



Neutral Citation Number: [2026] EWCA Civ 356

Case No: CA-2026-000036

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT BROMLEY
HHJ LAZARUS
ZE24C500099

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/03/2026

Before :

LORD JUSTICE PHILLIPS
LADY JUSTICE FALK
and
LORD JUSTICE COBB

Re B-A (Placement Order and Contact Order)

Damian Woodward-Carlton KC (who did not appear below) and **Sarah Barber** (instructed by **Local Authority Legal Services**) for the **Appellant**

Polly Allison and **Nathan Baylis** (neither of whom appeared below) (instructed *pro bono* by **Beck Fitzgerald**, also acting *pro bono*) for the **Third Respondent (father)**

The mother was not present and not represented

The father of A and B was not present and not represented

The Children's Guardian was not present and not represented

Hearing date : 4 March 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 25 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Cobb :

Introduction

1. It is, regrettably, now over two years since the Appellant local authority ('the Local Authority') applied for care orders in the Family Court at Bromley under Part IV of the Children Act 1989 ('CA 1989') in respect of the four children of the family with whom we are concerned in this appeal.
2. The final hearing of those applications was conducted by HHJ Lazarus ('the Judge') in two phases: for fourteen days in June 2025 (leading to the first judgment – hereafter '[J1]'), and then for a further nine days in December 2025 (leading to the second judgment, '[J2]'). By the time of the final hearing, applications for placement orders in respect of the younger two children of the family had additionally been issued under Part 1 of the Adoption and Children Act 2002 ('ACA 2002'). The consolidated applications concluded with a number of final orders being made relating to placement and contact on 18 December 2025; this marked the 94th week of the proceedings.
3. It is against only one of the final orders, providing for limited face-to-face parental contact under section 26 ACA 2002 (a 'section 26 order') after placement for adoption, that the Local Authority, represented before us by Damian Woodward-Carlton KC and Sarah Barber, now appeal. Permission to appeal was granted by King LJ on 10 February 2026.
4. The subject children of the proceedings under the CA 1989 are: A (girl, aged 13), B (boy, aged 10 at the final hearing, now rising 11), C (boy, aged 3 at the final hearing, but now aged 4), and D (boy, aged 2, now rising 3). The appeal in fact directly concerns only the younger two children, C and D.
5. The children's mother is the First Respondent to this appeal ('the mother'), but she is neither present on this appeal, nor is she represented. The father of A and B is the Second Respondent to this appeal, and is likewise neither present nor represented. The father of C and D is the Third Respondent to this appeal (for convenience, I shall refer to him as 'the father' in this judgment); he is the only respondent directly affected by the appeal and is represented on the appeal by Polly Allison and Nathan Baylis. They, together with their instructing solicitor, have given their legal services on this appeal *pro bono*, and we are particularly grateful to them for their assistance. The four children were represented in the proceedings in the Family Court by their Children's Guardian ('the Guardian'); she is neither present nor represented before us having encountered difficulties in obtaining public funding for participation in this appeal.
6. The Local Authority urges us to conclude that the Judge erred in making a section 26 order in this case. It argues that we should discharge that order, and replace it with a recital (reflecting intentions to arrange post-placement contact) on the face of the order; Mr Woodward-Carlton has proposed a form of words for that recital which I have reproduced in full in the Schedule at the conclusion of these judgments. The

father opposes the appeal. Of the unrepresented parties, we were informed in writing by the solicitor for the children that the Guardian supports the Local Authority's appeal, having opposed the making of a section 26 order for direct contact in the court below. None of the other respondents have communicated their positions to the Court. For the purposes of this appeal, we have been provided with a small number of the key documents filed for the final hearing.

7. For the reasons set out below, I would dismiss this appeal.

Background

8. It is unnecessary for me to rehearse the background history in any detail.
9. The care proceedings were launched on the back of increasing Local Authority concern about the mother's serious and complex mental ill-health, her neglect of the children, her emotional abuse of the children, and her generally chaotic life. The mother, "an intelligent and capable woman" ([J1][15]), suffers from complex post traumatic stress disorder – a legacy of multiple abusive experiences in her own childhood. She has also been diagnosed with ADHD and a borderline and/or emotionally unstable personality disorder; she has been depressed and suicidal, making an attempt on her life as recently as October 2024. Her relationship with the father of A and B was difficult and conflictual; private law proceedings between them concerning A and B were said to be "acrimonious". The Local Authority had been involved in supporting the family for four years prior to the launch of the care proceedings.
10. The mother and father commenced their relationship in or about 2021. Their relationship was also volatile. The mother made a number of serious allegations of abuse against the father, although these were not pursued within the proceedings and no findings have been made.
11. The father, now aged 62, is a great deal older than the mother; he has a significant learning disability, functioning in the extremely low range of adult intellectual ability with some underlying developmental disorder. He is said to be a "very vulnerable" man, who cannot read or write. The Judge commented ([J1][108]) that "he comes across as extremely well meaning, a very pleasant personality... but his words and meanings were occasionally unclear, and this all fitted with the picture that I have gained of an extremely good-hearted somewhat compliant but cognitively challenged person, who loves his children very much" ([J1][109]). Later, the Judge reflected that: "his approach is loving, affectionate, caring and warm, and he is very proud of his children" ([J1][139]). Throughout the proceedings in the Family Court he was supported by an intermediary. The father has enjoyed regular contact with C and D, and all the reports of that contact are positive; he is said to regard them as his "pride and joy".
12. In June 2025, the Judge made findings of fact which satisfied the section 31(2) CA 1989 'threshold criteria' for the making of public law orders in respect of all four children, and at that stage ruled out the father as a long-term carer for C and D. The proceedings were then adjourned for further assessments of the mother and wider maternal family.

13. The Judge concluded the proceedings in December 2025 by making a care order in relation to A on the basis that she would remain in foster care; the Judge provided for B to live with his father under a supervision order. A care order and a placement order were made in relation to C and D, on the basis that they would be placed – ideally together – in an adoptive home. None of those orders is under appeal. The focus of the appeal is, as I have said, an order for limited contact between C and D and their father.
14. At the time of the final hearing, the four children were seeing each other on a fortnightly basis and they were seeing their parents (separately) twice per week. The final care plans (9 October 2025) referred to the promotion of sibling contact in the future, and the ambition of the authority to “seek to identify a placement [for C and D] which might support sibling contact” (emphasis added). Contact between the father and C and D was expressed thus: “should the adoptive parent(s) feel they can manage any potential ongoing associated risks from [the father’s] association with mother, they may feel in a position to consider direct family time twice per year”. The care plan contemplated a farewell (‘wish you well’) visit between C and D and their father and (separately) their mother.
15. During the hearing, the Local Authority amended its care plan ([J2][127]), to reflect the possibility that separate placements may need to be found for the boys, and to express the Local Authority’s evolving views about future parental contact for the younger boys. By the conclusion of the final hearing:
 - i) The parties all supported the continuation of sibling contact once all the children were in their permanent placements; there was professional consensus that this sibling contact should be reflected in a section 26 order;
 - ii) The Local Authority proposed (and the Guardian supported) the continuation of contact between the father and C and D following their placement for adoption; however the Local Authority and Guardian both opposed the making of a section 26 order. The father sought a section 26 order.
16. To complete the picture, the Judge recorded that the mother: “wisely and generously accepts that if placement orders are made that she would seek currently no order for contact because it might prejudice being able to find an appropriate placement for the boys together” ([J2][13]); there is no record of her view as to future contact between C and D and their father.

The Judgment and Final Order

17. The judgments delivered in June and December 2025 are both the work of considerable industry; they cover the factual and legal ground with care, and offer sensitive and insightful reflections of this complex and extensive family, and their various claims to care for one or more of the children in the long-term. We are principally concerned with the second, lengthier, judgment ([J2]) delivered on the 18 December 2025.
18. No challenge is made to the accuracy or thoroughness of the Judge’s review of the applicable legal framework relevant to post-placement contact. Specifically, the Judge addressed the provisions of section 26 ACA 2002, and recorded her

acknowledgement of “the need for a change in approach to post-placement contact compared with earlier authorities” ([J2][32]). She referenced, and indeed quoted extensively from, Baker LJ’s judgment in *Re R and C (Adoption or Fostering)* [2024] EWCA Civ 1302 (*‘Re R and C’*) and Sir Andrew McFarlane P’s judgment in *Re S (Placement Order Contact)* [2025] EWCA Civ 823 (*‘Re S’*).

19. What follows here are only limited extracts of the judgment, setting out the passages which are relevant to the issue under review.

20. The Judge described C and D as:

“... little boys with typical high-dependency needs and typical behaviours, but they also have additional developmental issues. [C] has been noticed to do some headbanging, CAMHS have been referred. He has glue ear, he attends nursery, which he enjoys but has some separation issues. [D] is noted sometimes to be unsettled, is screaming at night, he is into everything like a typical two-year old and attends playgroup, which he enjoys. In terms of their wishes and feelings, inevitably, they will not have expressed it directly, but it is evident that between the two of them, there is a devoted, close, loving sibling relationship” ([J2] [160]).

21. The Local Authority’s long-term plans for C and D were described in this way:

“[C] and [D]’s behaviours might make it more difficult to place them for adoption; that splitting them up risks their relationship; that contact orders would ensure that contact would be promoted with prospective adopters but that in any event, [the social worker] would plan for the Local Authority to promote that with prospective adopters in any event. She said that a priority should be sibling contact and she also accepted that the siblings living together should take priority over separate placements... separation would represent significant further trauma for the boys,” ([J2] [126]/[127]) (Emphasis by underlining added).

22. Later in the judgment, the Judge described how the foster carer had expressed concern at the possibility of C and D being separated if an adoptive home could not be found for them to be placed together; she had described the prospect of separating them as “gut-wrenching” ([J2][140]), a view which the Judge endorsed: [J2][161]. The Guardian had also described how the boys have “an enhanced level of emotional need, that they have experienced disruption so far in their lives and that that is a factor that must be taken into account” ([J2][140]). The Judge described the boys as having “enhanced developmental needs” ([J2][164]).

23. The social worker’s willingness to promote sibling contact between all four children post-placement was reflected in the judgment, as was her commitment to support contact between C and D themselves in the event that it proved necessary to place them separately. The judgment further recorded that “meetings would be supported

and facilitated between the prospective adopters and the adult family members and introductory letters ditto” ([J2][128]). The Judge added:

“As far as the adults are concerned, it would depend on what the adopters would agree to and I was reminded of the evidence of the family finder, which is that sibling contact nowadays rarely puts off adopters. Whereas contact with a parent may do so and the family finder’s evidence is that it might halve the pool available” ([J2][129]).

24. Pausing there, reference to the “family finder’s evidence” in the extract above appears to be to a combination of various strands of evidence. First, the family finder had given oral evidence in the June 2025 hearing, when it was apparently said (we have no transcript) that there would be a “fairly drastic drop” in the number of prospective adopters who indicate in their profiles that they are open to direct parental contact, and that a requirement for direct parental contact would make it “harder but probably not impossible” to find adopters for the children. Secondly, the Judge had answers from the family finder to further written questions which were submitted to the court on 6 November 2025, prior to the final hearing, which reveal the following:

“Does having a sibling and or parental contact order reduce the number of potential adopters?”

Nearly all adoptive families are open to considering direct sibling family time, only around half of adoptive families are open to considering direct birth parent family time, so yes, a parental contact order would likely limit the amount of prospective families”.

“Given the proposals for sibling contact and the updated views generally about contact post adoption what impact if any has this had on finding a placement?”

I don’t think proposals for sibling contact in this matter have impacted on the family finding” (Emphasis by underlining added).

Thirdly, it is noted that the answer to the first written question above repeated the family finder’s written statement of evidence:

“Approximately half of families would consider direct family time with birth parents. Therefore, there is an impact on the pool of adoptive families if considering direct family time with birth parents for a child/ren”.

25. It is clear that the Judge formed a favourable view of the key professionals involved in the proceedings. She observed that the family’s social worker displayed “empathy, adaptability and reflective elements within her oral evidence” ([J2][122]); the Judge formed an equally favourable view of the Guardian describing her “careful and thorough enquiries” ([J2][121]), and separately spoke of her “impressive and careful

analysis” ([J2][136]). She said that the Guardian “... has always struck me in this case as having been thoughtful, careful, thorough and fair” ([J2][131]), adding:

“I was impressed by her ability to grasp and address the complexities and sensitivities in this case. Overall again, her evidence having been challenged thoroughly by comprehensive cross-examination, there was nothing that emerged which shook her conclusions or undermined the reliability of her analysis and the rationale on which she based it which would lead me to reject her analysis and her evidence.” ([J2][131]).

26. The Judge recorded that the Guardian was “quite clear” that a contact order needed to be made for sibling contact ([J2][140]) as “there needed to be a clear indication to prospective adopters of the importance and needs of these two children in terms of [sibling] contact” (ibid.), but that:

“... the boys’ need for permanence outweighed their need for contact arrangements to stay as they are... she accepted that the social worker’s views in relation to contact should be seen as important. Overall, the sibling relationship should not necessarily take priority over permanence, and she only supported contact orders for the siblings and not for the adults” ([J2][144]) (Emphasis by underlining added).

27. The Judge later returned to the Guardian’s recommendation for a section 26 order for contact between the siblings ([J2][169]), adding:

“... letters and meetings with adult family members for prospective carers and the work with and search for appropriate adopters open to such contact, all would go some way towards mitigating the loss and harm that I have referred to” ([J2][169]).

The Judge had described how the recommendations of the Guardian had “been made with a careful, thoughtful, empathic and child-centred approach” ([J2][145]). These observations are all relevant to Ground 4 of the Grounds of Appeal.

28. As to sibling contact, the Judge reproduced the view of “each professional” that sibling contact was “important” and that “this unique set of circumstances falls well within the type of case for which contact orders are well designed, in order to set the tone and meet the children’s individual needs under the relevant welfare checklist considerations” ([J2][165], [177] and [184]).
29. As to post-placement contact between C and D and their mother and separately their father, the Judge said this:

“[181]... The mother does not seek a contact order and nor do the maternal grandparents. Mother does not do so recognising the potential impact if there were such an order in her favour on placement finding.

[182] However, [the father] is in a different category, and an order is sought for him. His relationship with his sons is warm and positive, and they clearly know and love him dearly. He does not pose the same emotional risks as the mother. He has significant cognitive issues: he is illiterate, and he has required intermediary support. And unlike the mother he has a positive and cooperative attitude, which weighs in favour of contact taking place and assists with encouraging prospective adopters in understanding that. However, he will be grossly disadvantaged by his cognitive impairment, and therefore [C] and [D] will be grossly disadvantaged, if he then has to attempt to navigate the administrative demands of attempting to seek and enforce direct contact, in the absence of there being any order. And indirect contact as proposed will be an extremely poor, inadequate and unlikely mitigation for the harm and loss to the boys in these circumstances where their father has these difficulties but is their sole connection to their paternal identity and a significant and valuable relationship.

[183] I have already referred to the family finding evidence earlier in this judgment of a potential risk of a reduction in the number of prospective adopters if a parental contact order is made, but in that context have also carefully considered the guidance in paragraph 74 of *Re S* ... and in particular the balance to be struck where: 'it is the responsibility of the court to make orders for contact if they are required to meet the child's welfare needs'.

[184] Overall, therefore, I consider there is an established need in the unique circumstances of this case, for there to be a minimum single annual direct contact between him and the boys. Plus, that contact should take place with the boys jointly together with him and not one boy at a time. That way, it supports the boys' welfare interests under the ACA checklist in terms of their emotional needs, their identity, their relationships with their father who is of significant value to them and where the continuation of that relationship supports their feelings of being loved and connected together notwithstanding the impact of granting a placement order, and so mitigates the harm and disadvantages of a plan for adoption; and it supports their ability to come together as related individuals recognising their Article 8 rights to family life in that respect. Without that, I consider that the importance to the boys of their father and their connection to their paternal family would really be subject to a fundamental risk of never being respected, and their father would fall at the hurdles of having to navigate the system given his vulnerabilities". (Emphasis by underlining in each case added).

30. The final order contained a number of recitals, including a recognition of the “the primary aim” which was “to identify a placement for [C] and [D] together, it being in their welfare interests that they should be placed together if at all possible”. The final order contained the contact orders, including the order under challenge ((7) below):

“Contact orders pursuant to section 26 Adoption and Children Act 2002

- (5) The [Local Authority] must make sure that the children [C] and [D] have face-to-face contact with their older siblings [A] and [B] on at least four occasions each year.
- (6) If [C] and [D] are placed for adoption separately to one another, the [Local Authority] must also make sure that the children have additional face-to-face contact with one another on at least two occasions each year.
- (7) The [Local Authority] must make sure that the children [C] and [D] have face-to-face contact with their father ... on at least one occasion each year”.
31. In a Schedule to the final order, reflecting amendments to the Local Authority’s final care plans, it was recorded that the Local Authority would endeavour to place C and D together for adoption (said to be “the priority”), failing which (after a 6-month search) consideration would be given to broadening the search to include individual adoptive placements for each child separately; that prospective adopters would be sought who would be willing to promote face to face sibling contact between A, B, C and D, at a recommended frequency of three to four times per year; that if C and D were placed in separate adoptive homes, there should be frequent contact face to face between them approximately six to seven times per year “but ideally more regularly than this”; that meetings would be facilitated between any prospective adopters and the mother, father, and maternal grandparents.

The law

32. The core welfare principles underpinning the ACA 2002 are well-known. Central among those principles is that “the paramount consideration of the court” in making a decision in relation to the adoption of a child “must be the child’s welfare throughout his life” (section 1(2) ACA 2002). In making an order under the ACA 2002, the court is obliged to have regard, among other factors, to:
- i) section 1(4)(c) ACA 2002: “the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person”;
 - ii) section 1(4)(f) ACA 2002: “the relationship which the child has with relatives”, including “(i) the likelihood of any such relationship continuing and the value to the child of its doing so” and “(iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child”;

and that:

iii) section 1(6) ACA 2002: “in coming to a decision relating to the adoption of a child, a court ... must always consider the whole range of powers available to it in the child’s case ... and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so”.

33. The wider context of this appeal is set by section 21 ACA 2002, which governs the making of placement orders (i.e., ... “[a] placement order is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority”). Before making a placement order the court must “consider the arrangements which the adoption agency has made, or proposes to make, for allowing any person contact with the child”, and invite submissions from the parties on those arrangements (section 27(4) ACA 2002). Section 26(2) ACA 2002 provides that where an adoption agency is authorised to place a child for adoption:

“... the court may make an order under this section requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the person named in the order and the child otherwise to have contact with each other”.

A section 26 order may be made on application by a person listed in section 26(3)(a)-(e), or one who has obtained the court’s leave to apply under section 26(3)(f). Additionally, the court may make a contact order on its own initiative under section 26(4) ACA 2002.

34. Section 27(1)/(2) of the ACA 2002 provide that:

“(1) An order under section 26 –

(a) has effect while the adoption agency is authorised to place the child for adoption or the child is placed for adoption, but

(b) may be varied or revoked by the court on an application by the child, the agency or a person named in the order.

(2) The agency may refuse to allow the contact that would otherwise be required by virtue of an order under that section if

(a) it is satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare, and

(b) the refusal is decided upon as a matter of urgency and does not last for more than seven days.”

35. Unless revoked, a section 26 order endures until the moment of the adoption order. At that stage, and before making an adoption order:

“...the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings” (see section 46(6) ACA 2002).

If the court takes the view that it is in the best interests of the child that a post-adoption contact order is made, the court may make an order requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order “or for the person named in that order and the child otherwise to have contact with each other” (section 51A(2)(a) ACA 2002).

36. Recent case law has expanded a little on these provisions.
37. In *Re B (A Child: Post-Adoption Contact)* [2019] EWCA Civ 29 (the first case to reach the Court of Appeal following the implementation section 51A ACA 2002) McFarlane P described (at [62]) how at the placement order application hearing the court has the power to influence the development of any subsequent long-term contact arrangements, setting “the tone for future contact”. This point was developed further in *Re R and C* (see citation above) to which the Judge made reference, in which Baker LJ observed at [2] that:
- “... there is renewed discussion about open adoption and [this judgment] provides an opportunity to reiterate the clear principle that, at the stage of making an order under s.21 of the Adoption and Children Act 2002 authorising a local authority to place a child for adoption, it is the court, rather than the local authority or any other person, which has the responsibility for determining whether there should be ongoing contact between the child and the birth family”.
38. In *Re R and C* Baker LJ went on to describe the significance of family contact for older children placed for adoption; while he addressed the fact that adoption generally satisfies children’s needs for security and permanency, nonetheless “in many cases”, he said, they also have a need to sustain relationships with some members of their birth families (ibid. at [6]). Baker LJ referenced more than once the importance of the court setting the ‘template’ for contact going forward at the placement order stage (quoting at [39] from a speech given by McFarlane P [May 2024] who himself had referred to “setting the course for the maintenance of family relations over the longer term”) (see *Re R and C* at [57], [66] and [68]). Baker LJ emphasised that it is the court which has the responsibility to make orders for contact if orders are indeed required in the interests of the children; he went on to say at [68], it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement to which the adopters do not agree at the adoption stage, but “that does not obviate the court’s responsibility to set the template for contact at the placement order stage” (emphasis added).
39. McFarlane P reprised this theme of setting the ‘tone’ and/or laying the ‘template’ for contact in *Re S*; he spoke (at [77]) of “a ‘road map’ for contact looking forward, through the initial placement stage, and onto the longer term future in this regard”.

He also emphasised the role of the court in setting the arrangements for future contact at [74] in these terms:

“... difficult though the issue may be, it would be wrong for the risk of deterring potential adopters to be the determining factor in each and every case. That this is so is demonstrated by the decisions of the Court of Appeal in both *Re P* and *Re R [and C]*. Wall LJ and, nearly two decades later, Baker LJ were both right to hold that it is the responsibility of the court to make orders for contact if they are required to meet the child’s welfare needs, as determined under ACA 2002, section 1. The position of potential adopters should not, to use Baker LJ’s words, obviate the court’s responsibility to set the template for contact at the placement order stage”.

40. In the same case (*Re S*), McFarlane P discussed the tension (my word) between the importance of maximising the options for permanent (adoptive) placement as against the maintenance of contact. He specifically referenced three decisions of this Court, namely *Re P (Placement Order: Parental Consent)* [2008] EWCA Civ 535; [2008] 2 FLR 625 (*‘Re P’*), *Re D-S (A Child: Adoption or Fostering)* [2024] EWCA Civ 948 (*‘Re D-S’*) and *Re R and C*, and at [32] said:

“Standing back from these three authorities, there is a distinction to be drawn between those cases where continuing direct sibling contact is considered to be necessary for the child’s future welfare, and cases where the achievement of an adoptive home is the overarching goal, with future sibling contact being desirable as opposed to a pre-requisite. In the former circumstances (as in *Re P* and *Re R [and C]*) the court has ‘a responsibility’ to make a section 26 contact order”. (Emphasis by underlining added).

He added, later, at [44]:

“In some cases the need to preserve contact will be a preference, in others it may be essential. In all cases it will be necessary to take account of the impact on family finding of a care plan that includes ongoing contact and/or proposals for a section 26 order for contact. There will be some cases where the priority to be given to preserving the sibling relationship will be such that the court should make a contact order, notwithstanding that to do so may make the task of finding an adoptive family more challenging” (Emphasis by underlining added).

41. In relation to the ‘no order principle’ in section 1(6) ACA 2002, we were taken to *Re P*, in which Wall LJ (giving the judgment of the court) said at [123]:

“... particularly in the context of public law proceedings, the court should adopt the ‘least interventionist’ approach.

As Hale J (as she then was) said in *Re O (Care or Supervision Order)* [1996] 2 FLR 755 at p 760:

“the court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered to be in the better interests of the children ... unless there are cogent reasons to the contrary.””

42. Later in the same judgment ([151]) Wall LJ had observed that future contact is not a matter for agreement between the local authority and the adopters; it is a matter which, ultimately, is for the court: “... it is the Court which has the responsibility to make orders for contact if they are required in the interests of the two children”.

The Grounds of Appeal and Arguments

43. There are four grounds of appeal which I summarise as follows:
- i) Having determined that the welfare outcome that best met the needs of C and D was adoption, and having endorsed the professional consensus that it was overwhelmingly in the children’s best interests, if possible, for them to be placed together, the Judge failed to carry out a welfare analysis that properly took into account the comparative advantages and disadvantages of making a contact order in favour of the father;
 - ii) The Judge failed to give adequate weight in her analysis to the unchallenged evidence of the family finding social worker, who told the court that a requirement for parental contact would likely result in a fairly drastic reduction in the pool of prospective adopters, and whose written evidence was that the making of a contact order was likely to halve the pool of prospective adopters;
 - iii) The Judge failed to properly apply the ‘no order’ principle under section 1(6) of the 2002 Act in circumstances where the Local Authority was, in principle, willing to support face-to-face contact between the children and the father, placing undue weight on the difficulties that the father would have in navigating the administrative demands of seeking out contact with the children;
 - iv) The Judge failed to give adequate reasons for departing from the recommendations of the Guardian and the allocated social worker, both of whom recommended that the Court should not make a contact order under Section 26 of the 2002 Act.
44. Mr Woodward-Carlton and Ms Barber took Grounds 1 to 3 together; they rightly accepted that the Judge had a broad discretion to make orders in relation to contact, and that this Court would therefore be slow to interfere with the decision “save where it exceeds the generous ambit within which reasonable disagreement is possible” (per Asquith LJ in *Bellenden (Formerly Satterthwaite) v Satterthwaite* [1948] 1 All ER 343, 345). They argued that the Judge had failed to conduct a holistic welfare analysis, and in this regard had not given appropriate weight to the disadvantages of making a contact order. In relation specifically to Ground 3, they argued that the

Judge had failed to satisfy herself (per section 1(6) ACA 2002), that it would be “better” for the boys that a section 26 contact order be made; indeed they submitted that by making a contact order the pool of prospective adopters would be so reduced that the plan for adoption of the boys together (and/or at all) was unacceptably jeopardised.

45. In relation to Ground 4, they argued that the Judge had failed even to extend the ‘courtesy’ to the social worker and Guardian of explaining why she had departed from their recommendations (see Hale LJ as she then was in *Re J (Residence: Expert Evidence)* [2001] 2 FCR 44), and her reasoning was therefore fundamentally flawed.
46. Ms Allison and Mr Baylis argued that the judgment was balanced, thorough and appropriately focused on the individual circumstances of C and D (see [J2][38]: “... every such case will fall to be determined on its own facts”). They observed that the Judge had appropriately referenced the statutory checklists and caselaw and in this regard emphasised the comments of Baker LJ from *Re R and C* at [57] – to the effect that it was important for the court to “set the tone” for the future, and craft a “contact regime” at the placement order stage so that the eventual adopters accept the placement with “their eyes wide open to the court-directed imperative for long-term ... contact”. They drew further attention to Baker LJ’s comment (also at [57] of *Re R and C*) that:

“The use of section 26 in such circumstances would not be for the purpose of overriding an adopter’s fully formed views about sibling contact, but to shape those views before they are formed....”.

47. They drew our attention to passages in the second judgment which showed the Judge’s awareness of the possible adverse impact on family finding by the making of a section 26 order ([J2][129]: “... contact with a parent may [put off adopters] and the family finder’s evidence is that it might halve the pool available”: see §23 above) and, notwithstanding that evidence, her recognition of the responsibility upon the court “to make orders for contact if they are required” (ibid. at [183]). In this regard, they referenced the Local Authority’s somewhat vague commitment at the hearing to ‘exploring contact’ between the father and boys, arguing (in the context of section 1(6) ACA 2002) that the Judge was right to consider that this was insufficient to meet the children’s welfare needs for ongoing contact with their father. This was a classic case, they argued, in which a section 26 order should ‘set the tone’ for contact moving forward, inferring a clear expectation that consideration will at least be given to this contact continuing once the adoption order has been made.

Discussion

48. This appeal focuses on a single, albeit significant, issue. In circumstances where all parties accept the welfare benefits of future face-to-face contact between a parent and children who are to be placed for adoption, the question arises: when is it appropriate for the court to make an order under section 26 of the ACA 2002, and when should the court instead record the parties’ general intentions in a non-binding recital, which has the advantage of offering “flexibility over the contact arrangements” (*Re S* at [80])? This is essentially a binary choice for a Judge. The caselaw which we have considered on this appeal (i.e., *Re P*, *Re R and C* and *Re S*) all relate to section 26

orders for post-placement contact between *siblings*, but the approach to such an issue articulated in those authorities applies in my judgment to a case concerning future *parental* contact without material adaptation.

49. A prominent theme of the earlier authorities (see in particular *Re R and C* at [67], *Re S* at [30], [33], [44], [69] and [79]) is that each case must be decided on its own individual facts; McFarlane P spoke of the need for a “bespoke analysis of the future contact arrangements in each case for each child” (*Re S* at [79]). It is hardly worth saying, but I shall say it for emphasis, that no two children considered for adoptive placement, nor their families, will present the same set of circumstances. As I referenced above, the Judge herself recognised this, adverting more than once in her judgment to the “unique complexities” of the case, and “this unique set of circumstances” which fell well within the type of case for which contact orders are designed, “in order to set the tone and meet the children’s individual needs under the relevant welfare checklist considerations” (see again §28 above). As to the children’s specific circumstances in this case, it was common ground between the parties that:
- i) Contact between the father and the children was of a high quality; the father had shown commitment to his children, and a close and loving relationship was observed between them in contact which was “warm and positive” ([J2] [182]); the children “love him dearly” (*ibid.*);
 - ii) There were significant benefits to C and D of ongoing direct contact with their father;
 - iii) The father has “a positive and cooperative attitude” ([J2][182]) and would be unlikely to disrupt, undermine or pose any direct risks to any future adoptive placement(s) for C and D.

It is worth looking again at the Local Authority’s proposed recital, advanced on this appeal as an alternative to an order (see Schedule below), which vividly reinforces these points.

50. Unsurprisingly, there were factors in the evidence which pointed both towards a section 26 order and away from such an order. In seeking to demonstrate that the Judge was wrong to make an order, Mr Woodward-Carlton alluded to the particular characteristics of the boys which (quite apart from the section 26 order) would add to the complexities and challenges of family finding for them: they are a sibling pair, and they ideally need to be together; they display “behaviours” which may make them more difficult to place (see the social worker’s evidence at §21 above); they are aged 4 and 3 years; they have “enhanced developmental needs”; they have experienced much disruption in their early lives and as a corollary have “enhanced need for emotional stability” ([J2][164]) (see §§20-22 above). However, it was the making of the section 26 order which, the Local Authority contended, would materially impede the prospects of securing an adoptive home for C and D, and in making the section 26 order, the Judge had wrongly placed an unwarranted obstacle in the way of the adoptive placement, the outcome which she herself had expressly endorsed. This was the focus of the appeal.
51. As earlier mentioned, the family finding social worker had opined that post-adoption parental contact would “drastic[ally]” reduce, or “halve”, the pool of prospective

adopters (see §§23/24 above); this view appeared to be (to a greater or lesser extent) consistent with that expressed in other cases – see for example Peter Jackson LJ in *Re D-S (A Child: Adoption or Fostering)* at [17] (post-adoption parental contact will “complicate” the search for adopters, and an order “might be detrimental to the greater priority of finding an adoptive family” at [56]). However, it is not clear to this Court whether the significant reduction in the size of the pool described by the family finder would only follow if a section 26 order were made, or whether the pool would be similarly reduced if prospective adopters were advised (as they would need to be) of the Local Authority’s explicit commitment to supporting “a minimum of one face-to-face contact per year with the father”, which would be recorded on the face of the placement order by way of the proposed recital. Having reviewed the family finder’s evidence with care, and notwithstanding Mr Woodward-Carlton’s able submissions, I was left unpersuaded that the Judge erred in not affording the family finding evidence the weight (i.e., *against* the making of a section 26 order), which Mr Woodward-Carlton invited us to ascribe to it. In any event, I remind myself of McFarlane P’s comments in *Re S*, to the effect that where future contact is ‘necessary’ in the interests of the child(ren) (as the Judge found here, see below), it should be *ordered* even if that “may make the task of finding an adoptive family more challenging” (*Re S* at [44]: see §40 above).

52. The single strongest factor which pointed *towards* the making of a section 26 order in relation to the father was the Judge’s dual assessment of: (a) the central importance of some level of meaningful contact for the boys with their father in the future, coupled with (b) her concern that the father “would fall at the hurdles of having to navigate the system given his vulnerabilities” if no order were made ([J2][184]). The Judge was clear that if contact were left to wither because of the father’s inability to navigate unfamiliar administrative territory, the boys would be “grossly disadvantaged” ([J2][182]) (see §29 above). In this regard, the Judge drew specific attention to:
- i) The fragility of the arrangement, absent a section 26 order, given the intellectual limitations of the father and the difficulties he would encounter in seeking or enforcing contact absent an order;
 - ii) The limits of indirect (i.e., letters/cards) contact, given the intellectual limitations of the father and his illiteracy;
 - iii) The importance of the boys retaining “their sole connection” to their paternal identity;
 - iv) The importance of this “valuable relationship” between the boys and the father (“the continuation of that relationship supports their feelings of being loved and connected together” [J2][184]).

By way of context, the Judge referenced the Local Authority’s late-emerging commitment to post-adoption contact for the boys with their father which had “developed” only in the final throes of the proceedings, as evidenced through amendments to its final care plan (“the changes to the care plan ... are aimed at mitigating that level of loss [of relationships and identity]” ([J2][168]) (see also §14 above).

53. This was a case in which the Judge appeared to accept that a section 26 order was ‘necessary’ (she referred to “an established need” [J2][184]) rather than merely ‘desirable’ (see *Re S* at [32], quoted at §40 above). The Judge was aware of section 1(6) ACA 2002 and the ‘no order’ principle; she made specific reference to it when setting out the relevant legal framework ([J2][21]). In this case, no one mistrusted the Local Authority not to deliver on its objective of promoting contact; but the imposition of a court order reflected the real world challenges with which the father would be presented in seeking to press home an informal arrangement (see §52 above). For these reasons it is obvious that the Judge considered that the ‘compulsion’ of an order was justified and “better” for C and D than setting the arrangement adrift on the tides of chance.
54. This Judge had the singular advantage over us of having presided over multiple days of court hearings when determining this application, collecting through observation and evidence its nuances and complexities, and assessing the qualities and personalities of the parties. As Lord Wilson observed in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; [2013] 1 WLR 1911 (*‘Re B’*) at [42], the advantage afforded to the family judge in a child case over the appellate court “transcends the conventional advantage of the fact finder who has seen and heard the witnesses of fact”.
55. With that firmly in mind, we would plainly leave the Judge’s order undisturbed if we felt that she had been entirely right to make the order; we would leave it undisturbed if we felt on balance that she was right (even if we had doubts). We would also leave the order undisturbed if we felt we could not say whether making a section 26 order was either “right or wrong”. It would not, indeed, be open to us to disturb the Judge’s order unless we were satisfied that the decision was ‘wrong’ (see *Re B* at [44], [80] and (albeit dealing with proportionality) [93](iii) and (iv)). Thus, in this appeal we are not carrying out “a balancing task afresh” in relation to whether the Judge was right or wrong to make the section 26 order, but are instead considering “... whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, ‘such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion’”: see *Prescott v Potamianos (also known as Re Sprintroom) (‘Re Sprintroom’)* [2019] EWCA Civ 932 at [76] applying *R (on the application of AR) v Chief Constable of Greater Manchester Police & ano’r.* [2018] UKSC 47, recently affirmed in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc and another* [2025] UKSC 25 at [95].
56. It is well-recognised that in evaluative decision-making such as this, two different judicial minds might reach different decisions without either being appealable. In this case, it is at least arguable that there was no right answer; each of the two outcomes (a section 26 order or a recital) had its inherent benefits and drawbacks. However, I respect the fact that the Judge saw a real need in this case for the court to take responsibility for making a contact order; this is a decision which this Court has, through earlier caselaw, urged her to take (see *Re P* at [151] – [154]: “it is the court which has the responsibility to make orders for contact if they are required in the interests of the two children”, and *Re R and C* at [2], [66], and [68]). I can identify no flaw in the judge's treatment of the issue (per *Re Sprintroom* above), nor is there is any gap in her logic or lack of consistency. After all, down the line (and indeed

consistent with the approach taken by the Judge) it will be for the Family Court to make the necessary final orders, either for adoption, or for revocation of the placement orders if the children are not to be adopted. At that point, again it will be for the court, before making any adoption order, to decide, in accordance with section 46(6) of the ACA 2002, what ongoing contact C and D should have with their father, not for their prospective adopters or the Local Authority to do so (see again *Re P* at [149] and [151]). The Judge fulfilled the expectations placed upon her by statute and authority, and did so in a manner which in my judgment cannot fairly be impugned.

57. At the hearing of the appeal we discussed with counsel the safety net offered by section 27(1) ACA 2002; that is to say, if a section 26 order proved to be too significant an impediment to an otherwise suitable placement, application could be made to vary or revoke the order. None of the counsel appearing before us had any experience of section 27, and our separate research suggests that it has not been much deployed. I accept Mr Woodward-Carlton's submission that in many cases, including this one, the route offered by section 27(1) may be unwieldy and time-consuming (notwithstanding the availability of section 27(2) to cover an urgent situation); all relevant parties would need to be given the chance to participate in the application for variation or revocation, and in this case the father would need to re-engage with an intermediary to assist him actively to participate. However, it would always be open to the judge making a section 26 order to provide in their order that in the event of an application being made under section 27 for revocation or variation, any such application should be reserved to themselves so as to ensure judicial continuity. The judge may also wish to consider (if appropriate) reminding the parties, when making a section 26 order, that the court has wide powers under Part 1, Part 6, and Part 14 of the Family Procedure Rules 2010 (see especially rule 14.6(1)/(4) and rule 14.8 *ibid.*) to ensure swift passage of the application through its case management phase towards its determination.
58. Therefore, and for the reasons set out in §48 to §57 above, I would dismiss the appeal on Grounds 1 to 3.
59. As to Ground 4, the professionals' concern about the imposition of a section 26 order was focused on the impact of such an order on family finding; this concern was not in my judgment particularly securely rooted in the evidence given by the family finder for the reasons which I have outlined in §51 above. The Judge expressly accepted the professional opinions insofar as they related to pure *welfare* issues, i.e. "the analysis of the social worker and the Guardian as to the benefits of adoption" ([J2][174]); in this regard, she was right to complement the Guardian for being able to "grasp and address the complexities and sensitivities in this case" ([J2][131]). But when it came to her consideration of the range of *orders*, and the selection of the right *order* on the facts of this case, this was primarily judicial territory. She brought to this particular exercise the unique advantage of having surveyed the wide range of evidence over multiple days; the professional opinions, well-informed and sensitively crafted though they undoubtedly were (see §§25-27 above), were but a part of that picture. While I accept that it may have been "courteous" (*Re J*) for the Judge to have explained why in the end she did not accept the professional views of the social worker and Guardian in relation to the making and form of order, her failure to do so did not in my judgment vitiate the decision.

Conclusion

60. For the reasons set out herein, I have not been persuaded that the Judge fell into error in making the contact order in respect of the father's post-placement contact with C and D under section 26 ACA 2002 in this case. I would, as earlier indicated, dismiss this appeal.

Lady Justice Falk

61. I agree.

Lord Justice Phillips

62. I also agree.

Schedule

Draft Recital proposed by the Appellant (Local Authority) at the appeal hearing

UPON the care plans for [C] and [D] being that, in addition to sibling contact, there should be a minimum of once per year face-to-face contact with [the father].

In practice, when exploring potentially suitable matches for the children, the issue of post-adoption contact with [the father] will be discussed directly with any prospective adopters at any early stage of the family finding process in direct work between the allocated family finding social worker and the prospective adopters. This will include discussions with any prospective adopters about the importance of maintaining the parental relationship between [C], [D], and [the father], the frequency of contact that has been recommended for the children and/or ordered by the Court, and the rationale for that frequency. Such rationale including the observations of the Court that:

- a. [The father] is well meaning, good hearted and a pleasant personality but is cognitively challenged. He undoubtedly has a range of deficits and vulnerabilities and would need support in arranging and implementing the contact.
- b. [The father] is positive and cooperative. He has very warm and loving relationships with both [C] and [D].
- c. Contact supports [C] and [D]'s emotional needs and identity. He is a significant and valuable relationship for the children. They know and love him dearly.
- d. There are positive relationships between the father and each of the two little boys with enjoyment of time spent together.
- e. [C] and [D] are old enough to have identified positive relationships with their father and a sense of identity which ought to be preserved through continued contact with [the father].

The local authority would support and facilitate separate meetings taking place between any prospective adopters, the mother, [the father] and the maternal grandparents, subject to the agreement of the children's prospective adopters.

The local authority would also support and facilitate the mother, [the father] and the maternal grandparents writing introductory letters to any prospective adopters and contributing to life story work for the children. In light of [the father]'s particular difficulties, the local authority would support and facilitate his engagement in the provision of photos and videos as part of indirect contact. Professionals shall bear in mind when liaising with [the father] his cognitive profile and the fact he is illiterate.