



Neutral Citation Number: [2017] EWHC 35 (Fam)

Case Numbers omitted

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17 January 2017

**Before:**

**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

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**In the matter of A, B, C, D, E and F (Children)**

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**Mr Nicholas Stonor QC and Mr Justin Gray** (instructed by Hadaway & Hadaway) for the guardians of A, B, C, E and F

**Ms Lorraine Cavanagh** (instructed by John Whittle Robinson Solicitors) for the guardian of D  
**Ms Deirdre Fottrell QC** (instructed by Russell Cooke) for the prospective adoptive parents of D

**Ms Alexandra Conroy Harris** (of Newcastle City Council) for Newcastle City Council  
**Ms Frances Heaton QC** (instructed by the local authority) for Blackburn with Darwen Borough Council

**Mr Alan Inglis** of the English Bar and Scottish Bar (instructed by local authority solicitors) lodged written submissions on behalf of Dundee City Council, Clackmannanshire Council and Scottish Borders Council

Hearing date: 16 November 2016

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

**This judgment was handed down in open court**

**Sir James Munby, President of the Family Division:**

1. I have before me preliminary points in a number of cases which have been listed for the purpose of resolving various questions which, it is apparent, are now coming before the courts not infrequently. They arise in the context of applications for adoption, by prospective adoptive parents who live in England, of various children, living in England with their prospective adoptive parents, in relation to each of whom a Scottish Sheriff has made a permanence order with authority to adopt under sections 80 and 83 of the Adoption and Children (Scotland) Act 2007. Put very shortly, and I shall need to elaborate this in due course, the questions are: first, whether the English court needs to obtain the consent of the natural parent(s) before making an adoption order, and, secondly, whether the natural parents should be joined as parties to or notified of the adoption proceedings in relation to their child(ren).

The English legislation

2. Before proceeding any further I need to set out the relevant English legislation. I start with the Adoption and Children Act 2002.
3. Section 105(2) of the 2002 Act, as amended by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011, SI 2011/1740, provides that:

“A Scottish permanence order which includes provision granting authority for the child to be adopted has the same effect in England and Wales as it has in Scotland, but as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child.”

Section 105(5) contains the same definition of “Scottish permanence order” as section 47(10) of the 2002 Act (see below).

4. There is no doubt that the English family court has, in principle, jurisdiction to make adoption orders in this situation: *Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112, [2016] 2 WLR 713, paras 76, 90-92. The specific power is that contained in section 47(6)(a) of the 2002 Act, as amended by the 2011 Order.
5. So far as material for present purposes, section 47 provides as follows:

“Conditions for making adoption orders

(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied –

(a) that the parent or guardian consents to the making of the adoption order,

(b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or

(c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that –

(a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,

(b) either –

(i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old, or

(ii) the child was placed for adoption under a placement order, and

(c) no parent or guardian opposes the making of the adoption order.

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.

(6) The third condition is that the child –

(a) is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, or

(b) is free for adoption by virtue of an order made under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S. I. 1987/2203 (N.I. 22)).

(7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.

...

(10) In this section, "Scottish permanence order" means a permanence order under section 80 of the Adoption and

Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).”

6. It should be noted that in section 47, as originally enacted, (a) there was no sub-section (10) and (b) sub-section (6) read as follows:

“The third condition is that the child is free for adoption by virtue of an order made –

(a) in Scotland, under section 18 of the Adoption (Scotland) Act 1978 (c. 28), or

(b) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).”

7. One of the effects of the enactment of the 2002 Act was, of course, to remove the power of the courts of England and Wales to make a freeing order under section 18 of the Adoption Act 1976. Transitional provisions set out in Schedule 4, para 7, to the 2002 Act provided, so far as material, as follows:

“(1) Nothing in this Act affects any order made under section 18 of the Adoption Act 1976 (c. 36) and –

(a) sections 19 to 21 of that Act are to continue to have effect in relation to such an order, and

...

(3) Where a child is free for adoption by virtue of an order made under section 18 of that Act, the third condition in section 47(6) is to be treated as satisfied.”

8. Section 52(1) of the 2002 Act provides as follows:

“The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that –

(a) the parent or guardian cannot be found or is incapable of giving consent, or

(b) the welfare of the child requires the consent to be dispensed with.”

Section 52(6) of the 2002 Act defines “parent” as meaning:

“a parent having parental responsibility.”

9. Compatibly with the requirements of section 141 of the 2002 Act, which there is no need for me to set out, FPR 14.3 provides that the automatic respondents to an application for an adoption order include “Each parent who has parental responsibility for the child unless that parent has given notice under section 20(4)(a) of the 2002 Act” and “any person in whose favour there is provision for contact,” this latter expression being defined by FPR 14.1(2) and 13.1(2) as meaning “(i) contact provision contained in a child arrangements order under section 8 of the 1989 Act, or (ii) an order under section 34 of the 1989 Act.” So far as material, FPR 14.3(3) and (4) provide as follows:

“(3) The court may at any time direct that ... any other person or body be made a respondent to proceedings ...

(4) If the court makes a direction for the addition ... of a party, it may give consequential directions about –

(a) serving a copy of the application form on any new respondent;

(b) serving relevant documents on the new party; and

(c) the management of the proceedings.”

See also FPR 14.8(1)(b) and (e).

10. Broadly speaking the questions before me are (i) what is the effect of section 47(6)(a) of the 2002 Act, (ii) whether, in particular, the effect of section 47(6)(a) is to remove the need for the English court to obtain the consent of the natural parent(s), (iii) whether, given the making of the Scottish orders, the natural parent is a “parent” within the meaning, and for the purposes, of the 2002 Act and, consequential upon the answer to those questions, (iv) whether the natural parents should be joined as parties to or notified of the adoption proceedings in relation to their child(ren).

#### The Scottish legislation

11. I need now to explain the relevant Scottish legislation. I start with the concepts of “parental responsibilities” and “parental rights”, to use the Scottish terminology, and of “parental responsibility”, to use the corresponding English terminology. The former are defined in sections 1 and 2 of the Children (Scotland) Act 1995.
12. Section 1 of the 1995 Act provides as follows:

“Parental responsibilities.

(1) Subject to section 3(1)(b) and (d) and (3) of this Act [not relevant for present purposes], a parent has in relation to his child the responsibility –

(a) to safeguard and promote the child’s health, development and welfare;

(b) to provide, in a manner appropriate to the stage of development of the child –

(i) direction;

(ii) guidance,

to the child;

(c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and

(d) to act as the child’s legal representative,

but only in so far as compliance with this section is practicable and in the interests of the child.

(2) “Child” means for the purposes of –

(a) paragraphs (a), (b)(i), (c) and (d) of subsection (1) above, a person under the age of sixteen years;

(b) paragraph (b)(ii) of that subsection, a person under the age of eighteen years.

(3) The responsibilities mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as “parental responsibilities”; and the child, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those responsibilities.

(4) The parental responsibilities supersede any analogous duties imposed on a parent at common law; but this section is without prejudice to any other duty so imposed on him or to any duty imposed on him by, under or by virtue of any other provision of this Act or of any other enactment.”

13. Section 2 of the 1995 Act provides as follows:

“Parental rights.

(1) Subject to section 3(1)(b) and (d) and (3) of this Act, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right –

(a) to have the child living with him or otherwise to regulate the child’s residence;

(b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child’s upbringing;

(c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and

(d) to act as the child's legal representative.

(2) Subject to subsection (3) below, where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other or, as the case may be, of any of the others, unless any decree or deed conferring the right, or regulating its exercise, otherwise provides.

(3) Without prejudice to any court order, no person shall be entitled to remove a child habitually resident in Scotland from, or to retain any such child outwith, the United Kingdom without the consent of a person described in subsection (6) below.

(4) The rights mentioned in paragraphs (a) to (d) of subsection (1) above are in this Act referred to as "parental rights"; and a parent, or any person acting on his behalf, shall have title to sue, or to defend, in any proceedings as respects those rights.

(5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.

(6) The description of a person referred to in subsection (3) above is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1) above; except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.

(7) In this section, "child" means a person under the age of sixteen years."

14. Section 103(1) of the 1995 Act provides that:

"Any reference in this Act, or in any enactment amended by this Act, to a person having, or to there being vested in him, parental responsibilities or parental rights shall, unless the context otherwise requires, be construed as a reference to his having, or to there being so vested, any of those rights or as the case may be responsibilities."

15. The Scottish concepts of “parental responsibilities” and “parental rights” thus defined must be contrasted with the English concept of “parental responsibility”, defined in section 3 of the Children Act 1989 as follows:

“Meaning of “parental responsibility”.

(1) In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

(2) It also includes the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.”

16. Pausing there, it can be seen that there are three major differences between the Scottish and English provisions:

- i) In Scotland there are separate definitions of “parental responsibilities” and “parental rights”, whereas in England both are rolled up in the single definition of “parental responsibility.”
- ii) Whilst in Scotland “parental responsibilities” and “parental rights” are each defined by reference to a free-standing statutory list of specific “responsibilities” or “rights”, and the legislation expressly supersedes the common law (see sections 1(4) and 2(5)), in England “parental responsibility” is defined by reference to “all the rights [etc] *which by law* a parent of a child has in relation to the child (emphasis added).” So, in contrast to the Scottish scheme, where the statutory criteria are self-contained, the English scheme directs attention to the content of what it refers to as “law” – which in context can surely only mean the common law. So, one is inevitably drawn back to the learning in *Hewer v Bryant* [1970] 1 QB 357, with its references, 363, 373, 376, to “custody” as a “bundle of rights and duties”, “bundle of rights” or “bundle of powers.”
- iii) There is nothing in English law corresponding to section 103(1) of the 1995 Act. On the contrary, section 3 of the 1989 Act defines “parental responsibility” by reference to “*all* the rights [etc].”

17. Before leaving the 1995 Act, I should note that Section 11 of the 1995 Act, so far as material, provides that:

“(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 –

(a) parental responsibilities;

(b) parental rights;

...

(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders –

(a) an order depriving a person of some or all of his parental responsibilities or parental rights in relation to a child;

...

(d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age [sixteen years] and a person with whom the child is not, or will not be, living (any such order being known as a “contact order”);

...”

18. Section 11(A) provides that:

“(1) Subsection (2) applies where a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)) is in force in respect of a child.

(2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.”

19. I turn to the Adoption and Children (Scotland) Act 2007.

20. Section 80 of the 2007 Act provides as follows:

“80 Permanence orders

(1) The appropriate court may, on the application of a local authority, make a permanence order in respect of a child.

(2) A permanence order is an order consisting of –

(a) the mandatory provision,

(b) such of the ancillary provisions as the court thinks fit,  
and

(c) if the conditions in section 83 are met, provision granting authority for the child to be adopted.

(3) In making a permanence order in respect of a child, the appropriate court must secure that each parental responsibility and parental right in respect of the child vests in a person.”

21. Section 81 of the 2007 Act provides as follows:

“81 Permanence orders: mandatory provision

(1) The mandatory provision is provision vesting in the local authority for the appropriate period –

(a) the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act (provision of guidance appropriate to child’s stage of development) in relation to the child, and

(b) the right mentioned in section 2(1)(a) of that Act (regulation of child’s residence) in relation to the child.

(2) In subsection (1) “the appropriate period” means –

(a) in the case of the responsibility referred to in subsection (1)(a), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,

(b) in the case of the right referred to in subsection (1)(b), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.”

22. Section 82 of the 2007 Act provides as follows:

“82 Permanence orders: ancillary provisions

(1) The ancillary provisions are provisions –

(a) vesting in the local authority for the appropriate period –

(i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i) and (d) of the 1995 Act, and

(ii) such of the parental rights mentioned in section 2(1)(b) and (d) of that Act,

in relation to the child as the court considers appropriate,

(b) vesting in a person other than the local authority for the appropriate period –

(i) such of the parental responsibilities mentioned in section 1(1) of that Act, and

(ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act,

in relation to the child as the court considers appropriate,

(c) extinguishing any parental responsibilities which, immediately before the making of the order, vested in a parent or guardian of the child, and which –

(i) by virtue of section 81(1)(a) or paragraph (a)(i), vest in the local authority, or

(ii) by virtue of paragraph (b)(i), vest in a person other than the authority,

(d) extinguishing any parental rights in relation to the child which, immediately before the making of the order, vested in a parent or guardian of the child, and which –

(i) by virtue of paragraph (a)(ii), vest in the local authority, or

(ii) by virtue of paragraph (b)(ii), vest in a person other than the authority,

(e) specifying such arrangements for contact between the child and any other person as the court considers appropriate and to be in the best interests of the child, and

(f) determining any question which has arisen in connection with –

(i) any parental responsibilities or parental rights in relation to the child, or

(ii) any other aspect of the welfare of the child.

(2) In subsection (1), “the appropriate period” means –

(a) in the case of the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,

(b) in any other case, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16.”

23. It will be noted, and this is important, that because of the combined effect of sections 81 and 82 of the 2007 Act, a permanence order *cannot* vest in a local authority the parental responsibilities mentioned in section 1(1)(c) of the 1995 Act or the parental rights mentioned in section 2(1)(c) – they can only be vested in “a person other than the local authority” – and, unless they have vested in such a person (which is not the effect of any of the orders before me), the court *cannot* extinguish the parental responsibilities mentioned in section 1(1)(c) of the 1995 Act or the parental rights mentioned in section 2(1)(c). These matters – “personal relations and direct contact” – can, of course, be regulated by the court in accordance with section 11(2)(d) of the 1995 Act and section 82(1)(e) of the 2007 Act.
24. As Mr Inglis points out, the effect of sections 81 and 82 is that it is for the Sheriff in the particular case to decide which “parental responsibilities” and “parental rights” to extinguish. Typically, however, he tells me – and this is borne out, as we shall see, by the various orders which are before me – it is the practice to extinguish the maximum possible when granting authority to adopt.
25. Section 83 of the 2007 Act provides as follows:
- “83 Order granting authority for adoption: conditions
- (1) The conditions referred to in section 80(2)(c) are –
- (a) that the local authority has, in the application for the permanence order, requested that the order include provision granting authority for the child to be adopted,
- (b) that the court is satisfied that the child has been, or is likely to be, placed for adoption,
- (c) that, in the case of each parent or guardian of the child, the court is satisfied –
- (i) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or
- (ii) that the parent's or guardian's consent to the making of such an order should be dispensed with on one of the grounds mentioned in subsection (2),
- (d) that the court considers that it would be better for the child if it were to grant authority for the child to be adopted than if it were not to grant such authority.
- (2) Those grounds are –
- (a) that the parent or guardian is dead,
- (b) that the parent or guardian cannot be found or is incapable of giving consent,

- (c) that subsection (3) or (4) applies,
- (d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
- (3) This subsection applies if the parent or guardian –
  - (a) has parental responsibilities or parental rights in relation to the child other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act,
  - (b) is, in the opinion of the court, unable satisfactorily to –
    - (i) discharge those responsibilities, or
    - (ii) exercise those rights, and
  - (c) is likely to continue to be unable to do so.
- (4) This subsection applies if –
  - (a) the parent or guardian has, by virtue of the making of a permanence order which does not include provision granting authority for the child to be adopted, no parental responsibilities or parental rights in relation to the child, and
  - (b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian.
- (5) In subsections (1)(c) and (2), “parent”, in relation to the child in respect of whom the permanence order is to be made, means –
  - (a) a parent who has any parental responsibilities or parental rights in relation to the child, or
  - (b) a parent who, by virtue of a permanence order which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.”

26. Finally, I need to refer to section 31 of the 2007 Act, corresponding to section 47 of the 2002 Act, which provides as follows:

“(1) An adoption order may not be made unless one of the five conditions is met.

...

(7) The second condition is that a permanence order granting authority for the child to be adopted is in force.”

27. The contrast between the Scottish and English schemes is apparent. A permanence order granting authority for the child to be adopted, as referred to in section 80(2)(c) of the 2007 Act, cannot be made unless the conditions set out in section 83 are satisfied. One of those conditions, and the one immediately relevant here, is that the parent's consent is dispensed with in accordance with sections 83(1)(c)(ii), 83(2)(c) and 83(3). It will be noticed that there is no provision for such a parent to apply for leave to oppose the making of an adoption order. So, where a permanence order granting authority for the child to be adopted is in force, the effect of sections 31(1) and 31(7) of the 2007 Act is that the court making an adoption order is no longer concerned with parental consent, for that has been dealt with at an earlier stage of the proceedings: see, for an illuminating description and analysis of the Scottish legislation, the judgment of Lady Smith in the Inner House in *East Lothian Council, Petitioners* [2012] CSIH 3, 2012 FamLR 7.
28. This is borne out by the relevant Scottish practice. In relation to applications for an adoption order, the relevant Scottish rules are the Sheriff Court Adoption Rules 2009, set out in the Schedule to the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009, SSI 2009 No 284. The relevant rules are rule 14 and rule 15. So far as material for present purposes, rule 14 provides as follows:
- “(1) On the lodging of [an application for an adoption order] –
- ...
- (b) ... the sheriff clerk, must send a copy of the petition along with a notice of intimation in Form 5 to—
- (i) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under the 2007 Act;
- ... ; and
- (iv) every person who, if leave were given under section 31(12) of the 2007 Act, would be entitled to oppose the making of the order;
- ...
- (f) the sheriff may order the petitioner or, where a serial number has been assigned under rule 10, the sheriff clerk to intimate the application to such other person and in such terms as he considers appropriate.”
29. Rule 15 provides that:
- “In any application for an adoption order ... the sheriff may at any time order intimation to be made in such terms as he

considers appropriate on any person who in his opinion ought to be given notice of the application.”

30. It is clear from the analysis of Lady Smith in *East Lothian Council, Petitioners* [2012] CSIH 3, 2012 FamLR 7, that, where a permanence order with authority to adopt has been made, the natural parents will *not* be or be entitled to be served in accordance with rule 14(1)(b). Their joinder, if at all, will (see para 28) be in accordance with rule 14(1)(f) or rule 15. Lady Smith went on, para 28:

“Whilst the sheriff thus has a discretion when it comes to intimation of the adoption application, it will be incumbent on the court to consider whether or not, having regard to the whole circumstances including the parents’ Convention rights there requires to be such intimation ... Since the procedure involves the court being notified of any permanence order, if that order includes provision for contact between the child and a member of his natural family, we would expect the court to intimate the adoption application to any such family member, bearing in mind the article 8 rights involved.”

She added, para 49:

“Looking ahead to the adoption process, the appellants’ interest in continuing contact will be adequately protected by the intimation provisions in the relevant rules, to which we refer above.”

31. So, as Mr Inglis submitted, a parent who retains contact in accordance with a permanence order with authority to adopt is *not* included in those required to be intimated (served) under Rule 14. It is a matter for the Sheriff’s discretion under rules 14(1)(f) and 15. Plainly, as he observes and having regard to what Lady Smith said, the fact that, in a particular case, the parents do retain contact is a matter of considerable significance in determining whether they should be intimated.

#### The facts

32. After this lengthy preamble I can now return to the facts of the six cases before me. For present purposes I can be brief.
- i) Three of the cases relate to siblings, A, B and C, who were taken into care by Dundee City Council. In May 2016, in the Dundee Sheriff Court, the Sheriff made permanence orders with authority to adopt. The children were placed by Dundee City Council with prospective adopters in the North East of England (see section 42(8) of the 2002 Act). In September 2016 they applied for adoption orders. The applications were made to the Family Court at Newcastle. Newcastle City Council is a party to the proceedings because of FPR 14.3. The matter is listed before me pursuant to orders made by Her Honour Judge Hudson dated 31 October and 2 November 2016.
  - ii) The fourth case relates to a child, D, who was taken into care by Dundee City Council. In April 2016, in the Dundee Sheriff Court, the Sheriff made a

permanence order with authority to adopt. The child had been placed by Dundee City Council with prospective adopters in Lancashire. In November 2016 they applied for an adoption order. The application was made to the Family Court at Blackburn. The relevant English local authority is Blackburn with Darwen Borough Council. The matter is listed before me pursuant to an order made by Her Honour Judge Singleton QC dated 31 October 2016.

- iii) The fifth case relates to a child, E, who was taken into care by Clackmannanshire Council. In August 2015, in the Alloa Sheriff Court, the Sheriff made a permanence order with authority to adopt. The child was placed by Clackmannanshire Council with prospective adopters in Cumbria. In July 2016 they applied for an adoption order. The application was made to the Family Court at Carlisle. The matter is listed before me pursuant to an order made by Her Honour Judge Forrester dated 31 October 2016.
  - iv) The sixth case relates to a child, F, who was taken into care by Scottish Borders Council. In January 2015, in the Selkirk Sheriff Court, the Sheriff made a permanence order with authority to adopt. The child was placed by Scottish Borders Council with prospective adopters in Cumbria. In August 2016 they applied for an adoption order. The application was made to the Family Court at Carlisle. The matter is listed before me pursuant to an order made by Her Honour Judge Forrester dated 31 October 2016.
33. The orders made by the Sheriffs in these six cases, which I shall refer to collectively as the Scottish orders, are not all in precisely the same form, but in substance they are very similar. Each of them contains the following:
- i) An order dispensing with parental consent in accordance with section 83(3) of the 2007 Act.
  - ii) A permanence order containing (a) the mandatory conditions in section 81 of the 2007 Act and (b) ancillary provisions, in accordance with section 82, vesting in the local authority the parental responsibilities in section 1(1)(a), (b)(i) and (d) and the parental rights in section 2(1)(b) and (d) of the 1995 Act, and extinguishing the parent's parental responsibilities in section 1(1)(a), (b) and (d) and parental rights in section 2(1)(a), (b) and (d) of the 1995 Act.
  - iii) An order granting authority for the child to be adopted.
34. The Scottish orders contain different provisions in relation to ongoing parental contact:
- i) In the three Newcastle cases the order of the Dundee Sheriff Court provided that there should be no direct contact but only indirect contact, as specified, with a provision for automatic cesser of the indirect contact in certain events of parental default.
  - ii) In the Blackburn case the order of the Dundee Sheriff Court provided that there should be no direct contact with the child's parents. The order is silent as to indirect contact, though as I understand it indirect contact has never been proposed by Dundee City Council and has never taken place.



- iii) In the first Carlisle case the order of the Alloa Sheriff Court provided that there was to be no direct or indirect contact between the child and either parent.
- iv) In the second Carlisle case the order of the Selkirk Sheriff Court provided for supervised direct contact with the mother once a fortnight.

### The hearing

35. In accordance with the various orders made by Judge Hudson, Judge Singleton and Judge Forrester, the six cases were listed together for hearing before me at Newcastle on 16 November 2016. The guardians in the three Newcastle cases and the two Carlisle cases were represented by Mr Nicholas Stonor QC and Mr Justin Gray (who very rightly and fairly acknowledged the assistance of his pupil, Ms Grace Morton), the guardian in the Blackburn case by Ms Lorraine Cavanagh, the prospective adoptive parents in the Blackburn case by Ms Deirdre Fottrell QC, Newcastle City Council by Ms Alexandra Conroy Harris and Blackburn with Darwen Borough Council by Ms Frances Heaton QC. The three Scottish local authorities (Dundee City Council, Clackmannanshire Council and Scottish Borders Council) were represented by Mr Alan Inglis, who is both an English barrister and a Scottish advocate; he had prepared written submissions but, because of previous professional commitments, was unable to attend the hearing.
36. At the end of the hearing I reserved judgment.

### The issues

37. The orders made by Judge Hudson, Judge Singleton and Judge Forrester were in a common form co-ordinated by Cobb J and Peter Jackson J, the Family Division Liaison Judges for, respectively, the North Eastern and Northern Circuits. The orders identified the following seven issues for my determination in each case:
- i) Whether the permanence order should be recognised by the English court.
  - ii) The impact of sections 81 and 82 of the 2007 Act.
  - iii) Directions for the completion of the Annex A report to cover the circumstances of the birth parents.
  - iv) The need, if any, for expert evidence of Scottish law.
  - v) Whether the birth parents should be (a) notified of the proceedings, and/or (b) notified of the date of the final hearing of the adoption application.
  - vi) The dates for the filing of the Cafcass report and other evidence.
  - vii) Listing the final hearing.

I shall deal with these in turn, though not in the same order.

### Issue (iv)

38. There is, in my judgment, no need for any formal evidence of Scottish law. I am satisfied, not least because of the invaluable input of Mr Inglis, that I have been taken to the relevant Scottish materials. And, at the end of the day, what I am concerned with is the effect in England of the Scottish orders, and that is a matter of English, not Scottish, law.

Issues (i) and (ii)

39. These issues give rise to a number of separate questions.
40. The first question is whether the English court should recognise the Scottish orders. The answer is clear and simple: Yes.
41. In my judgment, the Scottish orders would be recognised at common law, under the principles in *In re Goodman's Trusts* (1881) 17 ChD 266 and *In re Valentine's Settlement, Valentine and others v Valentine and others* [1965] Ch 831 which I had to consider very recently in *Re N (A Child)* [2016] EWHC 3085 (Fam). But there is no need to consider that question any further, for section 47(6)(a) of the 2002 Act by necessary implication permits, and section 105(2) of the 2002 Act explicitly requires, the English court to recognise and give effect to a Scottish permanence order granting authority for the child to be adopted.
42. The more important question is as to the effect of section 47(6)(a) of the 2002 Act: in particular, does it remove the need for the English court to obtain the consent of the natural parent(s)? Again, in my judgment, the answer is clear and simple: Yes.
43. The key points are apparent from the face of the statute. Whereas if the court is concerned with the “first condition” under section 47(2), or the “second condition” under section 47(4), there is a possibility of a parent being given leave, under sections 47(3) and 47(5) respectively, to oppose the making of an adoption order, where, as here, the court is concerned with the “third condition” under section 47(6) there is no such possibility. Moreover, section 47(6)(a), read in conjunction with section 47(1), is clear: the court may make an adoption order if “the child ... is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted.” That, and that alone, is, so far as material for the purposes of section 47, the sole jurisdictional fact that has to be established in a case such as this. As Ms Fottrell rightly submits, the court should not add any gloss or filter to the third condition under section 47(6). There is, therefore, no scope for any inquiry into parental consent, a matter which has, after all, already been determined by the Scottish court, in accordance with section 83 of the 2007 Act, in an order to which, as mandated by section 105(2) of the 2002 Act, the English court is required to give effect.
44. Where the Scottish court has made a permanence order which includes provision granting authority for the child to be adopted, the consent of the natural parents would not need to be considered again by the court were an application to be made to a *Scottish* court for an adoption order. In other words, as Ms Fottrell put it, in a purely Scottish context the occasion of the making of a permanence order which includes provision granting authority for the child to be adopted is the *final* occasion for the consideration by the court of questions of parental consent or objection to adoption. Why then, one might ask, should such questions require reconsideration by the

English court, more particularly given the clear legislative intent evident in sections 47(6)(a) and 105(2) of the 2002 Act. After all, as the Lord President remarked in *B v C* 1996 SLT 1370, 1374, in a passage quoted by Lord Prosser in *Re S (Adoption)* [1999] 2 FLR 374, 378, “it is desirable that the same construction be achieved in both jurisdictions.”

45. Given the clear legislative intent to ‘marry up’ the Scottish process with the English process, I would be very reluctant to conclude that the English court should nonetheless revisit the question of parental consent. Of course, if that is in truth the effect of the 2002 Act then so be it. But in my judgment it is not. The effect of section 47(6)(a) read in conjunction with section 105(2) is, in substance, to put the *English* court hearing an application for an adoption order under the 2002 Act in the same position as the *Scottish* court would be if it was hearing an application for an adoption order for the same child under the 2007 Act. There is nothing in the 2002 Act requiring the *English* court to consider again the question of parental consent which has already been dealt with by the *Scottish* court.
46. That this is indeed the correct reading of section 47(6)(a) is, in my judgment, confirmed by the analysis of Wall LJ in *Re F (Adoption: Natural Parents)* [2006] EWCA Civ 1345, [2007] 1 FLR 363, a case where a freeing order had been made under the 1976 Act and a somewhat similar question arose under the original version of section 47(6)(a) of the 2002 Act, read in conjunction with the transitional provision in Schedule 4, para 7(3), of the 2002 Act.
47. Section 47(1) of the 2002 Act provides that “this section”, and therefore section 47(6), is “subject to section 52.” This takes me on to the third question under this heading: given the making of the Scottish orders, are the children’s natural parents “parents” within the meaning and for the purposes of the 2002 Act? Again, in my judgment, the answer is clear: No.
48. Section 52(6) of the 2002 Act makes plain that “parent” for the purpose of section 52 means “a parent having parental responsibility.” So the question becomes, do these parents have parental responsibility. In my judgment they do not.
49. The issue arises because, although the effect of the Scottish orders is to remove from the natural parents, almost all their “parental responsibilities” and “parental rights”, in each case they retain, subject to the restraints imposed by the court upon their exercise, the “responsibility”, pursuant to section 1(1)(c) of the 1995 Act, and the “right”, pursuant to 2(1)(c) of the 1995 Act, “to maintain personal relations and direct contact with the child on a regular basis.”
50. Although in the final analysis the question turns on the meaning and effect of section 105(2) of the 2002 Act, it is convenient to start with the position at common law. This was considered in a group of four cases, *Re G (Foreign Adoption: Consent)* [1995] 2 FLR 534, *Re Adoption Application 96 AO 147* (unreported, 31 January 1997), *Re AMR (Adoption-Procedure)* [1999] 2 FLR 807 and *Re AGN (Adoption: Foreign Adoption)* [2000] 2 FLR 431, which I recently analysed in *Re N (A Child)* [2016] EWHC 3085 (Fam), paras 76-84. There is no need for me to repeat the analysis. I can go straight to my summary (para 84):

“where a foreign court, properly seised of the matter, has made an order removing a parent’s parental responsibility, that order will be recognised by the English court. The consequence of such recognition is that (updating the statutory references to refer to the relevant provisions of the 2002 Act) the natural parent will not be a “parent” within the meaning of section 52(6) and the natural parent’s consent will therefore not be required under sections 47(2) and 52(1). Nor for the same reason will the natural parent be a respondent to the application for an adoption order (FPR 14.3), or be entitled under section 47 to apply for leave to oppose the making of an adoption order, or be given notice of the final hearing (FPR 14.15).”

51. In *Re AMR (Adoption-Procedure)* [1999] 2 FLR 807, His Honour Judge Gee, sitting as a Deputy Judge of the High Court, was concerned with the effect of an order of the Polish court depriving parents of their “parental authority” for the child but *not*, it is important to note, 814, their right to contact. Judge Gee held, 815, that the effect of the Polish order had nonetheless been to deprive the natural parents of parental responsibility, and that in consequence their consent was not required to the making of an English adoption order. This was because, as he put it, 814, “the right to contact is not sufficient for the purpose of the parents retaining any aspect of parental responsibility... the right to seek contact is not an incident of parental responsibility but rather an incident of being a natural parent.”
52. I respectfully agree with Judge Gee’s conclusion, though not with all the detail of his reasoning.
53. Judge Gee was, if I may say so, entirely correct to see contact as a matter extending beyond parental responsibility in the technical legal sense. I said as much in *Re H-B (Contact)* [2015] EWCA Civ 389, [2015] 2 FCR 581, para 72, a passage to which I was indeed referred both by Mr Stonor and by Ms Cavanagh:

“However, and I wish to emphasise this, parental responsibility is more, much more, than a mere lawyer’s concept or a principle of law. It is a fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. Parental responsibility exists outside and anterior to the law. Parental responsibility involves duties owed by the parent not just to the court. First and foremost, and even more importantly, parental responsibility involves duties owed by each parent to the child.”
54. I do not resile from a single word of that, but in the present context, as in the context with which Judge Gee was concerned, the court is concerned with parental responsibility in the strict legal sense in which it is being used in, for example, section 52(6) of the 2002 Act – and that takes us back to the statutory definition in section 3 of the 1989 Act.
55. In my judgment it is clear, to use Ms Cavanagh’s helpful expression, that contact is a facet of parental responsibility (in the same way that, in Scotland, it is one of the

parental responsibilities and rights enumerated in the 1995 Act). The proposition is really self-evident and underlies the vast mass of case-law under section 8 of the 1989 Act. An example, if needed, can be found, as Ms Cavanagh pointed out, in the Schedule attached to Wall J's judgment in *A v A (Shared Residence)* [2004] EWHC 142 (Fam), [2004] 1 FLR 1195. But, contact is only one facet of parental responsibility. Moreover, where the effect of one of the Scottish orders is to prevent contact, either in large part or altogether, the consequence is that, as far as English law is concerned, parental responsibility, to the extent that it survives at all, becomes vestigial and, as Ms Cavanagh put it, largely inaccessible.

56. But the important point, and here the differences between the Scottish and English concepts may be significant, is that, as a matter of English law, contact is at most a facet of – it does not cover the whole territory occupied by – parental responsibility. For there is much embraced within the concept of parental responsibility as defined in section 3 of the 1989 Act which extends far beyond matters of contact. The key point is that section 3 defines parental responsibility as meaning “*all the rights [etc].*” It follows that a parent whose only surviving right, all other rights having been extinguished by order of a foreign court, is a right to contact, is not a parent who has parental responsibility within the meaning of section 3. In any event, the residual parental responsibilities and rights left to the parents in the cases before me cover such a comparatively modest part of the territory embraced by parental responsibility in the English sense that it cannot sensibly be said that they continue to have parental responsibility. The fact is that they do not. It is for these reasons that, in my judgment, Judge Gee was correct in his conclusion in *Re AMR (Adoption-Procedure)* [1999] 2 FLR 807.
57. Applying this to the Scottish orders, it follows, in my judgment, that, since in every case the effect of the order was to extinguish all the parental responsibilities and rights except only in relation to contact, the natural parents no longer have parental responsibility for the purpose of section 52(6) of the 2002 Act.
58. That is the conclusion to which the common law directs me. As I have already observed, however, in the final analysis the question turns on the meaning and effect of section 105(2) of the 2002 Act. Section 105(2) provides, as we have seen, that:

“A Scottish permanence order which includes provision granting authority for the child to be adopted has the same effect in England and Wales as it has in Scotland, but *as if references to the parental responsibilities and the parental rights in relation to a child were to parental responsibility for the child* (emphasis added).”

The question is how one gives effect to the words I have emphasised.

59. The problem is that the Scottish orders are, consistently with sections 81 and 82 of the 2007 Act, framed in terms of extinguishing the particular “parental responsibilities” and “parental rights” mentioned in the specific provisions of sections 1 and 2 of the 1995 Act which are enumerated in the order. In other words, how does one give effect to section 105(2) when the relevant Scottish order provides, for example, to quote one of the orders in the present case, for the extinguishing of “the parental responsibilities

mentioned in section 1(1)(a), (b) and (d) of the 1995 Act and the parental rights mentioned in section 2(1)(a), (b) and (d) of that Act.”

60. The reality, given the form of the Scottish orders, is that one cannot give literal effect to section 105(2). But giving it a sensible, purposeful, construction, the meaning of section 105(2) is, in my judgment, apparent. One has to ask: Given the language and effect of the relevant Scottish order, does it leave the natural parents clothed with, to use the English term, parental responsibility? To that question there can be only one answer: for the reasons set out in paragraphs 55-56 above, No.
61. Miss Cavanagh has helpfully drawn attention to the fact that sections 92, 94, 98 and 101 of the 2007 Act contain important provisions giving the natural parents certain *procedural* rights even after the making of a permanence order with authority to adopt. I need not go into the detail, except to note that, as Ms Cavanagh put it, the effect of these provisions is that the parents retain access to routes which may enable them in certain circumstances to retrieve their parental responsibilities and rights and/or to vary or remove restrictions on contact. But these rights, whether taken separately or together, do not, in my judgment, ultimately affect the question before me. The existence of these rights is not sufficient to clothe the parents with parental responsibility.

Issue (v)

62. These are applications for adoption proceeding in the English court. So far as concerns *procedure* the applications are accordingly governed by the provisions of the 2002 Act and FPR.
63. It follows from my conclusions in relation to issues (i) and (ii) that none of the natural parents is entitled or required to be joined in accordance with FPR 14.3. They do not have parental responsibility and, even where the Scottish orders give them a right to contact, that right is not, within the meaning of FPR 14.1(2) and FPR 13.1(2), a “provision for contact” for the purpose of FPR 14.3.
64. The only question is whether, as a matter of discretion, they should be joined in accordance with FPR 14.3(3). In my judgment, the proper approach here is that marked out by Lady Smith in *East Lothian Council, Petitioners* [2012] CSIH 3, 2012 FamLR 7, for her reasoning is just as applicable to the exercise by the English court of its discretionary powers under FPR 14.3(3) and 14.8 as to the exercise by the Scottish court of its powers under rules 14(1)(f) and 15 of the 2009 Rules. So, except where the Scottish court has already made an order terminating all contact, the natural parents should have the opportunity to be heard, though only in respect of future contact, *before* an adoption order is made.
65. Accordingly, those of the parents who retain exercisable rights of contact should, as a matter of discretion, be joined under FPR 14.3(3) and 14.8. But this must be accompanied by a clear explanation of the legal position; in particular, a clear statement that the purpose of the joinder is not to enable them to defend the proceedings or to oppose the making of an adoption order but simply to be heard on the issue of future contact.

Issue (iii)

66. This requires consideration, as a preliminary point, of the position of the Scottish local authorities. Mr Inglis submits, referring in this context to the Act of Union of 1707, Article XIX of the Union with Scotland Act 1706 (which remains in force) and the decision of Hedley J in *O and Another v Orkney Island Council* [2009] EWHC 3173 (Fam), [2010] 1 FLR 1449, that the courts of England and Wales do not have jurisdiction to join as a party to proceedings a Scottish public authority such as a Scottish local authority, which is an organ of Scottish government, created under Scottish legislation – the Local Government (Scotland) Act 1994 – and with a registered address in Scotland. There is, in my judgment, no need for me to engage with this argument, for Mr Stonor and Mr Gray, Ms Heaton and Ms Cavanagh submit, and I agree, that the matter is concluded by the 2002 Act.
67. I start with section 43 of the 2002 Act, which provides that:
- “Where an application for an adoption order relates to a child placed for adoption by an adoption agency, the agency must –
- (a) submit to the court a report on the suitability of the applicants and on any other matters relevant to the operation of section 1, and
- (b) assist the court in any manner the court directs.”
68. The obligations under section 43 are amplified by FPR 14.11. FPR 14.11(1) requires the adoption agency to file the report “within the timetable fixed by the court.” FPR 14.11(3) provides that the report must cover the matters specified in PD 14C which, importantly for present purposes, include (Section B, Parts 1 and 2) information about the child, each parent, relationships, contact arrangements and views. PD 14C, it may be noted, is more prescriptive as to obtaining the wishes and feelings of parents than the corresponding Scottish requirements, to be found in sections 17 and 19 of the 2007 Act and rule 8(4) of the 2009 Rules.
69. The definition of “adoption agency” in section 2(1) of the 2002 Act is apt to embrace only an English local authority: see the definition of “local authority” in section 144(1). However, section 42(8) of the 2002 Act provides that for the purposes of section 42 (see in particular sections 42(2) and 42(7)) and section 43, “adoption agency” includes a “Scottish adoption agency”, which is defined by section 144(3), read in conjunction with the definition of “local authority” in section 77(1) of the Regulation of Care (Scotland) Act 2001, in such a way as to include a Scottish local authority. So, where the adoption agency is a Scottish local authority, that local authority, although located in Scotland and created by Scottish law, has, as a matter of English law, the obligations spelt out in section 43 and elaborated in FPR 14.11. (It does not matter for this purpose that sections 42 and 43 are not referred to in section 149 of the 2002 Act.)
70. So far as concerns the joinder of the Scottish local authorities, since they do not, for the reasons I have given, have parental responsibility (even if some aspects of parental responsibility are vested in them under the Scottish orders), the question of their automatic joinder turns upon whether or not they are, within the meaning of FPR 14.3, an “adoption agency which has taken part at any stage in the arrangements for adoption of the child.” In each case, as I understand it, the relevant Scottish local

authority has, in this sense, “taken part ... in the arrangements for adoption of the child.” The question is whether a Scottish local authority is, within the meaning of FPR 14.3, an “adoption agency.” The issue arises because there is no definition of “adoption agency” – an expression used in FPR 14.3 – either in FPR 2.3 or in FPR 14.1.

71. Mr Stonor and Mr Gray, Ms Heaton and Ms Cavanagh submit that, having regard to the express provisions of sections 42(8) and 43 of the 2002 Act, and giving FPR 14.3 a purposive construction, the words “adoption agency” in FPR 14.3 must, in a case where section 42(8) applies, be construed as including a “Scottish adoption agency.” In any event, they submit, section 43(b) plainly entitles the court to make whatever order is appropriate to ensure that the relevant Scottish local authority “assists” the court in the manner directed. As Ms Heaton puts it, the Scottish local authorities are, as the adoption agencies, required to provide the report and to comply with the court’s directions in proceedings the focus of which is the child’s welfare throughout their life; this is a matter of requirement, not mere invitation. Moreover, some, perhaps much, of the relevant information may, of its nature, not be within the knowledge of the English local authority, in which case the court has to look to the relevant Scottish authority. As Ms Heaton puts it in relation to the local authority she represents, though the same is no doubt true of the others, Blackburn with Darwen Borough Council can provide only partial assistance, by providing information about the prospective adopters. It does not hold information about the child’s development, specific needs, birth parents’ circumstances or the reasons for the decision that there should be no contact. Nor was it instrumental in the matching decision.
72. I agree. In my judgment, where the Scottish local authority has, as these Scottish local authorities have, “taken part ... in the arrangements for adoption of the child,” they are, for the specific purposes of the 2002 Act with which I am here concerned, an “adoption agency” and accordingly should be joined pursuant to FPR 14.3, are bound by section 43 and can be required to comply with the court’s directions under section 43(b).
73. Mr Inglis refers me to the principle set out by Lord Guest in *Utah Construction & Engineering Pty Ltd v Pataky* [1966] AC 629, 640, approving what was said by the High Court of Australia in *Shanahan v Scott* (1956) 96 CLR 245, 250, cited in Bennion on Statutory Interpretation, ed 6, page 237:

“... such a power does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends.”

Given the scheme of the 2002 Act and the provisions of sections 42(8) and 43(b), there is nothing in this to prevent me reading FPR 14.3 and FPR 14.11 as I have.



74. In any event, I might add, co-operation between the authorities can confidently be expected. As Ms Fottrell comments, this is really a practical rather than a legal issue. Discussion between the relevant social workers will, no doubt, quickly identify which authority is better placed to provide what information.
75. As Mr Stonor points out, PD 14C does not distinguish between parents with and parents without parental responsibility, while contemplating wide-ranging enquiries including the wishes and feeling of parents. As he correctly observes, the purpose of these enquiries is not simply to enable parents to participate but, crucially, to obtain information *for the benefit of the child*. He submits that the report should be comprehensive and thorough, and questions how these objectives can be achieved without involving the parents in the process. Ms Cavanagh says much the same, submitting that there are considerable benefits to the child – knowledge of his identity and life history as he grows and as an adult – in offering the parents the opportunity to assist in the completion of the report. As Ms Conroy Harris points out, this material is also vital if the court is properly to comply with its duty to have regard to the ‘welfare checklist’ in section 1(4) of the 2002 Act and, as required by section 46(6) of the 2002 Act, to consider the question of future contact.

#### Issues (vi) and (vii)

76. These are matters in relation to which I would anticipate that agreement can now readily be arrived at.

#### The way forward

77. I invite counsel to consider whether, and if so to what extent, I should now give directions in each of these cases before remitting them for hearing in the local Family Court. There is, I venture to suggest, advantage in my approving a generic form of directions order which can be used, with appropriate adjustments, in future cases.

#### Two final matters

78. Understanding of these cases by practitioners and others is significantly inhibited by two serious omissions to which I draw attention in the hope that each may speedily be remedied.
79. The first is the omission from the Family Court Practice 2016 of section 47(6) of the 2002 Act, together with sections 47(10), 105(2) and 105(5), on the basis that (see p 277) it “applies to Scotland and Northern Ireland only.” The omission is surprising and the stated reason is simply wrong. These provisions all apply *to* England, albeit that they relate to the effect *in* England of orders made in other parts of the United Kingdom: cf section 149.
80. The second is the wholly inapt content of the application form (Form A58) required to be used by an applicant for an adoption order. The fundamental problem is that Form A58 does not acknowledge the possibility of an application pursuant to section 47(6) of the 2002 Act. It thus places in a position of considerable forensic embarrassment anybody attempting to complete the form in such a case. The problem is illustrated by the evident inaptness in a case within either section 47(6)(a) or section 47(6)(b) of Parts 2(j) 2(k), 2(m), 3(i), and 3(l) of Form A58. The sooner this is addressed, and

remedied, by the Family Procedure Rules Committee the better. The matter is pressing. Urgent action is required.