

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2021] SC EDIN 48

AD23-20 & AD24-20

NOTE BY SHERIFF T WELSH QC

in

An application for performance orders under Section 80 of the Adoption and Children (Scotland) Act 2017

by

THE EDINBURGH CITY COUNCIL, Waverley Court
4 East Market Street, Edinburgh EH8 8BG

Petitioners

against

LT (The Mother)

First Respondent

and

JL (The Father)

Second Respondent

in relation to

NTT, (born 14 July 2014) and EST, (born 10 May 2016)

Petitioners: Sharpe, Adv, City of Edinburgh Council

First Respondent: Leiper, Solicitor, Edinburgh

Second Respondent: Conroy, Solicitor, Edinburgh

EDINBURGH, 15 July 2021

The sheriff having resumed consideration of the application by the Petitioners for permanence orders granting authority for NTT and EST to be adopted under section 80 of the Adoption and Children (Scotland) Act 2007 with ancillary orders for contact; interpones

authority to the Joint Minute No 27 of process; and finds the following facts admitted or proved:

1. The petitioner is Edinburgh Council, a local authority with an office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG and is an Adoption Agency for the purposes of the Adoption and Children (Scotland) Act 2007 [the Act].

2. All social work records, reports and minutes lodged as productions are, so far as copies, held to be equivalent to principals and as having been written or pronounced by parties by whom they bear to have been written or pronounced on or about the dates they respectively bear.

3. NTT was born on 14th July 2014 and EST was born on 10th May 2016 (hereinafter referred to as the children).

4. The mother of the children is LT.

5. The father of the children is JL who holds parental rights and responsibilities in respect of both children.

6. JL is currently in HMP Glenochil serving a sentence for being concerned in the misuse of controlled drugs with an earliest release date of July 2021.

7. Contact between the children and their mother takes place every three weeks. This was by video link during the Covid 19 restrictions. The mother has been exercising direct in person contact again since February 2021. There has been no direct contact between the children and their father since on or about March 2018.

8. On 29th October 2015 a Child Protection Order was granted in respect of the child NTT.

9. EST was born on 10th May 2016 and was released from the hospital into the care of her parents and NTT was rehabilitated to her parents care on 27th October 2016.

10. The parents separated on or about 15th December 2016.
11. The mother received additional support from the Circle Project between September to December of 2017.
12. In October 2017 the mother began the Incredible Years Parenting Programme at Gilmerton EYC. This was a 12 weeks course but she only attended three sessions.
13. On 26th February 2018 EST who was 21 months old was found by a member of the public, on her own, in the street at about 3.40pm. She was not appropriately dressed for cold weather. When police traced the mother to the family home, she had not realised EST was missing.
14. On 21st March 2018 a Children's Hearing made a Compulsory Supervision Order (CSO) with a condition that both children be accommodated with foster carers. After being initially accommodated, they moved to longer term carers on 22nd May 2018 and then moved to their current prospective adoptive carers on 19th February 2021.
15. On 24th July 2018 a Looked After and Accommodated Review (LAAC) decided there should be parallel planning put in place.
16. At a Children's Hearing on 28th August 2018 LT's contact was increased to a minimum of three times a week for a period of six weeks as part of an assessment to see how LT would manage.
17. At a LAAC Review on 10th October 2018 the decision was made to refer the children to an Adoption Panel and contact was reduced.
18. On 14th March 2019 an Adoption Panel recommended the children be registered as children in need of permanence. The legal route was deferred. The recommendation was endorsed by the Agency Decision Maker (ADM).

19. On 30th April 2019 a Children's Hearing reduced mother's contact with the children to once per week and JL was to have indirect contact.
20. On 16th August 2019 police searched mother's property and found drugs with a street value of £15,000 along with a sum of cash of around £1,000. JL was present in the home and was arrested. He was subsequently charged with offences relating to possession with intent to supply and being concerned in supply of controlled drugs.
21. On 21st November 2019 there was an Adoption Panel Review when the recommendation was made for the children to remain registered for permanence and the legal route was for the local authority to make an application for a Permanence Order with Authority to Adopt (POA). This recommendation was endorsed by the ADM on 28th November 2019.
22. A Children's Hearing on 3rd February 2020 gave advice to the sheriff to support a Permanence Order with Authority to Adopt. The Hearing also reduced mother's contact to once every three weeks and supervised by the Social Work Department.
23. Whilst JL was remanded in custody in HMP Perth it was recorded that between 24th September 2019 and 23rd January 2020 LT visited him.
24. On 14th February 2020 he was given a custodial sentence of 3 years and 9 months. He has had no contact with the children for almost two years.
25. On 20th May 2020 an Adoption Panel met and recommended the children be matched to their current prospective adoptive carers. This recommendation was endorsed by the ADM on 3rd June 2020.
26. The children moved to their current prospective adoptive carers on 19th February 2021.

27. The report by Jenny Foley, Chartered Counselling Psychologist, dated 13th December 2020 and instructed by the parents is what it bears to be, but the opinions contained within it are not agreed.

28. Both LT and JL were offered supports from a number of different agencies such as the Rock Trust and Safer Families and Throughcare and Aftercare. Both parents took part in a 12 week parenting assessment at Hailesland Early Years Centre from 12 April 2016.

Though the parents did not attend all sessions.

29. NTT first came to Social Work's attention in August 2015. This followed two police reports relating to incidents of domestic abuse between LT and JL. There were also concerns raised by NTT's health visitor because of a lack of engagement with health services.

30. In 2016 there were a number of police reports relating to domestic incidents and JL assaulting LT. During home visits the flat was frequently observed to be unhygienic and cluttered. There were also concerns about engagement with professionals, gatekeeping, routines and attendance at the nursery. On 10 December 2016 LT said she had ended her relationship with JL and would parent the children on her own. This was immediately after a serious physical assault on LT by JL, witnessed by both children.

31. Although LT's attendance at contact was generally good, it was noted that she was unable to take advice on board about meeting the children's needs. LT failed to engage with the Incredible Years Parenting Programme that she was offered.

32. After JL was arrested for drug dealing LT told social workers that JL was initially released on bail then it was discovered he had been remanded in Perth prison from 18 September 2019 and LT had been visiting him there three times a week. On 4 November 2019 LT admitted to social workers she was in a relationship with JL and always had been.

LT had previously denied being a relationship with him on numerous occasions. LT said the reason she lied was to delay permanency planning for the children.

33. After the children were accommodated LT had contact with them which was reduced over time. LT cannot look after and manage the children. She has no insight into her own inability to parent the children safely. Her relationship with the children is akin to that of a big sister. Despite many attempts to train LT to parent the children she is incapable of doing so. This will not change and there is not viable proposal that would indicate she can change.

34. JL has no relationship with the children. His early contact with them was positive but after LT and JL separated he disappeared for a period and has now ended up in custody. The children barely remember him and seldom mention him now. He is incapable of rearing the children.

35. Once taken into care the children's behaviour was noted to be maladjusted. They have greatly improved in their foster placement. They are making progress in the care of the prospective adopters. It would be seriously detrimental to the welfare of both children to reside with either natural parent.

36. Both parents are motivated to destabilise any permanence or potential adoptive placement. LT cannot accept that she is a poor parent who has damaged the children. She is incapable of rearing the children safely.

37. JL remains in a relationship with LT and supports her. LT has been in other abusive relationships while JL was in custody.

38. Direct post permanence contact would be destabilising to any permanence placement which is what LT wants.

39. The children are happy in a safe placement which constitutes a good opportunity, if they are adopted, for them to have a stable family life in their childhood and future life.

Finds in fact-and-law

1. On the facts established in relation to the conduct of LT on 26 February 2018 [para 13], residence with LT is likely to be seriously detrimental to the welfare of EST in terms of section 84(5)(c)(ii) of the Act.
2. On the facts established in relation to the conduct of JL and LT on 16 August 2019 [para 20], residence with either or both JL and LT is likely to be seriously detrimental to the welfare of NTT and EST in terms of section 84(5)(c)(ii) of the Act.
3. On the facts established, in relation to the potential risk of harm posed by JL and LT; and the likely inability of JL and LT to protect NTT and EST from that harm, residence with either or both of them, is likely to be seriously detrimental to the welfare of NTT and EST in terms of section 84(5)(c)(ii) of the Act.
4. On the facts established, in considering whether to make a permanence order in respect of NTT; having regard to the need to safeguard and promote her welfare throughout her childhood, as the paramount consideration, in terms of section 84(4) of the 2007 Act; having regard to; her views as ascertained by her Curator *ad litem*; her religious persuasion, racial origin and cultural and linguistic background; and the likely effect on her of the making of the order; that it is, in terms of section 84(3) of the 2007 Act, better for her, that a permanence order be made than that it should not be made, because, her residence with JL and or LT, is likely to be seriously detrimental to her welfare.
5. On the facts established, in considering whether to make a permanence order in respect of EST; having regard to the need to safeguard and promote her welfare throughout

her childhood, as the paramount consideration in terms of section 84(4) of the 2007 Act; having regard to her religious persuasion, racial origin and cultural and linguistic background; and the likely effect on her of the making of the order; that it is, in terms of section 84(3) of the 2007 Act, better for her, that a permanence order be made than that it should not be made, because her residence with JL and or LT, is likely to be seriously detrimental to her welfare.

6. In so far as the permanence order sought seeks authority for NTT to be adopted; LT understands the effect of but does not consent to the making of an adoption order in relation to NTT; she has parental rights and responsibilities in relation to NTT but is unable, satisfactorily, to discharge these; and is likely to continue to be unable to do so; therefore, in respect that the Applicant has requested that the permanence order sought, includes authority for NTT to be adopted; and being satisfied that NTT has been or is likely to be placed for adoption; finds that it is, in terms of section 83(1)(d) of the 2007 Act, better for her, on the facts established, that authority for her to be adopted is granted, than, if such authority is not granted; accordingly dispenses with the parental consent of LT and grants such authority.

7. In so far as the permanence order sought seeks authority for NTT to be adopted; JL understands the effect of but does not consent to the making of an adoption order in relation to NTT; he has parental rights and responsibilities in relation to NTT but is unable, satisfactorily, to discharge these; and is likely to continue to be unable to do so; therefore, in respect that the Applicant has requested that the permanence order sought, includes authority for NTT to be adopted; and being satisfied that NTT has been or is likely to be placed for adoption; finds that it is, in terms of section 83(1)(d) of the 2007 Act, better for her, on the facts established, that authority for her to be adopted is granted, than, if such

authority is not granted; accordingly dispenses with the parental consent of JL and grants such authority.

8. In so far as the permanence order seeks authority for EST to be adopted; LT understands the effect of but does not consent to the making of an adoption order in relation to EST; she has parental rights and responsibilities in relation to EST but is unable, satisfactorily, to discharge these; and is likely to continue to be unable to do so; therefore, in respect that the Applicant has requested that the permanence order sought, includes authority for EST to be adopted; and being satisfied that EST has been, or is likely to be placed for adoption; finds that it is, in terms of section 83(1)(d) of the 2007 Act, better for her, on the facts established, that authority for her to be adopted is granted, than, if such authority is not granted; accordingly dispenses with the parental consent of LT and grants such authority.

9. In so far as the permanence order seeks authority for EST to be adopted; JL understands the effect of but does not consent to the making of an adoption order in relation to EST; he has parental rights and responsibilities in relation to EST but is unable, satisfactorily, to discharge these; and is likely to continue to be unable to do so; therefore, in respect that the Applicant has requested that the permanence order sought, includes authority for EST to be adopted; and being satisfied that EST has been, or is likely to be placed for adoption; finds that it is, in terms of section 83(1)(d) of the 2007 Act, better for her, on the facts established, that authority for her to be adopted is granted, than, if such authority is not granted; accordingly dispenses with the parental consent of JL and grants such authority.

The Issue

[1] JL and LT were teenage parents. They had two girls, now 7yrs and 5yrs. They could not look after them properly. There was domestic abuse in the house, which the children witnessed. JL got into trouble and ended up in jail where he is now. LT could not look after the children alone. They eventually ended up in care. JL has had very little contact with the children. LT has restricted contact with them. The children were initially fostered and are now placed for adoption with a couple who want to adopt them. JL and LT do not consent to adoption. LT wants to be-rehabilitated with the children. JL thinks that is best for the children and he wants contact with them while they are with LT. The parents instructed an expert psychologist to help their case. The parents do not agree to the local authority application for permanence with authority to adopt. If permanence and ultimately adoption were to occur, the parents want regular direct contact with the children. A curatrix *ad litem* for the children was appointed who obtained the views of the oldest child, in so far as is reasonably practicable, given their ages. I heard a proof on all these matters. I heard two pre-proof hearings but on the morning of the proof, a late motion was made by the respondents to disclose the names and address of the prospective adopters so that they could be called as witnesses in relation to future contact. This was opposed by the petitioners, on the basis that their views were known, with regard to contact. I refused the motion because the views of the prospective adopters are known from the report of Jenny Foley and the affidavits of BMcG and CEB, all of whom gave evidence.

The evidence.*The Petitioner's proof.*

BMcG social worker gave evidence.

[2] BMcG gave an affidavit, which she adopted. She holds a First Class Honours degree in Social Work and also a HNC and NC in Early Years. She has also completed a Postgraduate Certificate (with distinction) in Applied Professional Studies (Child Welfare and Protection). Prior to qualifying as a Social Worker and worked as an Early Years Officer for 17 years. She first became the allocated Social Worker for the children in April 2016 just before EST was born. At that time, NTT was accommodated with a rehabilitation plan to return her to her parents' care. The parents were together when she became involved. NTT first came to Social Work's attention in August 2015. This followed two police reports relating to incidents of domestic abuse between LT and JL. There were also concerns raised by NTT's health visitor because of a lack of engagement with health services. A Social Worker was allocated to carry out an assessment. On 29 October 2015, a Child Protection Order was applied for due to serious concerns for NTT's physical and emotional wellbeing and that her developmental needs were not being met. The order was granted, and NTT placed with departmental foster carers. Both LT and JL were offered supports from a number of different agencies such as the Rock Trust and Safer Families and Throughcare and Aftercare. Both parents took part in a 12 week parenting assessment at Hailesland Early Years Centre from 12 April 2016. Though the parents did not attend all sessions it was felt there was enough to promote attachment and provide support in relation to rehabilitating NTT to her parents.

[3] The witness said EST was in the care of her parents after she was born. Her name remained on the Child Protection Register in reflection of the ongoing concerns related to

domestic abuse and parenting incapacity. Although the rehabilitation plan for NTT continued to be progressed this took longer than anticipated. JL and LT were not always able to follow the agreed rehabilitation plan or adhere to NTT's established routines. NTT returned home on 27 October 2016. Over the next few months there were a number of police reports relating to domestic incidents and JL assaulting LT. During home visits the flat was frequently observed to be unhygienic and cluttered by involved social work staff and the wider multi-agency team. There were also concerns about engagement with professionals, gatekeeping, routines and attendance at the nursery. On 10 December 2016 LT said she had ended her relationship with JL and would parent the children on her own. This was immediately after a serious physical assault on LT by JL, witnessed by both children.

[4] The witness said that throughout 2017 there continued to be concerns around LT's ability to meet the children's emotional, developmental and health needs and to keep them safe due to certain adults she permitted in the family home. On 26 February 2018 social work were contacted by the police as EST, who was 21 months old at the time, had been found by a member of the public, alone in the street, around 3.40pm. It was cold that day and EST was wearing only socks, trousers and a thick top. The police made door-to-door enquiries that included LT's home. It was only when the police appeared at her door, around 4.55pm, that LT realised EST was missing. The witness stated that following this incident, and the other continuing concerns, a Children's Hearing, on 21 March 2018, decided the children should be accommodated. Both children were placed with departmental foster carers. LT was to have contact with the girls a minimum of four times a week for a minimum of one hour. The children then moved to foster carers, on 22 May 2018. A Children's Hearing, on 28 June 2018, reduced LT's contact to a minimum of twice a week for a minimum of two hours. JL's whereabouts were unknown at this time. It was agreed at

a Looked After and Accommodated Review (LAAC), on 24 July 2018, that there should be parallel planning for the children. Although LT's attendance at contact was generally good it was noted that she was unable to take advice on board about meeting the children's needs. LT failed to engage with the Incredible Years Parenting Programme that she was offered. The witness said she also struggled to maintain her tenancy and she had rent arrears accruing.

[5] The assessment of the girls returning to LT's care continued and at a Children's Hearing, on 28 August 2018, the affiant proposed that there be a six week period of increased contact in terms of duration and frequency and a reduction in supervision as part of an assessment to see if LT could resume care of the children at home. The hearing agreed and contact took place a minimum of three times a week supported by social work. Observations of the increased contact demonstrated that LT was not able to consistently meet the children's needs. The witness said it also appeared the children were struggling emotionally with the increased level of contact and it negatively impacted on their usual routines. During this period of increased contact NTT began to engage in body focused behaviours, including scratching her genitals and nose until they bled. This lasted for several months. Observations indicated that these behaviours were linked to contact with her mother. At a LAAC Review, on 10 October 2018, the decision was made to refer the girls to a Permanence Panel. At this same LAAC Review it was agreed that from the beginning of November 2018 contact between the girls and their mother should be reduced to two hours, three times a week, to be supervised by social work and early years staff. The witness said this was in recognition of the observations from the increased contacts. A Children's Hearing, on 23 January 2019, decided to reduce the girls' contact with their mother to once a week again to be supervised by social work. After LT appealed the decision, EST's contact

only was increased to twice a week for two hours. The recommendation from the Adoption and Permanence Panel, on 14 March 2019, was to register the girls as in need of permanence and this was agreed by the Agency Decision Maker. The witness said the legal route was deferred to allow Family Based Care to search for prospective adopters for the children. LT's contact was then set at once a week, for both girls, at a Children's Hearing on 30 April 2019.

[6] A police concern report, dated 16 August 2019, was received relating to a drugs search of LT's tenancy where drugs, including heroin, crack cocaine and cannabis were found with a street value estimated at £50,000 [although parties agreed the sum of £15,000 in the Joint Minute]. The police also recovered £2,000 [£1,000 in the Joint Minute] in cash and drug dealing paraphernalia. JL was in the flat at the time and told police he lived there with his girlfriend LT. JL was charged under the Misuse of Drugs Act as was LT later. The witness said JL was initially released on bail then it was discovered he had been remanded in Perth prison from 18 September and LT had been visiting him there three times a week. When the witness discussed this with LT, at a meeting on 4 November, she admitted she was in a relationship with JL and always had been. LT had previously denied being a relationship with him on numerous occasions. LT said the reason she lied was to delay permanency planning for the children. A social worker from North East locality children and families practice team carried out what was thought to be a positive piece of work with LT over a period of several months, starting in October 2018, based on therapeutic principles relating to recovery from domestic abuse. However, this work was not meaningful as LT was subsequently found out to be still in a relationship with JL. A review Adoption and Permanence Panel was held on 21 November 2019 with a recommendation for the local authority to apply for Permanence Orders with Authority to Adopt for both children. This

was also agreed by the Agency Decision Maker. During 2019 LT's contact was once a week and normally supervised in a room in Fort Early Social Work Centre. The contact took place inside the room and garden for safety reasons following on from drugs being found in LT's flat in August 2019. It was said by the witness that the risks to the girls were too great to have contact in community settings. There were persistent observations of what she called the children's regressional, oppositional and dysregulated behaviours during contacts and LT's inability to be consistent in her responses during the contacts. The endings of contacts were highlighted as particularly difficult for the girls to manage. LT was unable to fully adhere to agreed plans for the endings and was making these last longer than necessary with no clear boundaries. At the children's LAAC review held on 24 September 2019 it was agreed that social work would offer LT and the girls a higher level of additional support throughout the contacts, intervening as required. The witness said LT was not in attendance at the LAAC Review to be involved in this discussion as she was visiting JL in prison.

[7] The witness said that during the time the children were with foster carers they made a lot of progress. The foster carers were able to establish routines for the girls and put boundaries in place which they had not experienced at home with LT. Although experienced, the foster carers found it challenging looking after the girls when they moved in. Both children displayed very unsafe behaviours, especially EST. This included running onto main roads, swinging from ceiling light fittings, climbing onto furniture and emptying bottles of liquids. The witness said that when in community settings they would approach unfamiliar adults and children frequently without checking in with carers. They required a high level of consistent supervision to ensure they were safe. EST was scared of males and for a long time would not permit her male carer to be involved in her care. They

demonstrated no outward distress at moving from the care of their mother to the emergency carers and then to foster care a few weeks later.

[8] It was said JL had other charges relating to drug offences all of which resulted in him receiving custodial sentences. The affiant states her Team Leader Susan Rattigan met with JL, in Perth prison, on 29 January 2020 to advise him of the plans for the children. At that time he seemed to accept what was happening, acknowledging that he and LT had not parented well nor worked well with the professionals involved. He also accepted having indirect contact with the girls. A Children's Hearing, on 3 February 2020, gave advice to support the Permanence Orders with Authority to Adopt. A decision was also made to reduce LT's contact to once every three weeks supervised by social work and that JL would have indirect contact also supervised by social work.

[9] With regard to the contact LT has at present, the witness said LT is given advice about how to manage contact but finds it difficult to implement the advice. After lockdown, in March 2020, direct contact could not safely take place and video contact took place instead. Video contact lasted for about half an hour as neither NTT nor EST could tolerate any longer. EST in particular was not able to engage with LT well via video calls. The girls though did seem to cope better when there was less direct contact, in that it had less impact on their daily functioning. Generally, the witness said, the girls cope better with direct contact if it is outside as it is less intense and LT has less opportunities to be intrusive, than if indoors. When contact is outside, they can move away from LT, as she tends to follow them around, and it is easier for them to avoid engaging in conversation with LT. During outdoor contacts NTT and EST normally play in different areas of playparks, with NTT often opting to be close by the contact supervisor. EST will sometimes tell LT to 'go away' or 'leave me alone' when she is too intrusive.

[10] The witness said that whilst looking for a new family for the girls she went to an Adoption Exchange Day, in Stirling, which took place in December 2019. Prospective adopters were there along with their social worker. The witness spoke to them about the girls. There was other interest shown, by potential adopters, but social work staff were taken by the prospective adopters. They came across as being a very warm couple and they were very interested in hearing about the girls. They were accepting of the girls' background and liked hearing about their different personalities. They came back three or four times to ask more about the girls and staff were able to show videos of them as well.

[11] The witness explained the assessment process the prospective adopters went through. The prospective adopters showed insight into the children's life experiences and their need for warmth and support. The witness further explained that at a Permanence Panel on 20 May 2020 the prospective adopters were matched with the children. It had been hoped to move the girls shortly after this but by then the applications for permanence orders were in court and being opposed by both LT and JL. However, when an interim order was granted, on 23 December 2020, to allow the girls to move, the social work department were able to start the process of moving the girls. A co-ordination process was set out as this was important to make it a positive move for the children. The couple had made books of introduction for each of the girls. The witness took them with her when she went to tell the children of their new family on 28 January 2021. NTT asked things such as would she still see her foster parents and spoke of how she would miss them. NTT also asked about the prospective adopters, what they liked to do, how many bedrooms they had and about the dogs they have.

[12] The witness said the introductory visits went well and the girls moved on 19 February 2021 on a fostering basis. The placement is still in its early days, but it is going

as well as can be expected. The witness said it was intense to start with and tricky with the children regressing in some of their behaviours. Both children have safe spaces created for them in the home where they can spend short periods of time if they need this. The girls had been with their foster carers for almost three years at the point of moving. The witness thought it was healthy that the children showed a reaction to the move as this indicates they managed to form a secure attachment to their foster carers and trusted them to keep them safe. The witness has visited the children three times since they moved and sees them as getting more and more comfortable in their new family. Several factors have helped. The prospective adopters encourage the children to speak about their feelings and people who are important to them. They adopt a calm and consistent approach and have sought advice appropriately, from the multi-agency support team. They have been able to follow the routine the children had whilst at their foster placement which has helped them to feel safe. The children have now successfully started at the local school and nursery.

[13] With regard to ongoing contact, the witness said that on Thursday 4 March 2021 she collected the children to take them to have contact with LT. When they arrived the girls immediately went off in different directions. LT followed EST and tried to help her in the playground but EST did not want her help and told LT that. NTT choose to play on equipment and did not answer LT when she asked about her move. LT gave the girls a necklace each with photos in them of her with each of them. Prior to the contact the witness had two phone calls with LT where the necklaces were discussed in detail. LT wanted the children to wear the necklaces as a reminder that she loved them. However, the witness was concerned the necklaces could symbolise a different meaning for the girls, a reminder of their unsafe care experiences whilst living with their mother. She had advised LT that, whilst the sentiment was nice, the timing would not be appropriate. She had strongly

advised that LT either hold onto them until a later date or the witness could pass onto the carers to keep for them. The children showed little interest in the necklaces with NTT opting not to wear hers when LT asked her directly. The witness said she showed the necklaces to the prospective adopters, with the children present, when they got back, and they put them in the memory boxes the girls have. Neither child has asked to look at the necklaces since.

[14] Further, the witness stated that on 25 March 2021 another direct contact took place between LT and the children. The witness spoke with LT on the phone prior to this date to give advice about contact and feedback from the previous contact. LT asked if she could bring them a chocolate Easter egg. The witness asked if LT meant something like a small egg with a chocolate bar, she said yes, and the witness agreed this would be fine. LT arrived at the contact with two large bags containing Easter eggs. This included, for each child, huge chocolate bunnies, two large chocolate Easter eggs and approximately 10-12 smaller eggs/chocolate treats. LT bringing extensive sweet treats to contacts has been a feature over the years. She has continuously been advised not to do so due to health and behavioural issues. EST, who has teeth removed due to dental decay incurred whilst at home with LT, can become very focused on sweet things. The witness said she is aware, as is LT, that EST has become overtly distressed when the fosters carer had to limit access to the sweet treats from LT.

[15] The witness said she is concerned that having direct contact with LT is re-traumatising the children at a time when a lot is expected of them emotionally in terms of developing attachments to their new carers. She said that en route to both contacts NTT asked her for clarification about why she is not living at home. She requested specific details about traumatic events such as when EST was found alone in the street and when JL assaulted LT. On the way to contact on 25 March 2021 NTT spoke of crying when Daddy J

hurt Mummy L, asking if, she or EST cried the loudest. She said she thought she had cried the loudest and for the longest. EST contributed a little saying Daddy J was “bad” and “not nice”. The prospective adopters have noted that the children do not speak about LT apart from immediately before or after contacts. They have noticed both girls are louder and more excitable following on from contacts but report this subsides around 2-3 hours later. They are not currently observing contact to impact the children’s functioning to the same extent as when they were cared for by foster carers. The children were able to feel safe to show their true feelings when living with foster carers as they developed trust in them. As they have only recently moved to the care of the prospective adopters, they are building trust and a sense of safety. After the contact on 25 March 2021 NTT told them that she remembered Daddy J and Mummy L shouting and Daddy J kicking and hitting Mummy L.

[16] The witness continued LT has recently been in another relationship which was abusive. The witness was only made aware of this relationship when she received a police concern report detailing how LT was assaulted. The witness said she cannot be sure if LT and JL have resumed their relationship or not. They have lied before about ending their relationship when they had not and kept up this pretence for almost two years. LT has said JL phones her about three times a week but says they are just friends. Around June 2020 the witness contacted HMP Glenochil and established that between 6 January and 11 February 2020 LT had visited JL on around eight occasions despite LT denying she had visited him. After visits were stopped, due to the coronavirus, there were regular phone calls logged from JL to LT.

[17] With regard to JL’s contact with the children the witness said JL is still serving his sentence in Glenochil Prison. He does not have a relationship with the children. She is not sure when he last saw the children as he may have seen them when LT was having

unsupervised contact around September/October 2018 but he certainly has not seen them since. Prior to that, JL did not have supervised contact with the girls, as he could have done, since March 2017. In October 2020 the witness phoned JL to discuss with him having indirect contact with the children. She also spoke to a prison social worker as they could help JL with this. JL said he would write letters to the girls. It was agreed JL would write the letters then prison social workers would email to the witness who could call back to give further advice on the content. When the witness spoke to him again, in January 2021, he said he had sent the letters to LT to pass on to but she has not received them. JL said he had copies of the letters so the witness asked him to send those to her but nothing has arrived from him. The witness said JL's early release date is now in August 2021 although he is requesting to be permitted to be allowed out by May 2021.

[18] With regard to the impact permanent residence with the biological parents would have on the children, the witness said, she believes it would be seriously detrimental for the children to be in JL's care due to the history of abusive behaviours when he was involved with their care and due to not maintaining contact with the children when he could have done. Nor did he maintain contact with the witness after the children were accommodated to find out about the children. He failed to let social work know where he was staying so he could be notified about LAAC Reviews or Children's Hearings. Also, the witness repeated, JL does not have a relationship with the children.

[19] Further the witness stated she believed it would also be seriously detrimental for the children to be in LT's care due to the neglect they suffered when in her care, the ongoing concerns regarding her ability to keep them safe and the difficulties LT has been assessed as having in meeting the girls' needs in contact.

[20] She said the children need a stable and secure family in which to grow up in and be in for the rest of their lives. The prospective adopters want to adopt the girls if the Permanence Orders with Authority to Adopt are granted. She said she believes it is better for the girls if the orders are granted than not granted. The prospective adopters are able to offer them safe and nurturing care and be responsive to their needs as they grow and develop.

[21] With regard to future contact she said once yearly indirect contact can be maintained between the children and their parents to help give them a sense of their identity. The prospective adopters are supportive of the children knowing their life story, building on the work started by their foster carers and social work. Direct contact continuing between LT and the children, post adoption, would not benefit them. The witness said she had seen the report prepared by Jenny Foley and she did not believe it contains a comprehensive assessment of how contact impacts on the children's sense of safety and their development. The witness said she had a number of significant concerns with regards to LT's request for ongoing direct contact. Having contact with their mum LT, who was unable to offer them consistently nurturing and safe care, continues to evoke a range of feelings in the children. LT's actions during the contacts, such as bringing excessive amounts of chocolate, are undermining of the prospective adopter's role and act as a reminder of the children's early care experiences. She said it is asking a lot of the children, to begin to transfer their trust to prospective new parents and feel secure, whilst still having direct contact with their mother. There is likely to be longer recovery times required as the girls start to feel safer and trust their prospective adopters. The witness said she would be worried that having direct contact could compromise their safety as they grow and develop.

[22] In further examination, she said she would support indirect letterbox contact. She did not consider including photographs that could potentially identify where the children reside or their school would be appropriate in this case. The natural parents could include photographs of themselves as part of the children's life story. With regard to direct contact post permanence or post adoption she said the prospective adopters were opposed to direct contact. Once the girls were teenagers it might be different depending on their needs and development. The witness indicated that the prospective adopters were considering withdrawing if direct contact continued after permanence, were that to be granted. She said these children have been waiting a long time for a placement. She said honesty is very important if there is to be post adoption contact. She said LT had lied about her relationship with JL to delay permanency planning. She said social work worked really hard with LT over 3 years but she lied. The witness would be concerned JT would use contact to undermine the placement.

[23] In cross-examination she said LT had matured somewhat since 2016 but she did not engage the supports she was offered. The witness said that LT did attend the majority of contacts but she could not give effect to the advice she was given about how to manage the children. She cannot follow through on advice she is given. The witness said the children given their ages are unlikely to get another placement if the present one fails. She also said that at such contacts as JL had with the children he engaged well with them.

SJB social work assistant

[24] SJB (57) supplied an affidavit and gave evidence to supplement that. She first became involved with LT in 2017. Her job was to help LT with parenting work. LT was separated from JL at that time. She said LT could not follow through in the parenting advice

she was given. She said she had the impression that the children were just pleased there was someone there who would give them some attention. She did not observe LT responding to the girls in the natural way she would expect a mother to. Though LT would get down on the floor to play with the girls it did not feel natural play, more orchestrated, because she was there. She said as LT knew when she was going in she did find the house clean, the washing would be done, LT would have the girls' room organised, she would have toys where the girls could reach them. However the affiant said BMcG would describe the house as being in chaos when she visited unannounced. It felt as if LT needed someone there all the time to keep on top of the housework. She said there had been a welfare concern when EST had gone missing from the family home on 26 February 2018. The girls were both accommodated from a Children's Hearing on 21 March 2018. After this LT spoke about the children not going back to her and EST going to be adopted but not NTT. She seemed to be accepting that she had not done what she should have done. When talking about such things LT came over as unemotional. The witness said that when she would have sessions to give feedback to LT she would always just agree. With regard to the contact she supervised she said when children then started attending Fort Early Years Centre and if contact took place in the Centre, which provided an enclosed setting, the contact with LT was more manageable than when it took place outside. In the summertime, the contact often took place outside in a park. LT was not able to keep the girls safe as she was not able to put boundaries in place and she did not seem to be aware of the risks to the girls. When the witness had to supervise the contact she had to intervene a lot to make sure the girls were safe. EST would just run off and LT appeared to have no idea how to keep them both safe. In an enclosed setting they managed better. LT found it hard to divide her time between NTT and EST. NTT at this time could be very demanding of her mother's

attention and EST, being younger, would just do her own thing. She said right from the off with contact safety was an issue and LT did not seem prepared for contacts. LT had to be reminded to hold the girls' hands if we were out walking with them and the girls did not listen to her. It seemed clear boundaries had not been in place before and the children either did not listen, or could not listen, to LT. She said generally, she felt LT found it hard to manage two children. NTT had the louder voice, was more dominating in the contact and LT tended to focus on her. If LT did not pay attention to NTT she became upset and would make loud noises. EST would just play away by herself. The children liked being outside a lot, walking to a park or the library but again there were always the issues around safety. LT would let go of the girls' hands and they would run off. LT would then expect the girls to stop when she shouted 'stop' but they didn't. So that is why we took the contact back to the Fort – it would either be inside or in the playground there. It was too much to manage the contact outside. The witness said she would arrange to meet LT on a weekly basis to give her feedback about the contact sessions. This was feedback from herself and the others who were involved supervising the contact. She would write everything down for her about what was not working and different ways of trying things. For example, if NTT was having a tantrum the witness would say to LT to just to let her go and focus on EST and give her some attention. The witness said she thought EST would often run off as a way to get attention. Most of the contact notes go on the local authority Swift system and these are a fair reflection of what happens. The witness said when she gave LT feedback she would agree with what the witness said. The witness tried to get LT to think of breaking the session down, for example, reading a story, having a snack and then have a play. The witness also talked to LT about not bringing lots of snacks as she tended to do and the girls would eat them, because they were sweets and such things, even if they had just had their

lunch. LT could take on board what the witness said but it would maybe last a week and then the witness was back to saying the same things over and over. The witness said she probably supervised about 12 contacts a year – sometimes on a fortnightly basis and sometimes there were longer gaps in between the contacts.

[25] The affiant said she talked to LT about the need to keep the girls safe and she would say to her to have a plan in place for the contact the next week, to think which park we might go to, and remind her of the need to hold the girls' hands until we were inside the park. If one of the girls asked to get on LT's shoulders, whilst walking to the park, she would do this rather than keep walking and holding their hands. It was like talking to a brick wall having to always repeat about the need to keep the girls safe. If we went in a car to meet at a park, an enclosed space, and then back in the car it was easier and safer. It was a nightmare walking to and from the park. The witness said LT has always found ending contact difficult, the endings would take so long, saying goodbye took so long it was almost as if LT was prolonging the ending so the girls did become upset rather than just saying 'goodbye' and going. By prolonging the ending the children would become hyper and the foster carer, who came to collect the girls, would have to tell LT to go so they would stop demanding her attention. The witness said during the time the children have been accommodated the times of contact have varied, starting off for 2 hours at a time and then reduced to 1 hour 15 minutes as the girls did not cope with 2 hours and this showed in how they behaved before, and after, contact. It was then further reduced to be 1 hour and then for 45 minutes. The witness said overall she felt LT was inconsistent in managing the girls in contact, and she did not take on board the feedback she was given, it was like saying the same things over and over again.

[26] The witness said LT loves her children but their safety was a huge issue and she did not pick up on the girls' cues. For example, if we were outside and they were playing on their bikes LT would run alongside EST, as she was peddling, rather than just letting the children play. LT did not have to be so close to them all the time particularly to EST who made it clear she did not want this. The witness said NTT had an insecure attachment to her mother. NTT would worry if mum was not there for contact when we got there and she would be anxious if LT was late. If LT did not turn up the girls would play with the witness instead. Given how the girls were indiscriminate then I would say the girls did not have a close attachment to their mother. The children did not look for cuddles from LT. They did not seek physical contact with her. LT would have to ask them for a cuddle.

[27] The witness said she suggested to LT to read a story towards the end of contact so she could sit on the sofa and have the girls cuddle in and though NTT quite liked that EST did not. It did not seem natural to LT to do something like this. LT took too literally what the witness had suggested about breaking the contact up by setting the alarm on her phone to change an activity after 10 minutes or so. This was not natural and the witness would feedback that it was ok if LT did not get through all the activities she had decided to do.

[28] The witness said she do not feel LT would be able to look after NTT and EST and give them what they need. She said she was pleased prospective adopters have been found for the girls as they need a family of their own to provide them with a secure and loving home.

[29] In cross-examination the witness said she had a good relationship with LT but there was no consistency in her management of the children and she would not take and give effect to advice she was given. The witness said LT tried but was unable to take and give effect to the advice she was given. She said LT found it hard to say no to the girls. She

could not put down boundaries. The girls got upset and LT could not manage them. She repeated there were safety issues all the time. LT couldn't pick up on the girls cues. She stated she did not think LT had really matured over the past 4 years.

CEB senior practitioner at the St Andrew's Children's Society, Edinburgh.

[30] CEB (65), senior practitioner at the St Andrew's Children's Society, Edinburgh provided an affidavit and gave evidence in support of it. She has a BA Hons. in Psychology from 1978 and a Master of Social Work (MSW) from 1980 which includes a CQSW (Certificate of Qualification in Social Work). She also has a Post Qualifying Masters Certificate in Securing Children's Futures from 2009. After qualifying as a Social Worker she commenced working in a local authority. Initially she worked full time as a generic social worker for four and a half years. This covered everything from working with children and families to community care and mental health. She worked part-time for many years; first as a Mental Handicap Resource Worker, then as a Social Worker in Children and Families and from 1995 until 2012 as a social worker in fostering and adoption with the Family Placement Team.

[31] The witness said in her current post she helps with recruiting, preparing and assessing prospective adopters as well as long term foster carers. She also provides training and support to adopters. She is involved in post approval family finding, placing children and providing post adoption support. Through the preparation groups and assessment of prospective adopters the Society covers such areas as the backgrounds of children who are fostered and adopted, attachment issues, the impact of loss and trauma that children may have experienced as well as the effects of abuse and neglect. It also cover possible contact between an adopted child and their birth family both direct and indirect; and the importance

of life story work. During preparation groups candidates and trainers talk about understanding attachment, how children can regress, how they experience loss and the need for support networks such as family and friends. Also, they discuss about 'funnelling' when a child is placed - the need to focus on attachment, safer caring and gradually introducing new people to the child. New adopters and foster carers enjoy and value the input from experienced adopters and foster carers who have gone through the experience themselves.

[32] The witness explained in detail the journey of the prospective adopters in this case, who they were, their background, their present circumstances, how they first became aware of the children, the introductions and how the placement is proceeding. All of this was positive and constructive.

[33] The witness indicated that neither she nor the prospective adopters supported post adoption direct contact in this case. The witness said she thought it would mean the girls continuing to be collected by social work to go for contact and it would be a disruption to normal family life. It would make it hard for the girls to settle and for them to consolidate as a family. The prospective adopters would not deny the children knowing about their origins or their past. It would be confusing though for the girls if there was ongoing direct contact. It might disrupt the security and stability it is hoped the girls will have in an adoptive family. The witness said the girls miss their foster carers but they do not mention LT much. Indirect contact once a year would be appropriate. Once a year is enough due to the busyness of family life. The witness said this could be two way though, as in other cases, if the parents miss two opportunities to write to the children then the adoptive parents do not have to continue writing to them. The witness said she did not think photographs should be given as part of the indirect contact due to the risks that they could be put on social media by the birth parents or others. There would be no way of policing this or

retracting the photographs if they did appear on social media. Photographs appearing on social media could pose risks to the security and safety of the children.

[34] In cross-examination the witness explained the prospective adopters consider that direct contact has caused a lot of anxiety for the children both before and after. Anxiety has been caused by their knowledge that their father has been in prison and his abusive behaviour to LT by punching and kicking her. Such discussions have occurred in the car going to and returning from direct contact. The witness explained the prospective adopters want to give a positive life experience to the girls. She said this is a relatively new placement, the childrens emotions are 'all over the place'. The witness said the children are happy and that letterbox contact would be best. Ms Conroy in her cross-examination suggested a year was too long a time for contact. The witness did not change her view that yearly indirect contact was in the best interests of the children. In re-examination she indicated that photographs from the natural parents could be included in the letter from them but it should be for the adopters to decide how and when to share the information supplied with the children.

LML foster carer

[35] LML (59), the girls' foster carer, supplied an affidavit and gave evidence. She is a foster carer with The City of Edinburgh Council and with her husband has been for 24 years. During that time they have fostered ten children altogether. She is registered to take up to two children aged between 1 and 6 years old.

[36] The witness stated she had looked after the children from May 2018 until they were placed with the prospective adopters in February 2021. She said it was quite an eye-opener when the girls arrived as their behaviour was very, very, challenging, dangerously so. We

live in a second floor flat and they would try to climb on the bannister in the stairwell. They would be jumping around in the flat, they pulled things off the walls including a mirror and EST managed to pull the TV over. They were lucky not to get hurt given that they would climb everywhere. They even managed to pull the fireguard out which was securely fixed to the wall. She said she was very concerned for their safety as they would climb on top of the fridge, on top of wardrobes and jump on to the bunk beds. The witness and her husband had a lot of experience as foster carers so they could manage their behaviour but they wondered if this placement was right because of the safety issue. It was as if the children did not listen or did not hear what you said to them.

[37] The witness explained how contact worked before and after Covid started. She explained how the children reacted when they moved to the care of the prospective adopters. She described how the move to the adopters was managed and how the children seem to be settling into their new home. The witness said she has never had contact with the girls' father she only saw JL once at a review. The witness concluded it was the right decision to move the children as they needed to be settled in a new family and though they need to be given time to settle she was sure this is the right family for them.

[38] In cross-examination the witness said that neither child had been seriously hurt in her care. NNT had pulled a window off a wall. It was put to the witness that these were boisterous children who loved their mother.

Documents relied upon

[39] The applicant also relied upon the contents of the Local Authority Social Work Reports lodged in Process with the applications, as well as the terms of the Joint Minute of

Admissions, the affidavits (already referred to) and, the three reports provided by the *Curatrix* ad litem Mrs Marion Foy, which in this case it was said are especially significant as they provide the court with very up-to-date information on the views of the children, through her interview with NTT and prospective adopters.

The Respondents proof

LT

[40] LT (22) submitted an affidavit which she adopted and then gave evidence. In her affidavit she stated she had the children when she was young and since the children have been out of her care she has matured considerably and deserves another chance to look after the children permanently. She accepted there were aspects of domestic abuse within the relationship with JL. She thinks now she should have left JL at an earlier stage. She may have had undiagnosed post-natal depression after the birth of NTT in addition to mental health issues. The affiant suggested she has not been given a proper opportunity to prove she is capable of caring for the children. She states she is now more mature and should be given another chance. She acknowledges that her relationship with JL was toxic and she ought to have left him. She states:

“5. This behaviour by me continued following NTT being removed from my care by way of a Child Protection Order. I did engage more with the Social Work Department but JL was often shouting and being abusive towards me despite me being pregnant with EST. I received intensive help from Rock Trust who helped me with my tenancy and finances, but I still felt as though I was in a difficult position as I wanted my children to have a father and felt that it would be best for them if I was still in a relationship with JL. This was further complicated by JL not accepting that he had a problem and that this was in relation to drugs and being abusive towards me. NTT’s name was on the Child Protection Register for some time and when EST was born she was also placed on the Child Protection Register. However, I was able to have EST returned to my care when I left the hospital. I attended Hailesland Early

Years Centre and underwent a parenting class and assessment regarding NTT. This resulted in NTT being returned to my care. This was one of the happiest days of my life and I had all of my children living with me, and I was able to be the family I always wanted. Unfortunately, the happiness did not last forever as, only a short time later, after the children had all been returned JL assaulted me. This resulted in JL and I separating.”

The witness goes on to narrate she did have different men in her home but this was “not at a level that would be upsetting to the children”. The witness acknowledges she had difficulty managing money despite financial help from the Rock Trust. The affiant deals with the incident in February 2018 when EST managed to get out of the house on her own and was returned by the police. The witness says:

“I am unsure as to exactly how EST had managed to get herself out of the house, but clearly this was something which T should have been able to make sure did not happen. I am extremely embarrassed and sad that I allowed this to happen. It was shortly after this incident that the Social Work Department took my children off me.”

The witness deals with the gradual reduction of her contact with the children over time and expresses the view;

“I believe that the Social Work Department have used the power that they have to convince Panels to reduce my contact. I do not believe that these decisions were in the best interests of the children. Instead, I believe the decisions of the Social Work Department at that time were simply to make it easier for Permanence to be granted.”

The witness further states:

“Given that the children were placed and accepted for Adoption very early after being in the system, I believe that the Social Work Department have not been considering the children being returned to my care and have not given me a fair opportunity in relation to matters”.

The witness expresses her view that contact with the children works well generally though they may push the boundaries. The witness then explains that if permanence is granted she should have direct contact with the children which she states is in their best interests. The

affiant continues and expresses views about the likely impact of not having direct contact with the children thus:

“I believe that removing me from my children's lives would be like ripping a part of their heart out. The children love spending time with me and the information I receive is that the children are always excited about coming to see me. NTT and EST are not young children. They are children who are aware of their circumstances, who are aware that they do not live with their mum, and therefore I think it would be extremely sad for them to be aware that their mum is out there looking for them and wanting them to live with her, but that the Court has said "no" to this”.

The witness goes on to acknowledge that her behaviour has had a negative impact on the children. She says:

“My behaviour will have had an impact on my children in their past. I cannot take away from the fact that, at times when they were young and vulnerable, I did not make the right decisions. That is something I am deeply regretful of and find hard to accept at times. At times, I have also found it hard to say that to individuals. I know that the children will remember incidents where I have not looked after them, that we have not had enough money to care for them, and I am aware that they will have seen domestic abuse. These are all incidents which will and likely have affected my children. However, I believe that my children are able to put this behind them and I am also able to put that behind them..... In 2020, I fell pregnant again. I decided that I would not continue with the pregnancy as I wanted to make sure that I was able to provide for girls. I think that EST and NTT deserve the opportunity to live with me and for me to show that we can be a wonderful family together. I have learned from my past and I believe that we are able to move forward.”

The witness then deals with her present circumstances and her hopes for the future:

“If I had a magic wand, I would have a new home with my children living in it with me. I am currently unable to move house because of rent arrears of approximately £900 which I am trying to pay back, but finding it difficult to do so. This has stopped me from being able to move on. The house that I am in is not something which fills me with joy. I remember the occasions of the abuse from JL and the difficulties that I had with JL bringing drugs to my house. I would love the opportunity to be able to move forward with my children and to focus my life around my children. I have the support of my mother and other family members in order to be able to look after them and provide support.”

With regard to her relationship with JL the witness said:

“I have not spoken to JL in over a year now. I went to see him initially at the Prison because I wanted the opportunity to have our family together. However, I realised that this was not what was best for my children. I gave up that relationship for my

children and I believe that it is important for my children to realise that I am strong enough to make decisions to look after and care for them.”

The affiant stated she did not accept Jenny Foley’s opinion that she could not look after the children but did accept the expert in so far as she recommended post adoption or post permanence contact. The witness stated she did not agree with the Social Work Department’s plan for the children and stated:

“While I accept and I understand that if Permanence was granted and ultimately Adoption, then the children would have a new mum and dad, I also believe that given the ages of the children and the fact that they know who I am, that it would be extremely upsetting and distressing for the children not to be able to see me. I think that the children would be crying regularly and would often ask to see me. I think that not allowing me contact and only allow a letter a few times a year would leave the children thinking that they were the ones that were doing something wrong.”

In her evidence before me she began by asserting she was the mother of the children and it was in their best interests to be with her. She acknowledged that allowing EST to get out of the house in 2 February 2018 was the biggest mistake of her life. She said she has had an opportunity to reflect on the past and the mistakes she has made. She wants another chance to be reunited with the girls. She explained what happened on the 26 February. She had been out with the girls. They went to Cash Converters. They got back home. The children had gone for a nap. She went to the bathroom. She was on the phone when the police arrived. She did not realise EST had got out of the house. The children were taken away but returned. The witness said she could look after the children. She acknowledged she went for parenting classes but did not attend them all. Since the children have been removed, she has been offered no support. She said the children are demanding but she could look after them. She said she is now more mature. She was a child herself trying to look after the children at the beginning. She said contact was successful. The children bond with her. She referred to strategies she uses to help her manage the children. The children love her and

she loves the children. She said she does everything asked of her by social work. She said she takes the feedback on board and tries to improve. She said that if permanency or adoption are granted she wants direct contact every three weeks. She said she has not tried to interfere with the social work plans for the children. She has not posted the children's pictures on social media.

[41] In cross-examination by Ms Conroy, the witness admitted her relationship with JL was abusive. She said it had its ups and downs. She said it was a fractious relationship. There were physical and verbal fights. She said JL never abused the children and that he adored the children. She repeated she did not get enough support from social work to help her look after the children. In cross-examination by Mr Sharpe she said JL assaulted her in front of the children. He was armed with a knife but didn't use it. This was done in the presence of the children. She acknowledged she picks bad relationships, even recently, but she said she had changed. She said she realises now that the children cannot wait. She said the social work could have given her more support. It was put to her that both she and JL were given supports by social work from Rock Trust and Early Years Charity. She said she was set up to fail. She acknowledged she did not attend all the parenting sessions organised. She accused BMcG of lying. It was put that the social work department supported her to have the two children back home when child protection order could have been taken. She was allowed the children home to see if she could manage on her own. The witness said she wasn't given enough support. It was put to the witness that she cannot take and apply advice given. It was put to the witness that the social work department do not go out actively look for children to put up for adoption. The witness said the social work department know that she can achieve but they are not giving her the chance. It was suggested that what the witness was offering was too little too late. She denied this. The

witness admitted she lied to social work about maintaining her relationship with JL for two years. She said she was not in a relationship with him now. She said she would take advice about how to manage the children but in relation to 'big occasions' in their lives she would spoil the children. She said she did not agree with the opinion of Jenny Foley. She did not agree to adoption.

JL

[42] JL (22) gave evidence. He has not seen the children since August 2018. He said he decided to step back from the children because he was not in a correct frame of mind. He was drinking, taking cannabis, going downhill. He was struggling to cope. He said he was now in custody and clean from drugs. When asked what he wanted for his children he said he wanted them to have a better start in life than he had. He wanted them to have a good education, love care and family support. He said the best place for the children is with their mother. He opposes adoption and supports the children being reunited with their mother. He said LT had changed and she deserved a chance to raise the children as a single parent. He said he was not ready to be involved with the children to begin with. After he was sentenced he did try to contact social work but BMcG did not get back. He said if he could he would turn back time. He was never given bad feedback and always got on well with the children. He said that should permanence or adoption, be granted, that indirect contact was not enough. He said he was now changed. When he is released from prison he intends to start a business breeding attack dogs. He intends to leave Edinburgh on his release.

[43] In cross-examination he repeated that LT did not get the support she needed from the social work department. He said he was not looking for a parenting assessment review for himself. He said the children should not go to the prospective adopters because they are

not family they are strangers. He said he didn't know if the prospective adopters love the girls.

[44] Affidavits from family members CAL, JDL and LSL were lodged by the second respondent. These all indicated that JL had materially changed for the better since his imprisonment.

Jenny Claar Foley BSc MSc Post MSc Dip. Counselling Psychologist, Chartered with BPS Registered with HCPC

[45] Ms Foley who is a psychologist gave evidence. She was instructed by the parents and she produced two reports.

Report 1 dated 13 December 2020

[46] In this report Ms Foley's terms of reference were set out thus:

"I was instructed to comment on the possibility of the children being rehabilitated to either parent, failing which whether contact, direct or indirect, would be in the best interest of the children post adoption."

The expert's assessment comes at para 10.7 and following where she states:

"10.07 The concerns with regards to LT's ability to parent full-time relate to psychological immaturity on her part and lack of understanding of what would be required, especially in the context of the children requiring especially sensitive and competent parenting in light of their experiences to date. EST especially presents in a way that suggests she requires a high level of consistent and safe parenting with clear boundaries being implemented. Through my assessment I did not see evidence of LT having the ability to exercise the degree of authoritative parenting required. The way in which she interacted with the children could be described as that of a big sister. She was able to relate to the children, to interact positively with them and there was a definite rapport there but little evidence of the children viewing LT as a parental figure. NTT seems to feel protective towards her mum and EST as though she would go along with her mum's instructions only as long as it suited her to do so. LT thought that with access to and engagement with any support offered she

would be able to manage to have the children in her care. I am concerned that she underestimates the pressures of being a single parent and that even with plenty of professional support there are many times when it would just be her and the children with nobody around to guide and support her.

10.08 LT appears to struggle to form healthy relationships. She has a history of being caught in abusive relationships. Although she demonstrates a degree of insight with regards to this, there is evidence of her struggling to maintain a distance from negative relationships and therefore a question mark over her ability to gatekeep the children and maintain a socially safe and healthy environment around them.

10.09 To summarise, while I think LT's vulnerability and limited parenting capacity are apparent in the assessment, it is also evident that her ability to interact and respond to NTT and EST in a contact relationship is positive. This is not based purely on observation but on assessment of her psychological parenting representations and reflective functioning (mentalisation) in relation to the girls. Given this profile, there are some positive indicators towards a plan for direct contact should adoption be granted.

10.10 JL has had a very limited role in the children's lives and there is no established relationship between him and them. The children have very limited knowledge of their father and reports through the assessment process suggest that they not talk or ask about him. Due to no direct contact taking place between JL and the girls, I had no opportunity to observe any interactions between them.

10.11 JL came across as honest in talking about his struggles with regards to life, drugs and also when he spoke of the positive changes he has made in his life since his conviction and subsequent imprisonment. I have no reason to doubt his wish to continue to make positive changes in his life. However, he appeared to minimise the troubles with regards to and the abusive nature of his relationship with LT in that his account of events did not align with that of Social Work.

10.12 JL expressed an idealised view of LT in her role as parent and he was overly focused on how Social Work had misunderstood and misconstrued events in the past. His reflective ability and insight with regards to the concerns in relation to the children's care were limited. Especially there was little indication he was understanding of the impact on the children of the destructive relationship between him and LT."

10.13 The children need stability and certainty in their lives. Both LT's and JL's lives currently lack the level of certainty, security and stability the children require. It is clear through my assessment that although LT demonstrates capacity to understand and relate to the children, she remains vulnerable with regards to her ability to manage the children effectively and lacks an in-depth understanding of their needs."

The expert stated in evidence in chief that LT has a naïve idea of what it means to parent. She said that if the correct supports were in place post adoption contact could be beneficial to the children but it would have to be supported by all parties. She indicated she had spoken to the prospective adopters and they did not support post adoption contact. She said they were clear about that. She said that post adoption direct contact with LT might be beneficial to the children but she was of the opinion that given that there was no ongoing established relationship with JL indirect letterbox contact with him would meet the children's needs.

Report 2 dated 13 December 2020

[47] In the run up to the proof the first respondent's solicitor Mr Leiper sought a further report from the expert directed at post adoption contact. The terms of reference of the expert were stated thus in her second report:

"This report has been prepared in line with LT's solicitor, Mr Iain Leiper's, instruction, in the context of LT's wish for direct contact post-adoption with her children to be ordered. I previously conducted a psychological assessment of the case and submitted a report on 13th December 2020. In my report I put forward the opinion that some level of direct contact between the children and LT post-adoption would be in the children's best interest. I understand that the local authority has opposed this view and it is in light of this that Mr Leiper has instructed me to further outline the evidence supporting the notion of direct post-adoption contact."

[48] In the process of preparing this report the expert interviewed Social Worker, BMcG, LT and the prospective adoptive parents. The experts report spent a great deal of time surveying the academic research surrounding post adoption direct contact. The author acknowledged this was a relatively rare occurrence in the UK. She made the following observation:

“My assessment revealed mistrust between LT and Social Work. This would potentially disrupt opportunities for positive direct contact unless resolved, as cooperation and negotiation would be required to enable direct contact to take place. LT would need to demonstrate an acceptance of the adoptive placement and convey this in her interactions with the children to protect the children from experiencing a conflict of loyalty. The adoptive parents would also need to understand the benefits of direct contact and come to accept and support the children’s relationship with LT.”

“In order for future direct contact to be beneficial, it would need to be carefully managed (Iyer et al 2020) with all parties understanding the value of and supporting some direct contact between the children and LT. In the interest of minimising disruption to the children’s day to day life, activities and routines, any direct contact should take place on an infrequent basis such as two to three times per year. It would further be important that LT is able to overtly support the children in their relationships with their adoptive parents and that she is able to convey a positive attitude with regards to the children’s lives with their adoptive family.”

[49] In relation to her assessment of LT for the purposes of post adoption contact the expert stated the following on page 6 of her report:

“5. LT told me that she would find it easier to come to terms with the adoption if some degree of direct contact was ordered. She understood that it would likely be much less frequent than current contact arrangements.

6. LT was of the view that the children would benefit from some direct contact as there is an existing relationship between her and the children.

7. LT said that she would like to be able to be the one answering questions the children might have in the future about their family background and history and she thought that if there was some direct contact in place it would offer opportunities for these type of conversations to take place.

8. She said that she understands that once they are adopted, the children will have two mums. I talked about the importance of the children feeling that they are supported in their relationships with their adoptive parents. LT appeared to understand this, but I believe that she would need support and guidance to enable her to sufficiently convey this to the children.”

In her conclusion the expert stated:

“2. LT would need to engage with support and guidance to ensure that contact was safe and did not create a loyalty conflict for the children. My view is that with a focus on how she can offer something important and meaningful to the children (as opposed to focusing on her failings with regards to her parenting capacity), LT

would feel more positive about the adoption and be more likely to engage with the support offered. This would also benefit the children.

3. Social work would need to be willing and able to offer the level of support required to manage contact to ensure it is beneficial to all parties.

4. For post-adoption direct contact to be positive, it requires the support of all parties and as it stands neither social work, not the prospective adoptive parents support the idea of direct contact in this case.”

[50] In cross examination counsel explored the rich research history surrounding post adoption direct contact which it is not necessary for me to rehearse here. He also explored with the expert what he referred to as ‘the triangle of trust’ which is essential if post adoption contact is to succeed. This involves openness honesty and trust between the biological parents, the prospective adopters and the social work professionals if the direct contact is to work. What did emerge in cross-examination that in my judgment is critical to this case, is that, when asked, the expert indicated she was under the impression that the biological parents in this case supported adoption. It came as a surprise to her to be informed by counsel that both parents in evidence had stated they were implacably opposed to adoption. In those circumstances the expert conceded that post adoption contact would not work in her opinion. In fact, she said there was a real risk it would undermine the placement. She said:

“It’s regrettable but from what I am advised now there is a high risk of the placement being undermined because of lack of support by the birth parents”

Counsel put parts of the Curatrix *ad litem*’s third report to the expert and suggested there was a risk that direct contact post adoption might re-traumatise the children. The witness indicated she was not asked to consider that in her report.

Submissions

[51] Counsel for the Applicant invited me to make the following orders:

- “1. To grant the applications in terms of section 80 of the Adoption and Children (Scotland) Act 2007 (the 2007 Act).
2. To make an order in terms of section 82(1)(e) of said Act that there should only be annual, two-way, indirect letterbox contact with the inclusion of no more than two photographs, and said letters and photographs to be passed on to the children in a manner and at a time deemed to be appropriate by the current carers. Further, the information provided to the birth parents should include, but not be restricted to, the general progress of the children and their everyday activities, their school work, health and general development.
3. To terminate the Compulsory Supervision Orders in terms of section 89 of the 2007 Act.
4. To find no expenses due to or by any of the parties.”

Mr Leiper for the first Respondent invited me to make orders as follows:

- 1.1 To dismiss the petitioner’s application, the statutory test for making a permanence order having not been met.
- 1.2 Esto the permanence orders are granted for NTT and EST, for an ancillary provision specifying that there be direct contact between the Respondent and the children a minimum of once per three weeks (or such other frequency the court deems appropriate), and indirect contact by way of school reports and photographs provided at the end of each academic year in terms of section 82(1)(e) of the 2007 Act.
- 1.3 Esto the permanence orders are granted and the court does not provide for the ancillary provision outlined in paragraph 1.2 above, then for an ancillary provision specifying that there be indirect contact between the Respondent and the children a minimum of 4 times per year and contact by way of school reports and photographs provided at the end of each academic year in terms of section 82(1)(e) of the 2007 Act.

The final orders sought by the second Respondent were slightly more complex *quoad* contact and were in the following terms:

- “1. To dismiss the Petitioner’s Application for a Permanence Order in respect of the children on the basis the statutory test for making a permanence order having not been met, esto
2. To make a Permanence Order an ancillary provisions as follows

- a. specifying Specifying that the Petitioners must provide JL with a report in terms of the children's education, health and development by Recorded Delivery post in March of each year in terms of Section 82(1)(e) of the 2007 Act;
 - b. Specifying that the Petitioners must provide JL with a report in terms of the children's education, health and development by Recorded Delivery post in September of each year in terms of Section 82(1)(e) of the 2007 Act;
 - c. Specifying that JL shall provide the children with one card, photograph of himself and one present on each birthday and each Christmas throughout the duration of the Permanence Order, to be facilitated by the Petitioners;
 - d. Specifying that the Petitioners provide JL with a minimum of five separate colour photographs of the children to be provided to JL in December of each year by Recorded Delivery post;
 - e. Specifying that the Petitioners must provide JL with an educational report for the children a minimum of once each academic year by Recorded Delivery post in June of each year;
 - f. Specifying that the Petitioners must obtain the views of the children in respect of direct contact with JL one occasion per year with the views to be taken by a person or organisation (other than the children's foster carer or carers from time to time by the Petitioner's Social Work Department); and for those views to be provided to JL by the Petitioners in writing by Recorded Delivery within twenty one days of the views being obtained.
 - g. Specifying that any direct contact with the children and JL will take place if deemed appropriated by the Petitioners and in line with the children's views and wishes.
3. To revoke the Supervision Requirement in respect of the children as compulsory measures of supervision are no longer necessary in terms of Section 89(1)(b) of the Adoption and Children (Scotland) 2007.
 4. That there shall be no expenses due to or by either party."

[52] Thus, it appeared to me that parties were agreed there should be no expenses due to or by. There was complete disagreement between the applicant and respondents about whether any form of Permanence Order should be granted but if it was, all parties agreed that the Supervision Requirement in respect of the children should be revoked as compulsory measures of supervision would no longer necessary in terms of Section 89(1)(b)

of the Adoption and Children (Scotland) 2007. However if a Permanence Order is granted parties disagree about the terms of any contact if that is granted as an ancillary provision.

The Law

[53] A veritable legion of authorities was referred to in submissions. I do not analyse these here. They are all well known. They include *TW & JW v Aberdeenshire Council* 2012 CSIH 3 per Lord Bonyon at paras 12 to 14 and *KR v Stirling Council* (2016) CSIH 36 per Lord Drummond Young at paras 12 to 15; *ECC v GD* (2018) SAC (Civ) 5) *The City of Edinburgh Council v GD* (2018) CSIH 52.

[54] So far as is relevant to this case, counsel for the applicant argued that permanence orders are regulated by Part 2 of the Act. He said that with regard to the making of the order sections 80 to 86 are engaged, although sections 80 to 84 are directly relevant to the decision I have to make. In addition, he argued that because the court is coming to a decision relating to the adoption of children, s 14 (2) to (4) of the Act is also engaged. Mr Leiper agreed with counsel's analysis. Ms Conroy only agreed with counsel *quoad* the permanence order sought but argued that on one view of the facts, s 14 is not engaged, if I found as a fact that the prospective adopters did not agree to post adoption contact and I only granted a permanence order. I did not agree with Ms Conroy's analysis for the reasons stated below and accepted the submission of counsel on how I should proceed.

Decision

Witnesses

[55] With regard to the applicant's witnesses, BMcG, JSB, LML and CEB. I found them all to be credible and reliable. They all gave their evidence in an honest and straightforward

manner. They gave me no cause to believe that their evidence was unworthy of belief. I also accepted the evidence of the defence expert Jenny Foley was credible and reliable and given in the knowledge of her duties to the court as an expert witness. I deal with the evidence of the respondents below.

The threshold test in s 84(5)(c) of the Act for a Permanence Order with authority to adopt (parents not consenting).

[56] In reaching my decision in relation to the threshold test for a permanence order with authority to adopt where parental consent is absent, I took into account the submissions made by the parties. I also reminded myself of the many judicial *dicta* in the cited cases warning that the making of such an order is a very serious step, breaking as it does the natural order of things and ties of family life between parent and child. Such an order must only be made as a last resort, if nothing else will do. It must be necessary and proportionate to promote and safeguard the welfare of the children, in this case, not just throughout their childhood but throughout their life because this application is for a permanence order with authority to adopt. Not only must the threshold test be satisfied but the welfare tests have to be considered holistically and satisfied before such a draconian measure is taken. Before I could grant such an order I have to be satisfied on the facts established from the evidence led before me that the children's residence with either or both parents is, or is likely to be, seriously detrimental to their welfare. I deal with each parent separately. I considered Mr Leiper's submission that inadequate assessment was made of LT's capacity to parent and that she was inadequately supported to achieve rehabilitation of the children. I disagree. I accept the evidence of BMcG, JSB and LML in this regard that parental assessment has been continuous in this case and that many attempts both formal and informal were made to train

LT to parent but she could not respond to a degree sufficient that she would be able to parent the children safely. I also accept the evidence of Jenny Foley that LT lacks insight maturity and ability to parent safely.

LT

[57] I watched LT closely during the proof and particularly when she gave evidence. The applicant's case is that LT does not have the capacity to parent the children. Nor does she have the insight into what it takes to parent children with complex needs, such as hers because of the way they have been damaged in their early lives. She has been offered parental training but did not commit to the course. She has been given support but cannot give effect to the advice she is offered. She is a positive danger to the children as evidenced by the incident where EST inexplicably escaped from the house in the middle of winter inappropriately dressed and was returned by the police in circumstances where LT didn't even realise she was missing. In her affidavit LT admits this. She also admits she has made inappropriate relationships that have resulted in the children witnessing scenes of domestic violence. She admits she has not appropriately cared for the children in a material sense. She was living in a house with the children where JL was concerned in the supply of drugs. She also admits lying to the social work department for two years about her relationship with JL even to the extent of engaging in a domestic violence course which was wasted work because all the while she was in a relationship with JL, behind the back of the social workers. Her own expert witness explained to me that LT is more of a 'big sister' figure to the children, than a parent and she is incapable of parenting the children at present. Attempts have been made to teach LT parenting skills but she either does not co-operate or cannot give effect to the advice. In my judgment she cut a tragic and pathetic figure in court. She

showed no emotion when questioned and cross-examined. All that I saw was defiance in the face of the application. Sadly, I have reached the conclusion that to place these children back in her care would be seriously detrimental to them because of her inadequacies as a parent, her inability to learn how to parent and her propensity to lie to promote her own interests. There is a further danger that she would re-introduce them to JL who is, in my judgement dangerous and violent. She told BMcG that she lied about being in a relationship with JL to delay the permanence process. She put her personal interests above those of the children. There is a real danger that LT would put herself first at the expense of the children. I am not persuaded that she has changed or is capable of change.

JL

[58] JL has no relationship with the children. When he had contact with them this seemed to go well. However he subjected LT to domestic abuse on multiple occasions, once with a knife in the presence of the children. He ran an illegal drug business from the house the children were living in thereby exposing them to danger. In my judgment the children are traumatised as suggested by counsel because the Curatrix *ad litem* in her third report indicates what NTT said about what happened. The children have talked about this on the way to contact with LT. When he was sentenced to imprisonment, BMcG said her team leader went to see JL and he seemed to accept the social work plans for the children at that time. I took that to mean permanence with a view to adoption. Yet, now he opposes the application, which he is perfectly entitled to do. It was said he was going to write letters to the children and that these were forwarded to LT, yet they have not been produced. I am very sceptical about JL's motivation in this case. I do not believe he has the children's best interests at heart. I read the affidavits from his family which are all positive and supportive

but I watched him very carefully when he gave evidence. To begin with he gave very plausible evidence about what he wanted for the children in relation to a good supportive family, a good education and a happy life, something better than he had, he said. But in cross examination his true character emerged. He was hostile and positively aggressive to counsel. His body language told a very different story. In my judgment his violent propensity manifest when questioned about his past behaviour which, he did not deny. I have no doubt he said, in chief, what he thought the court wanted to hear. He said he thought LT should be given a chance to bring up the children as a single parent. In my judgment his opposition to this application has nothing to do with the best interests of these children and everything to do with his relationship with LT. He came over as dishonest and violent. Not though, as counsel put to him, that he is asking for the children to be placed with him, but I have to be satisfied that the threshold test is met with regard to him also before I could grant the orders sought and I consider that given his past history for violence and drug dealing the children's residence with him is, or is likely to be, seriously detrimental to their welfare. I will say more about his motivation later.

The welfare tests in s 84(3) and (4) of the Act for a Permanence Order with authority to adopt (parents not consenting).

[59] I will explain my decision in the context of the welfare issues which arise out of s 14 of the Act later. For the present I restrict myself to the welfare test as it applies to the making of a permanence order with authority to adopt. Even if the threshold test is met, I have no power to make a permanence order, unless it is better for the children to make such an order than not to. Even then in considering whether to make a permanence order and, if so, what provision the order should make, I must regard the need to safeguard and promote

the welfare of the children throughout their childhood as the paramount consideration. Section 84(3) and (4) is entirely child focused. I require to consider all of the options available for these children in deciding if the application is granted. The first observation I make is that I do not consider it is in the best interests of these children that they are separated. I have not been asked to consider separating them but lest this becomes an issue at a future stage, that I should have considered the children separately I have deliberately not done that. I consider their interests together and that their best interests are to remain together as a family unit. The only constant these children have had in their short lives is that they have been together. To separate them would, in my opinion, be deeply traumatising. What the proof has established about these children is that they have had a very bad early upbringing by their natural parents. They have been psychologically damaged and traumatised by seeing domestic violence perpetrated on their mother by their father. NTT is psychologically under developed. EST even had to have teeth removed because of dental neglect while in her mother's care. Their living conditions with their mother have been unhygienic at times. She has had inappropriate people in the family home. The children have been taken into foster care where they were found to be disturbed and maladjusted in their behaviour. They have stabilised and developed through kind foster care. They are now with prospective adopters where the possibility of a stable safe life for them exists. Potential adoption is at an early stage. They may or may not bond with the prospective adopters. The prospective adopters may, for any number of reasons decide against adoption. That is their right. However, given the age and stage of the children it is obvious to me that what these children need is a parent or parents who will bond with them and provide a safe nurturing family for them during their childhood. I do not believe LT or JI can do that. What happens if I decide to refuse the application? In that event, the children

will remain in local authority accommodated care with foster parents or in a local authority home, as many do and their innate need to find parents will go unsatisfied. I would consider that to be a bad outcome for the life chances of these girls. If they remained in local authority accommodated care there would be uncertainty about their future. There are no social work plans to rehabilitate the children with either natural parent. Of course, further endeavours could be made to try to teach LT how to parent. The social work department have no confidence in LT's ability to improve, nor do I. JL has no plans to parent the children full time he accepted that in cross-examination, nor could he, in my judgment. Delay, waiting for LT to learn to parent, will achieve nothing for the girls that will promote their development and safeguard their welfare. If, on the other hand, a permanence order with authority to adopt is made the children can move on and build constructively on what has been achieved since they were accommodated. That gives the children a chance, but it is a real chance, to have a good safe childhood in a nurturing family. LT's response to the application is to beg for more time and more support from social work and another chance to get her act together. Yet, here is no positive plan proffered by her to demonstrate what is to be done and how long it will take before LT can parent these children, if she ever can. Counsel said 'that was too little too late'. I have reached the conclusion that LT is desperate not to lose her connection with these children and wilfully blind to the fact that she cannot parent them and is prepared to hang on to her 'big sister' role as long as she can, irrespective of the best interests of the children. In my judgment, she puts her interests and not the children's welfare first. More importantly, the children cannot wait for some possible future change in their natural mother's parenting capacity. They only have one childhood to quote Lord Reed in a case which hardly needs cited. In my opinion, their needs are immediate. In fact, the evidence from BMcG and CEB was that given their age, the placement they are in

may be their only chance for adoption. I do not believe their parents put their welfare first. In my judgment their opposition to this application is cruel, cosmetic and insincere. I am satisfied it is better to make this permanence order than not to make it. I also consider that if it is made it will safeguard and promote the welfare of the children throughout their childhood.

The welfare test in s 83(1)(d) of the Act for a Permanence Order with authority to adopt (parents not consenting) in the context of s 83(1)(c) and dispensation of parental consent.

[60] Clearly, parents have a right to withhold their consent to their children being subject to a permanence order which includes authority for them to be adopted. However withholding parental consent to such a permanence order is not determinative. In the first place I have to be satisfied that it would be better for the children that authority to adopt is granted in the order than not granted before the order can be made. But, if the parents understand what an adoption order is, I can dispense with the parental consent of each parent if I am satisfied that each of them is unable satisfactorily to exercise and discharge their parental rights and responsibilities and that situation is likely to continue. For the reasons I have already articulated I have no doubt it is in the best interests of the children that the order sought is made including authority for the children to be adopted. Equally for the reasons already articulated in regard to LT and JL I am satisfied they cannot parent these children satisfactorily now or in the future and they should not be allowed to frustrate the process by withholding their consent. I am further satisfied that LT has deliberately lied and misled the social work department to delay the permanence process. I am of the view that both she and JL continue to be so motivated and that is to promote their own interests not those of the children in their withholding of consent to the application. Accordingly, I will

dispense with the need for their consent because I am satisfied that it would be better for the children if I were to grant authority for them to be adopted than if it were not to grant such authority.

The views of the children requirement in s 84(5)(a) and s 14(4)(b) of the Act.

[61] The children are very young. The curatrix *ad litem* prepared 3 reports. By way of context she stated:

“The children’s social worker is particularly concerned that since the children were moved to the prospective adoptive placement, the natural mother has behaved in ways which are undermining of the placement, including bringing the children necklaces with a love message and a photograph of herself in the design to the first contact after the children moved to the prospective adoptive placement, and excessive amounts of other presents. She is also worried that ongoing contact could lead to the prospective adoptive placement being identified, particularly when the natural father is released from prison. The children’s social worker believes that the children need the opportunity to fully settle into the prospective adoptive placement and to adapt to being in a new primary school and nursery. When she is transporting the children to and from contact she says the child regularly talks about the domestic violence which she witnessed, and about the reasons why she was removed from home, and that this raises the concern that contact might be re-traumatising the child..... Between contact visits the children rarely mention either of the natural parents except to raise issues which worry them, such as the domestic violence which they have witnessed or their anxiety about the natural father being released from prison, and the child has spoken about the natural father punching and kicking the natural mother.”

In relation to her interview with NTT on 15 April 2021 the Curatrix *ad litem* reported:

“The Curatrix *ad litem* asked the child if she can remember when she lived with the natural parents and she indicated that she can, and that what she remembers is “Daddy J fighting L and Mummy shouting”. When the Curatrix *ad litem* asked the child what she saw, the child replied that she was scared and frightened and her sister was crying. The child confirmed that she cannot remember how often she saw this, but that she was too scared to ask the natural father to stop. The Curatrix *ad litem* asked the child if she remembers anything else about the natural mother and she replied that she remembers having a can of fizzy juice with her tea, and she remembers that her sister escaped and the Police found her. The child went on to say that she tried to run away lots of times because she was a bit frightened of the fights, but her sister did run away and the Police found her. The child suggested that her

sister ran away when it was “snowy and chilly”, and that she was “so lonely and crying because she was all alone.” The child then went on to say that the natural father always used to “hide in the window”, and the Police found him and put him in jail and he is still locked up in jail. The child then said that she and the natural mother were sitting on a chair and they were “so bored” and then they had to go home in a Police car..... The child then volunteered the statement that the natural mother did not take her to the doctor, and the natural parents did not take her to nursery, and that everyone got shouted at by the natural father and that she heard it and watched it and that “Mummy got hurt but she is fine now”. The Curatrix ad litem asked the child if the natural mother’s house was a safe house. The child replied that it was “a bit messy” and that there were other people there apart from the natural father who behaved like him and were not nice either..... When the Curatrix ad litem asked the child how often she sees the natural parents and how often she would like to see them, the child replied that she would like to see the natural father “twice a day” because she has not seen him for a long time, and that she would like to see the natural mother “twenteen” because she is lovely. The child told the Curatrix ad litem that she knows about the natural father taking tablets, but that this would not make her worry about seeing him, and she also indicated that she would like to go to the park with the natural mother, and she repeated her statement that the visits should take place “twenteen”. In the context of the child saying that she would like to go to the park with the natural mother, the Curatrix ad litem asked the child what she would like to do with the natural father, and in response the child replied “Stay away from him”. The child went on to say that her sister would do the same thing, and that she would give the natural father “zero stars” and her sister would give him “100”, and that the natural father needs to be nicer if he wants to come out of jail. The Curatrix ad litem asked the child if the natural mother would have to do anything to be nicer and she replied “Make J calm down”..... The child is aware that she has been looked after by a number of different adults during her childhood, and when the Curatrix ad litem was discussing them with her, the child indicated that her current carers look after her the best. The child then indicated that she was not sure whether she would be sad or happy if she did not see the natural father, and that she would be sad if she did not see the natural mother, with the explanation that she had really missed her. The Curatrix ad litem asked the child how she feels about the prospect of her current carers being her “forever family”, and the child replied that she will be happy providing she can live with them until she is a grown up and she is also able to live with her sister, because she would be sad without her. The child then volunteered the statement that it would be o.k. to stay with her current carers forever, and to see the natural parents on a Thursday and go to the park, and on the natural father’s birthday to go to the cinema, and on the natural mother’s birthday to go to the cinema, and that she remembers going to the cinema when they got strawberry candy canes and her sister fell asleep and missed the whole film. The child went on to say that after the cinema they went back to L’s and then L and B [Foster carer and social worker] found her and her sister a “forever family”. The Curatrix ad litem asked the child if L and B had found her and her sister a good “forever family”, and the child replied “Yes. Our best forever family”. The child then went on to say that it would be o.k. not to see the natural parents if she and her sister can stay with their current carers forever, and she will

meet up with the natural mother when she is a grown up and ask her if she is o.k., and she can tell the natural father to be nice to the natural mother and “to help people getting better and if they make mistakes he can fix that..... The Curatrix ad litem asked the child what she calls her current carers and she replied “Daddy and Mummy”. The child went on to say that she is glad that her current carers are her Daddy and Mummy and that she wants to live with them forever. When the Curatrix ad litem asked the child if she knows what her sister wants, the child replied that she wants a little doll’s house of her own for her birthday, and she confirmed that her sister also likes their current carers. The child then conceded that she and her sister call their carers by their Christian names, and she told me that she would prefer to call them “Mummy” and “Daddy”, and that she wants to stay with them until she is a grown up. The child also indicated that she is worried about the natural mother when the natural father is no longer in jail, and that she worried about the natural mother before when she was with the natural father. The Curatrix ad litem brought the conversation to an end on a positive note by talking about the child’s sister and her forthcoming birthday. The child confirmed again that they are both happy in their current placement and they want to remain there, and she described the nicknames which the current carers have given to her and her sister.”

[62] In reaching my decision I had regard to this material from the curatrix *ad litem*. I also considered the other matters referred to in s 14(4) and s 84(5)(a) and (b) of the Act relating to the value of a stable family unit in the children’s development, their religious persuasion, racial origin and cultural and linguistic background (although Ms Conroy conceded no issue was raised by this aspect of the case and Mr Leiper did not demur from that). I also had regard to the likely effect on the children, throughout their lives, of the making of an adoption order. For all the reasons already stated in considering whether to make this permanence order with authority to adopt I had regard to the need to safeguard and promote the welfare of the children throughout their lives as the paramount consideration.

Ancillary provisions by way of contact s 82(1)(e) of the Act

[63] I now turn to the question of post permanence contact. Both parents ask for direct contact post permanence. Failing direct contact, indirect contact is sought.

Direct contact

[64] Whether this is granted is a judgement I require to make. I take into account the authorities cited mention that such contact can be beneficial to adopted children. It can strengthen their sense of identity and maintain links with their past. However, Counsel for the applicant reminded me of the defence expert evidence of Jenny Foley that direct contact post adoption works when the natural parents consent to the adoption and the adopters agree to the contact. Counsel reminded me that transparency, trust and honesty between the social work department, the biological parents and the prospective adopters was essential for this to work. He referred to what he called the 'the triangle of trust' in this regard. Albeit, the term 'post adoption' contact was used frequently by all parties and the defence expert witness, in this case, I reminded myself that I am dealing with permanence and ancillary orders relating thereto. However, I can readily see that the general considerations in respect of direct contact post permanence and post adoption raise similar questions. The most startling aspect of this component of the case is that, in cross-examination, the defence expert Jenny Foley looked shocked when she was informed that neither parent consents to permanence or adoption. That revelation, then turned her entire evidence in respect of direct contact post permanence, where the children, as they are here, have been placed for adoption. I agree with her that direct contact, in these circumstances, could only work where everyone involved accepted that permanence might lead to adoption and made the interaction between social workers, natural parents and prospective adopters work. It cannot work in this case, in my judgement, because the parents are opposed to it. In fact I am convinced the natural parents would use any direct contact post permanence to destabilise the placement which would not be in the best interest of the children. LT admitted she lied to social work to delay permanence proceedings. I do not believe she

could be trusted to act in the best interests of the children at any such post permanence contacts. She would behave as she has already done by bringing excessive gifts even when told not to. I do not believe there is a proper basis for any such direct contact to work.

[65] Lest this become an issue at a later stage, I can say now that I attached no significance to the fact that the prospective adopters oppose direct contact. That is entirely their prerogative and they do not have to justify it before me. They have offered to take the children for possible adoption if the placement works out. Time will tell. They have not offered to fight a court battle for the children and it was wrong to try to drag them into these proceedings by seeking disclosure of their address to cite them to give evidence. I accept the evidence of Jenny Foley, BMcG and CEB that post permanence contact will not work in this case, nor could it ever be appropriate to attach conditions to orders like these that the prospective adopters oppose [save for exceptional/extreme circumstances see *Re B (A Child) (Post-adoption contact)* [2019] EWCA Civ 29]

Indirect contact

[66] Again this involves a judgement to be made. I considered the submission of counsel for the applicants to be sensible. I reject Ms Conroys various permutations to be unworkable in an adoption placement. I prefer the evidence of BMcG and CEB about the level of frequency of indirect contact. The prospective adopters will have a busy family life with two young children. It would not be beneficial to family life and hence the children to overburden them with reporting obligations to the respondents. Accordingly, I will order indirect letterbox contact as proposed by the applicant's counsel.

Decision

[67] I shall grant the applications in terms of section 80 of the Adoption and Children (Scotland) Act 2007. I shall make an order in terms of section 82(1)(e) of said Act that there should only be annual, two-way, indirect letterbox contact with the inclusion of no more than two photographs, and said letters and photographs to be passed on to the children in a manner and at a time deemed to be appropriate by the current carers. Further, the information provided to the birth parents should include, but not be restricted to, the general progress of the children and their everyday activities, their school work, health and general development. I shall terminate the Compulsory Supervision Orders in terms of section 89 of the 2007 Act and find no expenses due to or by any of the parties.

Thomas Welsh QC
Sheriff Court
Edinburgh
15 July 2021