

**SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY AT
AIRDRIE**

[2025] SC AIR 71

AIR-AD14-24

JUDGMENT OF SHERIFF ANTHONY MCGLENNAN

in the cause

G

Petitioner

for the adoption application

in respect of

“Mary”

Petitioner: “G”; MacKenzie

First respondent: “E”; Trainer, advocate

Second respondent: “F”; Hughes, advocate

Airdrie, 18 September 2025

The sheriff, having resumed consideration of the petition;

1. dispenses with consent of the first respondent E to the making of an adoption order in respect of the child Mary born 21 November 2020;
2. dispenses with consent of the second respondent F to the making of an adoption order in respect of the child Mary born 21 November 2020;
3. makes an adoption order in respect of the child Mary born 21 November 2020 in favour of the petitioner;
4. attaches conditions to the adoption order made providing for annual reciprocal letterbox contact between the petitioner and the first and second respondents, said

letterbox contact to be supervised and facilitated by the local authority and in respect of which;

- a) the first and second respondents shall be entitled to provide a letter or card update for the child Mary on one occasion per year;
 - b) the first and second respondents shall be entitled to include a birthday or Christmas card for the child Mary with the letter or card;
 - c) the first and second respondents shall be entitled to include one small gift for the child Mary with the letter or card;
 - d) the petitioner will provide a report as to the child Mary's health, welfare, and wellbeing to the first and second respondent once per year;
 - e) the petitioner will include a recent photograph of the child Mary with the annual report;
 - f) the petitioner's obligation at 4 d) will terminate in the event that the first and second respondents, without reasonable cause, fail to provide their annual letterbox contact update set out at 4 a) above on two successive occasions;
and
 - g) the petitioner's obligation at 4 e) will terminate in the event that any photograph provided by the petitioner is posted upon any form of social media platform whether on a private or public account, or otherwise published, or made available for public viewing, and the first and second respondents have failed to take all reasonably practicable steps to guard against that occurrence;
5. makes an order that the existing compulsory supervision order for Mary shall cease to have effect;

6. finds no expenses to be due or by either party.

FINDS IN FACT:

Introduction

1. Mary is a 4-year-old female child.
2. The petition before the court sought that an adoption order be made in respect of Mary.
3. G presented the petition seeking the adoption order.
4. Mary's natural mother is E.
5. Mary's natural father is F.
6. E holds full parental rights and responsibilities in relation to Mary.
7. F holds full parental rights and responsibilities in relation to Mary.
8. Mary has resided with G since 10 April 2024. They reside in the jurisdiction of this court.
9. E and F did not consent to the adoption order sought and opposed the petition.
10. E and F opposed the adoption order because they believed that doing so was in Mary's best interests.
11. G sought to adopt Mary because she believed that was in Mary's best interests.
12. E, F, and G each love Mary.

The parties

E's background

13. E was 31 years of age when, in July 2025, she swore the affidavit which stood as her evidence-in-chief at proof.

14. Since 2023 E has resided in the west of Scotland, with F, in a town which is out with the jurisdiction of this court. She is unemployed.
15. E's parents separated whilst her mother was pregnant with her.
16. E had a sporadic relationship with her father thereafter. There would be long periods without contact between them.
17. E's mother struggled to cope with bringing E up. She prioritised relationships with men and drinking over caring for her daughter. E was often moved to reside with different family members. E was placed in short break residential care on two occasions.
18. It is very likely that E was subjected to, and survived, sexual abuse as a younger child, although she has no memory of the attacks.
19. E witnessed domestic abuse perpetrated by a man she then considered her step-father upon her mother. The exposure to abuse has had a lasting adverse impact upon E.
20. E struggled in education and changed schools on a number of occasions. She ceased going to school when she was around 14 or 15. She has not been in either education or employment since then.
21. At 16 E moved away from her family. She resided in homeless units, for a short time with her father's girlfriend, and in a number of scatter flats.
22. At the age of 18, E fell pregnant with her eldest child "Barbara". This was an unplanned pregnancy. E was not in a relationship with Barbara's father.
23. E was unaware that she was pregnant with Barbara until approximately 16 weeks into the pregnancy. E felt pressured into continuing with the pregnancy and had

suffered the recent bereavement of her grandmother and her aunt at that time. Her mental health declined during the pregnancy.

24. When Barbara was born E was unsupported. Her mental health declined further. She began using alcohol frequently. Barbara was received into the full-time care of her maternal grandmother when she was 15 months old. Barbara has remained in the care of maternal and paternal grandparents ever since. E has had only sporadic contact with Barbara.
25. E's adult life has been made challenging by frequent periods where her mental and physical health has been very poor.

F's background

26. F was 35 years of age when, in July 2025, he swore the affidavit which stood as his evidence-in-chief at proof. He was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") as a child, and that condition persists to date. He is currently unemployed.
27. F had a child from a previous relationship in 2012. His son, "Rory", is 13 years of age and resides with his mother. F has not been a consistent presence in the childhood of Rory.
28. F has been diagnosed as suffering from ADHD.
29. F has had problems in adult life with alcohol and substance abuse, including during the periods in which he and E were caring for James and Mary.

G' background

30. G is a single female who is in her late forties.

31. G is employed in a senior role in the school education sector and has been for many years.
32. G has no biological children.
33. G has never previously adopted a child.
34. G contacted her local authority in November 2021 requesting they act as her adoption agency.
35. G's decision to pursue adoption was informed by her desire to provide a child with nurture that may have been missing from the child's earlier life.
36. G also wished to provide the child with support and guidance to assist the child in thriving in life.

E and F's relationship

37. E and F began a casual relationship before E discovered she was pregnant with Barbara.
38. E and F thereafter began a committed relationship in 2013, shortly after Barbara was born.
39. E and F married 2018.
40. In the initial stages of their relationship E and F did not reside together.
41. E and F's relationship has for many years, and until recently, been characterised by volatility and frequent periods of separation.

James' birth and early years

42. In 2015 a son, James, was born to E and F.

43. Social work services had involvement with James pre-birth. He was placed on the child protection register before he was born.
44. When E and James were discharged from hospital they initially resided with E's mother.
45. James was then removed from the child protection register on 2 February 2016.
46. During James' early years, F was inconsistent in taking medication prescribed to him relative to his ADHD condition. He self-medicated using cannabis and alcohol. His consumption of alcohol was problematic, including drinking secretly, and binge drinking. His use of alcohol and cannabis caused tensions in his relationship with E.
47. In January 2018 F assaulted E by placing his hand around her throat, pulling her by the hair and punching her to the lip. James witnessed this conduct and attempted to intervene. F then began threatening to kill himself. The police were called. F was charged but also taken to hospital because of concerns about his mental health. F was later made the subject a community payback order as a consequence of a conviction arising from this incident.
48. Consequent upon the incident that took place in January 2018, James was placed on the child protection register on 5 March 2018. He was removed from the same on 30 August 2018.

James' challenging behaviours

49. From the age of 3, James exhibited challenging behaviours. He often behaved aggressively, and there were incidences of self-harm. He had a very poor sleep pattern. He was disruptive at school.

50. School staff contacted social work services on 24 June 2019 due to growing concerns over James' behaviour.
51. Around this time E's mental health was fluctuating and she was experiencing significant physical health difficulties.

Exacerbation of James' challenging behaviours during the Covid lockdown period

52. James' challenging behaviours exacerbated during the COVID lockdown period.
53. There were several incidents at this time where James self-harmed. These included occasions where he; bit himself; hit his head against radiators; pulled his own hair; and punched doors.
54. There were instances of destructive behaviour at this time; he caused damage to his bedroom; destroyed many of his toys and caused damage to furniture; pulled wallpaper from walls; pulled blinds down from windows; smashed his television; and ripped the sheets up from his bed.
55. Some items required to be removed from James' room to stop him from using them to harm himself.
56. There were also instances in this period where James would kick and punch his parents.
57. F was unsupportive during these times and was secretively drinking to excess. On occasions when he was caring for James he would be drunk.

Initial issues during pregnancy with Mary

58. Concurrently, at this time E had fallen pregnant with Mary. The health visitor allocated to James notified social work services of this fact on or around 15 April 2020.
59. On 24 June 2020 the health visitor notified social work services of her escalating concerns regarding the parenting that was being provided to James and the impact that E and F's parenting was having upon James' behaviour.
60. On 2 July 2020 there was an incident at the family home in which E threatened F with a butter knife. F called the police. On attendance at the family home the police officers did not charge E but wished to take her to hospital to be seen by mental health services. E did not wish to attend and did not do so.

Initial referral discussion

61. Social work services held an initial referral discussion concerning the family on 3 July 2020.
62. A decision was made to hold a child protection investigation.
63. This decision was a response not only to the aforementioned incident of 2 July 2020, but also an accumulation of concerns held by social work services in relation to circumstances within the family, including those disclosed by the health visitor.

Initial child protection case conference

64. Upon recommendation from one of the social workers present at the discussion, it was agreed that an initial child protection case conference would be held.

65. This decision took into account ongoing concerns that; the risk factors and vulnerabilities that had led to previous involvement by the social work department and periods of child protection registration for James remained present; E and F's relationship was unstable; inadequate levels of care were being afforded to James; there had been a deterioration in E's mental health; and F's alcohol consumption was problematic.

Notification from midwifery services

66. A notification to social work services relative to E was made by midwifery services on or around 16 July 2020.
67. The midwife at E's maternity hospital stated significant concerns as to; the lack of support available to E; her difficult relationship with her own family, and with F's family; E's decision to decline a referral to peri-natal mental health services; and E's overall ability to care for her unborn child and James.

The initial child protection case conference

68. The notification from midwifery service was disclosed to social workers dealing with the family on 4 August 2020, that being the assigned date of the initial child protection case conference.
69. At the child protection case conference James was placed on the child protection register for a third time.
70. At that case conference a social worker was allocated to undertake a pre-birth assessment for Mary.

The pre-birth assessment

71. The allocated social worker recommended that Mary's case proceed to a pre-birth child protection case conference.
72. The recommendation founded upon the allocated social worker's consideration that; there was a high level of immaturity, toxicity, acrimony and instability within E and F's relationship, this impacting upon the level of care being afforded to James; that E and F prioritised their own relationship over the needs of James; and that the arrival of Mary would put strain on E and F's relationship, and further adversely impact on the level of care being afforded to James.

The pre-birth child protection case conference

73. A pre-birth child protection case conference for Mary was held on 21 September 2020. Its unanimous decision was to place, the yet unborn, Mary's name on the child protection register under the risk category of neglect.
74. As part of James' child protection plan, a referral was made to the local authority's intensive family support service. The service aimed to support families to avoid children of those families being accommodated by the local authority. A service worker was allocated to assist E and F in relation to James and in relation to the impending arrival of Mary.
75. A pre-birth child protection plan was implemented for Mary to support E and F through the pregnancy and to ensure that thereafter their circumstances were conducive to Mary being discharged from hospital into their care. This plan included weekly visits to E and F and provision of support and guidance in relation to household routines and preparations for Mary's arrival.

E and F's separation

76. On 10 October 2020 E was in hospital with an infection. Whilst there she received anecdotal information that F had been unfaithful and that he had James out late at night.
77. E called F to confront him upon these matters. F's response was to end the relationship.
78. F also called the hospital and reported that E intended to kill herself, an assertion E maintains was untrue.
79. Upon being discharged E secured homeless accommodation through the blue triangle service. She remained in homeless accommodation for a matter of days before securing a temporary furnished flat.
80. F remained within the couple's tenancy and became the sole carer for James.
81. The separation of E and F impacted upon social work services' child protection plan, which was predicated on the couple remaining together to parent both James and Mary.

Mary's birth and early months

82. Mary was born on 21 November 2020.

The post-birth child protection case conference

83. A post-birth child protection case conference for Mary was held on 23 November 2020.

84. The decision of the case conference was that James and Mary's names would be retained on the child protection register under the category of emotional abuse.

E and F living apart at the time of Mary's birth

85. F did not meet Mary until she was discharged from hospital following her birth.
86. When E left hospital, she took Mary to live with her in her flat.
87. For both E and F contact with the child not living with them was irregular. E did not see James for 6 weeks at one point.
88. E and F felt unable to rely upon each other for support at this time.

The review child protection case conference

89. A review child protection case conference for James and Mary was held on 23 February 2021.
90. The information presented to the review case conference detailed that the risk factors surrounding both James and Mary had not been mitigated through the child protection plan and in some regards had escalated.

Concerns expressed about argumentative behaviour

91. The biggest concern expressed at the case conference centred on the state of the relationship between E and F.
92. Although ostensibly separated and living apart E and F continued to have a high level of communication. This frequently descended into arguments by way of text message or telephone call, the subject matter often being petty in nature but

nevertheless escalating to a point at which time social work services were asked to arbitrate.

93. Some arguments between E and F resulted in the police being called. F contacted the police on 20 April 2021, 27 April 2021, and 16 October 2021. E contacted the police on 22 December 2020, and 24 April 2021. In addition, E's neighbour contacted the police on 29 May 2021. No charges arose from these reports to the police.

Concerns expressed about lack of candour

94. A further concern expressed was F's lack of candour with social work services. Positive progress reported by him in relation to James' behaviour had been exaggerated and it became apparent that F was not engaging meaningfully with the child protection plan.

The decision of the case conference

95. It was the decision of the conference that both James and Mary's names would remain on the child protection register, and both children be subject to their respective child protection plans.

The agreement

96. Following the decision of the case conference a working agreement was drawn up designed to ensure E and F fully understood social work services' concerns, and to identify actions required to effect positive change in relation to their circumstances.
97. E and F were willing to comply with the agreement, and it took effect from 31 March 2021.

98. By March 2021, although each had a separate tenancy, the relationship between E and F had resumed. F initially denied that this was so upon enquiry by social work services.

The social background report for the Reporter

99. On 19 March 2021 social work services wrote to the Reporter's office inviting them to request a social background report regarding Mary's circumstances with a view to consideration being given as to whether grounds of referral would require to be prepared. The Reporter's office then made such a request.
100. The report thereafter provided recommended that Mary be made subject to a compulsory supervision order but remain in the care of E.

Meetings of 28 April 2021

101. On 28 April 2021 social workers met E and F separately to discuss the ongoing significant concerns held by the department in relation to their relationship and its impact on James and Mary.

Incident on 29 May 2021

102. In the early hours of 29 May 2021, whilst within F's property and under the influence of alcohol, E and F, engaged in an argument. A neighbour contacted the police having heard the sound of a glass smashing. The police attended the house. As they did so E was in the process of leaving with Mary.

103. The police officers contacted the emergency social work out-of-hours service as James and Mary were present in the household at the time that they were called and both children were on the child protection register.
104. The emergency social work team spoke with E. She gave an account which materially conflicted with the police concern report they team had received.

Lack of emotional warmth

105. At this time there were instances whereby E demonstrated a lack of emotional warmth towards Mary in the presence of social workers.

Revisal of the recommendation to the Reporter

106. The accumulation of concerns culminating in the incident on the 29 May 2021 caused social work services to revise their recommendation to the Reporter's office. On 7 June 2021 they forwarded correspondence recommending that Mary be made subject to a compulsory supervision order, but out with the care of E and F.

The children's hearing of 9 June 2021

107. A children's hearing was convened on 9 June 2021 to consider grounds of referral in terms of section 67(2)(a) of the Children's Hearing (Scotland) Act 2011 that James and Mary were likely to suffer unnecessarily or have their health or development seriously impaired due to a lack of parental care.
108. E and F did not accept the grounds of referral. The applications for the children were referred to the sheriff court for proof.

109. Meantime the hearing made interim compulsory supervision orders in respect of James and Mary including a measure that they reside at a place of safety.
- Both James and Mary were then received into the care of foster carers.
110. There were no suitable kinship care arrangements available at this time.
111. Both children have remained as looked after and accommodated children since this time.
112. The children's hearing also attached a measure to the interim compulsory supervision order which provided for supervised contact to take place between E and F and James and Mary on four occasions per week under the supervision of the social work department.
113. On 27 August 2021 the grounds of referral were established at the sheriff court.

The parenting capacity assessment conducted by social work services

114. Concurrently social work services decided to conduct a parenting capacity assessment of E and F, to inform future care planning for both James and Mary.

The purpose of the assessment

115. The decision to conduct the assessment was prompted by social work services' identification that wide-ranging supports implemented over several years had failed to prevent James and Mary being accommodated.
116. The consideration of social work services was that a full parenting capacity assessment should be carried out before further decisions were made in relation to the care planning for both children.

117. Conducting a parenting capacity assessment was necessary given the history of, and recent developments in, E and F's care for James and Mary.

The preparatory sessions and the working agreement

118. During the period of the assessment E and F had temporarily reconciled.
119. The assessments were prefaced by a preparatory week in which E, F, James, and Mary were familiarised with the supervised contact environment.
120. It was made clear to E and F that the assessment was intended to provide the opportunity to demonstrate ability to fulfil a parental role, that social work services would support them in making and sustaining changes required to provide safe parenting to James and Mary.
121. The challenges which E and F had in relation to poor mental health, ADHD, and physical impairments were discussed and taken into account by social work services when making arrangements for the assessment's contact sessions.
122. The sessions were tailored to take account of F's ADHD condition and accommodations were suggested to take account of physical discomfort being experienced by E at certain times.
123. A working agreement laying out the overview of the assessment process was agreed and signed by the assessors and by E and F.

Conduct of the assessment

124. The assessment commenced on 21 June 2021 and concluded on 15 September 2021.
125. The assessment was conducted by social workers Suzanne McGregor and Jaqueline McKendrick.

126. The assessment examined parenting capacity with reference to; child development; parenting capacity; and family and environmental factors. It also examined amongst other matters; physical care; safety and protection; guidance routine and boundaries; play, encouragement and fun; external influences and support networks; attitude to the task of parenting; engagement; and potential for change.
127. There were nine individual parenting capacity sessions totalling 18 hours in aggregate, with observation of 58 direct contact sessions and six virtual contact sessions.
128. In addition, the assessment garnered information available from multiple agencies who had in the preceding 8 years provided parenting support to E and F. This addressed E and F's education and employment history, past relationships, current relationship, housing and financial situation, medical history, alcohol and drug usage, and engagement with criminal justice services.
129. The contact sessions took place in three different social work offices, selection being dependent upon the needs of the session.
130. The rooms which were used for contact sessions were of adequate size. Their size did not adversely impact on the ability of E and F to demonstrate adequate parenting ability.
131. Face masks were worn by all adults at the sessions, with the exception of E, standing the Covid regulations then in place.
132. Feedback from the contact sessions was given to E and F by social work services in a way which was digestible to E and F.
133. During the assessment E and F proved unable to carry out basic care tasks and meet the needs of their children at a basic level, including demonstrating insight and

responsiveness into their physical and emotional care needs, and reading, and responding to, their cues.

134. Neither E or F were able to demonstrate that any significant change had been effected by either of them over the course of the assessment that would allow them to provide safe, predictable, and nurturing care to both James and Mary.
135. The conclusion of the assessment period was followed, on 17 September 2021, by compilation of a detailed report upon the assessment. It was co-authored by Suzanne McGregor and Jacqueline McKendrick.
136. The report's recommendation was that both James and Mary's future needs would be best met through the permanence framework, that E and F were unable to fulfil James and Mary's needs, and would be unable to make the necessary changes to their lifestyle and parenting in a timeframe conducive to their children's needs and developmental milestones.

The children's hearing of 6 October 2021

137. A children's hearing convened on 6 October 2021. It deferred making a substantive decision on the basis that a safeguarder's report was awaited. The children's hearing made a further interim compulsory supervision order specifying that James and Mary continue to reside with their foster carers.
138. The children's hearing attached a measure specifying that supervised contact take place between James and Mary and E and F at a frequency of twice per week for 1 hour.

Events of 15 to 17 October 2021

139. Having been hospitalised as a result of mental health difficulties, E was then discharged on 15 October 2021. She returned home to find that F had removed all of his belongings from the family home.
140. F thereafter contacted Police Scotland on 16 October 2021 as he was concerned about E's mental health. Police officers attended at E's property where she presented as safe and well.
141. E was taken to a local hospital on 17 October 2021 having overdosed on a small amount of ibuprofen. She was discharged a short time later with a referral made to social work services' distress intervention team.

Children's hearing of 27 October 2021

142. A safeguarder's report was prepared for a children's hearing convened on 27 October 2021.
143. The hearing made a compulsory supervision order in relation to Mary which specified that she reside in the care of her foster carers and that contact take place with E and F at a frequency of 1 hour per month supervised by social work services.

Permanence planning meeting 1 December 2021 and the looked after and accommodated child review meeting of 11 January 2022

144. The local authority convened a permanence planning meeting in relation to both James and Mary on 1 December 2021.
145. It was the decision of the permanence planning meeting that permanency planning should be pursued in relation to both children.

146. That recommendation was ratified by a looked after and accommodated child review meeting on 11 January 2022.

Children's hearing of 9 March 2022

147. A children's hearing convened to review James and Mary's compulsory supervision orders on 9 March 2022.
148. The children's hearing deferred making a substantive decision. The hearing made an interim variation to the compulsory supervision orders and made a measure of no contact between James and Mary and both E and F.

Children's hearing of 30 March 2022

149. A further children's hearing was convened on 30 March 2022. The children's hearing continued and varied James and Mary's compulsory supervision orders. The order specified that James and Mary continue to reside with their foster carers and that there be no contact between James and Mary and E and F.

Final contact visit

150. The final contact session between James and Mary and E and F took place on 5 May 2022. It was delayed because of E's ill health.
151. There has been no direct contact between James and Mary and E and F since that date.

Permanence planning meeting of 18 May 2022 and the Looked After and Accommodated Children's Review Meeting on 16 June 2022

- 152. The local authority held a permanence planning meeting on 18 May 2022.
- 153. The permanence planning meeting recommended that adoption should be pursued for James and Mary.
- 154. That recommendation was ratified by a looked after and accommodated children's review meeting on 16 June 2022.

The adoption panel of 15 August 2022

- 155. The local authority convened an adoption panel in relation to James and Mary on 15 August 2022.
- 156. The children were registered as in need of permanent substitute care out with the care of their birth parents with the identified legal route being one of adoption by way of direct petition.

The prospective adopters of James and Mary

- 157. A couple were identified as prospective adoptive carers for both James and Mary.
- 158. A linking meeting convened by the local authority took place on 7 September 2022 approving the children being linked with the prospective adopters.
- 159. The local authority convened an adoption panel on 13 October 2022 at which time the match between the prospective adoptive parents and the children was recommended.
- 160. The agency decision maker for the local authority ratified the recommendation made by the adoption panel.

161. A children's hearing convened to review James and Mary's compulsory supervision orders on 8 November 2022.
162. The children's hearing continued James and Mary's compulsory supervision orders and applied a variation to the residence condition whereby James and Mary were to move to the care of the prospective adopters.
163. The children's hearing continued the no contact measure in relation to contact between James and Mary and both E and F.
164. James and Mary moved into the full-time care of the prospective adopters on 17 November 2022 after a period of phased introduction.
165. The children remained within that placement until 3 February 2023, when the placement broke down.
166. As a consequence of the placement breaking down, both James and Mary were received back into the care of their previous foster carers.

The children's hearing of 7 February 2023

167. An urgent children's hearing was called to review James and Mary's compulsory supervision orders on 7 February 2023.
168. The children's hearing deferred making a substantive decision and made an interim variation of the existing compulsory supervision orders to specify that both Mary and James were to reside in the care of their previous foster carers.

The children's hearing of 8 March 2023

169. A further children's hearing convened to review James and Mary's compulsory supervision orders on 8 March 2023. It continued the compulsory supervision orders

and specified that the children should continue to reside in the care of the foster carers. The measure of no contact with E and F was continued.

Breakdown of James' foster placement

170. On or around 21 June 2023 James and Mary's foster carers advised social work services that they were no longer able to continue to provide care to James due to the behaviours he was exhibiting.
171. Mary remained in the care of the foster carers, whilst alternative foster care provision was obtained for James.

Further permanency planning meeting of 8 August 2023 and the looked after and accommodated child review on 14 September 2023

172. The local authority convened a further permanency planning meeting on 8 August 2023 to review the permanence plans for James and Mary.
173. It was the recommendation of the meeting that Mary's permanence plan progress by way of direct petition for adoption. It was also recommended that the permanence plan for James progress by way of a permanence order application.
174. No permanent placements had been identified for either James or Mary as at the date of the meeting.
175. The recommendation of the meeting of 8 August 2023 was ratified by a looked after and accommodated child review on 14 September 2023.

G as Mary's prospective adopter

Initial meeting

176. Following G's enquiry concerning adoption in November 2021 an initial meeting satisfied Karen Jaskot of the family placement team of social work services that there were no circumstances or aspects of G's background that would act as a barrier to her progressing with an adoption process.

Preparatory group sessions

177. G was thereafter invited to take part in the preparatory group sessions operated by the family placement team. G took up the invitation.
178. G was a thoughtful and engaged participant in the sessions.

Full home study assessment

179. Following the preparatory group sessions, G proceeded to the next stage of the adoption process, the full home study assessment. This is a comprehensive and detailed assessment of prospective adoptive parents.
180. G's assessment was conducted by a member of that team, Karen Jaskot.
181. Following assessment G was readily recommended to be approved as an adoptive parent for one child of either gender within the age range of 3 to 6 years of age.

The adoption and fostering panel meeting of 9 March 2023

182. The local authority's adoption and fostering panel convened on 9 March 2023. The panel unanimously approved Karen Jaskot's recommendation of G as a prospective adoptive parent.

G's match with Mary

183. G then progressed to the stage of efforts being made to find an adoptive placement who represented a good match. This was conducted by way of the link maker platform utilised by the local authority in this process.
184. Mary was identified as a possible match during 2023.
185. G thereafter met with Mary's then allocated social worker, Abby McPherson and Mary's foster carers.
186. G proved committed to the match, keen to understand Mary's background, her history, personality, developmental trajectory and other information about her.
187. A linking meeting on 17 January 2024 approved the link between G and Mary.
188. An adoption panel convened on 15 February 2024 unanimously recommended the match of G and Mary for adoption.
189. The agency decision maker of the local authority endorsed the recommendation on 25 February 2024.

Mary being received into G's care

190. Introductory meetings between Mary and G commenced on 3 April 2024.
191. On 10 April 2024 Mary was then received into G's care.
192. Karen Jaskot conducted home visits with G and Mary upon 16 April, 25 April, 1 May and 25 May 2024.
193. G and Mary were observed to have a positive developing relationship.

194. G was assessed to be providing a very high level of consistent, nurturing parenting. She was able to respond appropriately and well when Mary displayed challenging behaviours. She communicated well and openly with Karen Jaskot.
195. Subsequent home visits were conducted by Karen Jaskot at a frequency of every 4 to 6 weeks.
196. Karen Jaskot was, and remains, happy with the progress of the placement, and with Mary and G's relationship.
197. Following a recent home visit in June 2025 the observation of Karen Jaskot was that; Mary had benefited hugely from the consistent and predictable parenting that G had provided; an extremely positive home environment had been created which was likely to make for a very successful adoptive placement; that Mary has claimed G as her parent and G has claimed Mary as her daughter; and that Mary and G have a very trusting and secure relationship.
198. Karen Jaskot is completely supportive of G's adoption application.

Mary's feelings

199. Mary is settled and happy with G and has flourished in her care.
200. Mary looks to the future and expects it to be with G. Mary talks about living with G until G is a very old lady.
201. Mary has met and fitted in with G's wider family and understands that she is part of that extended family unit. Mary wishes to have the same surname as G.
202. The prospect of being removed from G's care would be catastrophically unsettling to Mary and would be highly likely to have a very adverse effect upon her wellbeing and development.

E and F since direct contact ceased

203. Whilst Mary was in the care of her foster carers, E and F were aware of their personal details and were able to correspond directly with them.
204. E and F cooperated in providing consents to allow Mary to travel abroad with her foster parents.
205. The foster parents provided photographs of Mary to E and F.
206. No attempt was ever made by E and F to disrupt Mary's placement with the foster carers.
207. E and F had bought presents for James and Mary at birthdays and at Christmas, notwithstanding that they knew that the children would not be told where the presents came from.
208. E and F have held a statutory right to call a review of Mary's compulsory supervision order every 3 months but have chosen not to exercise that right.
209. E and F had very little information or knowledge about Mary's placement with G until the later stages of preparation for the proof.
210. Since it became clear to E and F that social work services did not intend to return James and Mary to their care they have made improvements in their lives.
211. E has been able to manage her mental health better. Her physical health has improved also. F has reduced his alcohol consumption.
212. E and F have been able to live together without interruption by separation from some point in 2023 until the present date.

- 213. In December 2024 E and F moved from the Lanarkshire area to the town in which they currently reside. They are happier in their new place of residence and have better support networks.
- 214. Since the move E and F's relationship has become more supportive, and their lives less chaotic.

James since the breakdown of his foster placement

- 215. James now resides within a therapeutic residential unit.
- 216. James' needs are very complex and frequently changing. He has periods of stability interspersed with periods whereby he finds life difficult. He can be destructive within the placement presenting risk to both himself and to others.
- 217. The local authority continue to pursue a permanence plan for James.

The adoption order

- 218. E and F love Mary but are unable to satisfactorily care for her and are likely to continue to be unable to do so.
- 219. G loves Mary and is able to provide a high degree of care to her and is likely to continue to be able to do so.
- 220. G is committed to caring for, and nurturing, Mary throughout her childhood, and maintaining that parental relationship throughout their whole life together.
- 221. Consolidation within a family unit, maintaining feelings of security and stability, and obtaining a sense of belonging to a parent and of being claimed as a child, are crucial to Mary's continued wellbeing and development.

- 222. An order granting G's adoption of Mary would consolidate Mary in G's family unit, maintain Mary's feelings of security and stability, and provide Mary with a sense of belonging and of being claimed as a child by G.
- 223. A residence order in favour of G or any of the other orders under section 11 of the Children (Scotland) Act 1995 proposed by E and F would not consolidate Mary in a family unit, nor serve to maintain within Mary feelings of security and stability, nor provide her with a sense of belonging and being claimed as a child.
- 224. There continues to be no appropriate kinship care placements available for Mary.
- 225. An adoption order is the only appropriate and viable option in terms of preserving and promoting Mary's wellbeing and development.
- 226. It has not been possible to ascertain Mary's views regarding her adoption given her age and maturity.
- 227. Adoption would not adversely impact Mary's religious persuasion, racial origin, or cultural, or linguistic background.
- 228. An adoption order whereby G adopts Mary would not sever Mary's bond with James.
- 229. An adoption order whereby G adopts Mary would not materially adversely affect Mary's relationship with James.
- 230. An adoption order whereby G adopts Mary would enhance Mary's future life.

Post adoption connection

- 231. It is important for adopted children, if commensurate with their welfare, to retain a connection with the birth family.

Contact at present between James and Mary

- 232. James and Mary presently have direct sibling contact. This takes place at a frequency of one visit per month.
- 233. Both children currently look forward to and benefit from the direct sibling contact which takes place.
- 234. G is supportive of this contact and is directly involved in the sessions.
- 235. It is difficult at present to predict the location and circumstances of James' future placement.
- 236. The location and circumstances of James' future placements may bear upon whether direct sibling contact remains in the interests of both children.

E and F and future contact with Mary

- 237. G has commenced introducing life story work to Mary and intends to continue to progress this at a level which is appropriate to Mary's ability to understand.
- 238. The introduction of the life story work acknowledges Mary's birth parents.
- 239. Mary has no substantial recollection of E and F.
- 240. At a recent contact visit with James, he referenced E and F. Mary looked confused and did not understand who James was talking about.
- 241. In principle G supports post-adoption "letterbox contact" for and E and F.
- 242. Letterbox contact as ordered by this court's order would preserve Mary's connection to her birth parents.
- 243. G will support Mary if, following adoption and when she is older, Mary wishes direct contact with E and F. This support is subject to G assessing that such contact is commensurate with Mary's welfare being maintained.

244. Annual provision by G to E and F of a photograph of Mary as part of letterbox contact will better preserve in Mary a sense of connection to E and F.

FINDS IN FACT AND LAW

1. E and F have parental rights and responsibilities in respect to Mary, but both are unable to satisfactorily discharge those responsibilities, or exercise those rights, and both are likely to continue to be unable to do so for the foreseeable future.
2. G is over 21 years of age, not a natural parent of Mary, and not part of a relevant couple. G is domiciled in the British Islands.
3. Adoption by G would consolidate Mary in a stable family unit and would assist her development.
4. It was not practicable to obtain Mary's views on the adoption taking account of her age and maturity.
5. An adoption order whereby Mary is adopted by G will not affect upon Mary's religious persuasion, racial origin, or her cultural and linguistic background.
6. An adoption whereby Mary is adopted by G would safeguard and promote Mary's welfare throughout her life and be likely to have a positive effect on her throughout her life.
7. Granting orders in terms of the Children (Scotland) Act 1995 as proposed by E and F would not safeguard and promote Mary's welfare throughout her life, nor be likely to have a positive effect on her throughout her life.
8. No other order of court, or other available care option, would safeguard and promote Mary's welfare throughout her life or be likely to have a positive effect on her throughout her life.

9. It is better for Mary that an adoption order be granted vesting parental responsibilities and parental rights in respect of her to G, than the order not being granted.
10. The attaching of the conditions for indirect contact contained in the adoption order made by the court;
 - a) aligns with the level and nature of the contact currently enjoyed by E and F;
 - b) will provide benefit to Mary;
 - c) will not carry any risk to Mary;
 - d) will be contact E and F will be able to commit to;
 - e) will be contact which G will be able to support;
 - f) is not significantly contrary to G's wishes concerning post adoption contact.

FINDS IN LAW

1. The consent of E and F to the adoption of Mary should be dispensed with in terms of sections 31(3)(c) and 31(4) of the Adoption and Children (Scotland) Act 2007.
2. An adoption order whereby G adopts Mary should be made taking into account the considerations set out at sections 14(2) to (4) inclusive of the Adoption and Children (Scotland) Act 2007.
3. An adoption order whereby G adopts Mary should be made taking into account the consideration set out at section 28(2) of the Adoption and Children (Scotland) Act 2007.
4. An adoption order whereby G adopts Mary should be made in terms of section 30 of the Adoption and Children (Scotland) Act 2007.

5. The conditions attached to the order for adoption of Mary by G should be made in terms of section 28(3) of the Adoption and Children (Scotland) Act 2007.

NOTE

Summary

[1] In July and August of this year I heard evidence, and then submissions, at a proof upon a petition for adoption of a 4-year-old female child. I call her Mary in this judgment to protect her privacy. The names of other children referenced in this judgment are, for the same reason, also pseudonyms.

[2] Mary's natural parents I have called E and F. They are married. They now live together in a town in the west of Scotland which is not in this jurisdiction.

[3] Mary has a brother, James, who was born to E and F in 2015. He is currently accommodated by the local authority as a looked after child. He lives in a residential unit. He was not the subject of an adoption petition before me and there are no plans that James be adopted. Rather the plan is that he will be made the subject of a permanence order. James was nonetheless a central personality in terms of my considerations. Mary has two other half-siblings. They are children from her parents' earlier relationships. Mary has never shared a household with them and appears to have no relationship with them. They featured far less in evidence and were not a material part of my considerations in this matter.

[4] The petitioner for adoption was Mary's current carer. I refer to her as G. She is a single woman in her late forties who has been caring for Mary since 10 April 2024. They reside together in a town in this jurisdiction.

[5] E and F did not consent to Mary's adoption and opposed the petition. G, E, and F thus became the parties to the case.

G's position

[6] G asked that E and F's consent to Mary's adoption be dispensed with. This was said to be justified on one of two available bases; firstly in terms of 31(3)(c) and (4) of the Adoption and Children (Scotland) Act 2007 because E and F were unable to discharge parental responsibilities and rights (and were likely to continue to be so unable); or, secondly and alternatively, because, as per section 31(3)(d) of the Act, Mary's welfare required it.

[7] Thereafter I could be satisfied that the other requirements set out by the 2007 Act before adoption could be granted had been met. Ancillary orders involving directions to the Registrar General and the cessation of the compulsory supervision order for Mary flowed from the adoption order and should be made.

[8] Post adoption, G was content that annual letterbox contact be put in place, but did not see that Mary would benefit from a photograph of her being included in the correspondence sent to E and F. G's view was that if when she was more mature Mary wished to have direct contact with E and F she would support her in that regard, provided that was in keeping with Mary's welfare. On the matter of direct contact between Mary and James, G was content that this continue (it is presently taking place on a monthly frequency) subject to it being safe and appropriate for both children. She did not however see that it was workable for a condition to be imposed requiring that the contact continue.

E and F's position

The principal motions

[9] E and F's positions aligned. They maintained that neither statutory basis to dispense with their consent had been made out. Relative to the ground to do so in terms of sections 31(3)(c) and (4) they challenged the methodology, findings, and recommendations, of the parenting capacity assessment report relied upon by G. Evidence of an assessment carried out by a Ruth Stark was led in contradiction of G's report. Separately it was also submitted that an adoption order would in fact be deleterious of Mary's welfare.

[10] Principally, I was asked to refuse the adoption order and instead grant G a residence order relative to Mary in terms of section 11(2)(c) of the Children (Scotland) Act 1995, and an order conferring upon her parental rights and responsibilities in terms of section 11(2)(b) of the 1995 Act. I should also make an order in terms of section 11(2)(d) of the 1995 Act for indirect contact between E and F and Mary as follows;

- a) entitlement to provide a letter or card to Mary on one occasion per year, to include a birthday or Christmas card for her with the letter or card, and to include one small gift for her with the letter or card;
- b) requirement that G provide a report as to the Mary's health, welfare and wellbeing to E and F once per year, along with a recent photograph of Mary with the annual report.

The esto position

[11] In the event that I felt it was necessary to circumscribe E and F's parental rights and responsibilities, it was submitted that such an order be limited to depriving E and F of the responsibilities and rights set out, respectively, at; sections 1(1)(a), (b) and (d);

and 2(1)(a), (b) and (d). Thus, the right to contact would be retained and the indirect contact sought could be granted.

The further esto position

[12] In the event that I did grant the adoption order I was asked to attach contact conditions for;

- a) direct contact between Mary and E and F should Mary express a view that she wishes to exercise contact with either or both of them, this to be facilitated by the local authority in such terms as G deemed to be in Mary's best interests;
- b) indirect letterbox contact as sought in their principal motion; and
- c) direct contact between the Mary and James once per month facilitated by G.

Surname

[13] Having read, following exchange of affidavits, that Mary desired to have the same surname as G, E and F stated in evidence that they were content to consent to Mary's surname being so changed - presumably by way of specific issue order in terms of section 11(2) of the 1995 Act.

E and F's approach to evidence and issues

[14] As is suggested by the nature of the orders proposed by E and F, their position, ex facie at least, accepted that it would no longer be appropriate for Mary to return to their care. In keeping with that stance they did not challenge most of the evidence received about the events and circumstances which led up to Mary being accommodated into a place of

safety. Nor did they challenge the vast majority of the evidence which related to the occurrences post-dating social work services' subsequent decision to move towards adoption. Nevertheless, it remained for me to make findings on these matters.

[15] Neither did E and F attack the capability or suitability of G as Mary's carer. Indeed, in oral evidence they were complimentary about her in that regard. Further, there was no issue taken with the report from the curator which confirmed that Mary was too young to provide a view, and that adoption would not adversely impact on her religious, cultural, or linguistic background.

[16] Rather the main evidential challenge was to the findings and recommendations of the 2021 parenting capacity assessment which social work services had conducted of their ability to care for James and Mary. This was an essential evidential support for G's contention that E and F would be likely to continue to be unable to discharge their parental responsibilities and rights. Beyond that, I was also asked to consider the effects severing of familial ties with E and F and James would have on Mary and hold that her welfare could be equally well promoted and safeguarded by the less drastic options proposed by them.

My orders

[17] I granted the petition for adoption. I dispensed with the consent of E and F. I found that the other requirements set out in law had been met by G. I attached conditions to the order relating to indirect contact, which I found to align with the law on that aspect of adoption orders. The balance of this note explains why I did so.

[18] I hope that my note also conveys another point. That each party to this case loves Mary. That E and F, regardless of the critiques I make of their opposition to the petition, were motivated by what they thought was best for her.

The law

[19] The Adoption and Children (Scotland) Act 2007 governs adoptions in Scotland. I was directed by parties' representatives to the pertinent sections and some cases which involved their judicial interpretation. I was told that there was no contention on the law, but on occasions, in the way of these things, differing emphases were provided. I summarise here the facets of the Act and case law I was referred to which I considered salient and have applied. In addition, I considered observations from Professor Norrie in *The Law Relating to Parent and Child* (3rd Edition), and Lord Stuart's opinion in the recent case of *Child EO* [2025] CSOH 45. There is not inconsiderable detail and nuance in all of this, but in broad terms I adhere to the view expressed by Lady Wise at paragraph 74 of *V and V v F and F* 2017 CSOH 103 that where disputed adoption petitions are before the court, the Act reduces to a three-stage test:

“There are three aspects of the applicable law relevant to the dispute in these proceedings. First, section 31 of the 2007 Act sets out five conditions and specifies that an Adoption Order may not be made unless one of those five conditions is met. Secondly, there is a list of considerations in section 14 of the Act which require to be addressed before deciding whether an Adoption Order should be made. Thirdly, even if all other aspects of the first two tests are satisfied, I must go on to consider whether it is betterthat the orders in respect of them be made than not.”

Section 28 and section 30 of the 2007 Act

[20] Section 28 of the Act empowers sheriffs to make adoption orders vesting parental responsibilities and parental rights in relation to a child in an applicant adopter. In terms of section 30, an adoption order may be made to one person who is over 21, not part of a “relevant couple”, and is domiciled in the “British Islands”. That is to say that it was competent for G, as a single person, to be granted an adoption order relative to Mary.

[21] Importantly, the power to make an adoption order is subject to the injunction, at section 28(2), that the court must not do so unless it considers that it would be better for the child that the order be made than not. As per section 28(3), where an order is made it may contain such terms and conditions as the court thinks fit.

Section 31 of the 2007 Act

[22] Section 31 states that an order may not be made unless parental consent to the adoption is either provided (subject to stipulations upon the provision) or is dispensed with. Here of course there was no consent provided.

[23] Dispensation requires one of the four grounds set out at section 31(3) [read alongside sections 31(4) and (5)] to be satisfied. Two of these grounds were live issues at proof.

Section 31(3)(c)

[24] Firstly, and principally, G relied upon the terms of section 31(3)(c). This addresses the scenario where the parent withholding consent has parental rights and responsibilities. As per section 31(4) dispensation requires the court to find that the parent is unable to satisfactorily discharge those responsibilities, or exercise those rights, and is likely to continue to be unable to do so. This has come to be known as the incapacity or inability test.

[25] The assessment is one for the sheriff to make on the evidence *S, Petitioner* [2014] CSIH 42, Lady Smith at paragraph 29. In doing so the court should take a holistic view, *JDM and FBM petitioners* [2012] CSOH 186, Lord Glennie at paragraph 76:

“...the inability test refers to the parent being unable satisfactorily to discharge ‘those responsibilities’ or exercise ‘those rights’. It does not in terms cover a case where the parent can discharge some of the responsibilities or exercise some of the rights, but not others. It seems to me... that on this issue the court is required to take a broad view and to ask whether, looking at the matter in the round, it has

been established that the parent is unable satisfactorily to discharge that package of duties and to exercise that package of rights. It should not conclude that the inability test is not satisfied simply because the parent can discharge one of the duties or exercise one of the rights.”

[26] The period in which the incapacity or inability must be determined to be likely to continue cannot be “temporary or excusable... nor one whose effects are limited or transient” (*G v M* 1999 SC 439, Lord Coulsfield at page 450). Rather, the Inner House in *TW v Aberdeenshire Council* [2012] CSIH 37, Lord Bonython providing the court’s opinion at paragraph 16, made it clear that:

“What is required of the sheriff is a determination, at the time the application is considered, whether the inability of the parents to discharge their parental responsibilities and exercise their rights satisfactorily is likely to continue in the foreseeable future”

Section 23 of the Children (Scotland) Act 1995

[27] A factor maintained by E and F to bear upon the assessment of their capacity to discharge their parental responsibilities and exercise their rights, was social work services purported failure to take proper account of their statutory obligation to children affected by disability. This obligation is found at section 23 of the Children (Scotland) Act 1995. It is set out thus:

- “(1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
 - (a) to minimise the effect on any —
 - (i) disabled child who is within the authority’s area, of his disability; and
 - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person’s disability; and
 - (b) to give those children the opportunity to lead lives which are as normal as possible.
- (2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or has a mental disorder (as defined in

section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

- (3) Where requested to do so by
 - (a) a child's parent or guardian; or
 - (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) who—
 - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 for a child's case; and
 - (ii) makes the request for the purposes of either of those Acts;
 a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.
- (4) In determining the needs of a child under subsection (3) above, the local authority shall take account—
 - (a) if an adult carer provides, or intends to provide, care for the child, of the care provided by that carer,
 - (aa) if a young carer provides, or intends to provide, care for the child, of the care provided by that carer,
 - (b) in so far as it is reasonable and practicable to do so, of—
 - (i) the views of the parent or guardian of the child, and the child; provided that the parent, guardian, or child in question has a wish, or as the case may be, a capacity, to express a view.
- (5) In subsection (4)(a) and (aa), the reference to the care provided by a carer means—
 - (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,
 - (b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.
- (6) In—
 - (a) determining the needs of a child under subsection (3),
 - (b) deciding whether to provide any services under section 22(1), and
 - (c) deciding how any such services are to be provided,
 a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so."

Section 31(3)(d) of the 2007 Act

[28] Secondly, G argued that should the incapacity or inability test set out at

section 31(3)(c) and 31(4) not be met, they could, *esto*, found upon section 31(3)(d) of the Act.

This, as said, allows dispensation where the welfare of the child otherwise requires the

same. Professor Norrie at paragraph 21.59 of *The Law Relating to Parent and Child in Scotland* makes these observations on this provision:

“Section 31(3)(c) and s.31(3)(d)are not alternative grounds to cover the same facts and it would be incompetent to dispense with parental consent under both s.31(3)(c) and (d)—the latter applies only when the former does not. Section 31(3)(c)—that is to say the circumstances described in s.31(4) or in s.31(5)—is likely to apply in most cases where adoption is opposed by a parent or guardian, leaving only limited scope for the application of the welfare ground for dispensation in s.31(3)(d). The ground therefore serves a different purpose from the ‘unreasonable withholding of consent’ ground of the previous law, which was the most commonly pled ground. It might be applicable, for example, where one unimpeachable birth parent is refusing to consent to the adoption of his or her child by the new partner of the other birth parent (a ‘step-parent adoption’) or when a parent, who is presently unable to fulfil parental responsibilities perhaps due to drug or alcohol addiction, is likely because of rehabilitation success to reacquire satisfactory parenting ability in the foreseeable future: in neither of these circumstances does s.31(4) or (5) apply. Section 31(4) contains three conditions for its application and s.31(5) contains two. Given that these conditions are cumulative, the ground for dispensation contained in s.31(3)(d) may be relevantly pled whenever at least one of the three conditions in s.31(4)(a), (b) and (c) is shown to be not satisfied, and in addition at least one of the two conditions in s.31(5)(a) and (b) is shown to be not satisfied. So for example if the parent or guardian whose consent is at issue has only the parental responsibility and parental right of maintaining personal relations and direct contact, then the condition in s.31(4)(a) is not satisfied and s.31(4) does not, therefore, apply; if, in addition, the parent or guardian has not been deprived of parental responsibilities and parental rights by the making of a permanence order, then the condition in s.31(5)(a) is not satisfied and s.31(5) does not, therefore, apply. In these circumstances s.31(3)(d) may be used to provide the ground for dispensation. On the facts postulated, this would be unproblematic in art.8 terms: if contact is the only responsibility and right that the parent has to lose, then dispensing with that parent’s consent on the basis that to do so is required by the child’s welfare is unlikely to be a disproportionate interference with family life. Likewise, if the parent has full parental responsibilities and parental rights but is found to be both unable satisfactorily to discharge parental responsibilities and likely to continue to be so unable then s.31(4) applies and, consequently, s.31(3)(d) does not: dispensation may be granted, again unproblematically in art.8 terms, on the basis of parental inability. But if, on the other hand, the parent has full parental responsibilities and parental rights and *is able* satisfactorily to discharge these responsibilities (for example where the parent is a non-resident father against whom no allegations of unfitness can be made), or is presently unable but is *unlikely* to continue to be so unable (for example in cases of short-term illness or likely rehabilitation from addiction) then s.31(4) does not apply because all of its conditions have not been satisfied, and if s.31(5) does not apply either (typically, because there is no permanence order) then dispensation is excluded

under s.31(3)(c), opening the way for dispensation under s.31(3)(d) on the basis that the welfare of the child requires such dispensation. It is in these circumstances that art.8 of the European Convention on Human Rights becomes a central driver to the application of s.31(3)(d), because, in the circumstances postulated, the court is being asked to terminate the family ties, by dispensing with their consent, of a parent who is *ex hypothesi* satisfactory or likely to become so soon. Given that most parents are satisfactorily able to fulfil their parental responsibilities and parental rights towards their children it can hardly be said that this amounts to the ‘exceptional circumstances’ envisaged by the European Court in *Johansen v Norway*. Yet it is in just these circumstances that s.31(4) does not apply and (if s.31(5) also does not apply) s.31(3)(d) does, therefore, apply. For this reason it becomes all the more important that, even although s.31(3)(d) is applicable, how it is applied in practice is such as to avoid the ‘better bet’ approach clearly eschewed under the old law, and rejected as illegitimate by the European Court.”

[29] The Supreme Court, *S v L* [2012] UKSC 30, has emphasised that the use of the word “require” aligns with their view that legislation which severs family ties must be seen as setting tests of necessity. Petitions should therefore only be granted where only adoption will suffice, where other less drastic interventions would not secure the child’s welfare equally well (Lord Reed at paragraph 34):

“It follows that legislation authorizing the severing of family ties between parents and their children will not readily be construed as setting anything less than a test of necessity. Section 31(3)(d), in stipulating that the welfare of the child must ‘require’ that parental consent be dispensed with, is consistent with such a test. There must, in other words, be an overriding requirement that the adoption proceed for the sake of the child’s welfare, which remains the paramount consideration. The court must be satisfied that the interference with the rights of the parents is proportionate: in other words, that nothing less than adoption will suffice. If the child’s welfare can be equally well secured by a less drastic intervention, then it cannot be said that the child’s welfare ‘requires’ that consent to adoption should be dispensed with. That requirement is consistent with section 28(2), which prohibits the court from making an adoption order unless it considers that it would be better for the child that the order be made than not.”

[30] Assistance is available on how Lord Reed’s test should be applied. The Inner House in *North Lanarkshire Council v KR* [2018] CSIH 59 (dealing with a permanence order, the tests for such orders mirroring those for adoption) provided elucidation upon how “nothing less than adoption” should be assessed, Lord Menzies at paragraphs 62 to 64 inclusive:

“[62] The issue in the present case is whether the sheriff erred in his approach to the considerations in section 84(4) and (3) of the 2007 Act. The threshold test having been met, the court requires to consider what order (if any) should be made to safeguard and promote the welfare of the child throughout childhood (and indeed throughout her life – see section 14), and whether it would be better for the child that the order be made than that it should not be made.

[63] This is an exercise which involves a holistic, global evaluation. However, there is a risk in this difficult area of the law of paying lip service to phrases or shorthand terms without considering their purpose, what they truly mean, or what they require for application in practice. ‘Holistic evaluation’ and ‘nothing else will do’ are two such phrases which have found themselves used repeatedly in the recent case law in this area. We do not suggest that they are wrong, nor do we disagree with their use, but their context must be kept in mind. Mere repetition of the phrases does not ensure that the appropriate exercise is being carried out.

[64] Once the sheriff has decided that the threshold tests in sections 84(5) and (83)(2) have been met, it is clearly the case that a child will not be returned in the near future to live with the person who has parental rights with regard to the child. That being so, the court 30 requires to consider what are the various options available for the care of the child. Having identified the various options, the court then requires to carry out an assessment of the proportionality of each of these options. This will involve an assessment of the practicality of each option, and the possible benefits and disbenefits to the child’s welfare of each option. This is an exercise which is looking to the future, but which is informed to an important extent by findings in fact relating to past and present facts and circumstances, because future assessments cannot be based merely on hope or speculation, but must be grounded in sufficient findings-in-fact of what has happened or is now happening.”

Section 14 of the 2007 Act

[31] If parental consent is dispensed with, section 14 sets out the considerations required before adoption can be granted:

- “(1) Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child.
- (2) The court or adoption agency must have regard to all the circumstances of the case.
- (3) The court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.
- (3A) When considering the child's welfare, the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.

- (4) The court or adoption agency must, so far as is reasonably practicable, have regard in particular to—
- (a) the value of a stable family unit in the child's development,
 - (b) the child's ascertainable views regarding the decision (taking account of the child's age and maturity),
 - (c) the child's religious persuasion, racial origin and cultural and linguistic background, and
 - (d) the likely effect on the child, throughout the child's life, of the making of an adoption order."

[32] The directive at section 14(3) as to the primacy of the child's welfare aligns with the injunction at section 28 (2) that the court must not make an adoption order unless it considers that it would be better for the child that the order be made than not. Section 14(4)(a) meantime underlines the importance the legislators ascribed to a child being in a stable family unit, a matter Lady Wise examined at paragraph 97 of *V* and *V v F* and *F* (supra):

"[97] I turn now to consider the likely effect on KCF and KFF, throughout their lives, of the making of an Adoption Order. The effect on the legal position of each child is clear, namely that they would become part of the family of Mr and Mrs V for the rest of their lives. They would have equal inheritance rights with Mr and Mrs V's own three children, although that was not a matter on which any particular reliance was placed by the petitioners, who already regard KCF and KFF as having parity with their three sons. My assessment is that the likely effect on both children on the making of an Adoption Order would be to provide them with certain knowledge that they have been claimed, legally as well as emotionally, by the petitioners. While the petitioners' emotional commitment to the children would not be diminished in any way were an Adoption Order to be refused, the evidence supports a conclusion that the making of such an order would have a positive impact on both KCF and KFF. The only way in which the children could be assured of having a set of parents with the ability to support and guide them throughout their lives is by the making of an Adoption Order. There was evidence about whether the children's identity would be altered in a negative way by the making of such an order. KFF in particular has given some thought as to how she would wish to be known when an order is granted. She does not wish to lose the respondents' surname completely. The petitioners have, in my view very sensibly, agreed that the girls' surnames will be double-barrelled so that their surname would be 'V-F'. Counsel for the respondents challenged this idea suggesting that it was unheard of in an adoption situation and would somehow cause instability. That was rejected firmly by BC who said that she had come across such a situation before. In the society in which we live, it is now not uncommon for children to have a different surname from one or both of their parents. For example, many married women do not now alter their surname on marriage and have a different surname from their natural children and step families where children may have a

different surname from one or both of their main carers are a feature of modern life. As I have already indicated, the proposed adoption in this case is the antithesis of the type of closed adoption prevalent in previous decades. There is no desire on the part of the petitioners to rid these children of their current identity. What they seek to do is to blend that identity into that of the family in which the girls have been accepted. I conclude that the likely effect on both children throughout their life of the making of an Adoption Order in this case would be to reconcile in a meaningful and positive way their birth heritage with the secure and stable family into which they have been accepted.”

Section 11 of the Children (Scotland) Act 1995

[33] As opposed to making an adoption order, it is open to the court to instead make orders in terms of section 11(2) of the Children (Scotland) Act 1995. These are available standing the broad scope of proceedings which section 11(1) of the Act sets out orders under section 11(2) may be made (see also Lord Stuart at paragraph 18 in *Child EO* [2025] CSOH 45):

“(1) In the relevant circumstances in proceedings in the Court of Session or sheriff court, whether those proceedings are or are not independent of any other action, an order may be made under this subsection in relation to—
parental responsibilities;
parental rights;
guardianship; or
subject to section 14(1) and (2) of this Act, the administration of a child’s property.”

Post adoption contact

[34] Addressing the hypothesis that I was prepared to grant the adoption order sought, G’s solicitor directed me to then Sheriff Anwar’s commentary in *Mr and Mrs P v LD, SW and JD*, [2016] SC GLA 56 upon the relevant factors to be weighed up in determining whether to attach a condition of contact:

“[109] So what then is the correct test to be applied? In my judgement, the correct test to be applied is reflected in the language used in section 11 of the 1995 Act (being the same test which would apply in the event of an application for contact after an Adoption Order had been made) read together with section 14 of the

2007 Act; that is, (a) whether the order sought is in the best interests of the child and will safeguard and promote the welfare of the child throughout the child's life and (b) whether it is better that such an order be made than no order be made at all.

[110]the second leg of the test I have suggested allows the court to leave matters in the hands of the adoptive parents, where they can be trusted to make decisions in the best interests of the child.

[111] Whether an order for post-adoptive contact is in the best interest of a child requires a balancing exercise between securing finality and security for the child on the one hand, and maintaining some link with his/her birth family, where that is considered appropriate, on the other. Indirect or direct post-adoptive contact can assist the adopted child to understand more about his/her background; it can provide the adopted child with reassurance that the birth family continues to take an interest in his/her welfare and in turn enhance the child's feelings of self-esteem and self-worth; it can allow a link with the birth family to be maintained; and it can allow the child to reconcile conflicting loyalties and feelings of guilt and overcome feelings of rejection, anger and hurt. Such an order, however, carries with it a risk that the child will feel disappointed and confused and even hurt and rejected, if the child develops an expectation that such contact will continue and it does not. If the birth family use the contact as a means of undermining the adoption process, that is likely to have a significant impact upon the child's sense of security and emotional well-being. If the birth family is not able to communicate appropriately, or to heed advice on the contents of any indirect or direct communication with the child, it will serve very little purpose; inappropriate communications by way of letterbox contact are unlikely to be made available to the child. It is also undesirable to leave a legal avenue open for further litigation in the event of disagreements between parties as to non-compliance with any post-adoption order, or in the event of a change of circumstances.

[112] Having considered all the relevant authorities and the basis upon which orders for post-adoptive contact have been made or refused in the past, the following factors are, in my judgment, relevant to any decision on the issue, namely:

- a. the nature of the child's bond with, and attachment to, the members of the birth family seeking contact;
- b. the age and, if appropriate, the views, of the child;
- c. the level and nature of the contact currently enjoyed by the birth family, if any;
- d. the benefit derived by the child from such contact, if any;
- e. the risks to which the child may be exposed during such contact, if any;
- f. the ability, or otherwise of the birth family to commit to contact and to heed the advice of professionals in relation to how to manage such contact;
- g. the ability, or otherwise of the birth family to accept the terms of the Adoption Order, to be fully supportive of it, and to refrain from undermining the adoption process or engaging in future litigation; and

- h. the views of the adoptive parents to such contact.”

The evidence

Form of evidence

[35] Parole evidence was led on 28, 29 and 30 July 2025. Evidence-in-chief was received by way of affidavit augmented by some additional questioning in chief. In the instance of the expert witness led, her report stood as her evidence-in-chief.

Evidence for G

[36] The petitioner gave evidence. She led three further witnesses. Firstly, Suzanne McGregor, the social worker allocated to Mary in August 2020, who operated in that capacity until October 2022. Secondly, Karen Jaskot a social worker employed in the family placement team, or as it was sometimes referred to the fostering and adoption team. Ms Jaskot was allocated to G in the course of the summer of 2022. Lastly, a third social work services’ employee was led, Laura Webb. Her job title is now operations manager. Ms Webb oversaw the social work services’ team allocated to Mary’s case from August of 2023.

Evidence for E, the natural mother

[37] E gave evidence. She also led evidence from an expert witness, Ruth Stark. She is an independent social worker who had authored a report upon what she designated was an independent parenting capacity assessment. Ms Stark carried out her assessment and compiled her report upon the instruction of G’s solicitors. This report was lodged as a production.

[38] Affidavits from E's mother and father were also lodged and were unchallenged by the other parties. They were presented as supportive of her case.

Evidence for F, the natural father

[39] F also gave evidence. In addition, an affidavit from his mother had been lodged and was unchallenged. This too was presented as supportive of his case.

The unchallenged affidavits

[40] I found the unchallenged affidavits to be unhelpful to E and F. The witnesses had very little, if any, experience of the salient events. They also tended to exhibit a naïve understanding of the issues at play. The theme contained in some passages of the affidavits that it would be better if Mary came back to E and F's care jarred with the position E and F themselves put forward and served to underline the limited appreciation the witnesses had of the matters in contention.

Evidence relating to the background to Mary being accommodated into a place of safety

[41] Parties lodged a lengthy, well drafted, and helpful joint minute of agreed facts. Some of this was given over to the events and circumstances which formed the relevant background to Mary being accommodated in a place of safety in 2021. The affidavits which G's (for want of a better designation) *social worker witnesses* had sworn also addressed these matters in detail. In doing so, the terms of various pieces of correspondence, reports, minutes, and assessments which G had lodged as documentary productions were adopted by the witnesses. In addition, some evidence was taken from those witnesses on these matters in parole evidence. As has been trailed, what might be referred to as *social work*

services' account of those events was largely unchallenged. Indeed, passages of the evidence of E and F (both in their affidavits and that given in court) coincided with these accounts, occasionally annotating an event or circumstance with an explanation as to why it had occurred.

[42] There were some matters where there were minor discrepancies between evidence from G's social worker witnesses and the evidence of E and F. These related to characterisation, and occasionally the detail, of the events and circumstances. Where these more minor discrepancies arose, I preferred the evidence from the social worker witnesses. I did so, largely, based on its superior reliability. It contained more detail, had better logical flow, was often supported by being accounted or recorded in documents compiled close in time to the event. It was also given by professionals experienced in childcare matters.

[43] My findings in fact upon the events and circumstances which formed the relevant background to the petition therefore reflect both my determinations where there was such discrepancy, and the agreed and unchallenged evidence. The findings cover the period in question comprehensively. Much further elucidation upon the background to Mary's accommodation within this note is accordingly unnecessary. What should be reiterated however is that, clearly, as at the point that Mary was accommodated on 9 June 2021, whilst E and F undoubtedly loved Mary, both were unable to satisfactorily discharge their parental responsibilities or exercise their parental rights. I also readily inferred that the challenges, in their various forms, both had faced in earlier life, were, at the very least, significant contributory factors to that situation. It does not bear upon the tests set out by the 2007 Act, but as a matter of completeness it falls to be recorded that the evidence compelled one to feel sympathy towards E and F.

Evidence relating to the parenting capacity assessments

[44] Evidence was received relating to two parenting assessments. Firstly, that conducted by social work services following on from Mary's accommodation in June 2021. Secondly, that conducted by Ruth Stark, the independent social worker. This was, as said previously, an area of evidential contention.

The social work assessment

[45] The social work assessment took place over 12 weeks in 2021, commencing shortly after Mary's accommodation. It assessed parenting capacity with reference to; child development, parenting capacity, and family and environmental factors. There were nine individual parenting capacity sessions totalling 18 hours in aggregate, with observation of 58 direct contact sessions and six virtual contact sessions.

[46] In addition, the assessment garnered information available from multiple agencies who had in the preceding 8 years provided parenting support to E and F. This addressed E and F's education and employment, past relationships, current relationship, housing and financial situation, medical history, alcohol and drug usage, and engagement with criminal justice services.

[47] The output of the assessment was a detailed report, petitioner's production 1/75 to 1/155. Commentary upon the assessment and the report was provided, at considerable length, in Suzanne McGregor's affidavit. The recommendation was that James and Mary's future needs would be best met through the permanence framework. This flowed from the conclusion that both as a couple and as individual parents E and F had shown that they were unable to fulfil James and Mary's needs and would be unable to make the necessary

changes to their lifestyle and parenting in a timeframe conducive to their children's needs and developmental milestones.

Ruth Spark's assessment

[48] Ruth Spark's report, and her subsequent evidence to the court, was composed of her own assessment and critiques of the social work assessment methodology and recommendation. Her report concluded that there was too much uncertainty at present relative to how to best address James and Mary's complex needs to their lifelong best interest. That moving to adoption was premature.

[49] The attack made by Ms Stark upon the reliability of social work services' assessment was, to a degree, joined in by E and F in their evidence. The critiques included;

- a) the assessment not having taken into account F's ADHD condition;
- b) the process being likewise inattentive to the physical health difficulties which E was suffering from at the time;
- c) the process also having failed to take account of the social workers' obligation in terms of section 23(1)(a)(ii) of the Children (Scotland) Act 1995 to design provision of their service to minimise the effect on any child who is affected adversely by the disability of a person in their family;
- d) the oppressive environment in which the contact sessions took place, the rooms being small with a number of people wearing masks;
- e) feedback from sessions not being imparted to E and F in a digestible way;
- f) insufficient consideration being given to the effect Mary's adoption would have on James and Mary's sibling relationship.

Suzanne McGregor's evidence

[50] These criticisms were addressed by Suzanne McGregor in her written and oral evidence. She rejected their validity. Her affidavit devoted several paragraphs to the matter and her oral evidence dealt with them too. I found her evidence in both forms to be impressive. It was given in good detail with appropriate professional detachment. There was nothing within it which gave rise to concerns that the assessment and report had dubious reliability.

[51] There had been a preparatory week before the assessment commenced to ensure both E and F and James and Mary were comfortable within the supervised contact environment. E and F were advised that social work services were keen to give them every opportunity to demonstrate parenting ability, that they would be supported in making any changes required do so.

[52] In terms of F's ADHD condition, the assessment process had been mindful of F's difficulty in sustaining attention, impulsivity, difficulty in listening, disorganised thoughts and struggles to focus. Sessions were tailored accordingly. Individual sessions were no longer than 1 hour, with breaks offered whenever needed. Verbal feedback to E and F was given gradually to avoid overwhelming. No criticisms, or requests for further measures, were made by F during the assessment process. During the assessments Ms McGregor was aware of discomfort being experienced by E and offered advice upon alternative ways to interact and play with both James and Mary taking account of her discomfort.

[53] The wearing of masks, from which E was exempted on health grounds, was a regulatory requirement in 2021 and could not be avoided. Three separate contact rooms were utilised, with the room to be used being dependent upon who was attending a particular contact session and what type of contact session was taking place. All three

rooms were perfectly adequate for the contact that was taking place. When a safeguarder attended the contact sessions one of the observing social workers left the contact room so that there were never two social workers and also a safeguarder observing in the room.

[54] She and her colleague had been aware of section 23 of the Children (Scotland) Act 1995 and the obligations. They complied with the section. There were robust procedures in place within social work services' care provision to identify and assess support needs. Through the assessment process she and her colleagues were aware of difficulties that both parents had in relation to mental health, ADHD, and physical impairments. The assessment process took account of these factors.

[55] There was in Ms McGregor's estimation a minimisation by Ms Spark of the effect of domestic violence within the household upon James and Mary. More fundamentally there was a query raised as to whether Ms Stark had in actuality conducted a parenting capacity assessment. The process she embarked upon being said to be very limited, amounting in its substance to two home visits with E and F and a 1 hour conversation with Ms McGregor's successor as the family's social worker, Abby McPherson. There was not, it was said, any substantial analysis of parenting capacity or exploration of E and F's insights into the circumstances that led to both James and Mary being accommodated.

Ruth Spark's evidence

[56] In my view the query as to whether Ms Stark had actually conducted a parenting capacity assessment was misplaced. However, there was no doubt that her assessment was very far from being as robust and comprehensive as that conducted by social work services. Ms Spark's assessment was commissioned by E's solicitor on 25 February 2025 and concluded on 15 May 2025. As such, naturally, there had not been an opportunity to view

the contact sessions and the information available to her was more limited than that which was available to social work services. Ms Stark had been able to conduct only two meetings with E and F and one meeting with a social worker. She had been unable to take up an opportunity to observe a sibling contact session between James and Mary. She had not met the children. However, she had access to records and was able to draw upon considerable experience in a number of areas of social work practice. Nevertheless, I could not accept her report's recommendation, or her critiques (and those offered by E and F also) of social work services' methodology and conclusion.

[57] The weight that could be attached to the report's critiques of the contact sessions suffered because of the aforementioned absence of direct experience of contact sessions, the children, or the social workers who were present at the contact sessions. In any event, I found Suzanne McGregor's response to the same to be complete and satisfactory. In addition, there was within Ms Stark's critiques around how F's ADHD had been adjusted for, some tendency to veer close to, if not beyond the scope of her expertise. There was also an incorrect assumption that James had been diagnosed with ADHD, a factor that appeared to bear on some of her views. Some evidence was also somewhat speculative, for instance concerning the adverse effect adoption might have on identity, sibling relations, loss of inheritance rights, and medical records. There was also a pervading tone of general scepticism around the efficacy of granting adoption orders for children as young as Mary where such an order was opposed, one which I did not find easy to understand.

[58] Overall, I accepted that the parenting capacity assessment conducted by social work services was comprehensive and robustly and fairly conducted. It was reliable. I accepted as sound its conclusion that E and F were unable to fulfil James and Mary's needs and

would be unable to make the necessary changes to their lifestyle and parenting in a timeframe conducive to their children's needs and developmental milestones.

Evidence related to events and circumstances following social work services' parenting capacity assessments

[59] As with the evidence which pertained to the events and circumstances which led up to Mary being accommodated, evidence relating to matters which post-dated the social work services' parenting capacity assessment was largely unchallenged. Social work services moved towards a permanence framework for Mary's care. The children's panels thereafter convened went on to make supervision orders which first significantly reduced the level of contact between Mary and E and F, and then ordered that there be no contact at all. The last direct contact took place on 5 May 2022. As such E and F's involvement in Mary's life became minimal. The level of interaction with social work services also greatly diminished.

[60] There was criticism from E and F of social work services' level of engagement with them in that period, but I did not consider that it was material to the issues germane to determining the petition. E's evidence corrected social work evidence concerning events in mid-October 2021. I considered that she had the better knowledge of those events and my findings on that matter reflect her account.

Evidence of improvement in E and F's lives

[61] There was evidence from E and F of improvement in their lives from the point that it became clear to them that social work services did not intend that James or Mary be

returned to them. This was not challenged by G. The evidence is accounted in my findings in fact.

Evidence of G's life with Mary

[62] Much of G's evidence related to the process of being considered as an adoptive parent, and her placement with Mary. This was not challenged by E and F. Indeed, it was part of their oral evidence that having read G's affidavit they approved of her care of Mary. My findings in fact similarly reflect G's unchallenged evidence in these regards.

[63] It was an additional feature of E and F's oral evidence that they did not seek to have Mary returned to them from G's care. There was one slight, but nevertheless significant, deviation from that stance. It came in F's testimony. F was asked if it was correct that he accepted that Mary should not be returned to the care of himself and E. His initial response was "...not at this time".

Decision upon adoption

Dispensing with parental consent

[64] It might be reasonably inferred from E and F's ostensible stance that they accepted that Mary should spend the rest of her childhood in G's care that they also accepted that the incapacity/inability test set out at sections 31(3)(c) and 31(4) of the 2007 Act had been met. That was not so, or not quite at least.

[65] The challenge presented appeared to be focussed on whether it was likely that the inability that had existed in 2021 when Mary was accommodated would continue. This manifested itself in the position adopted relative to social work services' parenting capacity

assessment, the leading of evidence of the assessment by Ruth Stark, and the focus in their affidavits and oral evidence upon recent lifestyle improvement.

[66] I had no doubt that the accounts in the evidence of a large number of events, circumstances, and concerns that preceded Mary's accommodation in 2021 established that at that time E and F were unable to discharge their parental responsibilities and rights. This could not be reasonably seen as a passing or temporary phase. There were long standing issues of lack of care.

[67] Social work services' parenting capacity assessment I accepted as being a comprehensive, thorough, and fair analysis of the likelihood that E and F's incapacity/inability to care for James and Mary would continue. It was an empirical approach. It satisfied me that the conclusion correctly drawn at the time of the assessment's report was that there was a likelihood that E and F would continue to be unable to discharge their parental responsibilities and rights.

[68] Subsequently there was no evidence to suggest that the landscape had altered. I accepted that E and F had made significant changes in their lifestyles. That is laudable and shows no little fortitude on their part. However, it is a quite different thing from displaying that they are, or will be, able to discharge their responsibilities and rights.

[69] Firstly, the improvements are relatively recent. Secondly it cannot be said that the improvements are *parenting improvements* per se. They are improvements connected to personal wellbeing. This can be a platform for developing better parenting skills, but it does not necessarily follow. Significantly the improvements have taken place in the absence of E and F having to carry out parenting duties, with all of the pressures that are often attached to the same. Further there was no independent reliable source of evidence to suggest that E and F were now able to parent. Ruth Stark's assessment and report (which in any event I

was not willing to attach weight to in its material findings) stopped short of advancing that position. In broad brush terms, it advocated a *wait and see* approach. The difficulty with that is that I must look at what the foreseeable future holds. I was satisfied that the evidence did not suggest that E and F would be capable of discharging their parental responsibilities and rights in that time frame.

[70] As such I determined that I should dispense with E and F's parental consent to the adoption on the basis of the test set out at sections 31(3)(c) and 31(4) of the 2007 Act. The need to consider whether there was a basis in terms of section 31(3)(d) of the 2007 Act fell away.

Section 14 and section 28(2) requirements

[71] I examined all of the evidence of the events and circumstances that pertained to Mary and her relationships and experiences with E, F, and G. I examined also the evidence of Mary's relationship with James. Having done so I was readily satisfied of a number of matters. Firstly, that G loves Mary and cares for her to a high standard. Secondly, that she will continue to do so throughout the balance of Mary's childhood. Further, that their caring and nurturing parental relationship will continue into Mary's adult life, and indeed throughout their life together. Fourth, that adoption would not impact adversely, or otherwise, upon Mary's cultural, linguistic, or religious background.

[72] It was also clear that consolidation within a family unit was vital to Mary's welfare, and her development. Against the backdrop of turmoil in her early life it would maintain her feelings of security and stability and provide her with a necessary feeling of belonging to a parent and of being claimed as a child. It was equally clear that residing with G would do each of those things.

Whether it is necessary that an adoption order be made

[73] The question thereafter arose as to whether an adoption order was the only option which could achieve these required goals, or whether, in the language of the case law, there was a less drastic option. There were no kinship or other care arrangements available. The issue reduced to whether the suite of section 11 orders under the Children (Scotland)

Act 1995 proposed by E and F would secure Mary's welfare equally well. If it could, then the adoption order should not be granted. I was however satisfied that it would not do so.

[74] In carrying out my analysis I took as precepts that it was essential to Mary's welfare that she spend her childhood residing with G, and that she be completely secure that the situation would persist. Those precepts were seemingly commonly accepted. There was not, and reasonably could not be, any contention that adoption would not fulfil those requirements. It was key to accepting E and F's position that I find that the granting of these section 11 orders (and the refusal of the adoption order) would also do so, and that they would not create a foreboding background in Mary's life suggestive of the prospect that the status quo with G would be disturbed. Regrettably I concluded that they would serve to create such a background.

[75] Notwithstanding what was said in oral evidence there was a theme in the case presented by E and F that their proposed orders underpinned an ambition to have a role in Mary's life that would be substantial enough to introduce a threat that Mary's place in G's family unit might not be assured:

From E's affidavit there were the following passages (**my emphasis**):

"I fully believe that **if I was given the opportunity of engaging in a further parental capacity assessment, that I would not be as hindered by my health as I was the first time.**"

"I understand that Mary has not been in my care for a long time and it may be that she is happy and doing well where she is. If Mary is not returned to me, then I would be content for her to stay where she is if I knew the petitioner, however, I don't think that adoption would be right. I would like for there to be some contact with Mary. I think that this would be good for Mary and I think that it should be explored. I can offer Mary a lot of love and support. I would love to be a part of her life. I would like to be able to take her on days out to the park and soft play. I know that Mary does gymnastics. I want to be able to support her with this and be on the side lines cheering her on. I would like for her to know that throughout her life I will always be on the other end of the phone if she needs anything. In the future, I would be here to answer any questions that she might have"

From F's affidavit there was the following passage:

"Whilst my wife and I are in much better place in our relationship and feel we are well able to care for the children, I can appreciate that another move could be traumatic for Mary. I know that Mary needs a stable and secure home where she can receive consistent love and affection from her care giver. We wish to be a part of Mary's childhood and would be able to provide her with the love and care that she would require. We would be respectful with any boundaries that the prospective adopter would set and would simply wish to maintain contact with her, whatever measure was deemed in the best interests of Mary. I believe that if we were was given the opportunity, we could both have a good relationship with Mary. However, I think that less drastic things could be put in place like a residence order to secure her placement where she is rather than an adoption order being granted and severing the tie between us."

From F's mother's affidavit:

"I truly do think that both children should be returned to their mum and dad. They never got their second chance of looking after the. Both F and E have grown up a lot since the kids were removed. James has a terrible life now and would be better off with his parents. If it was as bad as Susan (sic) McGregor made it out to be, I don't know why James was not removed sooner, before Mary was born. I would love to see the children before I die. James was the love of my brother's life, and now he has passed without having the opportunity to reconnect. They were so close."

From E's father's affidavit:

"I do not believe that the adoption order should be granted. I think that Mary should go back to the care of E. If that isn't possible, I think that she should still have a relationship with her. I think that James and Mary had a close relationship. I don't think that Mary should be adopted separately from James because this will damage their bond. I think that it is important for Mary to have James in her life."

From F's evidence there was also the aforementioned comment that Mary should not be returned to his and E's care at this time.

[76] In making these observations I did take account of the general position provided in E and F's oral evidence that they now had no greater ambition than indirect contact.

However, that had been a recently alighted upon position. Its recency illustrated the essential difficulty with the orders proposed. What E and F wished today could change in the future. Section 11 orders can be varied by a court by way of summary application. They do not have the finality and the certainty that an adoption order would provide. They would not provide the security and stability needed by Mary.

[77] Even if no attempt was to made to vary the section 11 orders, they would not give Mary that sense of belonging, or of being claimed, that would come from adoption. It is a reasonable inference that soon enough, aware that G is not her birth mother, Mary would wonder why she had not been adopted by G.

[78] E and F asked me to consider that the severing of the family tie that would be inherent in adoption rendered making an order antithetical to Mary's welfare. In both affidavit and parole form E and F's evidence on this point was plaintive. It stood out even in evidence that was often emotively powerful. Setting sympathy aside however I could not agree that the point carried weight. Mary, not yet 5 years of age, has had no contact with her birth parents for over 3 years. The tie that exists is, sadly, minimal. The evidence was that Mary seems presently without any real knowledge of E and F. Her connection to her birth parents, her sense of identity, her sense of self can each be nurtured and developed by life story work and by indirect contact conditions. The loss to Mary by the severing of the family tie does not outweigh the benefit that would be obtained by adoption.

[79] Nor did I see that the relationship between Mary and James would be adversely impacted in the way that was being claimed. Circumstances have resulted in both children having different care plans. They have maintained their relationship despite the fact that James is accommodated in a therapeutic residential unit and Mary lives with G. The designation of the order through which Mary resides with G, whether residence order or adoption order, is not going to have bearing on the relationship. Upon adoption it is correct that Mary will be given G's surname, but that was now something which E and F were in any event content for the court to give effect to. Here also I did not view that this issue invaded upon the benefit that would be obtained by an adoption order.

Better that the order is made than not

[80] Having examined matters in detail in this way, satisfied of the need to make a decision that afforded Mary continued security and stability in what has thus far often been a tumultuous life, I determined that it was, clearly, better that the order be for adoption be made than not.

Decision upon contact conditions

[81] I examined the issue of contact conditions through the prism of the test set down, inter alia, by then Sheriff Anwar (supra). Using that analysis I discounted that an order for direct contact between E and F and Mary, if it was sought by Mary, was appropriate. It took away the important function that G would have as Mary's adoptive parent of gatekeeping decisions which might be emotionally damaging. G had committed in evidence that she would be supportive of Mary if in later years she wished to make contact with E and F, provided she felt it was in Mary's best interests. It was in any event presented to me in

submission by E's counsel that what was essentially sought here was that I refrain from making an order that there never be direct contact.

[82] Using the same analysis, I was satisfied that the order sought relative contact with James should not be made. For now, the direct contact that takes place is beneficial to Mary's welfare, and that of James. His circumstances and location could however alter. That could happen in a way that no longer renders contact in Mary's best interests. Instead of being able to make a decision about contact which accorded with Mary's welfare, G would be obliged to continue with the contact my order prescribed.

[83] The letterbox contact condition proposal from E and F was broadly acceptable to G. I considered it also, subject to some refinement, fitted with Sheriff Anwar's test, and with the theme from social work evidence that in principle a connection to birth parents is to an adopted child's benefit. G in her evidence and her solicitor in his submission queried the benefit to Mary of an annual photograph of her being sent to E and F. I favoured the submission developed by E's counsel that it lent meaning to the letterbox contact in a way that was beneficial to Mary. She would be receiving a letter (or card) from E and F, and a report upon her would be sent by G to them. That report would be enhanced in its value by provision of a visual representation of Mary's development, and in turn the correspondence to Mary would be likewise enhanced.

[84] I considered that Mary's welfare required to be safeguarded by the contact conditions themselves being subject to conditions. G's obligation to provide an annual update should terminate in the event that E and F, without reasonable cause, fail to provide their annual letterbox update on two successive occasions. Further, G's obligation to provide a recent photograph of Mary each year should terminate in the event that any photograph provided by her is posted upon any form of social media platform whether on

a private or public account, or otherwise published, or made available for public viewing and E and F have failed to take all reasonably practicable steps to guard against that occurrence.

Postscript

[85] I wish to conclude this note by returning to a point previously made, to emphasises a matter I would wish Mary, should she read this judgment in later years, to be clear upon. E and F could not provide her with the care she needs and I was satisfied that would continue to be the case. I was equally satisfied that only adoption could secure her welfare. The opposition to the adoption was misguided, but it was motivated by what E and F thought was in her best interests. Their evidence, often poignant, also recognised the importance of her loving relationship with G, and G's ability to care for her. The process, and granting, of her adoption, therefore took place against a backdrop whereby she was loved by all parties.

Expenses

[86] I make no order for expenses.