



Neutral Citation Number: [2020] EWCA (Civ) 1503

Case No: B4/2020/1611

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE (FAMILY DIVISION)**  
**Mr Justice Keehan**  
**WW17C00664, WV18C00394**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12 November 2020

**Before :**

**LORD JUSTICE UNDERHILL**  
**(Vice-President of the Court of Appeal (Civil Division))**

**LORD JUSTICE PETER JACKSON**  
**and**  
**LADY JUSTICE SIMLER**

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**K (Children: Placement Orders)**

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**Deirdre Fottrell QC and Wendy Frempong** (instructed by **Living Spring Solicitors**) for the  
**Appellant Mother**

**Kemi Ojutiku** (instructed by **Mould Haruna Solicitors Ltd**) for the **Respondent Father**

**Laura O'Malley** (instructed by **Sandwell MBC**) for the **Respondent Local Authority**

**Kathryn Taylor** (instructed by **Anthony Collins Solicitors LLP**) for the **Respondent**

**Children by their Children's Guardian** (by written submissions only)

Hearing date: 5 November 2020  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Thursday, 12 November 2020.

**Lord Justice Peter Jackson:**

1. This is an appeal from care and placement orders made on 2 September 2020 in respect of three children: R (a boy aged 3), J (a boy aged 2) and Q (a girl aged 1).

*The facts*

2. The background is contained in two judgments given by Mr Justice Keehan ('the Judge'). The first, given on 29 March 2019, was a fact-finding judgment. The second, given on 10 August 2020, contains further findings of fact and the welfare decision. The appeal is directed towards the welfare decision. The facts found by the Judge, which I shall briefly summarise, are not challenged.
3. The parents were born in Ghana. The mother came to the UK as a student in 2007 and became a British Citizen in 2012. She and the father married in 2016. They have no addictions or criminal convictions. Both parents work and the mother's job involves international travel. Members of the wider family networks live in Ghana and elsewhere in the world.
4. The family first came to the attention of the police and the local authority in May 2017 following an incident in the home in which R (then aged 10 weeks) sustained a small bruise above his right eyebrow. The mother called the police, complaining that this had occurred during an assault on her by the father. R was taken to hospital and kept under observation. On discharge the next day, R returned to his mother's care under an agreement with the local authority that she would live separately to the father. R remained within the family until he was 18 months old.
5. Unfortunately, the parents set their faces against cooperation with the local authority. In July 2017, the police found the father hiding in the family home. From October 2017, the local authority was repeatedly unable to make contact with the family and on 22 December 2017 it issued an application for a care order in respect of R. Papers relating to the proceedings had been posted through the letterbox of the family home and on 21 December the mother and R left the jurisdiction.
6. Because the child could not be found, the proceedings were allocated to High Court level and in January 2018 they came before the Judge for the first time. In the 2½ years that followed he conducted no fewer than 30 hearings. The mother returned to the jurisdiction, apparently without R. Orders were made that she should not leave the jurisdiction and that R should be returned. Despite this, both parents left the jurisdiction. At the time, unknown to the authorities, the mother was pregnant with J. Further orders were made and publicity was given to the return order relating to R.
7. J was born in Florida in July 2018. As a result of the publicity, the mother was by chance identified in hospital. The father was arrested and both children were placed in care in the USA. Care proceedings were issued in relation to J.

8. After legal proceedings in Florida, R was returned to the UK in August 2018 and J arrived here in October 2018. The boys were placed in the same foster home under interim care orders. The parents participated in a parenting capacity assessment over the course of several months. Their relationship with the children, seen at contact, was positive and R was noted to be a healthy child who had been well cared-for. They had suitable accommodation. Concerns remained about the initial incident in May 2017, about which the mother had changed her story, and about the events surrounding J's birth. Nonetheless, in January 2019, the local authority concluded that the two boys could be returned to their parents under a supervision order. The Children's Guardian did not agree. She expressed scepticism about the genuineness of the parents' co-operation and about the risks arising from domestic abuse and instability of care arrangements. She was concerned at the parents' stated intention to take the children to Ghana, where their welfare could not be monitored. More information was needed before a return to the parents could be supported and a plan for adoption also needed to be considered.
9. After a six-day fact-finding hearing ending on 29 March 2019, the Judge found that neither parent had told the truth about what had led to the injury to R and that it was caused by one or other of them, that the mother had abducted R to avoid the care proceedings, that the father was complicit and that the parents were a flight risk. He found that the mother had lied about her statements against the father, and about what she had said to a doctor, a police officer, her former solicitor and her counsel. The father had also lied about a number of matters. Directions were given for a welfare hearing to determine the children's future.
10. At the time of the hearing, again unknown to the authorities, the mother was expecting Q. From June 2019 she stopped attending contact to avoid her pregnancy being detected. She next saw the boys in December 2019.
11. The parents then devised a plan to deceive the local authority and the court into returning the boys to their care. In September 2019 the father informed the local authority that he had separated from the mother and asked to care for the children as a sole carer. A week later, Q was born in the Republic of Ireland.
12. Even without knowledge of Q's existence, the local authority and the Guardian did not support the return of the boys to the father alone and applications for placement orders were issued in October 2019.
13. At a final hearing in November 2019, adjourned part-heard to December, the Judge heard evidence from the father to the effect that the mother was off the scene. He overruled the local authority and the Guardian and directed the local authority to file a rehabilitation plan for the boys to be returned to their father's care on condition that he had no contact with the mother. He accepted solemn assurances from the father and imposed strict conditions that he was to have no contact whatsoever with the mother. He set a hearing in January for a decision to be taken about whether and how the plan should be put into effect.
14. In fact, the parents had not separated at all. Ten days after the hearing in November 2019, the mother called the police in the course of an incident between herself and the father, but later attended a police station and withdrew

her complaint. Then, on 21 January 2020, the parents were stopped by the police whilst together in a car with Q near to Gatwick Airport. On the following day, an interim care order was made in relation to Q and she was placed together with the boys. The rehabilitation plan for R and J was suspended. An application for a placement order for Q was made in May 2020.

15. At a hearing on 5-7 and 10 August 2020, the Judge heard evidence from the children's social worker, a social worker of Ghanaian origin, the parents and the Guardian.

*The judgment*

16. The judgment, which must be read together with the earlier fact-finding judgment, proceeds in this way: Introduction (paras. 1-5), Law (6-11), History from first judgment (12-26), Summary of previous findings of fact (27-37), Subsequent events (38-56), The oral evidence (57-96), Assessment of parents' credibility (97-105), Findings of fact (106-107), Threshold (108), Welfare decision (109-124), Outcome (125-127).
17. Not surprisingly, the Judge made damning findings about the credibility of the parents. Having set out their evidence in detail, he described the mother as "*the most egregious liar I have ever encountered*" and observed that the father "*appears not to know when he is telling the truth and when he is lying*". He continued:

"100. At the hearing on 18th December 2019 I had carefully explained to the father that:

- i) I did not want to find myself forced to place his children for adoption;
- ii) I wanted to give the children the chance to be cared for by a capable and loving father; and
- iii) I required him to promise he would not have any further contact with the mother.

I warned him, however, that if he breached my requirement for him not to have any further contact with the mother, it would be likely that I would be compelled and left with no choice but to place his children for adoption. I called him into the witness box, with his interpreter, to explain these matters to him and to ask him if he understood. He said he did.

101. Nevertheless, as the parents phone records reveal, within moments of the father leaving court he breached his assurances to me and he contacted the mother by her mobile telephone. He then repeatedly breached his assurances to me by repeatedly contacting the mother. He demonstrated an utter and complete disregard for everything I had said and he had said on oath at that hearing.

102. I am bound to conclude, on the totality of the evidence that I have heard, that I cannot trust a single word said by either of these parents.

103. ... The mother, like the father, does not regret any of her past actions during the course of these proceedings: she does not regret fleeing with R to the USA, later joined by the father, to give birth to J and she does not regret concealing the birth of Q. She, like the father, does regret and resents the involvement of the local authority in her life and these court proceedings. She, like the father, does not even begin to understand or accept the significant harm the children have suffered in their care and the significant harm they would each be at risk of suffering if they were returned to the parents' care in the future. I consider the prospects of the mother making any positive changes for the better are remote, whether in the short, medium or long term.

104. These observations and comments apply with equal force to the father.

105. If any of the children were returned to the care of either or both the parents they would immediately be removed from this jurisdiction and/or would not be made available to the local authority or the children's guardian."

18. Among other things, the Judge found that the father had never intended to care for the boys on his own and that he had colluded in the arrangements for Q to be born in Ireland and for her existence to be concealed. He then made these findings of fact about the children:

"107. In relation to the children, I make the following findings of fact, on the balance of probabilities:

i) in her efforts to conceal her pregnancy with Q, the mother absented herself from most contact visits with R and J between June and January 2020, which inevitably caused both boys emotional harm;

ii) in her efforts to conceal her pregnancy with Q, the mother failed to provide her unborn child with appropriate antenatal care and, save in the immediate days after her birth, appropriate post-natal care, putting Q at risk of suffering physical harm;

iii) the parents' failure to engage with the local authority or with any professionals with whom they have had contact is wholly irrational and is not founded on any objectively reasonable grounds;

iv) there has been no change in the approach of the parents towards professionals over the course of the last three years and there is no basis for concluding there will be any change in the foreseeable; not least because, in truth, they discern no reason to change;

v) accordingly, if the children were returned to the care of the parents and any professional, most especially a social worker, was to seek subsequently to involve themselves with the family, the parents' instinctive and immediate response would be, at least, to refuse to engage and co-operate and, most likely, to flee irrespective of the welfare best interests of the children;

vi) therefore, the children would be at a real risk of suffering significant emotional and psychological harm from the stability of their lives being disrupted and abruptly changed over the years to come; and

vii) moreover, in light of the events of 6th May 2017 and 26th November 2019, which the parents have consistently downplayed and minimised, the children would be at a real risk of suffering significant physical, emotional and psychological harm if they were returned to the care of the parents."

19. On the basis of these findings, the Judge found the threshold for making care orders to be crossed. He then turned to his welfare decision, which he expressed quite shortly:

"Analysis: Welfare

109. I have expressed the clear view on numerous occasions in the history of this case, especially at the hearing on 18th December 2019, that I did not want to find myself contemplating the placement of R and J, and now Q, for adoption.

110. The parents deeply love their children and the children love them. There is no question, and never has been, that the parents are more than able to meet the basic care needs of the children.

111. The stumbling block is the parents' irrational and extreme over-reaction to the involvement of professionals in their lives and those of their children, most especially social workers.

112. In closing submissions made on behalf of the mother and of the father it was submitted that the facts of this case did not warrant the making of orders which would separate

the children from their parents for the remainder of their lives or, at least, for the remainder of their respective childhoods. It was submitted that if the local authority had desisted and/or would desist in the future from involvement in the lives of the parents and the children, all would be fine and the children would be well cared for by their parents.

113. These submissions completely ignore the history of this case and the findings of fact that I made in March 2019. The local authority has constantly sought to work in partnership with these parents and to support them in their care of the children. At each turn their efforts to work with the parents have been rebuffed and/or apparent co-operation has subsequently been found to be based on lies and deceit.

114. The only long-term future options for the children are:

- i) a return to the care of the parents;
- ii) placement in long term foster care; or
- iii) placement for adoption.

No other alternative or familial placements have been advanced by any party.

115. On the basis of my findings of fact set out at 26-36 and [106 & 107] above, there is no prospect of any real or significant change being made by the parents, and most certainly not within the timescales of the children. Accordingly, a return to the care of the parents would place the children at a high risk of suffering significant harm in the future and throughout their respective minorities.

116. Given their very young ages, it would be wholly inimical to the welfare best interests of all three children to be placed in long term foster care. There is the ever-present risk of the placement breaking down or of the children having to move to new placements because of a change in the circumstances of the foster family. A social worker would always be involved in their lives with the usual periodic reviews of their care and placement.

117. On the other hand, a placement in foster care would leave open the option of the children possibly returning to the care of the parents at some unspecified and ill-defined point in the future.

118. The parents do not even begin to accept my previous findings of fact. I have no hope they will ever accept those findings of fact or the findings of fact that I have made in this

judgment. The prospects of the parents' changing their irrational and baseless views of social workers are remote. Accordingly, if the children were to return to the care of the parents they would, throughout their respective minorities, be subject to the risks of harm I have set out in paragraph 105 above.

119. On the other hand, they would be cared for by their biological and loving parents and the importance of this cannot be underestimated.

120. Placing all three children for adoption would sever their respective legal ties with their biological parents for the whole of their lives. It would entail the risk that, whatever the current best intentions of the local authority, they may ultimately be placed separately for adoption which would be wholly contrary to the welfare best interests of all three children.

121. The cessation of contact and of a relationship with the parents is bound to have an adverse impact on the children, most especially R. I note, however, that all three children have settled well into their foster homes. R and J missed seeing their mother in contact last year when she was in Ireland and/or in London with Q but neither of them was unduly upset. I must balance the adverse impact of a cessation of contact and of a relationship with the parents against the potential life-long benefits of an adoptive placement in a loving, safe and secure home. I am satisfied the balance falls decisively in favour of an adoptive placement for all three children.

122. Standing back and considering the three options in the round and against the background of the totality of the evidence, it is with a heavy heart and with great reluctance that I conclude that the only option which will meet the welfare best interests of each of the children throughout the whole of their respective lives, is a placement for adoption. It is the proportionate, indeed the only, course the court can adopt to secure the future welfare of all three children.

123. I place huge importance and emphasis on the need to place all of the children together for adoption. I cannot require the local authority to do so. It would, however, be my clear expectation that if the local authority, despite their best endeavours, could not place all three children together for adoption that they would restore this matter to court. Because, if this position were reached it may be, I would have come to a different conclusion on the placement for the children which was in their welfare best interests.

124. In all of the circumstances I am satisfied that the welfare of each child requires me to dispense with the consent of both parents to the adoption of each child and I so dispense with their consent.

#### Conclusions

125. On the totality of the evidence and for the reasons set out in this judgment I am satisfied and find the threshold criteria of s.31(2) of the 1989 Act to be met in respect of each child.

126. I am satisfied that the care plan for each child of placement for adoption is in the welfare best interests of each child and I make a care order in respect of each of them.

127. I have dispensed with the consent of the parents to the adoption of R, J and Q. I am satisfied that the placement of each child for adoption, but all placed together, is in the welfare best interests of each child. Accordingly, I make a placement order in respect of each of them.”

#### *The appeal*

20. Applications for permission to appeal were made by both parents on a wide range of grounds. On 15 October 2020, I refused permission on all but one ground of appeal, namely that the Court did not properly identify the risk of future harm to the children and that in consequence the welfare decision was flawed.
21. The appeal was well argued by Ms Fottrell QC, appearing for the mother with trial counsel Ms Frempong, and by Ms O’Malley, trial counsel for the local authority. For the father, Mrs Ojutiku supported the mother’s arguments and Ms Taylor made written submissions for the Guardian in opposition to the appeal.
22. Ms Fottrell describes the judge’s analysis of the mother’s parenting as reductive, in focusing unduly on her lies at the expense of her general parenting. She had been responsible for R for 18 months and Q for 5 months without them coming to harm, aside from the injury to R, whose presentation when he was removed over a year later was thought to reflect good care. The Judge did not adequately identify the harm that the children would be likely to suffer if returned to their parents. His willingness to entertain a return of the boys to the father alone at the end of last year, despite his being a possible perpetrator of the injury to R and being complicit in the removal of R and the attempted concealment of J, was not carried through to the decision about returning the three children to the parents together. At the same time the Judge’s statement that there might be “no choice” but adoption if the father did not keep his promises contributed to a factual matrix that was all about the parents’ lies. This flawed approach to risk fed into an overall welfare balancing exercise that was superficial in respect of other welfare factors and in its consideration of the proportionality of adoption. There are other difficulties with the judgment, one example being that it is not

clear why the parents' extreme reaction to intervention should be such a stumbling block (paragraph 111), and another that the Judge's response at paragraph 113 to the parents' case at paragraph 112 is circular in its reasoning. If the appeal is allowed, Ms Fottrell accepts that the welfare decision would have to be remitted on the basis of the Judge's findings of fact as at August 2020.

23. For the local authority, Ms O'Malley submits that the Judge did identify the harm to the children and the risk of it recurring. The past harm consisted of:
- (1) The injury to R in a domestic abuse incident between the parents.
  - (2) Emotional harm to R and J caused by the mother absenting herself from significant periods of their lives and denying the children contact with each other.
  - (3) The denial of antenatal care for Q as a result of the mother fleeing the jurisdiction in an attempt to avoid detection of the pregnancy.

The risk of future harm could be summarised as being the risk of repetition of the past physical harm, and of emotional/ psychological harm arising from repeated instability caused by the parents' irrational response to any future attempt at intervention or monitoring. The Judge described this as a high risk of significant harm. He then conducted a comparative evaluation of the advantages and disadvantages of each option. His analysis was not unduly focused on the parents' lying, as seen from the attempt to implement a rehabilitation plan despite their known levels of dishonesty. Special consideration was given to the cultural background through appointing a Ghanaian social worker to assess any cultural reasons for the parents not engaging with professionals; there were none. The parents continued to argue that the local authority have caused their difficulties, making change unlikely.

24. The Guardian submits that the parents' breaches of orders and conditions and their chronic lying has been so prevalent that they must be relevant to the decision. The background of non-engagement, the inability to mitigate risks, and the failed rehabilitation plan were all matters that the Judge was entitled to place significant weight upon when considering welfare.
25. In response to questions from the court, the parties confirmed that there had been no evidence, direct or indirect, about the likelihood of an adoptive home being found for the three children together, or about the availability of adopters who might match the children's ethnic identity to any degree. Nor could counsel say what the Judge meant at paragraph 123 when he said that he might have come to a different conclusion on placement if the children could not be placed for adoption together. It is not clear whether there would then be only one alternative (long-term-fostering, which had been firmly ruled out on welfare grounds) or whether a return to the parents would also be open for consideration.

#### *Analysis and Conclusion*

26. This is an unusual and difficult case. Capable and loving parents (to use the Judge's description of the father) reacted in such an extreme manner to the local

authority's efforts to carry out its statutory duties that the situation swiftly escalated out of proportion to the original concerns. The social workers and the court were fully justified in feeling anxious for the children's welfare as the parents brought about a breakdown of trust by their repeated deceptions and concealments and, when they were exposed, by their brazen lying. The impact of this behaviour on the process of assessment and decision-making across this lengthy litigation, involving huge expenditure of time and money, is easy to understand. Whatever else might be said, the parents have severely let the children down.

27. In circumstances like this, the court will want to return to first principles. These start with the principle that adoption of a child against the parents' wishes should only be contemplated as a last resort – when all else fails: *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 1 WLR 191, per Lord Neuberger at [104]. That is a stringent test and a rigorous and reasoned evaluation of all the realistic options must be carried out before it can be concluded that adoption is necessary and proportionate: *Re B-S (Children)* [2013] EWCA Civ 1146, [2014] 1 WLR 563.
28. Then, the relevant welfare checklist will be of particular value in a difficult or unusual case. Here, Section 1(4) of the Adoption and Children Act 2002 provides that:

“(4) The court or adoption agency must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) 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,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

(f) 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,

(ii) the ability and willingness of any of the child's relatives, ... to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child’s relatives, ... regarding the child.”

This list provides structure for decisions and ensures that all welfare elements are taken into account. So in the present case the children’s particular needs under (b) include the need to stay together if at all possible, while their background under (d) includes their Ghanaian/black British heritage. In issue were the questions of harm and risk of harm under (e) and the ability of the parents to provide a secure environment and otherwise meet their needs under (f)(ii).

29. The next general matter concerns the significance of lies. The correct approach to lies in relation to fact-finding is well known and the Judge appropriately gave himself a *Lucas* direction in that context. Here the more pertinent matter for our purpose concerns lies in the context of welfare. Lies, however disgraceful and dispiriting, must be strictly assessed for their likely effect on the child, and the same can be said for disobedience to authority. In some cases, the conclusion will simply be that the child unfortunately has dishonest or disobedient parents. In others, parental dishonesty and inability to co-operate with authority may decisively affect the welfare assessment. But in all cases the link between lies and welfare must be spelled out. That did not happen in *Re Y (A Child)* EWCA Civ 1337, where Macur LJ said this at [7(4)]:

“... I consider the case appears to have been hijacked by the issue of the mother's dishonesty. Much of the local authority's evidence is devoted to it. The Children's Guardian adopts much the same perspective. It cannot be the sole issue in a case devoid of context. There was very little attention given to context in this case. No analysis appears to have been made by any of the professionals as to why the mother's particular lies created the likelihood of significant harm to these children and what weight should reasonably be afforded to the fact of her deceit in the overall balance.”

30. Finally, in *Re F (A Child: Placement Order: Proportionality)* [2018] EWCA Civ 2761 I attempted to set out the questions that the court should ask itself when assessing risk of future harm and setting it in context:

- (1) What is the type of harm that might arise?
- (2) What is the likelihood of it arising?
- (3) What consequences would there be for the child if it arose?
- (4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?

The answers are then placed alongside other factors in the welfare equation so that the court can ask itself:

- (5) How do the overall welfare advantages and disadvantages of the realistic options compare, one with another?
- (6) Ultimately, is adoption necessary and proportionate – are the risks bad enough to justify the remedy?
31. Against that background I return to the present appeal. In my judgement the decision to make care and placement orders for these children cannot be sustained on the basis of Judge’s reasoning. His findings of fact cannot be criticised and the threshold for making care orders was plainly crossed. However, in a case in which the risk of harm was the central issue in the proceedings, there is substance in the argument that he did not sufficiently examine the reality of the risks to these children if placed with their parents. Nor, in a case where the other welfare factors tended to point away from adoption, does the judgment explain why those risks were so bad that it outweighed them. Instead, the parents’ reprehensible behaviour came to eclipse other welfare considerations. In the end, the stark choice was between an unmonitored placement with the parents or a search for adopters. Each option had difficulties, not least in the short term, but the judgment treated the risks presented by the parents as self-evidently unacceptable. That conclusion needed further explanation. The crux of the matter is found at paragraphs 112 and 113 where the analysis is, as has been submitted, circular. The real question is whether the findings at paragraph 107 justified adoption.
32. Although it did not feature as a ground of appeal, I also consider that there was a gap in the evidence about the likely availability of a single adoptive placement for these three children. That gap finds its reflection in paragraph 123, where the Judge contemplates a change of direction of some kind if a single placement could not be found. The children have very particular needs as a sibling group, recognised by the Judge when he approved “*adoption, but all placed together*”. They also have very particular identity needs. In a case of this difficulty the court needed the best available evidence about whether an appropriate adoptive placement might be available for the children before reaching a final decision. Otherwise the choice would be between long term foster care and placement with the parents, both being options that the Judge appeared to rule out.
33. I would therefore remit the matter for a fresh welfare decision, preserving the Judge’s findings of fact. The care and placement orders will be set aside and the interim care orders will revive. I would only add that the parents’ undeserved success on this appeal should not lead them to assume that their children will not be adopted. The decision remains a difficult one and it will be made on the basis of the court’s existing findings of fact together with its conclusions on any further evidence that may be put before it. There will be an urgent case management hearing before a judge of the Family Division so that directions can be given for an early final hearing.

**Lady Justice Simler**

34. I agree.

**Lord Justice Underhill**

35. I also agree.

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