LB to choke. She said that she had not felt able to tell the authorities of the father's behaviour at that time as he had threatened her. She complained, too, that in the Bristol proceedings she had not been able to or had not been permitted to give evidence. As a result, she said, she felt guilty that by failing to give evidence she had failed to protect LB.

With regard to CB, she maintained that she still could not understand why CB had been removed from her care although she then went on to say that CB "couldn't stay as there was too much violence with SP". She went on to describe CB's reaction when she subsequently arrived on St Helena. CB was in tears, she said, although she went on to say that CB had not initially known who she was; but within a few days, she said, CB had begun to become more attached to her. Certainly it is clear that she and CB have now formed an attachment. She has regular contact with CB which includes overnight visits by CB to her house when the mother is wholly unsupervised. The Applicant is aware that such visits occur and has had no cause for concern about the mother's standard of care for CB.

So far as AB is concerned the situation is very much more ambivalent. Contact between the mother and AB is much more limited than in the case of CB. The mother has never had overnight contact with AB. Indeed and although the mother seemed reluctant to acknowledge it, it seems to me to be plain that AB does not even know that the mother is her mother. It seems that she has been told, and believes that an Aunt is her mother. This bizarre - and in my view wholly undesirable state of affairs - is I accept not an arrangement actually desired by the mother. It is a fiction devised, I suspect, by Ms AR for reasons I have not been able to fathom in which it is seems to me the mother has reluctantly acquiesced.

It is pertinent to focus on the relationship that the mother has with the father's family and in particular with AR who is, as already indicated, Special Guardian to CB and AB. Although the mother and father are now separated it is clear to me from all the evidence that I have heard and indeed from what I have observed during the proceedings that a considerable degree of animosity persists between the mother and father. It is also clear to me that the mother's relationship with her (former) husband's family can at best be described as uneasy. There is little doubt in my mind that AR in particular can treat the mother unkindly. The latter told me that on more than one occasion AR had called her "small minded" (referring to the mother's learning difficulties) and has made clear to the mother her view that the mother is unable to cope with bringing up children generally. It is also plain that the mother cannot rely on any support from her husband's family who are on St Helena. The mother has on at least two occasions moved house - once, certainly, when she was heavily pregnant - and no one offered to assist her. When she gave birth to R in March 2013 she would have been without support at the hospital had not the Public Solicitor accompanied her and remained with her during the birth.

I turn then to her account of her pregnancy, the birth of R and events thereafter.

Once the mother had become pregnant, it was inevitable that the Applicant would become involved. The Applicant of course was well aware of the Bristol proceedings and their outcome. The mother told me that she recalled having had a number of

meetings with Social Services during the course of her pregnancy. Nevertheless, she said, she felt isolated. She did not feel that she was receiving the kind of support she needed. Although her relationship with the father had broken down, they were still living in the same house which she found very difficult. There were incidents of violence, almost invariably initiated by the father, although she denied that CB had ever been exposed to such incidents when visiting her. She said, however, that her state of mind was such that she seriously contemplated returning to the UK. She had concerns that Social Services in the UK would seek to remove her baby from her given the outcome of the Bristol proceedings. She said however that what determined her to remain on St Helena was CB's reaction when she told him of her possible plan. She said that CB had begged her to stay.

In early 2013 the Applicant arranged alternative accommodation for the mother at the teenage referral unit in Half Tree Hollow. By early February 2013 it seems that the Applicant had decided that post-birth the mother should be permitted to care for the baby, initially at least at the Family Centre in Longwood where her parenting skills would be assessed. The mother herself told me that she was confident of her ability to look after her baby. Subsequent to her arrival on St Helena, and much to her credit, the mother had found employment as a cleaner. She had worked throughout her pregnancy. Although, as is by no means uncommon on St Helena, her pay had been meagre, she had nevertheless scrimped and saved in order to buy baby clothes, a moses basket and a sterilisation kit for the baby's bottles. She said that she felt that she had matured since the events which had prompted the Bristol proceedings, and most importantly of all, she was now out of the relationship with the father, who, she felt, was almost entirely responsible for the events that resulted in the removal of her first three children. She felt that she had already demonstrated her capacity as a parent with regard to CB who, she maintained, had been properly parented by her during the first two years of his life.

The mother acknowledged that she had been resistant to the notion of attending the Family Centre in Longwood. She was fearful of some young men resident in Longwood, against whom she had given evidence, but, as is indeed the case had ultimately consented nevertheless to go there. She also acknowledged that during the course of February she had been taken to hospital with fears of raised blood pressure but had refused to remain in hospital despite advice from her social worker that she do so. She said that she did not feel unwell; had been advised by the Doctor that there was nothing wrong with her; and had therefore seen no reason to remain.

By the date of R's birth it is clear that the Applicant had radically changed its plans for the mother and R. The idea of a parental assessment at the Family Centre had been abandoned. R would remain with her mother in hospital for 7 to 10 days after which she would be placed into foster care. The mother described to me how she felt when learning of this decision:

"They said I didn't deserve a second chance, the baby would be at risk. I felt angry. I had brought the child into the world by c section I wanted to prove to people I could cope. I thought things were different. I was away from SP, away from the violence. I was shocked but angry too".

Ten days after her birth R was placed into foster care with Mr and Mrs Frank and

Lorna Wastell. Arrangements were made for the mother to have contact visits to R three times a week each of two hours duration at the Wastell's home. The duration was subsequently reduced to 1 ½ hours at the mother's request. The mother told me that initially she had got on well with Mr and Mrs Wastell although Mrs Wastell had declined the baby clothes that she had bought for R, because she, Mrs Wastell, already had plenty of baby clothes. The mother said that she had found that very hurtful given the sacrifices she had made to buy the clothes. Furthermore the mother told me that as time went by she began to feel less welcome at the Wastell's home and it was for that reason that she had requested that the visits be reduced to one and a half hours. She felt that she was being watched over critically and on occasion that suggestions were made about her parenting that were either unnecessary or unhelpful.

On 1st June 2013 Mrs Wastell returned to the United Kingdom under long standing plans to do so. R was then placed with other short term carers for approximately a week before being placed with Mr and Mrs Y. Contact continued as before. In July 2013 however the Applicant altered the arrangement to facilitate contact. Until July the Applicant had driven the mother to and from her home to enable her to travel to the foster parents' home. On 17th July the arrangements were altered necessitating that the mother present herself at the Applicant's premises in Jamestown, Brick House. Following the contact visit she was returned to Brick House. The mother said that the new arrangements made life difficult for her. To get to Jamestown from Half Tree Hollow is, in effect, a bus ride and she does not like buses. Her place of work is also in Half Tree Hollow and it made it difficult to get to work on time. In consequence there was a week when contact was missed altogether. The mother finds changes in routine upsetting. In her statement of 23rd August 2013 she summed matters up in this way:

"I feel I am being punished. I feel that social services don't want me to do well".

Referring to the altered transport arrangements she said:

"I had to make my own way from Ladder Hill to their offices in Jamestown. This is hard for me, especially on the days that I work".

As to the missed contacts she said

"I have missed a week of contact; this was before I saw the doctor and the two sessions afterwards. I felt churned up and without hope. I know I should have told social services as I let them down, but I felt low".

Perhaps the essence of the mother's attitudes hopes and fears are set out at paragraphs 70 -72 of her statement of 23rd August 2013 where she says:

"I am not comfortable with Social Services being present at contact visits, and the way they react around me. I try to be with R and bond with her, I am told off or told I am not doing things right and often they will take R off me during sessions. It is precious time but it is often spoiled. I do play with R and talk to her.
I try and comfort R and see whether she needs changing or feeding or is thirsty. I know that she is teething as she had her hands in her mouth and dribbles. I don't lose my temper when she is screaming. When Social Services interfere when she is crying

that is when I get frustrated. I am fed up being put down. It's not right. I can help R, I can teach her to learn how to read and write. If I need help I would ask for it".

I have deliberately dealt with the mother's evidence at considerable length. I feel it right that she should know that her evidence has been considered carefully and in detail.

The Father

The father's contribution to these proceedings has been brief and succinct. He acknowledges that he is not able himself to care for R. It is clear that he does not consider that the mother is capable of caring for R. He is firmly of the view however that R should be cared for or brought up by his uncle Mr DP and the latter's partner NC. He feels that it is preferable that R should be brought up within the kinship of her family.

The Applicant

As indicated, three witnesses gave evidence on behalf of the Applicant. Of those, Ms Claire Yon has been most closely involved with the mother throughout her pregnancy and since the birth of R. Indeed Ms Yon has known and sought to assist the mother since shortly after the mother arrived on St Helena.

In general terms Ms Yon felt that the mother had coped very well since her arrival on St Helena. She had been impressed by the fact that the mother had remained on St Helena despite her sense, sometimes, of isolation. She was impressed, too, that the mother had managed to find and retain employment.

In the assessment report dated 27th March 2013 Ms Yon speaks positively of the relationship that the mother had developed with CB:

"Evidence on SB's ability to parent CB has been effective and she does ensure all the domains of his development is being met she he is in her care with routine based evidence and structure and boundaries in place"

However, Ms Yon detailed the very real concerns that aose when the Applicant learned of the mother's pregnancy in relation to her ability to care for the baby when he/she arrived. She said that although she did not perceive the mother as having severe learning difficulties she was nevertheless of the opinion that when circumstances arose which required the mother to deviate from her normal routine that she then became withdrawn and lost focus. She observed that the mother seemed to have developed little in terms of her parenting skills since the events which gave rise to the Bristol proceedings. The mother, she observed, remained firmly convinced that CB had been adequately cared for in developmental terms by her. The mother had told her that she attributed the fact that CB had been removed from her care exclusively to the Father. She said that although on occasion the mother would say that she required help, on others she would say that these were her children, and that she did not need to learn anything in terms of their care. Ms Yon felt strongly that in the four years that have elapsed since the conclusion of the Bristol proceedings, the mother remained essentially as she was then; demonstrated little or

no insight into why her three elder children had been removed from her; and that the conclusions of the experts involved in the Bristol proceedings remained equally pertinent.

Ms Yon acknowledged that the plan originally envisaged by the Applicant following R's birth had been to assess the mother's parenting skills under a residential assessment at the Family Centre. Ms Yon said that she herself was dubious about this proposed course of action. At the time St Helena had no qualified social workers. The Family Centre at that time housed one 11 year old girl and was staffed by unqualified carers who had had no social care training. An intensive assessment of the sort required would have been extremely difficult with the resources then available.

On 1st February 2013 Ms Claire Gannon arrived on St Helena to take up the post of Senior Social Services Manager, in effect the head of Social Services. Ms Gannon has been a qualified social worker since 1998 and has had extensive experience of working with children and young people within the social care sector in the UK.

Following Ms Gannon's arrival on St Helena Ms Gannon conducted a review of all the cases with which the Applicant was concerned, including this. Ms Gannon said that having reviewed all the relevant papers, including those available from the Bristol proceedings, which in her view were highly significant, she felt that the decision taken to place the mother and R in the Family Centre was the wrong decision. She felt that to do so could place R at significant risk, given the resources available at the Family Centre. From her review of the case she concluded that many of the issues which had determined the outcome of the Bristol proceedings remained relevant; and that the threshold, therefore, for removing R from the mother had been crossed. As a result it was decided that R should remain in hospital with the mother for 10 days following her birth; that once born an interim Care Order should be sought which, if granted, would permit R to be placed with foster parents. That indeed is how the matter unfolded. Ms Gannon confirmed that events subsequently , namely the nature of the observed contact had by the mother with R, did nothing but reinforce the Applicant's view that the mother was incapable of caring for R adequately. Although the mechanical aspect of the mother's care - feeding R, changing her, bathing her - were satisfactory, the other showed little or no capability in meeting R's developmental needs and that in consequence R was likely to suffer significant harm.

Mr Martin Warsama's evidence dealt exclusively with events relevant to the Fourth Respondents' intervention and I shall, therefore deal with it at a later stage.

Independent Expert Evidence

1. Mrs Alison Blunt

Mrs Blunt is a qualified social worker who at the relevant time was employed by Ascension Island Government in that capacity. On the joint instruction of the parties Mrs Blunt travelled to St Helena in September 2013 in order to conduct a case assessment of the mother taking specific account of the mother's learning difficulties using the Parent Assessment Manual Software (PAMS).

Mrs Blunt noted that there are not insignificant positives that must be taken into account so far as the mother is concerned: that she clearly loves R; her personal hygiene is good; her accommodation although very modest and sparsely furnished is kept clean, neat and tidy; she has demonstrated an ability to provide adequate basic care for R in terms of feeding, changing and bathing; she has demonstrated the ability to care for CB unsupervised on contact visits and has clearly developed an emotional bond with CB; the abusive relationship that she had with the father has now finished and she now has a new relationship with a young man 18 years of age which she reports as supportive; against considerable odds she has obtained and retained employment as a cleaner at the Community Care Complex; and she has demonstrated the ability to live independently on St Helena.

Measured against those positives however Mrs Blunt raised the following concerns:
- that as a direct result of her own upbringing the mother can act negatively and aggressively when she feels that she is being criticised, with the consequence that she finds it difficult to accept help and support
- that the mother appears not to be equipped with the skills fully to integrate into the small island community of St Helena
- that she has little faith in the social workers on St Helena or in the UK
- that her relationship with the father's family is at best ambivalent
- that she has little insight into the reasons why her three older children were removed from her care.

Mrs Blunt further reported that under the PAMS assessment the mother scored poorly in her knowledge of stimulation, whether visual, motor or language; and poorly too in her knowledge of guidance and control. Her knowledge of day-to-day safety around the home was generally reasonable but on her knowledge of emotional abuse and with regard to the risks associated with sex offenders she also scored poorly. Mrs Blunt noted that there is a very significant gap indeed in the help which the mother herself identifies as needing in order to care for R properly and the help which the PAMS assessment identified her as needing.

Mrs Blunt concluded that:

"given the current situation and resources available on St Helena, even if significant parenting and support were put in place, until SB has had the opportunity and time to reflect on her past and deal with some of the issues in a therapeutic setting she is unlikely to accept any help and support in a consistent manner that would enable her to effectively parent R".

2 Dr Bryn Williams

Dr Williams was also instructed jointly by the parties. For the purposes of preparing his report Dr Williams undertook:

- a psychological assessment of R with the mother via video link
- an interview and assessment of the mother via video link
- an interview with the foster mother via video link
- an interview with the Public Solicitor via video link

- an interview with Lay Advocate, Ivy Ellick via video link
- an interview with Claire Yon via video link

The video link assessments and interviews were conducted over the course of one day - 13th August 2013. Whilst Dr Williams was careful to acknowledge the limitations imposed by a video link - particularly with regard to the assessments - he nevertheless felt able to assist the Court. He also had access to all the papers pertinent to these proceedings and to the relevant assessments made during the course of the Bristol proceedings.

The nature of the mother's learning difficulties as identified by Dr Williams have already been rehearsed. Central to his evidence was his view that, taken in isolation, the mother's learning difficulties are of relative insignificance in terms of her parenting skills. By contrast and of a paramount significance was the mother's own upbringing. Dr Williams explained his view that so inadequate was the mother's upbringing that she had never at any stage during her childhood or adolescence enjoyed a loving, caring and supportive child/parent relationship from which she might innately have acquired parenting skills in later life. Equally, the abusive and bullying nature of the regimes she had endured both within her home and at school, means that now she views anyone who so much as tries to offer her guidance or assistance as a potential enemy. Her learning difficulties are of significance to the extent that it makes it difficult at times for her to understand or to accept that guidance or assistance can be constructive rather than destructively critical.

"She is likely to respond to advice on parenting as a criticism of herself as a person. Her reactions are described as agitated and excitable. Drawing this together with her learning difficulty creates a very vulnerable picture" says Dr Williams; and later in his report:

"…from an attachment perspective I am more concerned at one level that her parenting is marred by her own unresolved emotional pain. Her parenting style and indeed her interaction with other adults is hugely compromised by her fear of attack and bullying. It is my opinion that she is likely to struggle from any form of support from a person she perceives as being critical and bullying of her. In other words when a health professional attempts to work with her to explore the intimacy in the relationship between her and R she will see this as though it were her stepfather or a friend at school belittling her"

Of her relationship with CB, Dr Williams suggested that whilst there was clearly intimacy between CB and the mother, it was a relationship which the mother needed to provide her with self-efficacy, that CB was a means more of gaining her own needs than meeting CB's needs. Extrapolating his assessment of the mother's relationship to CB and applying it to R Dr Williams says that her

"learning difficulty and her emotional vulnerability compromises her capacity to have an intersubjunctive relationship with her children. She struggles to be attuned to their emotional needs and whilst she is capable of carrying out basic parenting tasks such as feeding, changing and washing her babies, the love she has for her children and particularly for R does not necessarily extend to meeting her needs. I would suggest that it is not necessarily her learning difficulty that makes it difficult for her to be

attuned to her daughter but the emotional barriers that exist in her capacity to form judgments with others".

Dr Williams also identified the possibility that a vicious circle had been brought into existence as between the mother and the Social Services on St Helena. He felt it likely that once the mother had been told of the Applicant's decision that no parenting assessment would in fact be conducted, inevitably that was something to which the mother would have reacted defensively. The more defensive the mother became the more were the genuine concerns of the Applicant reinforced. The more they were reinforced, the more defensive the mother was likely to become.

For Dr Williams it was a very real concern were R to remain with the mother, whether the other would be able sufficiently to control her own emotions and put the needs of R first. As he said in his oral evidence there is at least a danger in these circumstances that the mother would view R as existing for her own emotional needs, and that R would in due course adopt that standpoint to her own detriment in developmental terms. From his admittedly limited observation of R and the mother together, and although the love the mother had for R was apparent, he nevertheless saw no evidence of the two of them "dancing" together as he put it, a telling absence of that vital element of social interaction particularly in a parental context.

Dr Williams, too, acknowledged the significant positives: the evident love the mother has for R; the fact that the mother clearly likes the idea of being a mother; the fact that she had now separated from the father, something which Dr Williams described as potentially of huge significance. Dr Williams accepted that the mother had achieved a great deal. She had travelled to St Helena, had obtained employment, had saved money and despite the isolation he observed in her, had remained on St Helena to be close to CB and AB.

To attempt to help the mother acquire the necessary parenting skills, Dr Williams felt that the mother would require residential therapeutic intervention of a duration in the region of 3-6 months. He made it plain that the process would be extremely hard for the mother: it would be necessary, he said, effectively to dismantle the mother's upbringing with the attendant emotional fall out. Only if that outcome was successful would the mother then be able to access the help and guidance that she would need throughout R's childhood without instinctively putting up the defensive barriers. Nevertheless Dr Williams's evidence was to this effect: the damage inflicted on the mother is now so deeply engrained that it was unlikely that the mother would ever willingly accept the assistance in parenting that her learning difficulties on their own would necessitate. Although there had been the passage of some years since the Bristol proceedings Dr Williams said he saw nothing to suggest that the mother had developed in terms of insight since then. Indeed, recent experiences may have re-enforced her resistance to and suspicions of guidance and help however genuinely intended. Dr Williams emphasised that the situation that mother now found herself in was 100% not her fault. It was entirely attributable to the utterly miserable childhood she had endured. That said, Dr Williams's evidence was that even if a programme of intervention and therapy could be specifically tailored to address all the issues that needed to be addressed, supported by the relevant expertise, the prognosis remained associated with a high risk of failure.

Findings

The findings I make at this stage ignore the late intervention and application of the Fourth Respondents. It seems to me to be appropriate to make findings relevant to the issues between the Applicant and the mother and Father ever bearing in mind the caveat of MacFarlane J in the case of Re G [2013] EWCA Civ 965 that the judicial exercise should not be a linear one.

I am quite satisfied that the mother is genuine in her desire to care for R herself. The father has made it clear that he cannot care for R himself and he is genuinely of the belief that the mother cannot do so. I am equally satisfied that the father's family here and in the UK are not in a position to care for R. The paternal grandmother on St Helena already has special guardianship of CB and AB. The paternal aunt in the UK, has special guardianship of LB.

In discussion with the Applicant the mother has also contemplated the possibility of returning to the UK with R. Were she to do so then in the first instance, at least, she would, she says, live with her mother who, she says, was supportive of her following the birth of CB. Her mother is the only familial support network she would have were she to do so.

I am quite satisfied that the Fist Respondent loves R. It is equally plain that at a basic level the mother is capable of feeding R, changing her, bathing her and attending to the mechanical nature of R's needs. Dr Williams said, and I accept, that if the population of St Helena, save for the mother and R, were in some way temporarily vaporised and then miraculously re-embodied some 3 months later, he would confidently expect to find R alive and physically well. It is also clear that the mother has shown a determination and tenacity in relation to CB and AB and particularly CB that few at the time of the Bristol proceedings would have predicted. She travelled to St Helena - one of the remotest locations in the world having previously rarely, if ever, left Bristol. She obtained work on St Helena and supports herself. She lives independently in accommodation, which although sparse, she maintains in a clean condition. She has extricated herself from the violence attendant on her former relationship with the Father. She now exercises a degree of contact to CB, including overnight contact which is unsupervised, which again few would have predicted four or five years ago. These, I find, are all significant positives from the mother's point of view.

There is no dispute that the mother suffers from learning difficulties, albeit of a mild nature. Nevertheless I am satisfied that they are of a nature that would necessitate that the mother receive long term support and assistance to enable her to meet the developmental needs of any child in her care. Without that support, guidance and assistance I am satisfied that the mother would not be capable of meeting those needs, as a consequence of which the child concerned, in this case R, would be likely to suffer significant harm. In this context it is pertinent to note the report prepared by Ms Beverley Singer dated 16th November 2008 for the Bristol proceedings (paras 5.12 - 5.14) which deal with the developmental progress of CB when he was 2 years of age. I am satisfied that despite the passage of time, the mother is no more capable now of meeting the developmental needs of a child then she was then, unless there

was long term support available to her which she was prepared to accept.

Unhappily her learning difficulties are not the only issues which affect the mother. It is evident from the papers available from the Bristol proceedings and from the evidence that I have heard in this case that the mother is generally non-receptive and frequently hostile to any attempt to offer her advice and support . I accept the evidence that I have heard that she tends to regard such advice and support as unjustified criticism; that she becomes defensive and puts up the barriers against those who offer it; and that in the words of Alison Blunt she "has little faith in the social workers on St Helena, or social workers in the UK". I accept, too, Dr Williams's explanation for the mother's reactions in this respect, namely that they derive from the deep-seated and probably irreversible emotional damage suffered by the mother as a result of her upbringing. Unless this emotional damage can successfully be addressed, unless in Dr Williams's words the mother's childhood can be deconstructed and the mother can confront those issues, then I accept that the mother will not be able herself to respond constructively to any help, support or guidance that she may be offered. In consequence I am satisfied that the developmental needs of R would be so compromised that she would be likely to suffer serious harm.

Dr Williams said, and again I accept his evidence in this respect, that to address the emotional damage suffered by the mother would require three to six months of intensive therapeutic intervention, preferably residential (he mentioned Orchard House) in order merely to assess whether the mother was capable of making progress. There is no such resource on St Helena and it is highly improbable to say the least that any such resource will become available within a time scale which could assist either the mother or R. To an extent however, such considerations are irrelevant given Dr Williams's view that even if the mother were placed in the best possible environment with intervention therapy specifically tailored to meet the issues confronting the mother, the prognosis would still be attended by a high risk of failure. Having heard the evidence in this case, having seen the mother give evidence, having read the material available from the Bristol proceedings, it is, unhappily, an assessment with which I agree.

Given the findings I have made above, I am quite satisfied that the threshold requirement of Section 42 of the Welfare of Children Ordinance 2008 has been crossed. I am satisfied therefore that the Applicant's decision to remove R from the mother was correct. I therefore proceed to consider the intervention by the Fourth Respondents.

The Fourth Respondents

Mr DP first gave evidence before me on St Helena. As I have indicated he and his partner live on the Falkland Islands where for many years they have worked hard to establish a successful business as proprietors of a public house in Stanley. Integral to the pub is their accommodation comprising of a three bed roomed two storey house. At the same time they are in the process of constructing two houses on St Helena. They propose to sell the business on the Falkland Islands in three or four years time to return to St Helena.

Mr DP is one of a large family. He has eight brothers and three sisters, one of whom

is AR, the special guardian of CB and AB. He has maintained a close relationship with his siblings, despite having left St Helena as his principal residence many years ago. He first travelled to the UK but then worked for a time on Ascension Island where he met Ms NC. The two of them were subsequently to move to the Falklands Islands where they have since established the business I have referred to.

Mr DP told me that he and Ms NC had been trying to have children of their own for some years hitherto, unhappily, unsuccessfully. In consequence, and over the last two years or so they had discussed the possibility of adopting a child.

In August 2013 DP returned to St Helena. NC remained on the Falklands to look after the business. It was only after he arrived on St Helena that he became aware specifically of R's birth; and the fact that R had been removed from the Mother and had been placed with Mr and Mrs Y.

DP told me that having learnt of R's birth and subsequent placement he firstly consulted both with his family including the First and Fathers and with NC. The family were supportive of the idea that he and NC should put themselves forward as carers for R. He and NC discussed the matter over several days, not because either were unreceptive to the idea but so that they could both reflect fully on the possible consequences should they actually become carers for R. At the end of the process of reflection both he and NC were wholly committed to offering themselves as carers for R.

DP said that he then sought to make contact with the Applicant. His first visit was successful. Ms Gannon was not on St Helena. Ms Clare Yon was off sick. He left his details.

Ms Yon indeed contacted DP subsequently. He had two meetings with the Applicant. At the first he was seen by Ms Yon alone; at the second he was seen by Ms Yon and Mr Warsama.

There is a significant divergence of recollection in terms of what occurred during those meetings between the recollection of DP on the one hand and the recollections of Ms Yon and Mr Warsama on the other. DP's overwhelming impression, spoken to both during the evidence he gave on St Helena and the evidence he gave on Ascension Island was that the Department viewed his intervention as unhelpful at best and with hostility at worst. He says that he received no constructive advice from either Ms Yon or Mr Warsama as to how he could best advance his and NC's desire to become carers for R. The Applicant's attitude, he said, was entirely negative and unreceptive to his approach. Indeed, he said that he so felt that he had encountered a brick wall in his first meeting with Ms Yon, that for the second meeting he took with him Councillor Derek Thomas to act, in effect, as a friend. The second meeting however was, he said, as negative and as unhelpful as the first. He said that although no absolute objection was raised to the possibility of him seeing R, he was given no active assistance in making arrangements to that end. Although subsequently he was to have five contact visits with R, the first of those visits was effected through the mother and subsequent visits with the help of the contact officer. As to those visits themselves DP said that he felt he had developed a genuine bond with R, to the extent that it was specifically commented upon by the contact officer.

I interpose here the differing recollections of Ms Yon and Mr Warsama. As to the first meeting Ms Yon's account is that it appeared to her that DP had little perception of the needs of R and the disruption which DP's proposal would inflict upon R. She said that she told DP that in any event it would be necessary for NC to come to St Helena, only to be told that NC could not leave the business on the Falkland Island. (DP's account is that NC could not have travelled to St Helena as the flight and the shipping schedules from the Falklands to St Helena were full).

Mr Warsama went even further. He said that not only did he form the strong impression that DP had no concept of the needs of a child of R's age, he said that it was his firm conviction as well that DP had no real commitment himself to caring for R but that he was merely acting under pressure from the family on St Helena. Mr Warsama said that DP told him that he was at this meeting as the head of the family and not because he understood R's needs. Peculiarly however, and in the light of his own assessment he went on to say that he would not object to a further assessment, which if positive would have to be given consideration. But for himself he was of the view that at the stage then reached - i.e. in September 2013 - any change in the status quo would be extremely difficult for R. In consequence both DP and NC were assessed as unsuitable as carers for R.

Undeterred DP extended the time he had originally intended to spend on St Helena to await my arrival and the sitting of the Supreme Court in October when this case was listed for hearing. As I have said with the agreement of all the parties DP gave evidence at that hearing at the conclusion of which, and again by consent, I ordered that he and NC be joined as Fourth Respondents; that their intervention be treated as an application for Special Guardianship orders in respect of R; and that the case be adjourned so that they could fully be assessed by an independent social worker. It is more appropriate that I deal with my findings in respect of this evidence having rehearsed the evidence I heard at the resumed hearing.

RESUMED HEARING 17TH MARCH 2014 - 24th MARCH 2014

The resumed hearing was held on Ascension Island. By the date of the resumed hearing UK Counsel - Mr R Littlewood - had been appointed to represent the Fourth Respondents who on St Helena had been represented by Mr E Benjamin, Lay Advocate.

At the resumed hearing I heard from the following witnesses:
Applicant: Ms C Gannon
Fourth Respondents: Mr DP and Ms NC
Independent: Dr Bryn Williams, Ms F Cadwaladr
A statement from Mr and Mrs Y was also filed and although it was at one time anticipated that they would give evidence in the event it was decided not to call them.

Applicant

Ms Gannon summarised her evidence previously given that it was her assessment that the mother would be unable to care for R. In the absence of any family member then

known of able to care for R, the decision was taken in June 2013 to place R with Mr and Mrs Y as fosterers with a view to adoption. Of DP's intervention in September 2013, Ms Gannon said that had the Applicant known of DP and NC in May 2013; and had the Applicant had the benefit of Ms Cadwaladr's assessment of them at that time, then the Applicant would have placed R with them. However, even given Ms Cadwaladr's very positive assessment of the Fourth Respondents - an assessment undertaken in January 2014 - she said that the Applicant nevertheless felt unable to support placement with the Fourth Respondents because it was now too late. She pointed to the deep attachment that R has formed with Mr and Mrs Y. It was her firm view, she said, that to remove R from that environment was too great a risk. Aware, she said, that adoption must always be regarded as a last resort, nevertheless in the light of the risks that she felt were attendant on uprooting R, the criteria for adoption had been met. She acknowledged the report of Dr Williams - the generally accepted theory that a child who has shown the ability to attach is likely more readily to attach again. She did not suggest that Dr Williams was wrong in this regard but maintained that this was a general theory. R is a specific child to whom the theory might not apply, and the risk, she felt, was not worth running. She acknowledged Ms Cadwaladr's assessment that the Fourth Respondents would provide good care for R. She did not suggest that Ms Cadwaladr was wrong (with some implicit reservations) but again felt the risk was too great.

The reservations that she had may briefly be summarised as follows. In her evidence, although not in her statement, she expressed concern as to the extent to which Mr DP had been pressured by the family to come forward - thus harking back to Mr Warsama's concerns in terms of whether there was a real commitment on his behalf to care for R. This question mark over commitment was she said exacerbated by the fact that neither DP nor NC had at any time sought any form of contact with R since the date of DP's departure from St Helena "despite the Department offering to facilitate this…One would have expected both DP and NC who has had no contact with R would have pursued the opportunity to meet R, even if this was via skype." In her evidence she re-iterated that the Applicant had received no request even for updates about R's well-being. She then went on to acknowledge that the Applicant had not sought to contact the Fourth Respondents either, other than on one occasion when she left a message on their answer phone. In cross-examination she also acknowledged that given that their lack of contact was a matter of some concern to the Applicant, the Applicant should itself have made greater efforts to contact the Fourth Respondents.

Ms Gannon also said that there were concerns that, if and when the Fourth Respondents return to St Helena, R would be exposed to risk from her family on St Helena. During the course of the hearing in October/November 2013 it had emerged that the mother was being permitted unsupervised overnight contact with CB something that should not have been permitted (although it has never been suggested that CB has suffered any harm whatsoever as a result). Ms Gannon felt that when on St Helena the Fourth Respondents might be subjected to irresponsible familial pressure detrimental to R. In cross examination however she conceded that this was something that Ms Cadwaladr had dealt with exhaustively in her assessment of the Fourth Respondents; and that if Ms Cadwaladr was happy then so was she.

Ms Gannon readily accepted the importance to R as she grows up of the ties of

culture, ethnicity and family. She accepted that in relation to all three the Fourth Respondents would be entirely appropriate as carers. She nevertheless maintained that if R were to remain with Mr and Mrs Y these issues could adequately be addressed by an appropriate life story, the vital importance of which she conceded. She also expressed herself satisfied that Mr and Mrs Y, through their existing links to St Helena, their willingness to encourage R to maintain contact with her family on St Helena and the fact that this would be an open adoption, would ensure that R would maintain a link with her family. She accepted that the Care Plan in fact prepared by the Applicant at present made no provision at all for a life story for R but said that this would be addressed. Taking everything into account Ms Gannon remained firmly of the view that the attachment that R had formed with Mr and Mrs Y outweighed all other considerations; that the risks associated with removing R from Mr and Mrs Y were simply not justified by those other considerations.

I deal now with the statement from Mr and Mrs Y. It is clear from that statement that they were only ever prepared to become fosterers for R on the basis that the arrangement would in due course become permanent.

"After much careful thought we decided to care for R with view to having her join our family. We did feel that if we took on the care for R it would have to be with a view to her permanently joining our family. We explained that we did not see ourselves as foster carers and did not want to care for her temporarily, particularly given the impact on our and [our son's]'s life" (para 7)

(I interpose here Ms Gannon's evidence that so far as she was concerned Mr and Mrs Y were told that there could be no guarantee of permanence; that it was ultimately a matter for the Court to decide.)

Later in the statement they relate ,quite understandably their state of devastation at the thought that R might be removed from their care.

Mr and Mrs Y raise two matters which they feel would be detrimental to R were she to move to the Falkland Islands to be cared for by the Fourth Respondents. In the first place they say that the Fourth Respondents' pub is a "notorious venue for excessive drinking", frequented by soldiers at the weekend, "often rowdy" where fights break out in the streets. Secondly they suggest that there is an engrained racism inherent amongst some Falkland Islanders exhibited towards St Helenians, "who are sometimes looked down upon and treated as second class citizens". (paragraphs 10 and 11). Later they say that they are deeply troubled by the fact that NC has never seen R "and appears to have made no positive effort to do so or have contact" (para 14).

I have also seen e-mails from Mr and Mrs Y to the Applicant in which increasingly extravagant allegations are made against Mr DP in particular. I can only say there is not a shred of evidence to support those allegations and I treat them accordingly. No-one has anything but sympathy for the Y family in their predicament if R is transferred. As Dr Williams said they are likely to do anything not to lose R. The significance of these e-mails however is the extent to which Mr and Mrs Y may feel able to co-operate if R is transferred.

Fourth Respondents

Both Mr DP and NC gave evidence before me, the second occasion therefore that I had heard from DP.

DP reiterated the disillusioning nature of his experiences of the Applicant whilst on St Helena in the latter part of 2013; a disillusionment, he said, assuaged not at all following his return to the Falklands. He said that when he had left St Helena he had been assured that the Applicant would allow him continued contact with R; would ensure an initiation of contact with NC; and would keep them informed of R's well being in the UK. He and NC made efforts to hear news of R and to have contact with her but they were informed that Mr and Mrs Y had difficulties with their internet and skype connections; and that contact therefore was not possible. As time went by they became, he said, increasingly concerned. In early January 2014 they e-mailed their Lay Advocate, Mr Benjamin. They e-mailed the Public Solicitor. Copies of those e-mails are included in the court papers and the sense of concern they convey is palpable. When Ms Cadwaladr visited the Falklands to assess them they expressed their concern to her as well. DP said that Ms Cadwaladr offered to make enquiries; and that she was to inform them subsequently that there were still difficulties with internet and skype.

DP told me of the preparations they had made on the Falklands in the hope that the care of R might be transferred to them. They have bought a cot, toys, books and learning accessories. They have made their house child safe. He said that they have been to the childcare centre to make provisional arrangements to take R there one day a week so that she would have contact with other children of her own age.

In the first hearing he had given evidence of his relationship with NC. He repeated that there was a strong relationship of 14 years duration. He said that she was a loving person, fully committed to caring for R. Both of them knew, he said, that if R was transferred it would initially be difficult for R. He did not doubt however their ability to win R's love, trust and attachment with the additional advantage that during her minority she would be with and amongst her own family. He acknowledged the concerns relevant to any perceived risk posed by the family on St Helena. He made it plain that in this respect he would be governed solely by what was in R's best interests, acting, if necessary on professional advice.

He said that he and NC had been intensely hurt by the allegations made by Mr and Mrs Y. Had their pub remotely resembled the pub described by Mr and Mrs Y then without any doubt at all the licence which they need to renew annually would have been revoked. As to their suggestion of racism he could say only, as a St Helenian, that he had flourished in terms of his life and business on the Falklands and rejected out of hand the notion that this was a problem disproportionate to the Falklands.

NC spoke too of the strength of her relationship with DP, and of the love they have for each other. She made it plain that her commitment to having R was total. She mirrored the evidence of DP in terms of the preparations made to receive R. Those preparations, she said, were necessary as it can be difficult to obtain items on the Falklands, and if they were awarded care of R then they wanted everything to be in place for her in advance.

She echoed DP's concerns at the lack of contact with R despite their best endeavours. She was equally adamant that when they move to St Helena she would not permit any interference from the family there. She would be entirely guided by what was in R's best interests and again, in this context would seek and accept such professional help as was necessary.

She confirmed the hurt she felt by the allegations made by Mr and Mrs Y and was as forthright as DP in rejecting them. She accepted that racism might exist on the Falklands, but suggested that it was no worse a problem than elsewhere in the world in general, or the UK in particular.

Both DP and NC said they would be prepared to travel to the UK for the purposes of any transition; and to remain in the UK for as long as might be necessary in R's best interests. They both said they would be able to work with Mr and Mrs Y, despite the hurt they felt, acknowledging the reasons that might exist for making the allegations.

Dr Bryn Williams

Dr Williams had of course given evidence before me at the hearing in October/November 2013. For the purposes of this resumed hearing he had visited Mr and Mrs Y at their home in England where R, too, was present. He had also had sight of Ms Cadwaladr's report.

Dr Williams observed the clear attachment that R had formed with Mr and Mrs Y. He described how when he first arrived at Mr and Mrs Y' house R was with Mrs Y. Within a short space of time R hid her face away, burying her head in Mrs Y's shoulder. By the end of his visit Dr Williams noted that she had clearly decided he was a safe person: "she was conversing in her pre speech babble and even at one stage reaching out to hold my knee". Dr Williams was quite satisfied with R in terms of her developmental milestones.

It was clear both from Dr Williams' evidence and from his report that the Y family, including their young son, have very much claimed R as their own. Dr Williams was careful to emphasise on more than one occasion the enormity of the loss which the Y family as a whole would suffer if R was transferred from their care.

As indicated, Dr Williams noted the close attachment R had to Mr and Mrs Y. It was his opinion that to transfer successfully that attachment to the Fourth Respondents would require R to experience them as selective relationships in the way she has with Mr and Mrs Y. Given her ability to use selective attachment figures there is, in Dr William's view: "every possibility that should she be able to form a selective relationship with DP and NC she would be able to transfer her maturing attachment behaviour to her new carers"

Dr Williams did not underestimate the risks. In his oral evidence he made it clear that there should be cogent reasons for moving R; that if R failed to form a selective relationship then that would be very worrying. R, he points out, has already experienced interruption in her relationships. Discontinuity of care creates risks.

"The critical point to remember in R case is that she is in this extremely important time in her development and the greatest risk is that it will be interrupted" (para 5.15)

In his oral evidence he said "the most important thing is that we are as confident as we can be that this is going to work" in terms of deciding whether a transfer should be effected.

Ms Fiona Cadwaladr

Ms Cadwaladr is the Independent Social Worker who was instructed to assess the Fourth Respondents. For the purposes of the report she has prepared, Ms Cadwaladr visited the Falkland Islands. The extent of her assessment is set out in her report. Ms Cadwaladr's report and her oral evidence made plain the fact that the Fourth Respondents possess all the qualities necessary to provide R with a stable, secure and loving environment. What particularly impressed Ms Cadwaladr were not only the physical preparations that they had made to receive R but the clear forethought that they had given and the insight they displayed as to the care and sensitivity with which any transition would have to be undertaken. It emerged, she said, without prompting from her. Both DP and NC made it plain to her that they would welcome and defer to any expert help offered, both during the transition period and thereafter. "This couple" she said "are unusually firmly centred on R. They want to make it as easy as possible for her"; and by centred she meant centred on what is right for R. Of the Fourth Respondents relationship her assessment is that it is "balanced, open and considerate". The fact that hitherto they have had no relationship with R is not something that is entirely unusual. She is aware of cases in the UK where Local Authorities have in fact refused any contact between a child and potential carers until there has been a positive assessment.

Ms Cadwaladr acknowledged that the transition period would have to be very carefully managed. She said that the co-operation of Mr and Mrs Y would be vitally important. Ms Cadwaladr also confirmed that the Fourth Respondents were both well aware of the possible family tensions when they return to St Helena. They "demonstrated an understanding regarding the need to protect R…In discussion they were able to say that contact between R and her parents would have to be supervised should the Court deem such contact as being in her best interests".

Ms Cadawaladr's assessment of the Fourth Respondents as set out in her report is uniformly positive in terms of their relationship; their understanding of R's needs, their ability to provide for her both emotionally and financially and the environment in which she would live. The enquiries she made on the Falklands of referees, family members and the police produced equally positive outcomes.

"I have found no evidence to suggest anything other than the couple are suitable to be Special Guardians for a child".

Ms Cadwaladr confirmed in her oral evidence that the Fourth Respondent had expressed to her their very considerable concern at the fact that they had had no contact with R; had received no information about her from the Applicant or otherwise. She agreed to contact the Applicant and duly did so. As a result she spoke

to Claire Yon to discuss why there had been no contact. She was informed by Ms Yon that there were ongoing skype problems which were being addressed. Ms Yon also told her that in no way had the Applicant concluded that either of the Fourth Respondents were unsuitable as carers, somewhat strange in the light of the fact the Applicant had in fact assessed DP as unsuitable.

Ms Cadwaladr also made plain the fact that the Applicant itself had a duty to maintain contact with the Fourth Respondents.

That concludes my summary of the evidence with the caveat that it is but a summary. The totality of all the evidence in this case which has taken some 8 or 9 days, hitherto has been voluminous. It should be unnecessary to recite, but I nevertheless do, that I have taken the totality into account in making my findings and in reaching the decision that I have.

Before I deal with my findings, it is necessary to relate the events of Thursday 20th March and Friday 21st March 2014. During the course of Thursday 20th March the Court was informed that information had come to light suggesting that Mr DP was the father of a 16 year old girl, still living on St Helena. It soon became apparent that the information in fact amounted to no more than gossip and tittle-tattle, none of which could conceivably have been put before the Court as evidence as Ms Cheetham quite correctly acknowledged. Ms Cheetham nevertheless submitted that if true, and if evidence could be presented, then this information would be of relevance to my deliberations.

When I sat at 9.00am on Friday morning, there was an affidavit before the Court from Mr Warsama. He deposed that he had seen and spoken to the mother of this child, the previous day. She had confirmed to him, his affidavit said, that DP was indeed the father of this child and that at one time she had consulted the Public Solicitor to seek financial support for the child. In the light of Mr Warsama's affidavit I agreed to adjourn so that this lady Ms Z could be found. She was located at the police station where she had apparently been taken in the company of her mother by Ms HP, the sister of Mr DP. The purpose of taking her there was to enable the police to take a statement from her. In fact she had apparently made no statement at that time. At my request Mr Garner, the trainee Public Solicitor accompanied the purported mother of the child, her mother and Ms HP to the offices of the Registrar of the Supreme Court.

Ms Z has a mental health condition clinically diagnosed as paranoid schizophrenia. Her condition is treated by fortnightly injections. Her most recent injection had been that morning.

I had also directed that Mr Glen Mohammed, the Community Psychiatric nurse also be contacted so that he could assess Ms Z's mental condition as at that time. Mr Mohammed was located, and attended and spoke to Ms Z. By video link I subsequently spoke with Mr Mohammed with the parties present. Mr Mohammed confirmed that Ms Z was lucid, orientated, and capable of giving evidence if required to do so.

Once Ms Z had been assessed by Mr Mohammed, Mr Garner took a statement from her. In that statement she made clear that whilst she did not know who the father of the child was, she had never suggested that Mr DP was the father; nor had she ever sought financial support from DP in relation to the child. Indeed she had no recollection of having visited the Public Solicitor's office in connection with her child.

I spoke to Ms Z myself again via the video link and again in the presence of the parties. I asked her whether she actually wanted to give evidence in the case. She said that she would prefer not to. I then asked whether any party - but specifically the Applicant - wished to call her to give evidence. Ms Cheetham said that she did not wish to call her. No other party wished to either. I shall return to this episode in due course.

FINDINGS

I start by returning to the events of August / September 2013. I made it plain before the hearing in November 2013 adjourned that I had found Mr DP to be an impressive witness. I can find no better adjectives to describe him than those that appear in Ms Cadwaladr's report - descriptions applied both by her and DP's own friends: considered, reflective, grounded, reliable and steady. I have been able, too, to observe his demeanour and emotion when speaking of R and of his own and NC's desire to become carers for R. I have absolutely no hesitation in finding that his commitment to becoming R's Special Guardian is total. I am completely satisfied that as R's Special Guardian he would do all in his power to provide R with a loving, stable, safe and secure home environment and that he would protect R's best interests with as much passion as any parent would. I am heartened that this finding is reflected by Ms Cadwaladr's own assessment. Mr Trueman on behalf of R submits that it is difficult to imagine an assessment that could have been more positive. I agree.

That poses the question then as to what occurred when DP approached the Applicant back in September 2013. Some indication, I am satisfied is given by an e-mail dated 1st September 2013 - disclosed on the last day of the hearing before submissions - from Ms Gannon to the then Attorney General and Clare Yon, and sent, I suspect, shortly before Ms Gannon was due to leave St Helena, either on leave or other business.

"Hi Claire, Ken will you please discuss this with Martin who arrives tomorrow. This report concludes our own findings that we outlined in our assessment, therefore, the Care Plan remains that it would be in R's best interest to be placed for adoption, this will be the case even if the parenting assessment is positive".

It is clear to me therefore that as early as 1st September 2013, the Applicant had already decided that DP was an irrelevance, even without having seen him. DP's own evidence was that in the meetings he had with Clare Yon and Martin Warsama was that he was treated as an irrelevance, "a joke". Furthermore, having decided that he was an irrelevance, it would also then be convenient for the Applicant to decide that he was unsuitable. I am quite satisfied that both Ms Yon and Mr Warsama

approached the interviews with DP with that frame of mind. I suspect that the Applicant's view of the negative impact that DP's proposal would have on R was relentlessly impressed upon him; and if in the circumstances DP made any suggestions that were a little naive, then it is hardly to be wondered at in the circumstances. He had gone there for advice and assistance; and when he says he received neither, I am quite satisfied that that was indeed the case; and if he did make some suggestions that were naive then I am also quite satisfied that both he and NC, unprompted and unassisted by the Applicant have developed a real appreciation of the difficulties R will face and have the qualities to minimise those difficulties as reported by Ms Cadwaladr.

Concerning this aspect of the matter, it is right I think to observe that I was generally unimpressed by the manner in which Mr Warsama gave his evidence. He was unnecessarily and unhelpfully combative and aggressive when answering questions in cross-examination. I merely observe that if his manner during the interview he conducted with Mr DP remotely resembled his demeanour in Court then it is an added testament to Mr DP's commitment that he did not desist immediately in his attempts to care for R.

Many of the findings I have made in respect of Mr DP are of equal application to NC. When she started her evidence she was clearly nervous and emotional which was unsurprising. But she spoke quite genuinely, I am quite satisfied, of the love that she and DP have for each other and the strength of their relationship. She too told me of the lengths they had gone to, to prepare their house for R. She has family on St Helena - her father, I think she said is married to a St Helenian, and St Helena is their principal residence. She knows DP's family on St Helena.

I am completely satisfied that NC too is wholly committed to caring for R and that she too has an excellent appreciation of the difficulties that may be encountered in effecting any transition. I am satisfied that she is under no illusion as to the effects that having a year old child will have upon her life, DP's life, and their relationship. I am quite satisfied, too, that she not only remains fully committed to having R knowing the impacts referred to, but has the necessary qualities equally to provide R with a loving, safe, secure and stable environment. I am satisfied that she will always put R's interests first whether they live on the Falklands or in due course on St Helena.

Both DP and NC have said that they will seek and defer to expert help and I am happy that they will do so when necessary. Both have said that they will travel to the UK so that the transition can be effected as smoothly as possible and are happy to remain in the UK for as long as is necessary. Again, I am happy that they are entirely genuine in this respect. Their business in the Falklands will be minded by their staff whilst in the UK.

Despite their upset at the contents of the statement of Mr and Mrs Y, I am satisfied that they well understand the desperate situation in which Mr and Mrs Y find themselves in and will be able to put that hurt aside for the all important task of co-operating with Mr and Mrs Y in ensuring as smooth a transition as possible.

The question of contact or lack of it between the Fourth Respondents and R has been an issue which has assumed significance in this hearing demonstrating, according to Ms Gannon, and indeed Mr and Mrs Y, a lack of commitment. I have to say that I find it breathtakingly disingenuous of the Applicant to turn what in any view was a palpable failure by the Applicant to fulfil its duty to maintain contact with the Fourth Respondents into a criticism of the Fourth Respondents. In fact I am perfectly satisfied that DP and NC were making considerable efforts to establish contact with R. The e-mails that I have seen demonstrate as much. They tried through Ms Cadwaladr. As I have said, she says that she was told that the matter was being addressed, which Ms Cadwaladr told me she assumed, with the benefit of hindsight naively, that this was intended to include the Fourth Respondents. In any event I am quite satisfied that the Fourth Respondents wanted contact and continually sought to establish contact. The fact that no contact was established was, I am satisfied, in no way their fault.

It seems to me therefore that the sole issue in the case is the Applicant's assertion that the risks associated with now severing the attachment R has formed to the Y family are outweighed by the advantages of a kinship placement. I do not under-estimate the nature of that risk; and this seems to me to be an appropriate moment to consider the check-list set out in the Adoption and Children Act 2002 at Section 1 (4). I deal with each in turn:

(a) I find not to be applicable

(b) It seems to me clear that a child of R's age particularly needs a safe, loving and secure environment. That she has that with the Y family is beyond any doubt. Equally, and given my findings, the Fourth Respondents would provide her with a matching environment. As Dr Williams points out a child this age requires stability, continuity and lack of disruption. Transferring R to the Fourth Respondents, would, everyone agrees, result in at least a temporary loss of each, and so we come back to the question of risk.

(c) If R ceases to be a member of her original family it is almost inevitable, as Dr Williams acknowledged, she will not develop a relationship with her family in any meaningful sense of that word. The Applicant proposes an open adoption although the e-mail of 5th March raises real doubt that Mr and Mrs Y will in fact encourage contact between R and her family. Even if they did so, as Dr Williams says that would involve a knowledge of rather than a relationship with the family. On the other hand if R is placed with the Fourth Respondents she will grow up in the heart of the family, ever subject to the safeguards which I am satisfied that the Fourth Respondents would carefully monitor and impose.

(d) R is dual heritage (black St Helenian father and white British mother). The Fourth Respondents are equally a dual heritage partnership. Mr and Mrs Y are both white British.

(e) Following her birth R was removed from her mother, placed with a first set of fosterers, then placed with a second set of fosterers before placement with Mr and Mrs Y. I have heard no direct evidence of actual harm suffered by R but the discontinuity of her early months was certainly unsatisfactory. The harm which R is

at risk of suffering has already been identified.

(f) (i) This has been dealt with by the evidence of Dr Williams to which I have just referred and which I accept.

(ii) This is self-evident

(iii) To the extent that views have been ascertained, R's relatives are unanimous in support of the Fourth Respondents. This includes R's mother and father.

I deal then with the risk bearing in mind Dr Williams' strictures that there should be cogent reasons for severing the attachment that she has formed to the Y family; and that I should only contemplate severing the attachment if I am confident that any arrangement will work.

I am quite satisfied that there are cogent, indeed compelling reasons for transferring R. As I have just said, if the Fourth Respondents were to become Special Guardians to R she will grow up at the heart of her family. She already has two full siblings on St Helena. She has cousins on St Helena and on the Falkland Islands. Mr DP is her great uncle. As Ms Cadwaladr said the importance of kinship cannot be overstated in this type of case. Equally, and if she were to remain with the Y family, she would merely have knowledge of her family.

In dealing with the second of Dr William's strictures I am confident not only that the transfer can be made to work, but that it will work. The Fourth Respondents have a strong, loving and stable relationship. They are passionately committed to caring for R. They have an appreciation of the difficulties which R will have in effecting the transition to an extent which Ms Cadwaladr found to be unusual of a couple in their position. They have a comfortable home on the Falkland Islands into which to move R when finally they return there. They will have more than one home on St Helena when they move back to St Helena in three or four years. I am satisfied that they have all the qualities, both emotional and otherwise, to provide R with a loving and secure future. I see no reason, particularly if the transition can be managed carefully and with the cooperation of all, why R, who has demonstrated her ability to attach, should not be able to form a selective attachment relationship with the Fourth Respondents. As Dr Williams says therefore in those circumstances there "is every possibility that she ….would be able to transfer her maturing attachment behaviour to her new carers".

I have to confront the possibility that Mr and Mrs Y will not be able to co-operate with the transition. I nevertheless remain satisfied that although more difficult confidence in a successful transition can nevertheless be maintained. It will have to be extremely carefully monitored however.

Without underestimating that risk I therefore disagree with the Applicant that the risk involved in severing R's present attachment outweighs the very considerable advantages of allowing her to grow up at the heart of her family with Special Guardians who will love and care for her and who will seek always to promote her best interests

When I balance therefore those matters which I have to balance and ask myself the

question: What decision would best meet R's welfare throughout her life? I answer unhesitatingly that R's welfare throughout her life would best be met by transferring the care of her to the Fourth Respondents.

THE LAW

I have been provided with many authorities on the principles to be applied when considering an application to free for adoption against the wishes of the parents: see

Re B [2013] UKSC 33
Re B-S [2013] EWCA Civ 1146
Re W [2013] EWHC 1227
Re G [2013] EWHC CN 965
Re P [2013] EWCA Civ 963

I am not going to analyse these cases in detail. It seems to me to be plain that the principles by which I must be - and have been - guided in reaching the decision I have is that adoption should be regarded as a draconian measure, one that should only be considered as a last resort, where nothing else will do. Additionally " ..the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted to that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child", (per Lady Hale Re B (above)).

I have applied those principles in reaching my decision. I can see no basis for saying that adoption in the case of R is now necessary because it is the last resort. Patently it is not the last resort, and has not been the last resort for many months. Equally it is in my view absurd that adoption in this case should be sanctioned "because nothing else will do". I hope that my analysis indicates that there is a great deal else. Nor can I ignore Lady Hale's direction that the effort should be devoted to reuniting the family. As my judgment indicates I am far from the position of being able to say that writing off R's relationship with her family is justified by the overriding necessity of R's interests.

RULING

The decision I have reached will already be clear. In due course I will make the order which provides for the transfer of R's care from Mr and Mrs Y to the Fourth Respondents. I shall require the assistance of the Advocates to draw up the precise terms of that Order because of the care that will be needed in managing the transfer of R's care.

The mother I believe acknowledges that she will not be given care of R and she supports the application by the Fourth Respondents. For the avoidance of doubt however and for the reasons given I rule that it would not be in R's best interests to be returned to the care of the mother.

Charles Ekins
Chief Justice

ADDENDUM TO JUDGMENT

That concludes my judgment in this case. There are however further matters upon which I have to comment.

Criticisms were made of the Applicant during the hearing on St Helena and also during the resumed hearing on Ascension Island. Criticisms were also made of others during the latter hearing. I will deal with those criticisms under the headings St Helena and Ascension Island.

ST HELENA

Of the Applicant it was submitted principally by the Public Solicitor but supported by Mr Trueman that: no parenting assessment was in fact ever undertaken of the Mother; that the Mother's hopes were first raised by the promise of an assessment, then dashed when that decision was reversed; the fact that within the first three months of her life R was placed with three different carers, that the first of those carers was the then Solicitor General and his wife, an inappropriate choice in the circumstances; that too little was done to encourage and enable the Mother to exercise contact with R; and when Mr DP put himself forward, his potential suitability was dismissed in an overly peremptory fashion.

To enable a balanced view of these criticisms to be taken the culture and strength of the familial ties both on St Helena but also indeed within the St Helena diaspora must be taken account of. As a non St Helenian myself I speak with considerable diffidence: but it is nevertheless the case that for many decades it has been quite normal for parents to place their children for extended periods running into years with members of the extended family whilst the parents work overseas. When the parents return so too do the children to the parents. These arrangements, almost invariably informal or at least semi-informal, have worked over generations of St Helenians and to many St Helenians appear entirely normal. Therein, I suspect, lies the principle reason for the fact that as at March 2013, there appears to have been no formalised or sophisticated system for fostering on St Helena and not a single trained putative foster parent or family. Certain it is that this is the first case of its kind that I have encountered on St Helena. I am not aware of any case even remotely similar that has been heard in the Magistrates' Court whilst I have been Chief Justice. Hindsight is a gift granted to no-one; and I suspect that the allocation of limited resources to meet a potential problem rarely if ever encountered in the past was something which was never likely to receive priority.

It seems also to have been the case that for much of the critical period until February 2013 there was not a single qualified social worker on St Helena. Ms Claire Yon is a social carer, a qualified nurse with experience of working with parents with learning difficulties but is not a qualified social worker. Equally, the F referred to in the proceedings and who I assume is FJ, is also not a qualified social worker. They were dealing with a case the complexities of which in not dissimilar circumstances had engaged the comparatively well resourced professionals in the UK for something like 18 months before the Bristol proceedings drew to a conclusion. If mistakes were made, and I emphasis the word 'if' then it is hardly to be wondered at.

Ms Claire Gannon arrived on St Helena at the beginning of February 2013. Ms Gannon has long experience of working in child care cases; and is a highly qualified social worker. Her role, in effect, is that of head of social services. No criticism it seems to me can realistically be made of Ms Gannon for not immediately becoming intimately familiar with the detail and complexities of this case. It seems likely, however, that she had done so by the end of February or early March 2013 and it was she I suspect, who was instrumental in changing the decision to undertake a parental assessment of the Mother. With the benefit of hindsight it seems fanciful that any meaningful assessment of the Mother could in fact have been undertaken. The Family Centre at the time was occupied by one 11 or 12 year old girl. It was staffed by carers with no formal qualifications at all. On the other hand Ms Gannon had acquainted herself with the papers relevant to the Bristol proceedings. If Ms Gannon was instrumental in taking the decision not to implement an assessment, it is easy to see why she did so, given the available resources.

Once that decision had been taken it seems to me that the Applicant had little option but to make a virtue of necessity. When R was placed with Mr and Mrs Wastell it seems there was literally no alternative. Ms Gannon herself readily conceded that the arrangements effected for R over this period were far from ideal - certainly judged by UK standards. Lessons, she said, had been learnt for the future. At the end of the day, however and with the resources available the decisions taken at this point were, I am satisfied, taken in R's best interests and with her welfare the paramount consideration

I do not propose to comment on the changes made to the arrangements for enabling the Mother to attend her contact visits. I suspect there were occasions when the Mother was not at home when the car arrived to collect her. I can understand the frustration. Equally I have sympathy with the frustrations that the Mother herself felt she was confronting.

I shall deal with the criticism relevant to Mr DP and indeed NC in due course.

ASCENSION ISLAND

A number of concerns and criticisms were made both of the Applicant and others during the course of this hearing. I shall deal with the criticisms made against those other than the Applicant first.

Mr Littlewood took the lead in these criticisms which were, in the main, directed against the Attorney General. Mr Littlewood submitted that a number of occurrences during the course of this hearing indicated an unwarranted interference by the Attorney General and the Executive in a judicial process. In the first place Mr Littlewood was concerned to have learnt that the Attorney General's wife had visited Mr and Mrs Y's home 6 weeks ago, when she was in the UK. He suggested that it was wrong and inappropriate for the Attorney General's wife to be seen apparently to ally herself with Mr and Mrs Y given that the case was underway.

In the second place Mr Littlewood was concerned that the e-mail of 1st September 2013 referred to in the main body of this judgment and sent by Ms Gannon was sent

by her to the Attorney General.

The next occurrence related to events surrounding Mrs Z. In Court and with all parties present I was told that the information which alleged that Mr DP already had a child on St Helena was information which had been received by Ms Gannon from Mr Y on the evening of Wednesday 19th March 2014. Mr Y himself had received the information from someone on St Helena. At that point I was told by Ms Cheetham for the Applicant that she had been instructed to make a Public Interest Immunity application to withhold the source of that information. I heard that application and in support of it heard evidence from Ms Gannon and the Attorney General. Ms Gannon told me that she spoke each evening with Mr Y to keep him appraised of the proceedings, that he told her that this supposed information had been received in an e-mail from Mrs Tamara Capes, the wife of HE The Governor of St Helena. In that e-mail Mrs Capes apparently had said that she had been in discussion with her domestic staff at Plantation House when a member of that staff had indicated that DP had a child on St Helena. It seems Mrs Capes then thought it appropriate to e-mail Mr and Mrs Y with that information.

In his evidence, the Attorney General confirmed that his understanding of how Mr Y had come by the supposed information conformed to the above. He made it absolutely clear that the PII application related solely to withholding the identity of the member of the domestic staff. The Attorney General said that he was firmly of the view that child protection issues in particular were at stake. He explained that it is very difficult on St Helena, for obvious reason within a small community to persuade people to come forward with information; and that if this staff member suddenly became the focus of an investigation there was a significant danger that it would undo the progress that had been made in encouraging people to come forward.

The Attorney General also volunteered that he had independently learnt of this supposed information. On the same evening - i.e. Wednesday - Mrs Y had telephoned his, the Attorney General's, wife to inform her of this supposed information. Mrs Wastell had in turn told the Attorney General. In consequence the Attorney General the following day had contacted the Registrar of Births to ask what entries, if any, there were upon this child's birth certificate. His evidence was that no father was recited on the birth certificate but that the Registrar of Births told him that she had heard that DP was the father.

I emphasise that the Attorney General made no PII application designed to conceal either what he had done or his wife had done or indeed, what Mrs Capes had done.

I hope that Mr Littlewood is reassured. If not I am happy he be provided with a transcript of the entire application. In the event I made no ruling on the application, as I informed the Court, as it appeared to me that the information amounted to no more than hearsay on gossip on hearsay; and I was not going to permit a diversionary investigation to proceed on that basis.

I deal with the second of Mr Littlewood's concerns first. It may be that Mr Littlewood is unfamiliar with the way matters are set up in small Overseas Territories such as St Helena. The Attorney General's chambers are small, commensurate with the resources available. It is frequently necessary for the Attorney General

him/herself to become directly involved in case preparation which involves departments of Government. In St Helena's case and on St Helena the AG's Chambers comprises of the AG, the Solicitor General and Crown Counsel. The then Solicitor General, Mr Wastell, could have no involvement in this case because he and his wife had originally fostered R. It does not surprise me, therefore, that the then Attorney General, Mr K Baddon had himself assumed responsibility for the preparation of this case for Court. Therefore I see nothing sinister whatsoever in the fact that this e-mail was addressed to Mr Baddon.

As to Mrs Wastell's visit to Mr and Mrs Y' home I accept that this was inadvisable given that the hearing had commenced in October and was still on going; and in the light of subsequent events. To the critically minded it might raise issues of perception. I say only this. As already indicated Mrs Wastell had been the principal carer for R during the first weeks of R's life. If she retained an affection for R it would be understandable. Furthermore it would seem that she made no secret of the fact that she had visited the Y family which in itself belies any suggestion that the visit in fact had any sinister purpose.

The events surrounding the Mrs Z affair are more concerning. It was certainly unwise of Mrs Capes to e-mail Mr and Mrs Y. Mrs Y should not have felt able to call Mrs Wastell about the case; and Mrs Wastell should flatly have declined to speak about the case with her. Having ensured that he had had nothing to do with this case, the Attorney General should not have taken it upon himself to involve himself, even to the limited extent that he did. It ought to have been appreciated that in acting as they did they were capable of giving the impression that the establishment of St Helena were firmly lined up behind Mr and Mrs Y.

Having said that I am far from persuaded that taken individually (and there is no evidence or even suggestion of collusion) that the incidents I have related suggest, or come near to suggesting an attempt by the Executive to interfere in the Judicial process. Taken individually the actions were unwise but no more. I accept, however, there will be those who view them collectively despite the lack of any evidence whatsoever and that issues of perception will have arisen and may arise which is regrettable. It is also an object lesson in the danger of listening to or acting upon island gossip and tittle-tattle.

Applicant

There can be nothing but sympathy for Mr and Mrs Y who are the real victims of this whole proceeding. The Applicant in evidence says that Mr and Mrs Y were made aware from the outset that there could be no guarantees that R would remain with them, that would be for the Court to decide. Mr and Mrs Y in their statement indicate that they were only prepared to take R in the first place on the basis that it would be a permanent arrangement. Although the Applicant argued that the placement with Mr and Mrs Y was designed on the UK model of a fostering placement with a concurrent view to adoption, Ms Cadwaladr in her evidence was clear that in its execution this placement did not resemble the UK model in any "way, shape or form".

I have not heard sufficient evidence to enable me to determine what assurances or

otherwise were given to Mr and Mrs Y. The evidence that I have heard satisfies me that good social work practice demanded that Mr and Mrs Y should never have been given any assurance. They should have been made aware of the Applicant's duty to seek to place R with the family if at all possible. It seems to me that once Mr DP had come forward Mr and Mrs Y should have been told that an in depth assessment would have to be carried out on DP and NC, which if positive would in all likelihood mean that R would be transferred to their care, given the clear law in this regard.

The e-mail of 1st September 2013 suggests that Mr and Mrs Y were not appropriately informed by the Applicant. It also suggests a clear failure by the Applicant to act objectively in R's best interest. For reasons that I will make clear I am satisfied that this lack of objectivity was deliberate on the Applicant's behalf - in the sense that they felt duty bound to do all they could to ensure that R remained with Mr and Mrs Y irrespective of R's best interest.

I have no doubt that the Fourth Respondents were badly treated by the Applicant both in the way in which the so-called assessment of DP was undertaken and subsequently in that the Applicant made no meaningful attempt whatsoever to keep in contact with the Fourth Respondents. There is little doubt that the Fourth Respondents feel - not without justification - that the Applicant was quite deliberately seeking to obstruct their endeavours to care for R by trying to ensure that R remained with Mr and Mrs Y. Again for reasons which I will make clear I am satisfied that that was indeed the case.

Real concern also surrounds the Applicant's failure to produce the file relevant to these proceedings. It is astonishing that Ms Gannon did not bring the file with her to Ascension from St Helena. The file was requested on the first day of the resumed hearing and assurances were given that it would be e-mailed. By Friday 21st March, four days later, a number of documents had been received but virtually no documents relevant to the period from the conclusion of the hearing on St Helena to date, which in many respects is the crucial period. On Friday 21st March I ordered that the Applicant file an affidavit verifying that its entire file was now in the possession of Ms Cheetham or otherwise identifying the documents which had yet to be disclosed. On Saturday morning an affidavit was received from Mr Warsama deposing that all documents relevant to R had been disclosed.

On Sunday 23rd March 2014 I was invited by the parties to reconvene the Court at short notice. I did so. Once reconvened I was invited by all the parties, including Ms Cheetham to make an order prohibiting Ms Gannon from communicating with any member of the St Helena Government or with any person employed by the Applicant or with Mr and Mrs Y until I have delivered judgment in this case. I was also asked to make an order preserving the integrity of all e-mail accounts of Ms Gannon, Mr Warsama and Ms Yon until further Order. I have made the Order in each respect as requested. I was invited to take this course as a result of documents which Ms Cheetham had found in her possession in the form of a series of e-mails from Mr and Mrs Y to the Applicant which ought also to have formed part of the Applicant's file and which thus should already have been disclosed. Ms Cheetham had come into possession of them during the course of a conference she had quite properly had with Mr and Mrs Y earlier in March. She had mistakenly thought that they were e-mails to the Solicitor General and thus privileged. When she came across them again late

on Saturday 22nd March and realised her error she immediately disclosed them to her colleagues; and thus it was that on Sunday I was asked to make the Order referred to.

These e-mails ought to have been disclosed by the Applicant at the outset of this hearing. The are very significant. In the first place they exhibit a degree of hostility toward the Fourth Respondents which may well make the transitional arrangement for R even more difficult since it seems not unlikely that Mr and Mrs Y will simply not be able to co-operate with the transfer. That is matter which the Applicant must have known that the Court should have been made aware of to assist the drawing up of an appropriate Order, let alone the other parties.

Of even greater concern, in one e-mail Mr Y says:

"There is also the issue of R's family. They are not caring, pleasant or stable - we do not want a lifelong commitment of them being constantly in our lives. We have to particularly think of this for [our child's] sake – [our child] is innocent in all of this and we will not accept his life being impacted or tainted by them"

This e-mail is dated 5th March 2014.

It has been the Applicant's case throughout that the adoption proposed for R would be an open adoption. It has been Ms Gannon's evidence on oath that Mr and Mrs Y would actively encourage R to maintain contact with her family; that the adoption would therefore not have the effect of severing R from her family ties. Indeed in the statement that she prepared for this resumed hearing Ms Gannon said

"Mr and Mrs Y have always and will continue to facilitate and promote contact with the birth family and have also said that they will bring R back to St Helena when she reaches an age where she is able to further explore the country where she was born".

How that evidence could be given without any form of caveat in the light of Mr Y's e-mail is, I am afraid, beyond me. There is also the issue of Mr Warsama's affidavit. Two of the e-mails - the one of 5th March and one dated 9th March 2014 were specifically addressed to him. His affidavit therefore is clearly untrue.

Regrettably I am driven to the conclusion that the Applicant has obstructed and misled the Court in its judicial process of determining the best interests of R. I am not prepared to say unequivocally that the obstruction has been wilful - my focus in this case has been on determining R's best interests, not the conduct of the Applicant; but it is unparalleled in my experience that all advocates in this case, including the Applicant's own Counsel, felt it necessary to invite me to issue an injunction against the senior social worker with responsibility for this case. Furthermore, it seems to me to be likely that significant portions of the Applicant's file have still not been disclosed and it is hard not to draw the inference that the absent documents have been deliberately withheld. It seems to me that, having decided that R should remain with Mr and Mrs Y, the Applicant's approach to this case has been to promote their cause exclusively and to ignore and, in the light of the non-disclosure perhaps even to suppress, any information which might have suggested that R's best interests lay elsewhere. It is for that reason that I have made the findings that I have relevant to the Applicant's objectivity and the Fourth Respondents.

So troubled am I by what has occurred that I shall direct that a copy of this judgment and addendum be sent to HE The Governor. I shall recommend that experienced independent Counsel should urgently be engaged to review the papers in this case and to advise on whether the evidence is such as to disclose reasonable grounds for suspecting the commission by any member of the Applicant's staff of any criminal offence pertinent to attempting to pervert the course of justice or perjury. Counsel instructed should be given the case papers and a copy this judgment and addendum. The Applicant's full file should be secured and should also be provided to Counsel instructed. It may well be that Counsel will require a transcript, at least of Ms Gannon's evidence but I leave that to Counsel. I am well aware of the seriousness of this recommendation but in view of the Applicant's apparent reluctance, to use a relatively neutral word, to disclose the full file, I can see no other means by which the full file can be secured and measured against the evidence given by the Applicant in this case.

Charles Ekins