SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2020] SC EDIN 21

EDI AD116/19

NOTE BY SHERIFF T WELSH QC

in an Application for a Permanence Order under Section 80 of the Adoption and Children (Scotland) Act 2007

by

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

Pursuer

in relation to

against

B & C

Defenders

Act: Ennis, City of Edinburgh Council (Pursuer)
Alt: Scott, (For C an Interested Party)

Edinburgh, 18 March 2020

The Sheriff having resumed consideration of the application by the Petitioners for a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 [the 2007 Act] with an order granting authority for A to be adopted; interpones authority to the Joint Minute, No 24 of process; Finds the following facts admitted or proved:

1. The Pursuer (Applicant) is The City of Edinburgh Council having its principal office at Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. In terms of the Act, the Applicant is an Adoption Agency.

2. A is a boy who was born on 1st November 2015 at St John's Hospital, Livingston. B is the mother of A. B was born on 6 October 1994. She resides in Edinburgh. B alone has parental rights and responsibilities in relation to A. B has consented to the grant of this application and does not contest these proceedings. B was diagnosed with paranoid schizophrenia when she was 13 years old. She missed a

great deal of school. Her illness is not a condition from which she will recover. B is prescribed Clozapine an anti-psychotic medication for her condition.

3. C is the father of A. B and C have never married or co-habited permanently together. C is not the registered father of A in the register of births.

4. C was born in Nigeria on 15 October 1987. He entered the UK on a visitor visa in 2012 and moved to Scotland. C has remained illegally in the UK beyond his visa entitlement. C has no other family in Scotland or the UK. He is employed as a carer in Edinburgh. He resides in Edinburgh. He does not have parental rights and responsibilities in relation to A. C raised an action seeking an award of such rights and responsibilities at Edinburgh Sheriff Court on 15 August 2017. That action is sisted pending the outcome of these proceedings.

5. B's mother is D who resides in the Scottish Borders. She does not keep good health.

6. The Applicant's social work department first became concerned for the welfare of B's unborn child, A, on 22 October 2015 as a consequence of a referral made to them by the Perinatal Mental Health Services at St John's Hospital Livingston because B presented as socially isolated.

7. Following the birth of A and on being told that C was an illegal immigrant within days of A's birth, B ended her relationship with C.

8. On 6th November 2015 C attended at the Special Care Baby Unit of St John's Hospital where A was being cared for. The Police had been asked to attend by the staff at the Unit as C became aggressive. The staff were concerned that on being asked to leave the department, C might react badly.

9. The police attended the hospital. They asked C to leave the unit. He was arrested and detained as a consequence of a lack of clarity regarding his immigration status.

10. On 9 November 2015 an initial child protection case conference was convened by the Applicant's social work department in respect of A. The first part of this case conference was attended by C and the second part was attended by B. At that time, A was placed on the child protection register. This meeting agreed that on his discharge from hospital, A would be accommodated by the Applicant.

11. On 16 November 2015 A was discharged from St John's Hospital Livingston into the care of the Applicant's social work department. A was placed in foster care. B consented to A being accommodated by the Applicant. B was then and remains unable to meet A's needs as a consequence of her mental illness.

12. On 15 March 2016 a LAAC (Looked After and Accommodated Children) Review meeting and Review/Child Protection Case Conference was held in respect of

A. This meeting had before it a letter dated 10 March 2016 from Community Mental Health Nurse JH in respect of ongoing treatment and medication of B.

13. In terms of the said letter, B was noted to be engaging with the North West Community Mental Health Team and remained under the care of a Consultant Psychiatrist. B was presently prescribed Clozapine, 350mg, which had been increased from 300mg in December 2015. B was noted to continue to require sedation at night as a consequence of her taking this medication. She slept on average from 10pm until 10am. She had limited contact with A. Her schizophrenia responded well to increased medication. However, the ongoing stress associated with the social work review and assessment of A's future, led to her suffering further psychotic phenomena. Because of her illness and her inability to care for A, B made the decision to terminate her contact with A.

14. On 30th June 2016 there was another Review/Child Protection Case Conference and LAAC Review relative to A. At that time A's name was removed from the Child Protection Register. The meeting had before it another letter dated 23 June 2016 from Community Mental Health Nurse JH in respect of the ongoing treatment and medication of B.

15. In terms of that letter, B remained under treatment, on a prescribed dose of 375mg of Clozapine and JH reported that B would not meet with A at that time. B was keen that A was placed in the care of her mother, D.

16. Thereafter the Applicant assessed the potential of D as a kinship carer for A. She was approved as such.

17. On 24 November 2016 A was placed into the care of D.

18. That kinship care placement broke down. D's health declined. She considered that she could no longer provide care for A.

19. On 3 March 2017 A was placed with foster parents MW and GW.

20. During A's time in the care of D, C exercised direct contact with A on four occasions. Contact always took place with either B or D being present and consenting.

21. B's ill health is unlikely to improve. As a consequence of her illness she is unable to care for A. B is the only person who is entitled to have A reside with her. Such residence, if it occurred, would be seriously detrimental to A's welfare. It would also be seriously detrimental to the health and wellbeing of B. B recognised both of these factors at an early stage in the decision making process in respect of A by placing him voluntarily into the care of the Applicant and thereafter supporting the present application.

22. B has had the benefit of independent legal advice in respect of this application. She has chosen not to oppose it. She has also consented to authority to have A adopted. B understands the effect of such an order for adoption.

23. On 8 June 2017 the UK Immigration department advised the Applicant's social work department that C was to be deported to Nigeria. He was then being detained within the Dungavel Immigration Detention Centre. He was detained for approximately two months.

24. C advised the Immigration Authorities in June 2017 that he was still in a relationship with B. This was not true. He advised these authorities that he had contact with A. This was not true. He sought to show these authorities that he had a family life with A and B. This was not true.

25. C sought judicial review of the decision to deport him. He relied upon his right to a family life as the basis of this judicial review. In claiming this right, he relied upon the falsehoods that he remained in a relationship with B and had contact with A.

26. On 27 April 2018, C was issued with a residence permit that is valid until 26 October 2020. Until then he is permitted to live and work in the UK.

27. On 20 September and 12 October 2017 C met with Dr David Briggs, Forensic and Clinical Psychologist who had been instructed to prepare an independent forensic clinical psychology assessment of C; to report and comment on C's presentation, his current psychological state, and future prognosis; to provide an assessment of his parenting capacity and to advise on any risk were A to be placed in C's care.

28. C advised Dr Briggs that he was still in a relationship with B.

29. As part of the parenting assessment, C had six periods of direct, face to face, contact with A.

30. These six periods of contact commenced on 15 January 2018. At that time C had not seen A since February 2017.

31. A endured increasingly significant upset and distress during and after these sessions of direct contact.

32. A suffered "night terrors" after contact with C. He had never experienced these prior to contact with C in January 2018.

33. During contact A avoided physical contact and engagement with C. A showed signs of distress, anxiety and upset during these contact periods.

34. A did not exhibit any similar signs of distress, anxiety or upset during contact with any other person through his life to that time. He did not seek to avoid any other people introduced into his life.

35. Continued contact with C adversely affected A's welfare. Following suspension of contact sessions on 26 February 2018, A's night time distress resolved.

36. A further session of direct contact between A and C took place on 24 April 2018. This contact was observed by Dr Briggs.

37. A engaged well with Dr Briggs during this contact. C was unable to manage A during this contact. He showed no insight or awareness of A's needs and could not empathise with him. Dr Briggs formed the view that C had no realistic or credible parental relationship with A. There was an emotional detachment observed in C towards A at contact. C presented as someone who wants to have involvement in the life of A but without a focus on the child's priorities and needs. He presented as an unempathic father. Dr Briggs was of the view there was a highly significant risk of neglectful parenting were A to be placed in C's care, with a particular anxiety on his part, as to C being able to meet A's emotional needs.

38. By 24 April 2018 C had only experienced contact with A on approximately 10 occasions throughout A's life. C had never provided meaningful care for A. He had no bond with A. A had no attachment to him.

39. On 11 June 2018 another LAAC Review meeting took place in respect of A. That meeting considered the reports by Dr Briggs, dated 9 November 2017 and 5 June 2018.

40. Dr Briggs concluded that C had experienced a significant level of trauma in his early life as a consequence of his upbringing. Also he lacked appropriate emotional capacity to parent A. He stated that if A were to reside with C, there was a risk that this would harm A's development in childhood.

41. Dr Briggs expressed the view that the risk could be ameliorated were C to engage in a substantial period of specialised therapy.

42. Such therapy would require to be undertaken over a period of time and would be for between 12 and 24 months.

43. Dr K Edward Chartered Clinical Psychologist DClinPsych, PhD, MA, AFBPs is an expert child psychologist. She was instructed to provide a report regarding the contact and care situation of A. In her opinion, it was appropriate to stop the contact sessions between C and A. Her opinion was that the distress suffered by A as a consequence of contact was detrimental to him.

44. In Dr Edward's opinion, there was no scope to build a relationship between A and C. To attempt to do so would be likely to traumatise A. It was detrimental to his welfare to attempt this.

45. In Dr Edward's opinion, A's future was best promoted by his being loved within a secure family environment. She considered that adoption provided such an environment for A.

46. Originally, the Applicant intended to assess C as a potential full time carer for A using a STEPS Assessment. Given the impact of contact with C upon A, it was not considered appropriate to progress that assessment.

47. C has no parental right to have A reside with him. However, such residence is or would be likely to be seriously detrimental to A's welfare now and throughout his childhood.

48. The Applicant has considered all of the reasonable alternatives to placing A for adoption.

49. On 25 September 2018 an Adoption and Permanence Panel was convened in respect of A. It recommended that a permanence order with authority to adopt be sought in respect of A. This recommendation was considered by the Agency Decision Maker, on 1 October 2018. That Agency Decision maker agreed with that recommendation.

50. Following the recommendation of the Adoption and Permanence Panel, the Applicant sought to "match" A with prospective adopters. As a consequence of this process, a prospective adoptive mother E was identified at a matching panel on 4 April 2019.

51. On 27 April 2019 A moved to reside with E. He has resided there since that date. E is mindful of A's mixed heritage and cultural identity. E had been pro-active in contacting her church, local school and resources that will enhance her understanding and knowledge of A's mixed heritage. E has sourced literature about Nigeria. E has also contacted her local Nigerian community for support and a Nigerian person who also has children who are of mixed heritage. E has neighbours who are of black African ethnicity and have children close to A's age. A is well settled and bonded with E.

52. It is likely that A is now suitably placed for adoption with E.

Finds in fact-and-law that:

1. B is the only person who has parental rights and responsibilities in respect of A in terms of section 3 of the Children (Scotland) Act 1995. Accordingly in respect of any permanence order granted in relation to A, B is the only person whose consent is required to the inclusion of a provision for authority to adopt A, in terms of section 83(1)(c)(i) of the 2007 Act.

2. In considering whether to make a permanence order in respect of A and having regard to the need to safeguard and promote A's welfare throughout his

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

3. B understands the effect of and consents to the making of an adoption order in relation to A; that the Applicant has requested that the permanence order sought includes authority for A to be adopted; and being satisfied that A 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 him, on the facts established, that authority for him to be adopted is granted, than if such authority is not granted; and accordingly grants such authority.

4. That it is in the best interests of A that C should have indirect contact with him once per year in terms of section 82(1)(e) of the 2007 Act.

The Issue.

[1] Child A was born to parents B and C on 1 November 2015. The parents are not married. They were in a short relationship. The mother B has serious mental health issues. She cannot look after A in any meaningful way. Kinship care for A, with B's mother D, was tried but failed because of D's failing health. The father, C, is an illegal immigrant to the UK, with limited leave to remain. C is not the registered father of A. C has no parental rights and responsibilities. His locus in the present proceedings is as a person who claims an interest in them. B consents to the grant of a permanence order in respect of A, with authority to adopt. C has had limited contact with A. C opposes permanence with authority to adopt as not being in the best interests of A. Instead C wants to be reunited with A and bring him up. Should permanence with authority to adopt be granted in A's case?

The evidence.

The pursuer's proof.

JL, senior social worker, gave evidence.

[2] JL (54) supplied an affidavit and gave evidence to supplement that. She said she was a senior social worker with the applicant's social work department and formed part of the Southwest Locality Children's Practice Team. She has an honours degree in Social Work which she obtained in 2005. She also holds the Post Graduate Certificate in Child Protection. She said she was the allocated social worker on the case which was referred to the local authority by Perinatal Mental Health Service, St John's Hospital shortly before the birth of A. In relation to the relationship between B and C she said they met on a bus in 2014 and started cohabiting shortly after that. According to JL the referral by the NHS was made due to concerns in respect of B's psychiatric difficulties and her diagnosis of paranoid schizophrenia. She was on Clozapine which was described as a "heavy duty" anti-psychotic medication. She said that B was socially isolated and it was unclear at the time of referral what C's intentions were in relation to support of the baby. B's mother D had moved to the Scottish Borders and it was unclear what level of support she would be able to provide. There were also concerns expressed by professionals and by D, that C had put pressure on B to become pregnant and that B did not want to be pregnant. Following the referral, JL said she was allocated the case. According to JL there was information from B and D that C was violent. JL explained that A was born prematurely on 1 November 2015. There were concerns that the relationship between B and C was unstable and that B would be unable to care for A because of her own mental health problems. Initially, D indicated she could offer assistance and care for A. However, she had her own 4 children to look after. JL gave evidence about an incident at St John's Hospital in November 2015. Police were called

because, she said, C had been behaving aggressively. The police were called and he was arrested and his immigration status discovered. She also gave evidence that it was after the birth of A, that C disclosed he was in the UK illegally. JL gave evidence that from an early stage B recognised she would be unable to look after and care for A. She said the parents split up after the birth of A, because C disclosed he was in the country illegally. She also said that A was discharged from hospital into the care of the local authority. She said an Initial Child Protection Case Conference was held on 9 November 2015, when A was placed on the Child Protection Register. C was present and then left and then B came in for the later part of the meeting. C was asked not to return to the hospital. It was also agreed at this meeting that A should be accommodated at the point of his discharge from the hospital. JL's evidence was that she met with C on 11 November 2015 to get background information. She said C explained he wanted to live in the UK with B and A as a family. According to this witness C said that he first saw B in a dream and that he then saw B on the bus the following day. A week later he told B about the dream. JL said C acknowledged that B had said that she wasn't ready to have a baby. He said that B had a contraceptive implant which had ended in March 2015. C said that B had spoken to her GP and they had all agreed that it would be fine for her to get pregnant, which was in contrast, according to JL, to what B had said about feeling coerced into becoming pregnant. JL indicated that D had stated that C had no insight into B's mental health condition.

[3] The witness said that B's community psychiatric nurse explained the side effects of B's medication. The dosage meant that B slept very heavily and was not fully alert until 10 am in the morning. The medication could also make her feel sick. JL said B agreed to give her consent to the baby being accommodated. The witness also said that B was very clear that she did not want A to have contact with C. B herself did have contact with A initially

but her response to contact was problematic and she could not cope. Contact was suspended between A and B because of the effect it was having on B's health.

[4] On 15 March 2016 there was a Looked After and Accommodated Children's Review meeting for A and a Review Child Protection Case Conference. At that time plans were being made for A and a kinship assessment was ongoing in respect of D. The plan for A at this time was to parallel plan and in addition to the ongoing kinship assessment there was a referral made to the Permanence Panel for A. A's name was removed from the Child Protection Register at the Review Child Protection Case Conference on 30 June 2016. On 13 September 2016 D was approved as a kinship carer following her kinship assessment. A was then placed with D on 24 November 2016. A few months after that placement D's health took a turn for the worse. She was unable to manage A's care. D ended A's placement on 3 March 2017. The witness said that very shortly after this, B and D made contact with the social work department to advise that they had made the difficult decision that it was best for A if he was adopted.

[5] On 3 March 2017 A was placed with MW and GW, foster carers, which is where he has remained, until moving to his prospective adopter E, on 27 April 2019, where he presently resides.

[6] JL explained that in March 2017 she became aware that B and D had facilitated a number of unauthorised contact visits between A and C at D's home. These took the form of trips to a local park and home visits. A was aged between 12 and 16 months when these visits occurred. The witness explained she had also received information from the Home Office that C was to be deported and had judicially reviewed that decision on the ground that he had a family life in the UK with A and B.

[7] The witness stated that the social work department opposed any contact between A and C. However, a Parental Capacity Assessment of C was agreed. This involved a psychological assessment of C by Dr David Briggs, a Clinical Psychologist. This became available in November 2017 and was unfavourable.

[8] The witness indicated a further referral was made to Viewforth Child and Family Centre for a STEPS parenting assessment. The witness explained this involves an intensive period of assessment and lengthy periods of contact, over a twelve-week period, between the prospective parent and child. It entails a parent spending time with the child at different locations, dealing with different scenarios for assessment. The assessment involves assessing a parent's ability to respond to and pick up on a child's cues and needs. It assesses a parent's ability to introduce consistent boundaries and routines and their ability to sustain these with the child. However, before the STEPs parenting assessment could be undertaken, there was first a requirement for there to be a relationship established between the child and parent. Given the gap since C said he had last had contact with A, it was agreed to gradually introduce contact in order that a relationship could be established between parent and child before the STEPS programme began. Accordingly, contact sessions were introduced. These sessions began on 8 January 2018. YM, social work assistant, was responsible for the management and supervision of contacts.

[9] The witness stated six sessions took place between January and March 2018. The witness didn't observe any of the contacts, but received feedback on how they had progressed from YM. The feedback from contacts was not positive. The witness was told C was unable to identify or respond to any of A's needs, and from the outset A was very wary of his father. The witness said YM provided advice and guidance to C around how to approach developing a relationship with A and about child development and A's age and

stage. It was a difficult situation for C, being reintroduced to his son after a significant gap and the witness said the department was sympathetic about this.

[10] The contact sessions did not go well. The child did not appear to bond with C and MW the foster parent reported that A suffered night terrors associated with the contact sessions. The contact sessions were terminated. Problems around these contact sessions were discussed with C and a number of variations were tried such as changing the location, gender mix and composition of the sessions but the contact itself remained problematic. The witness held a meeting to discuss the problems over initial contact between A and C. The witness said that she felt that during this meeting C was very dismissive of concerns regarding A's high levels of distress. C seemed to be of the view that if he could just have A in his care, then A would develop a bond with him. He stated that contact was forced. JL was of the view that A seemed unable to tolerate contact with his father and that his responses to contact seemed to be getting worse. Her impression from the meeting was that C's focus was about what he wanted rather than what was in A's best interests.

[11] The witness stated that after the meeting, it was agreed that the department would ask Dr David Briggs, who had already completed a report, to carry out an observation of the contact and to provide an update, in light of how contacts had progressed. The witness said it was important that there be further independent assessment of contact to determine whether the local authority could do anything more to support the situation at that time. Given A's distress at contact, contact was suspended. The witness said she spoke with A's foster carer on 13 April 2018 and she reported that A's night terrors had stopped since the contact had stopped.

[12] The witness stated that on 24 April 2018, Dr Briggs observed contact between A and his father. YM was also present, as well as MW his foster mother at different points, in order

to support A. A was about 29 months by this stage. The witness said Dr Briggs commented on how C presented as detached when A was showing distress to contact. He noted that A's anxiety appeared heightened during the contact. He commented that there was no meaningful attachment between A and his father. However, A was able to play with YM, although he had not known YM any longer than he had known C. A was also able to interact with Dr Briggs but completely avoided his father which the witness thought was very surprising given that A had only met Dr Briggs that day. Dr Briggs noted that C could not respond to A's distress and he was not observed to show any discomfort when A became distressed. According to the witness, Dr Briggs noted that C lacked empathy and insight into A's likes and dislikes. Dr Briggs' supplementary report was not favourable.

[13] Following Dr David Briggs' report being received, it was agreed with C's solicitor that a report from a child psychologist would be instructed, specifically to address the reasons why A was responding in the way he had to contact, and whether there were any supports that could be introduced to support contact taking place. It was agreed that Dr Katherine Edward would be instructed to prepare this report. Given the length of time that A had been accommodated for and the difficulties that there had been in facilitating contact, it was also agreed that Dr Edward would be asked to comment on future planning for A.

[14] The witness stated that prior to an Adoption and Permanence Panel on 25 September 2018, Dr Katherine Edward completed her report. Within her report, Dr Edward concluded that based on the information available to her and after having discussions with those involved including C that "contact between C and A was of poor quality and could reasonably be seen as detrimental to him". The witness stated that Dr Edward has indicated within her report that nothing further could be done to facilitate a relationship between C and A and that given A's significant level of distress, contacts were rightly stopped. It was

also the view of Dr Edward in regard to A being placed with C that "it would be seriously detrimental to A, in the long and short term, and across all aspects of his development and wellbeing, for him to be rehabilitated to the care of C."

[15] The witness confirmed that the view of the social work department was that in the light of all this information which included the observations of contacts between C and A by YM and both foster carers' input, in conjunction with the psychological assessment compiled by Dr Briggs and his subsequent observation of a contact between A and C, in addition to Dr Edward's report there was no more that could be done to establish a relationship between C and A, nor would it be in A's best interests to be returned to the care of C.

[16] In keeping with the strategic decision to parallel plan for A's future, which was taken towards the end of 2018 according to the witness, a female prospective adopter, E, was identified for A.

[17] The witness stated a Matching Panel for A took place on 4 April 2019. The Panel carefully considered the proposed match with the prospective adopter, E. In particular, as with any Matching Panel, the witness said it considered how the proposed match would meet A's ethnic, cultural and linguistic needs. At a Linking Meeting on 27 February 2019, E was stated to be mindful of A's mixed heritage and cultural identity and E had been pro-active in contacting her church, local school and resources that would enhance her understanding and knowledge of A's mixed ethnic heritage. E had sourced literature about a child's trip to Nigeria. E had also contacted members of her local Nigerian community and a particular Nigerian who also has children who are of mixed ethnic heritage. E also has neighbours who are of Black African ethnicity and have children close to A's age. The local school has a diverse pupil population and her Church a diverse congregation. I was told the panel were impressed at how pro-active E had been in accessing information to

ensure she would be able to meet A's cultural and ethnic needs and promote his Nigerian identity. The Panel considered that this match was positive for A and recommended that this match be approved. This recommendation was subsequently approved by the Agency Decision Maker.

[18] I was told A moved to his adoptive placement on 27 April 2019. Leading up to that point there were a series of coordination meetings and then introductions. These went well. A was well prepared for his transition from fostering to adoptive placement. He had been in foster care with two children who had moved onto adoption, and he had seen and in his own limited way assisted these children go through that process by participating in packing for their next stage. JL believed that this helped A understand he too would be moving on. When A was introduced to his adopter on 17 April 2019, he was delighted to see her and enjoyed playing with her. There were then several meetings and gradually E took on more and more parenting tasks for A.

[19] The witness said she visited A in placement on 1 May 2019. A had settled in well. A appeared happy and confident and there was no awkwardness between him and E. A was happy to show JL his toys and engage in play with her and E. A showed JL where he sleeps and his 'big boy's bed'. Initially, I was told, A was a bit tearful at bed times and needed some reassurance and familiar toys and photos around him. It has only been a relatively short period of time since A has gone to reside with E and the most recent update was that A is no longer tearful at bedtime and now goes to sleep with no issues. A continues to eat well and E has tried to keep to the same routines that were already in place for A, however, the witness said, these will change to adapt to A's changing needs. A was described as a very affectionate child and enjoys lots of attention and cuddles.

[20] The witness expressed the view that it is better for the order to be granted, than not to be granted. Given the significant difficulties in contact between C and A, coupled with social work concerns and the significant concerns raised by the independent psychologists, it was not possible to progress rehabilitation of A to his father's care. A has now been moved to a placement which has been very positive and this carer would wish to adopt A. If the order was granted, this would allow for adoption to be progressed. Adoption would offer A legal security throughout his life and allow for him to be claimed in a permanent family. The witness said that if the Permanence Order with Authority to Adopt were to be granted, this would give A the best start in life and the opportunity to grow and develop within a stable home environment. This would safeguard and promote his welfare throughout his childhood and life. The order would ensure A would be claimed by his adoptive family and given the best chance to experience a stable and secure upbringing throughout his childhood. A's adoptive parent will be able to safeguard and promote his wellbeing throughout the remainder of his childhood and beyond into a stable and secure adult who is able to contribute to society. The order will benefit A further as it will remove him from the social work processes and he will no longer be considered as a 'Looked After and Accommodated Child' thus able to move forward and enjoy life in the knowledge that he is wanted and loved by his adoptive family.

[21] The witness stated that all reasonable practical alternatives to adoption had been carefully considered and ruled out. A is a young child and seeking permanency through adoption is preferable to permanent foster care that would keep him involved with social work having to attend LAAC reviews and continued intervention by social work. She said there were two Family Group Decision Meetings to seek the views of extended family members and ascertain what they could offer to support A so he could remain with his

family. There were no extended family members on either his mother's or his father's side who were able to commit to caring for A. A's maternal grandmother was approved as a kinship carer for A, unfortunately due to ill health she was unable to care for him so he had to be removed from her care and placed with foster carers. A's mother is unable to care for A due to her mental health difficulties and has made it clear she wishes A to be adopted and be happy with a family who can care for him and love him. A's father has expressed a wish to care for A, however, assessments have concluded that he does not have capacity to parent or meet A's needs and A has not been able to tolerate being in the company of his father for any length of time.

[22] The witness also expressed the view that if the order was granted, there should be indirect contact between A and his father. Her view was that this should take place at a frequency of once per year. Contact would be in A's best interests and take place at a level that would safeguard and promote his needs. A is half white Scottish and half black Nigerian. Given the prospective adopter's ability to promote A's mixed heritage and ethnicity, once yearly indirect contact would be sufficient to give A an understanding of his identity and his father's history. Given that it has been evidenced that A is unable to spend any time with C direct contact would not be in A's best interests.

[23] In cross-examination Mr Scott put to the witness a series of texts and photographs which related to the contact arranged by B and D when A was in kinship care with D between November 2016 and March 2017. These demonstrated that D positively encouraged C to have contact with A. The photographs showed images of happy contact sessions. Mr Scott put it to JL that these texts and images portray a different story from the narrative suggested by JL that B and D were opposed to contact between C and A. JL stated she was unaware this unauthorised contact was going on and it was contrary to what she

understood the situation was in respect of the attitude of B and D towards C's involvement with A.

YM gave evidence.

[24] YM (51) supplied an affidavit and gave evidence to supplement that. She is a social work assistant and has been in her current post since August 2016 within the South West Locality Children's Practice Team. She has been working with this Team since June 2013. In her role as social work assistant she is involved in supporting and supervising contact. She said this had been one of the most difficult contacts she has had to supervise. She stated that the first contact between A and C was on 8 January 2018. YM said she was informed by C that he had some experience of contact with A when D had A in kinship care. YM thought A was wary of C and that C had unrealistic expectations of A. She said C had high expectations of what A could manage and a limited understanding of A's age and stage of development. She said she was conscious that it had been some time since C had seen A so he might not have realised A's age and stage of development, so she gave C guidance around this. Her expectation at that time was that as contact continued to progress, C would become more familiar with A's age, stage and needs. However, A showed no recognition of C and C showed no warmth towards A. This surprised the witness. Contact occurred again on 15 January 2018. The witness said contact only lasted for thirty five minutes, as A struggled to manage this. Various attempts were made to engage A with C but the child became distressed. A contact session scheduled for 30 January 2018 had to be cancelled. The next contact was on 5 February. MW brought A to the contact. A refused to enter the contact room unless MW was there. When A went into the room he played with toys and MW slipped out. However, A became distressed when he realised MW was

absent. C tried to engage with A but the child disengaged from him and only appeared happy when he was told MW was coming back to the room. The session ended early. The witness said A had no eye contact with C during the contact session which lasted 40 minutes. The next session was on 12 February 2018. A refused to enter the contact room. Both C and MW tried to get A to come into the room. The session was terminated. C expressed concerns about the suitability of the location of the contact and the fact that he was the only male present. When MW left the next session, A became upset. The witness said C showed no empathy and gave no reassurance to A. He was unable to manage the situation. MW returned and A settled but when she left again to allow contact the witness said things became difficult. A became rigid and flinched when C came near him. At one stage the child looked terrified, according to the witness. The witness considered the session was extremely difficult for A. The witness said the child seemed fearful of C and flinched on contact. C stated again the sessions were dominated by females and he was the only male. He also suggested A may be afraid because C is black. At the next session on 26 February 2018, GW attended to add another male. When A saw C, the witness said his whole presentation changed. He looked down to the floor. It was suggested everyone went to the park to play. A did not engage with C. He was able to engage with a random window cleaner met on the way to the park. Some of the play was successful but when C picked him up, according to the witness, A froze and became distressed when C tried to take him by the hand to a slide. A would not look at C.

[25] The witness formed the view that over the six sessions the contact got worse. The witness thought the child was becoming increasingly anxious about contact. The witness said contact was suspended. The social work department was told by MW that A was having night terrors.

[26] A final contact session was tried in the presence of Dr Briggs on 24 April 2018. The witness said A engaged and played with Dr Briggs. A remained wary of C according to the witness.

[27] The witness said in most cases children would allow the parent to support or interact with them and in most cases would accept some comfort from a parent, but this was not the case with A. A was always dependant on the witness rather than his father and could not cope with MW being away from the contact room. She said C never offered any comfort to A and was not available emotionally to A during the contact.

MW gave evidence.

[28] MW (44) supplied an affidavit and gave evidence to supplement that. The witness said she has been a foster carer for 14 years. She and her husband were the foster carers for A from 3 March 2017 until he moved placement to E, his prospective adopter, on 27 April 2019. There were no serious medical concerns over A and he settled well with the witness's family. He enjoyed and responded well to a firm routine. The witness said that after the contact sessions with C started A began having night terrors. He would go to bed happy and wake up screaming and have to be settled. This occurred 3-4 times after contact with C started and stopped after contact ended.

[29] The witness has visited A in his new placement. He is happy, well settled and bonded with E. She said A was aware of the transition from foster care to potential adopter because he had watched two other children fostered by MW make that journey. He was excited about the prospect of moving from MW to E and made the transition very well.

AK gave evidence.

[30] AK (46) gave evidence to supplement his affidavit. He is a supervisor and team leader in the South West Children and Families Practice Team with the applicant's social work department. He has been a social worker for over 20 years. He holds the Diploma in Social Work which he obtained in 1996 and the Post Graduate Certificate in Child Protection which he obtained in 2003. His evidence reflected that of JL, MW and YM. He discussed the case often with JL and was in overall charge of the team dealing with A's progress. He was party to all strategic decisions made. He had read the expert reports. He supported the case for permanence with authority to adopt for the reasons stated by JL.

Dr K E Edward, PhD, MA, AFBPsS, Chartered Clinical Psychologist gave evidence.

[31] Dr Edward gave evidence and explained that she had been instructed to prepare a report by the applicant and C's agents. Her remit had been to review the social work records relating to A and comment on the contact and care situation so far as A was concerned. In her report dated 19 September 2019, she indicated she had access to all relevant social work records and interviewed JL, YM, MW and C. She incorporated a synopsis of the working notes made by YM of the contacts between A and C between January and April 2018. She had access to and referred to the report of Dr Briggs. She provided a report by answering certain specific questions regarding the welfare of A and how his best interests may be served. Before me she adopted her own report as evidence and expressed the following opinions:

> 1. "There are some aspects of A's response to his father that might be suggestive of a normative level of uncertainty and wariness as might be expected in the situation. However, there is also clear evidence that A's response to his father goes beyond this and is suggestive of a much more concerning and entrenched emotional response. I agree with the characterisation of A's response as a triggered trauma

response. He shows clear evidence of freezing, being actively scared, hiding, flinching and actively dissociating from interacting with his father. This response did not reduce over time. This response was directly associated with attempts made by his father to engage him and particularly to attempts at physical contact. The fact that A did not show extreme responses every time his father engaged with him does not negate the distressing response he showed repeatedly across contacts. Part of the difficulty with A's response is that we cannot know exactly what is triggering it, what makes it worse and what makes it better. We can see that close proximity to his carer and very notably the knowledge and action of leaving contact improves the situation for him. However, I would suggest that the only meaningful explanation for the behaviour A presented with across the contacts is that there is some aspect of interaction with his father that is triggering a trauma response which A cannot manage. This response is distressing for him and makes it impossible for him to build a relationship with his father. Clinically one would suggest that contact with his father was actively detrimental to his psychological wellbeing. The fact that A presented with night terrors throughout the period of contact, that were not seen previously or subsequently, further emphasises the negative impact on him……. It would be my view that A's response was related to C as an individual and cannot be attributed to some aspect of the situation (location, ethnicity, gender etc) as there is good evidence that A can manage all those contexts outwith contact with his father…….. I would suggest that there is good evidence that C's direct mode of interaction did at times worsen A's response further, deteriorating an already distressing situation. I can understand that A's response to him was distressing for C, however, C's ……lack of attunement to A's needs, and seeming lack of empathy to A's emotions at times, exacerbated the distress A was feeling. It would be my clinical view, based on the information available to me, that the contact between C and A was of poor quality and could reasonably be seen as detrimental to him. This was the result of A's psychological and physiological response to close proximity, physical contact and interaction with his father, and was exacerbated by evidenced deficits in C's parenting capacity."

2. "It would be my view that there are no measures that would assist the facilitation of direct contact between C and A, and that focus requires to be placed instead upon the longer term support and care options for A."

[32] By the time of her involvement in the case contact had ceased so she did not herself see it. Notwithstanding that, on her analysis of the information before her which was comprehensive, Dr Edwards concluded that termination of contact between A and C was the right thing to do. It was clearly harmful, in her opinion, to A. She stressed the antipathy that A had for contact with C was not seen in other people including strangers of different genders and ethnicity. In Dr Edward's opinion there was a triggered trauma response

manifest in this case. She conceded there was no direct evidence that C had ever been cruel to or harmed A. She was of the view that A's reaction to C meant there had been some sort of 'interactional trauma' which had left 'an imprint' on A which caused the behaviour.

[33] In cross-examination, it was suggested to Dr Edward that there may be evidence in the case which indicated that C had a caring side to him and that he was good with other children. Dr Edward indicated that would not change her opinion. She said on the evidence she saw and given the reaction of A to C it would be unethical to continue with contact to see if a change could be created in the dynamic between the father and son. She indicated the problem seemed to be incremental and over the contact period tried it was getting worse with night terrors which subsisted after contact ceased. Dr Edward indicated that A was now settled and attached to E. He needed to move on and she considered that it was better for him to become attached and know he was accepted by E now at his stage in life.

Dr D I Briggs BSc(Hons), MSc, DipPsych, PhD, AFBPsS, CPsychol, Forensic Psychologist and Clinical Psychologist, Registered Psychologist with the Health and Care Professions Council gave evidence.

[34] Dr Briggs gave evidence. He spoke to his reports dated 9 November 2017 and 5 June 2018. He also gave evidence about the one contact session he witnessed on 24 April 2018 between A and C which is the focus of his second report. Dr Briggs explained he was instructed to prepare a report and comment on C's presentation, his current psychological state, and future prognosis, to provide an assessment of his parenting capacity, and to advise on any risk were A to be placed in C's care. In his report and in evidence Dr Briggs described C as an intelligent man, with no evidence of cognitive disability or mental health concern. He said he presents as wary, egocentric with blunted perspective taking skills,

impoverished empathy, deflective of criticism and could offer brittle responses when challenged. Dr Briggs took a full social, educational and medical history from C. However, Dr Briggs had no access to any school, medical or social work records relating to C. Accordingly, the factual and social basis of Dr Briggs' findings and opinion in relation to C are entirely self-reported by C. Dr Briggs mentions this limitation on page 15 of his first report:

> "With regard to Mr C's future prognosis, the usual way of determining the likely trajectory of an individual's mental health is to consider their past clinical history, to build a formulation of factors which may have predisposed that individual to past mental health difficulties, to consider the particular instances which precipitated mental health breakdown in the past, hence determining that individual's particular vulnerability factors. We would then consider future scenarios, including those factors which may exacerbate mental health breakdown as well as likely protective factors. There is a significant methodological issue in this case however with regard to predicting C's future mental health. I do not have access to medical records (if indeed there are any), which relate to his childhood and adolescence prior to his relocation to the UK. Furthermore, I do not have medical records which relate to his period of residence in Scotland. As such the documentary trail with regard to any health issues is virtually non-existent. "

Dr Briggs narrated that C was born in Nigeria. In his childhood he saw poverty and hardship. As an adolescent he was taken into service by an acquaintance of his family. He was poorly schooled and put to work. He saw suffering, hardship and extreme violence including witnessing the murder of the man whose service he was in. Dr Briggs notes that C is unskilled as a parent with a poor understanding and insight into the requirements of parenting. This was contrasted with a strong belief in his parenting capacity that has not been evidenced. Dr Briggs stated that C appears to lack empathy. Dr Briggs expressed concern about C's ability to understand and respond to A's emotional and psychological needs as he develops. He doubted that C had the necessary capacity to parent A throughout his childhood. Having provided his first report Dr Briggs was asked to observe a contact

session, which he did. His second report is problematic from C's perspective. Dr Briggs stated at page 12:

> "….. I must report that I have very significant anxieties about this case and for A's wellbeing. More specifically I cannot evidence that C has insight into A's needs, sufficient to reassure me that he is equipped to provide attuned parenting to A at this point in time. This is a father who has no realistic or credible parental relationship with his child at this point in time. There was an emotional detachment observed in C towards A at contact. C has presented as someone who exhibits a somewhat intellectual approach to his circumstance, a person who presents as wanting to have involvement in the life of his child but without a focus on the child's priorities and needs. He presents as an unempathic father, as exemplified by him being relaxed when faced with his son's distress at contact.
>
> There remains, in my opinion, a highly significant risk of neglectful parenting, were A to be placed in C's care and with a particular anxiety on my part as to C being able to meet A's emotional needs. I revert to the concerns expressed in my initial report and my analysis of C's circumstance."

[35] Dr Briggs did state in evidence and in his report that C's emotional dysfunction was treatable but at present he was not capable of parenting A and if allowed to do so would constitute a potential significant risk of neglect to the child. He expressed the view that intensive specialised therapy could, if successful, alter that situation but this would take time. He thought between 12 and 24 months. In his conclusion to his second report he states:

> "I am of the opinion that until C addresses the aftermath of the trauma and maltreatment he was exposed to in childhood that he will not be positioned to offer safe and reliable parenting to A. Furthermore, I am pessimistic that a swift resolution to C's emotional difficulties can be achieved, even were he to be offered any form of sophisticated psychotherapy. The trajectory for change is likely to be slow and steady rather than swift. There is little realistic prospect of C bringing about a change in his emotional and psychological functioning and addressing his early life trauma within a timescale which meets C's needs.
>
> It would be misleading for me to suggest that the local authority in this case should attempt to manage risk by short-term solutions such as inviting C to attend parenting skills courses. Whilst respecting the local authority's duty to promote the involvement of C in the life of his child and to offer whatever support is appropriate, I do not see the interventions and support C requires as being a social work task.

> C is damaged in terms of his personality structure and emotional functioning. He requires highly specialist assistance to understand and meet his emotional needs before he can be considered as having capacity to parent a child. He is fortunate that he has access to a dedicated faith group and community around him and which may go some way towards supporting him in a compassionate, and culturally sensitive and culturally compatible manner. C's emotional maturation and the development of empathy is likely to be a slow process however, and any psychotherapy designed to address early life trauma will be long-term, even assuming C is motivated to engage in such psychotherapy and a suitable treatment provider were to be found. Prognosis is very uncertain in C's case, the risks to A are significant were he to be placed in his father's care at this point in time, and timescales for A are unfavourable whilst we await evidence of C achieving meaningful change."

[36] With this evidence, the report of the safeguarder and the Joint Minutes lodged, Ms Ennis closed the pursuer's proof.

Interested party's proof.

C gave evidence.

[37] C gave evidence. He is 30 years of age. He said he is a Nigerian citizen. He came to the UK on 14 July 2012 on a visitor's visa and stayed on beyond the time allowed. He has leave to remain in this country until October 2020. He explained it was unsafe to remain in Nigeria because of civil unrest. He said there was violence there all the time. He met B on 9 September 2013 on a bus. It was a chance encounter. They talked and exchanged details. They met the next week and got to know each other. C was living in Wester Hailes at that time. The couple texted each other and met again. After 3 months C said B wanted to move in with him. He found a room in Edinburgh and they lived together. C indicated he knew about B's mental health condition. He met D whom he said he got on with. C said he lived with B for about 4 or 5 months. One day there was an incident involving C speaking to a woman called F. B accused him of infidelity and left the flat. The parties have not lived together since, except for the odd night. The separation was in April or May of 2014. C said

he discussed having a family with B in the future when they were together. He was aware she used contraception. Between March and April 2015 B was staying over with him. They were having sexual intercourse. In May 2015, B told C she was pregnant. They were both excited by the news. C accompanied B to medical appointments. The baby was born on 1 November 2015. The baby was born by Caesarean section. C was present. At that time, there was a possibility of B being allocated a council house. Shortly after the birth, C disclosed to B that he was an illegal immigrant in the UK. B was very upset. C indicated that he told social work staff that he was an illegal immigrant on 3 November 2015. C confirmed he was at the hospital helping with the baby when the police came. He denied there was any issue at the hospital when he was violent. However, he was detained and taken to Livingston police station. He was bailed with a weekly 'sign on' condition. B was texting him at that time. C attended a social work meeting in November 2015. C said he went to meetings with social workers but the social work department did not want him to have the baby. He said B and D were afraid of the social work department. He said he went to the Council Chambers to sign a declaration in respect of paternity to A but B did not go through with the arrangement. In December 2016, D contacted him by text and a number of arrangements were made for C to visit A, B and D in the Borders. C spoke to various texts messages and photographs relating to contact he had with A while the child was in D's care at this time. During these contacts he went to a park and D's home to see A. The contacts all went well according to the witness. C bought some clothes for A and supported him as best he could. In March 2017, C said he was told that B decided to give A up for adoption. C went to see JL and asked to see A. He was told he had no parental rights and responsibilities. He was also told by JL that B did not want him to see the child. C raised an action to secure contact. C said he had problems with the Home Office about this time. He

went for an interview in Glasgow and was detained between June and August 2017. He was given a permit to remain in the UK. That expires in October 2020. C registered with the social work department for parental assessment. He was told before that could begin, he had to have preliminary meetings with A to get to know him. The contacts started in January 2018. He met YM before the sessions. He was given advice about how to engage with A. C said the room used for contact was not suitable. It was too small. A was shy with C. According to C, A allowed him to engage. He was of the view the first session did not go badly. The second session he said went well until MW left the room. He said A's mood went down and he could not engage with him. C tried to pick A up but was told to put him down by MW. At the third contact A did not want to come into the room. C said A needed MW to stay in the room for the contact to work. Again, on the fourth contact A refused to enter the room. C said the contact needed to be free for it to work. At the fifth contact C said he was able to hold A's hand. At the sixth contact in the park he said he was asked to stop carrying A by MW. He got a hug from A before the contact ended. The final contact with Dr Briggs he said started well. However, when MW left the room and C tried to pick up A he began crying.

[38] C indicated his present landlady has children with whom he gets on well. One child is under 2 years old and C childminds for him. C indicated he works as a carer for adults in Edinburgh.

[39] In cross-examination, C said he wanted what was best for A. He accepted he does not have his own accommodation and that his immigration status is unresolved. He said he was looking for accommodation he and A could reside in. He said he was unsure of when A is due to start school. He also indicated he works full time doing shifts some of which begin at 7am. He indicated he also has support and a family among his church congregation. He

said his landlady would be willing to help out with A. C said he has no right to state benefit or housing benefit. He denied there was any violent incident when he was in the hospital after A's birth. It was put to C that he lied to immigration workers about his relationship with B. It was put to C he lied to his former solicitors. C said he wanted to be a part of A's life.

[40] Mr Scott for C, relied upon supportive affidavits lodged by CR and SF both of whom confirmed that C worked in Edinburgh as a carer. Each affidavit gave details of the caring work C does for those under his charge. An affidavit was also provided from HA who is C's landlady. She spoke to the fact he has a good relationship with her own children. There was also an affidavit lodged from PKFA, who is C's pastor, in the church he attends in Edinburgh. This too is supportive of C and details the caring side of C's personality.

[41] With these documents Mr Scott closed the interested party's proof.

Submissions

[42] Both counsel and Mr Scott made detailed submissions. I do not intend to rehearse them here. Importantly and I will refer to this later both agreed that C had no parental rights and responsibilities in law. Both agreed only B had statutory rights and responsibilities and that only B's consent to authority to adopt was required or had to be dispensed with, if a permanence order was granted with such authority to adopt. The core dispute between them related to the conclusions I should reach with regard to the application of the welfare principle in this case. I will deal with this later.

Discussion

The permanence order

[43] Given A's age I am satisfied that he cannot consent to the order sought. I considered the terms of section 3 the 1995 Act which provides that:

> "3.— Provisions relating both to parental responsibilities and to parental rights.
> (1) Notwithstanding Section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 (provision for disregarding whether a person's parents are not, or have not been, married to one another in establishing the legal relationship between him and any other person)—
>
> > (a) a child's mother has parental responsibilities and parental rights in relation to him whether or not she is or has been married to his father; […]
> >
> > (b) without prejudice to any arrangements which may be made under Subsection (5) below and subject to any agreement which may be made under Section 4 of this Act, his father has such responsibilities and rights in relation to him only if [—]
> >
> > > (i) married to the mother at the time of the child's conception or subsequently; or
> > > (ii) where not married to the mother at that time or subsequently, the father is registered as the child's father under any of the enactments mentioned in subsection (1A)"

Accordingly, only B has parental rights and responsibilities over A. C has no such rights and responsibilities. Before making a permanence order I must be satisfied that the threshold test set down in section 84 (5) of the 2007 Act is met. That provides that:

> "(5) Before making a permanence order, the court must—
> …….
> (c) be satisfied that—
> > (i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence, or
> > (ii) where there is such a person, the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child."

In the present case B does have the right to have A living with her and regulate his residence but she has agreed to relinquish her parental rights and responsibilities and supports the

grant of a permanence order with authority for adoption. Notwithstanding her agreement to that course of action, I am separately satisfied on the evidence led before me that A's residence with B given her medical condition, which is unlikely to change, is now and would likely in future be seriously detrimental to A were he to live with and be looked after by B. Sadly, B cannot look after or meet the physical, emotional and developmental needs of A, even if she wanted so to do, through no fault of her own but because of her illness. Thus, on the evidence led I am satisfied that the threshold test is met.

[44] Mr Scott for C did not dispute that, as a matter of law, C has no parental responsibilities or parental rights in relation to A. As a consequence, standing my conclusion with regard to the seriously detrimental consequence for A, if he were to reside with B, the threshold test for the grant of a permanence order is crossed before C's legal interest is engaged.

[45] However, even when the threshold is passed for a permanence order, it is not inevitable that it is made. I may not make a permanence order in respect of A unless I consider it would be better for him that such an order be made than not made (section 84(3) of the 2007 Act) and in considering the matter of grant I must regard the need to safeguard and promote the welfare of A throughout childhood as the paramount consideration (section 84(4) of the 2007 Act). I must also have regard to A's religious persuasion, racial origin and cultural and linguistic background, and the likely effect on A of the making of the order (section 84(5)(b)(ii) and (iii) of the 2007 Act).

[46] Ms Ennis invited me to accept the evidence and affidavits of the pursuer's witnesses as credible and reliable. Subject to my view on one part of Dr Edward's opinion evidence, I found them all to be so. On the basis of that evidence, I concluded that A has never been raised by his biological parents. He has spent his entire short life in local authority care,

with the exception of kinship care with his grandmother D, between November 2016 and March 2017. That short placement failed because D had older children of her own and her health did not permit her to care for A. Mostly, A has been with foster carers and now he is settled with E, who wants to adopt him and has insight into his ethnic and cultural background. I concluded A is well settled with E. He may have had some early developmental health problems with a possible trait for autism but there appears to be nothing seriously physically wrong with him. Further, his mother B consents to permanence with authority to adopt. His father C wants what is best for A. A will be 5 years old in November 2020 and may start school in August 2020, although there was no evidence that this is planned.

[47] I accepted the evidence of Dr Edwards, Dr Briggs, JL and AK that A needs, at this stage in his life, to be claimed by a primary care figure and attached to a family. I had no difficulty in deciding that attachment to a family was in his best interests and needed to safeguard and promote his welfare throughout his childhood. In considering the impact permanence will have on A, I had regard to the evidence of MW. She said that A had followed the journey of other cared for children she fostered and A had helped them pack to move on to their new adopters. I am satisfied that A understands that moving on like that is different from being fostered. He will have appreciated there is something different in that move. Now, the evidence from JL and MW, who have both visited after A's transition, is that he has bonded with E. He is happy there and has a loving parent who provides for him physically and emotionally. I was told E has insight into A's particular needs, as a child of mixed heritage. Therefore, in posing the question, whether it is better that the order be made than not, I considered that the uncertainty of knowing what is to happen to A, could not be better than moving forward in a positive and caring direction. A may start school

this year which is an important stage in his life, if that happens. The evidence from social workers and Dr Edward was that he needs to be claimed as part of a family rather than being in limbo and not knowing where and what is to become of him. I considered, on the evidence before me, that it is better for him to move to permanence than to remain in the local authority's childcare system.

[48] C's objection to the grant of a permanence order in this case has to be seen in the context of his evidence. I have to decide what weight to attach to that objection. As Mr Scott reminded me, C stated that he had met B by chance and they formed a relationship. After A was born, C disclosed his immigration status to B and the relationship with B ended. Neither B nor D gave evidence in person and neither was subjected to cross-examination. According to C, both B and D actively encouraged him to travel to the Borders and have contact with A. JL on the other hand gave evidence that both B and D did not want A to have anything to do with C. There is a clear conflict in the evidence around the question of the attitude of B and D to C. However that conflict is resolved, I did not consider it to be material to the decision I had to make with regard to the best interests of A, at this stage in his life. I considered it perfectly possible that D lied to social workers about her contact with C and her encouragement of him to see A. However, with regard to the chapter of evidence that related to C going to the Borders and visiting with B and D to have unauthorised contact with A, I attached no weight to it at all because of the age of A at that time (A was 13 to 16 months at the time). I have no difficulty in accepting that those visits were pleasant and that C engaged closely with his son who does not appear distressed, as is demonstrated by the photographs lodged on his behalf. In that regard, I also rejected the opinion evidence of Dr Edwards, based on her review of the records, that A's antipathy towards his father at supervised contact in 2018 (when A was 26 to 30 months) was a "trauma response" possibly

related to C's conduct towards A in his early life. There is no persuasive evidence that C has at any time assaulted or been cruel to A or even had the opportunity to do that. There is no evidence he was ever alone with A. I considered the opinion of Dr Edward in relation to a "trauma response" and "imprint" in the sense that A has an antipathetic, deep-seated memory of trauma associated with C, to be mere speculation unsupported by evidence and I rejected it.

[49] However, I did accept, as credible and reliable, the direct evidence of JL, MW, YM and the opinion evidence of Dr Edward that contact with C in 2018 was distressing and harmful to A. Further, I considered whether the contact had been deliberately and maliciously rigged by social workers and MW, so that C would fail in trying to establish a bond with his son. I rejected that idea. I found Dr Briggs's evidence when he went to observe the last period of contact between A and C to be highly persuasive when considered in the light of his whole reports and the direct evidence of JL, MW, YM and the opinion evidence of Dr Edward about the effect of continued contact with C. Accordingly, I was satisfied that the pursuer had done everything possible to enable a contact bond to be established with A before a parenting assessment could be conducted in relation to C. I was satisfied the problem in relation to the lack of engagement and rejection by A of C, lies within C and nowhere else.

[50] I accepted the expert opinion evidence of Dr Briggs and his conclusions that C is:

> "….. damaged in terms of his personality structure and emotional functioning. He requires highly specialist assistance to understand and meet his emotional needs before he can be considered as having the capacity to parent a child."

I preferred the evidence of Dr Briggs to the affidavit evidence lodged on behalf of C that indicates that he engages well with young children. I did not consider that C had not been given a fair opportunity to create a bond with his son, as Mr Scott asked me to do and

refrain from granting permanence to allow more time for engagement between A and C. I did not consider Dr Briggs' opinion was weakened by the fact he did not have access to the full medical and educational records of C. Dr Briggs had a full social history from C and witnessed an occasion when C interacted with A to base his professional opinion on. I did not consider it material to my decision that full psychometric tests of C were not carried out by Dr Briggs. I considered he had adequate material available to him to form a professional judgement.

[51] I considered it is better for A that the order is made now than that it is not made. I reached that conclusion because on the evidence of JL, AK, Dr Edward (in part) and Dr Briggs. I was satisfied A has a compelling need now in his own best interests to move on and be claimed and attached to a loving parent. It is better for him that that happens now to safeguard and promote his welfare throughout his childhood than that he remains in the child care system possibly indefinitely, under compulsory measures of care, to wait and see if adequate and successful therapy can be found for C. I required to have regard to the religious persuasion, racial origin and cultural and linguistic background of A. I did so and I am satisfied that E is mindful of A's mixed heritage and cultural identity. I am also satisfied that E had been pro-active in contacting her church, local school and resources that will enhance her understanding and knowledge of A's mixed heritage. She has sourced literature about Nigeria. She has also contacted her local Nigerian community for support and a Nigerian person who also has children who are of mixed heritage. E has neighbours who are of black African ethnicity and have children close to A's age. A is well settled and bonded with E and in my opinion his religious persuasion, racial origin and cultural and linguistic background are appropriately and adequately protected, respected and recognised in his placement and reflected in my decision.

[52] There are no available alternative family members who are able or want to care for A, on either side of his family. Accordingly, my decision to grant the present application was informed by a number of factors. Firstly, C is a stranger to A. There is no parental bond between them other than a biological one. Secondly, no treatment along the lines which Dr Briggs suggests may succeed, has been identified let alone commenced. Dr Briggs opinion has been known since 5 June 2018. He thought if therapy could be sourced it may take between 12 and 24 months to complete. The outcome of therapy is unknown and unpredictable. If therapy were successful, which is unknown, A would require to be reunited with C. By that time he would be further estranged from him and more bonded with his present placement if it continues. There are simply too many imponderables in proceeding in that direction. In my judgement, the opportunity for A to move on is now. Thirdly, there is no guarantee that C will be allowed to remain in the UK beyond October 2020. I have come to the conclusion that the best interests of A cannot wait or be delayed on such a tenuous basis. The weight of the evidence and expert opinion I accepted comes down heavily in favour of making the permanence order now and not delaying on such a nebulous and indeterminate basis.

Permanence with authority to adopt.

[53] I considered the specific conditions which apply in the 2007 Act when deciding whether to grant a permanence order with authority to adopt, in so far as is relevant to this case. These are found in section 83 of the 2007 Act which provides:

> "**83 Order granting authority for adoption: conditions**
>
> (1) The conditions referred to in section 80(2)(c) are—

> (a) that the local authority has, in the application for the permanence order, requested that the order include provision granting authority for the child to be adopted,
> (b) that the court is satisfied that the child has been, or is likely to be, placed for adoption,
> (c) that, in the case of each parent or guardian of the child, the court is satisfied—
> (i) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or
> (ii) that the parent's or guardian's consent to the making of such an order should be dispensed with on one of the grounds mentioned in subsection (2),
>
> (d) that the court considers that it would be better for the child if it were to grant authority for the child to be adopted than if it were not to grant such authority….."

The consent of C to authority for adoption is not required by the legislation, as he is not defined in terms of section 83(5) of the 2007 Act, as a parent. His locus in these proceedings is qua interested party in terms of section 86(2)(d) of the 2007 Act. However, I still require to consider whether to grant such authority in the light of his objection. Mr Scott reminded me that C objects to steps being taken to place his son for adoption and wants to be a part of A's upbringing.

[54] The reasons I gave for granting the permanence order I consider to be relevant to the question of authority to adopt and I do not repeat them in detail but I took them into account. I considered that it was better for A that he not only be taken out of the local authority cared for and accommodated child system but that he be placed with a suitable potential parent. Whether that works out and adoption follows is not a decision for me but I considered it is better for him that that journey starts now than that he is left waiting in limbo for possible reintegration into a family unit with his father. I also took into account the fact he has had a troubled early start to his life and is now, judging by the evidence of JL and MW, invested in his new carer E and the prospect of a settled, stable and happy life with her. He seems to have bonded with her. I was troubled by the idea that 2 years could

pass and he would have to be removed from E with the associated trauma that might cause and reunited with C, if that were possible. I considered that would be very confusing for A. On the one hand he has a stable happy life now with someone he understands will be his parent. On the other hand, what C, who is a stranger to A, offers, is no more than the uncertain hope that he might be reunited in the future. Looking at the evidence in a holistic way and taking all factors into account I came to the conclusion that it was in A's best interests that authority to adopt be sanctioned now.

[55] Ms Ennis reminded me in submissions that part of the pursuer's case was that B had been deliberately impregnated by C to help him acquire a right of abode in this country. While that is a legitimate suspicion the local and immigration authorities may have, with regard to C, I found no evidence to justify that conclusion. C denied the suggestion and I believed him.

[56] Another part of the pursuer's case was that C entered appearance in these public care proceedings as part of a strategy, to create a legal attachment to A and thereby avoid deportation in the future, by claiming a family life and concomitant rights in terms of article 8 of the ECHR, in the UK, if he becomes subject to removal proceedings and decides to judicially review that administrative decision. Given the report of Dr Briggs and the fact that C has done nothing practical to demonstrate, in the evidence before me, that he is actively seeking and willing to undertake such therapy as may be available to address his damaged personality, I am more sceptical about the present motivation of C. During his evidence and while participating in the proceedings before me I formed the impression that C was distant and disengaged. He may have been preoccupied with thinking about this case but to me, he appeared completely unemotional and lacked any empathy for the fate of A, beyond mere assertion. Whether I have made a sound judgement in that regard is to my

mind moot because my decision to grant this application was based on the need to safeguard and promote the welfare of A throughout his childhood, rather than his father's possible motivation in delaying that decision, in his own best interests, as opposed to his son's.

Future contact in terms of section 82(1)(e) of the 2007 Act.

[57] Ms Ennis addressed me on this matter. She informed me that an indirect contact plan had been agreed between the pursuer and B which is contained in a Joint Minute No 24 of process. I am content to interpone authority to that agreement. With regard to future contact between A and C, Ms Ennis opposed this in principle on the basis of the opinion of Dr Edward that A's adverse reaction to C may have been 'triggered by non-verbal memory' which Dr Edward considered was the only meaningful explanation for A's behaviour. As I indicated above, I rejected that opinion as unfounded on any evidence of abuse or cruelty by C towards A. I considered it speculative. I did not consider it appropriate to base my decision on future contact between A and C on this aspect of Dr Edward's opinion. Mr Scott invited me to grant direct contact to C. I did not, on the basis of the evidence I heard from JL, MW, YM, Dr Briggs and Dr Edward (in part), consider that it would be in A's best interests to allow direct contact which I consider on the evidence of the effect of direct contact already tried would be confusing, distressing and unsettling for A in his adoption placement. Instead, I accepted the evidence of JL in her affidavit already referred to at para [21] above where she states:

> "If the order was granted, my view is that there should be indirect contact between A and his father. My view is that this should take place at a frequency of once per year. Contact should be in A's best interests and take place at a level that would safeguard and promote his needs. A is half White Scottish and half Black Nigerian. Given the prospective adopter's ability to promote A's mixed heritage and ethnicity, once

> yearly indirect contact would be sufficient to give A an understanding of his identity and his father's history. It has been evidenced that A is unable to spend any time with C when he has seen his father, direct contact would not be in A's best interests."

Conclusion

[58] I shall grant the orders sought in the purser's application and in the Joint Minute of agreement between the pursuer and B for the reasons I have stated and in addition make a further ancillary order for yearly indirect contact to C. C will be entitled to be updated and informed in writing of A's general health, progress and development. In time, this indirect contact may contribute to A's fuller understanding of his identity and history which is in his best interests, should he choose to pursue the matter when older. There is no evidence led before me that I accept which demonstrates that it is in A's best interests that all contact between A and C is ceased. If C is no longer resident in the UK the pursuer is under legal obligation to send the information to C provided he supplies an address.

Expenses

[59] I shall make no award of expenses due to or by any party in this case.