

Public Law Case Law Update

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This appeal concerned A, aged approximately 18 months. Whilst the Local Authority and Children's Guardian supported adoption for A, Recorder Calway refused a placement order and instead made a care order. Allowing the appeal, the Court of Appeal held that the Recorder had endorsed "an outcome that none of the parties had promoted and that the court had consequently not investigated or analysed", resulting in an order containing "no workable plan for A's future". The Court of Appeal concluded that insufficient weight had been given to A's need for permanence and that long-term foster care had not been subjected to a sufficiently rigorous welfare evaluation before being preferred to adoption. Appeal granted.

[Re L \(A Child: Placement and Contact Orders\) \[2026\] EWCA Civ 639](#)

Background

The proceedings concerned five siblings. A was born in June 2024 and was approximately 18 months old at the time of the final hearing. Her older brothers were aged between 7 and 13.

The family had been known to the Local Authority for years. In March 2023 the local authority issued care proceedings which concluded in A's older siblings being able to remain with the mother. Proceedings were again issued when A was born and concluded with a 6-month supervision order by agreement.

On 3 April 2025 and again on 14 April 2025 the father was arrested, the second occasion due to assault on the mother. At this time there were also concerns with the children's presentation and attendance at school. This resulted in proceedings being issued again on 15 April 2025. The Local Authority's final care plan for the four brothers was long-term foster care. For A, The Local Authority sought a placement order. This was supported by the Children's Guardian.

Decision at first instance

At the final hearing, the Recorder heard oral evidence from eleven witnesses. No party supported long-term foster care as an acceptable option for A.

In respect of A, the Recorder carried out both a welfare checklist analysis under the children Act 1989 and also under Adoption and Children Act 2002. As for the latter, the Recorder recognised that adoption would provide A with "*a forever family and stability*" and acknowledging that under long-term foster care she would remain within the care system with no certainty that her carers would remain the same. He nevertheless concluded that the benefits of adoption were outweighed by the importance of A's relationships with her parents and siblings:

"A's interest in remaining a member of her family outweighs the benefits of a placement order in my view. I am unable to be satisfied that her important relationships with her parents and siblings would be retained if a placement order was made." [187].

The Recorder consequently refused the Local Authority's application for a placement order and instead made a care order in respect of A. The practical effect of that decision was that A, like her brothers, would remain in long-term foster care notwithstanding that no party had advanced or supported that outcome during the proceedings and that there was no care plan before the court considering long-term adoption.

The appeal

The Local Authority appealed the Recorder's refusal to make a placement order in respect of A. The appeal was supported by the Children's Guardian and opposed by the parents. Permission to appeal was granted by Peter Jackson LJ on 9 March 2026.

The Local Authority advanced four grounds of appeal:

1. The conclusion reached by the Recorder was not a case being actively put or explored as part of the trial.
2. The Recorder failed to properly analyse the advantages and disadvantages of remaining in foster care as opposed to the permanence offered by adoption.
3. The Recorder failed to carry out an analysis of whether the sibling and family bonds could be secured by way of post-adoption contact orders.
4. In rejecting the Local Authority's care plan for A, the Recorder was wrong not to invite the Local Authority to provide an amended care plan.

Counsel on behalf of the Local Authority submitted that these grounds were interconnected [27]:

"The fact that no party suggested this outcome for A (ground 1) meant that it was not examined in the evidence or analysed in the judgment (ground 2) which, coupled with insufficient attention to mitigation by means of a contact order (ground 3), has left A without a care plan (ground 4)."

Counsel for the mother opposed the appeal and contended that the Recorder had been entitled to conclude that adoption was not the appropriate outcome for A, submitting that 'the fact that the Recorder did not set out a formal balancing exercise does not mean that he did not carry out such an exercise before coming to his decision' and 'he was not obliged to deal with every argument' [29]. It was further submitted that if the appeal succeeded the matter should be remitted for rehearing.

The Relevant Law

In summary, the Court of Appeal set out the following law:

- (a) Where a court is considering both a care order and a placement order, the welfare analysis must be undertaken pursuant to section 1 of the Adoption and Children Act 2002 ("ACA 2002"). Under section 1(2), the child's welfare throughout their life is the court's paramount consideration and the court must have regard to the welfare checklist at section 1(4). Where a court considers a placement order, recourse to the welfare provisions contained within section 1 Children Act 1989 may lead to error.
- (b) Section 26(2) provides the court with the power to make an order requiring contact post-adoption. Section 27(4) ACA 2002 requires the court, before making a placement order, to consider the existing or proposed arrangements for contact and to invite the parties to comment upon those arrangements. Further, pursuant to section 26 ACA 2002, the court has the power to make an order

- (c) Section 31(3A) and (3B) Children Act 1989 require the court to consider the permanence provisions of a care plan, including whether the proposed long-term outcome for the child is parental care, adoption or long-term foster care, and the extent to which that outcome can meet the child's current and future needs.

The Court of Appeal's Decision

The Court of Appeal identified five issues where the Recorder's welfare analysis in respect of A went 'awry' and subsequently allowed the appeal:

(1) *Failure to give proper consideration to A's need for permanence*

Given that A is an infant and at a critical stage of attachment formation, the greatest of her needs was as the Social Worker had set out; permanence and a family home to grow up in. This need was also identified by the psychologist, who stated that *"the primary psychological concern for A revolves around ensuring the sustainability of a safe, consistent, and emotionally responsive environment that will support the ongoing development of her secure attachment and mitigate the potential long-term impacts of her early traumatic experiences"*.

Despite reference to this need by all professional witnesses, the judge did not give it discernible weight and only refers to it briefly and as a benefit instead of a need.

(2) *Failure to properly evaluate long-term foster care*

There was no 'robust' assessment of long-term foster care, especially given that it was not promoted by any party to the proceedings. There was insufficient analysis as to whether A could remain in the care of her present foster carers and there had been no arrangements made in respect of long-term carers who could care for A. There was also little attention given to the consequences should A's brothers leave care and the vulnerability this could cause for A.

(3) *The sequence of the decision*

The Recorder made an error of approach in deciding to make a care order in respect of A and then proceeding to consider whether to make a placement order under ACA 2002. The Court of Appeal noted that this *"led to a process whereby the parent and adoption were successively excluded, leaving only long-term fostering"* [38(3)].

(4) *Absence of a workable corresponding care plan*

In rejecting both the Local Authority's proposal of placement and the parent's proposal for A to return to their care, the court made a care order without any corresponding care plan before it.

The Court of Appeal referred to *Re T (A Child) [2018] EWCA Civ 650*, where the Court of Appeal held at [42] that *"the family court cannot dictate to the Local Authority what its care plan is to be. What the court can, however, expect from a local authority is a high level of respect for its assessments of risk and welfare, leading in almost every case to those assessments being put into effect"*.

The court had no workable care plan for A's future in front of it and did not invite the Local Authority to provide a revised plan.

(5) Failure to properly consider powers in respect of contact

The Recorder did refer to s26 ACA 2002, however did not proceed to analyse it sufficiently. Professionals had e 'left the door open' to post-adoption contact and the court had an obligation to consider it.

The Local Authority had throughout proceedings considered post-adoption contact. In the Social Worker's final statement, she stated that A's relationship with her siblings will continue to be supported through structured family time arrangements (direct and indirect) and that this can balance the need for adoption with the importance of maintaining meaningful relationships.

The Local Authorities final care plan was described as 'thoughtful and informative' [15] and included a plan to respect her identity and connection to her siblings through continued family time. It was proposed for A to have contact with her parents once per year and with her siblings four times per year at a minimum [16].

The Court of Appeal described the Guardian's final analysis as 'a model of its kind' [17]. This analysis acknowledged that A enjoys the time spent with her parents and siblings and has a close sibling bond with her brothers. The Guardian describes it as a 'significant loss' should A and her brothers be permanently separated. As such, the guardian supported the plan for A to have ongoing direct contact with her siblings.

However, the Recorder did not explain why the arrangements proposed by the Local Authority and supported by the Children's Guardian would be insufficient to preserve A's relationships with her parents and siblings. Whilst he referred to section 26 ACA 2002 in his legal self-direction, he did not sufficiently consider his own powers and duties under sections 26 and 27 ACA 200. The Court of Appeal concluded that the Recorder had therefore underestimated his ability to secure the benefits of sibling contact for A.

Conclusion

Re L serves as another important reminder from the Court of Appeal of the need for rigorous permanence planning and analysis when considering a placement order. Recent authorities have repeatedly emphasised the importance of careful welfare analysis where adoption and long-term foster care are under consideration. The permanence option ultimately selected must be supported by a properly evidenced and workable plan capable of meeting the child's lifelong needs.

The judgment also reinforces the increasingly prominent role of post-adoption contact. In circumstances where the Recorder regarded adoption and the preservation of family relationships as competing objectives, the Court of Appeal emphasised that the professionals had not advocated an "either/or" outcome but rather a "both/and" approach, whereby A could benefit from both the permanence of adoption and the continuation of meaningful family relationships.



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