Neutral Citation Number: [2022] EWFC 10

IN THE FAMILY COURT AT NOTTINGHAM

Nottingham County Court and Family Court
60 Canal Street
Nottingham
NG1 7EJ

Date: Wednesday 19 January 2022

Page Count: 25
Word Count: 13625
Number of Folios: 190

Before:

MRS JUSTICE KNOWLES

- -

Between:

NOTTINGHAMSHIRE COUNTY COUNCIL — **Applicant**

- and -

(1) XX
(2) YY
(3) THE CHILD 'H' — **Respondents**
(via their Children's Guardian)

- -
- -

JAMAL JEFFERS appeared for the **Applicant**
CHARLIE FIKRY appeared for the **First Respondent mother**
LOUISE SAPSTEAD appeared for the **Second Respondent father**
ANNE BUTTLER appeared for the **Children's Guardian**

- -

Approved Judgment

I direct that 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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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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MRS JUSTICE KNOWLES:

1. This judgment is given ex tempore.

2. I am concerned with a little boy called H who is about 17 months old. H is presently living with foster carers and he has been the subject of an interim care order since 23 September 2020.

3. There are two applications before the court. The first is an application for a care order made by Nottinghamshire County Council on 4 September 2020 and the second is an application for a placement order, again made by the local authority, issued on 27 August 2021.

4. The local authority is represented by Mr Jeffers of counsel. The first respondent to the proceedings is H's mother, XX, who is represented by her litigation friend, the Official Solicitor, and by Mr Fikry of counsel. I will refer to her as 'the mother' in this judgment. The second respondent is YY, represented by Ms Sapstead of counsel. He is H's father and I will refer to him as 'the father' in this judgment. H is represented by his children's guardian Mr Phillips, and by Ms Buttler. I am grateful to all of the advocates for the great assistance they have given me in what is a difficult case. All have said everything that they possibly could in support of their respective client's interests.

5. This case was originally listed for hearing on three days, commencing on 16 November 2021. On the very first day, I acceded to an application to adjourn because the mother was unwell. I heard evidence on 17 and 18 November and, as a result of what I heard, I adjourned the proceedings part-heard until 18 and 19 January. I heard updating evidence on 18 January and submissions this morning. Those who gave oral evidence to the court were: (a) NH, the social worker for H; (b) SB, the parenting assessor; (c) DS, the contact worker; (d) SV, the mother's adult social worker; (e) the father, assisted by an interpreter; and (f) the children's guardian. The mother was present at the hearing in November 2021 but she has not been present during the hearing in January 2022 because she is heavily pregnant. Her due date seems to be in early March.

6. In November 2021, the witness evidence focused on the parenting abilities of the mother and the father. Though it was crystal clear to me that the local authority had comprehensively assessed the mother's parenting difficulties, I became concerned that the local authority had not meaningfully assessed the capabilities of the father as a parent and supporter to the mother in his own right. In judicial questions put to the children's guardian about that gap in the evidence, it became plain to me that there should be an addendum parenting assessment of the father.

7. My order dated 18 November 2021 provided that this assessment should address, firstly, an exploration of the father's understanding and acceptance of the mother's difficulties; secondly, his understanding of the risk to H, whether intentional or unintentional, posed by the mother's difficulties; thirdly, his appreciation of the impact of caring for H, the mother, and potentially the unborn child; fourthly, the plan for and level of support available to the family from adult social care and from children's services in the event that H returned to the parents' care; and finally, the father's willingness to engage with the support identified, his understanding of the requirement for that support, and his acceptance of whatever lifestyle changes that might entail. The

adjournment had the added benefit of this court being provided with more detailed information about the mother by her allocated social worker from adult social care. I should make it plain that I have also read a significant bundle of documents provided for the November hearing and updating material provided for this hearing in January.

8. I turn now to the essential factual background. The parents tell me that they have been in a relationship for many years and have known one another for more than ten years. They are of Romanian origin and they consider themselves to be married in the Roma tradition, albeit not in a form which is legally recognised. They live together as a married couple. I do not know when the mother arrived in this country. She and the father say it was not long before H was born in the summer of 2020. The mother came to join the father, who had been living in the United Kingdom since 2018. In reply to requests for information, the Secretary of State for the Home Department has told this court that she has no trace in any official records for the mother.

9. In late August 2020, the mother went to hospital with stomach pains. She was about 35 weeks pregnant and had received no antenatal care in the United Kingdom. She said that she could not access GP services as she did not have a passport. It is possible that she may have seen some doctors about her pregnancy in Romania. After a few days in hospital, the mother gave birth to H. Because he was born prematurely, H was quite small, weighing 2.3 kg, and he had to stay in hospital for medical monitoring. The mother stayed with him.

10. Whilst they were in hospital, doctors and nurses became worried that the mother appeared distressed and sometimes confused. They also became concerned that the mother was not managing to look after H despite nursing and medical advice. Sometimes the mother seemed aggressive towards staff and it was clear that she spoke little or no English. A Romanian doctor working at the hospital spoke with the mother and became concerned that she might have learning or cognitive difficulties. When H was ready to be discharged, the local authority issued care proceedings. It did so was because it was worried about the mother's ability to care for H. Its concerns are set out in the threshold document and the early statements of the social worker.

11. The first court hearing took place on 7 September 2020 and was adjourned until 8 September so that the mother could speak to her lawyers. The local authority suggested, with the agreement of all the parties, that the mother and H should move to a residential assessment centre in early September 2020. At that point in time, the father wished to be a party to the proceedings but was not joined until a confirmatory DNA test that he was H's biological father had been undertaken. He has been a party to the proceedings since 7 October 2020. Regrettably, the residential assessment did not go well. Staff there were worried that the mother did not seem to be able to retain the parenting advice they gave and they were also worried that sometimes the mother would behave in a way which was aggressive, intimidating, and threatening. On 23 September 2020, the court sanctioned the removal of H from his mother's care and he was placed in foster care. He has remained in foster care ever since, living with the same carers.

12. I note that the mother has a son by a previous relationship called T who is now aged 15 years old. He lives with his paternal grandparents in Romania and has very little if any contact with his mother.

13. I turn now to the procedural history. There have been many hearings in this case. To summarise, the key events were the issue of the proceedings on 4 September 2020, the making of an interim care order on 8 September 2020, and the court's authorisation of H's separation from his mother into foster care. The father was joined to the proceedings on 7 October 2020 and, at that hearing, directions were made for a cognitive and capacity assessment of the mother.

14. In his initial statement, the father questioned the jurisdiction of the courts of England and Wales in relation to H because of H's links with Romania. The family court decided that the issue of jurisdiction would need to be resolved. Accordingly, at a hearing on 26 November 2020, HHJ Rogers transferred the case to a High Court Judge. Noting the conclusions of the capacity assessment, HHJ Rogers also invited the Official Solicitor to act as the mother's litigation friend.

15. In February 2021, the Romanian consulate asked the parties to invite the court to consider transferring the case to Romania. That proposal was fully supported by the parents and, when the case was first before me on 17 February 2021, the father indicated his wish to apply formally for a transfer pursuant to Art.15 of Council Regulation (EC) No. 2201/2003 (known as BIIA). At a hearing listed on 31 March to consider that transfer, the father decided that he, in fact, wished to remain in the United Kingdom and sought permission to withdraw his application. I determined that, in any event, I had jurisdiction over H based on his habitual residence in the United Kingdom and allowed the father to withdraw his application.

16. The transfer of these proceedings to Romania has not been further ventilated either by the father or by the Romanian authorities. Further case management directions were made in May 2021 and again in July 2021. On 29 September 2021, I held an issues resolution hearing when I gave further directions for this final hearing, including requiring the local authority to notify the Romanian consulate about its plans for H. The Romanian authorities were invited to attend the final hearing should they wish to do so. They have also been informed of this hearing in January 2022. I record that, to date, they have not attended either hearing in November or in January.

17. At the issues resolution hearing in September 2021, a threshold document was agreed by the parties. That threshold document stated that H had suffered and was likely to suffer significant harm arising from the mother's inability to care for him in hospital, her unsafe parenting during the residential assessment, and, generally, her refusal to listen to advice about how to care for H. The threshold document is appended to my order dated 29 September 2021.

18. I turn now to the positions of the parties. First of all, the local authority contends that, in reaching its conclusions about H's welfare, it relies on (a) the specialist learning disability parenting assessment of the mother prepared by SB in March 2021, (b) a parenting assessment by the father that was carried out in 2021 and subsequently updated by reason of my order in November 2021, (c) the evidence given by DS, the contact worker, and (d) the evidence of the mother's adult social worker Mr SV.

19. The local authority submitted that this evidence, read as a whole, demonstrated that neither parent could meet H's needs whether he were placed with them individually or jointly. In any event, the local authority said that the parents' positions were such that there was no real option for the sole care of H because if the father were looking after

him, he would leave H with the mother at times and vice versa. The local authority submitted that it had tailored its processes and assessments to accommodate the mother's difficulties and given her the best opportunity to show her parenting capacity.

20. The local authority also contended that it had assessed the father in accordance with my order and found him to be inconsistent in his approach to the mother's difficulties, sometimes accepting she needed a lot of help in her own right and as a parent, and then at other times not accepting this at all. It described extensive searches and enquiries to identify a possible family placement for H, all of which it says have been unsuccessful. A number of relatives have been contacted by the local authority, some with the assistance of Romanian safeguarding services. Two sets of paternal aunts and uncles, together with a friend, have either not engaged with viability assessments or have had negative viability assessments. Those individuals have been notified of the conclusions of those viability assessments and of the means whereby those could be challenged. None has chosen to do so.

21. If successful in its applications, the local authority proposed reducing frequency of direct contact between H and his parents until he was matched for adoption and then proposed that face-to-face contact would stop. As a minimum after being placed for adoption, the local authority proposed two-way letterbox contact without photographs once a year. However, the local authority, as a result of the intervention of this court and the children's guardian, altered its care plan in November to commit to discuss with any prospective adopters whether they would be willing to facilitate direct contact between H and his parents. If prospective adopters were prepared to do so, then the local authority would proposed that such direct contact should take place on an annual basis.

22. I turn now to the mother's circumstances and position. The mother is 36 years old. She was born and grew up in Romania and is of Roma heritage. I have already indicated that H is her second child. The mother's older son was 15 years in December 2021 and lives with his paternal family in Romania. During the course of these proceedings, Romanian social and child protection services visited her older son in October and November 2020 to ensure that he was well.

23. The mother has been assisted by adult social care since November 2020. Her allocated social worker has changed but since September 2021 has been SV. Through adult social care, the mother has been working with Brighter Futures, an organisation which has provided her with assistance in respect of financial matters such as benefits, housing issues and has also supported her with her health needs. The mother is also presently undergoing an occupational therapy and speech and language assessment. She has a community nurse in her own right.

24. I have already indicated that the mother is represented by the Official Solicitor as a result of the outcome of a cognitive assessment undertaken by a clinical psychologist, Karen Houghton. The assessment was conducted remotely through the means of an interpreter. During the interview, the mother told Ms Houghton that she cannot read or write in any language. She recalled going to a specialist school for children with learning difficulties from the age of about 12 to 18. Her first language was Romanian.

25. In summary, the conclusions of Ms Houghton's assessment were as follows. First of all, the mother's overall level of cognitive ability fell within the extremely low range.

Secondly, her assessment score suggested a significant and severe impairment of intellectual functioning which is unlikely to be resolved and was described as an arrested or incomplete development of the mind. Thirdly, that impairment combined with the mother's additional literacy problems and very pronounced and unexpected level of difficulty in understanding what was said to her even in her native tongue, rendered her vulnerable. Fourthly, the mother's profile fell, in Ms Houghton's words, well within the criteria for approaching the Official Solicitor to act as a litigation friend. Finally, the mother lacked the capacity to conduct the proceedings in that she was unable to retain, understand, or weigh up information about these proceedings. Ms Houghton suggested that some of the behaviour the mother had been reported to show in hospital and, to a certain extent, in the residential assessment, such as disorientation and aggression, may have been attributable, in part, to stress, distress, and the environment in which she found herself.

26. At the conclusion of her assessment, Ms Houghton recommended that consistency of interpreter would help the mother to participate in the proceedings and made a variety of recommendations for professionals to modify their communication in working with the mother. She recommended the mother would benefit from a PAMS type parenting assessment. Ms Houghton also made suggestions for the way in which the mother ought perhaps to give evidence and be questioned in court. I have already indicated that the Official Solicitor accepted the court's request to become the mother's litigation friend.

27. The mother is now heavily pregnant and is due to give birth to a child probably in either late February or March 2022, although the due date is unknown.

28. The position on behalf of the Official Solicitor is set out as follows in the written documents before the court. Put briefly, the Official Solicitor has reminded the court that the mother loves H very much. She remains in a relationship with H's father. The mother believes that she could look after H, meet his needs, and does not want him to be adopted. Having considered everything the mother has said to her, the mother's best interests, and all of the evidence, the Official Solicitor accepted that there was no realistic argument to make on behalf of the mother at this hearing but, instead, supported the position adopted by the father and supported his challenge to the evidence upon which the local authority relied.

29. I turn to the father's position. The father is 48 years old. He is also a Romanian national and also of Roma heritage. He too speaks Romanian as his first language and has very limited English. He came to the United Kingdom in February 2018 and now has settled status until November 2025. He describes himself as being unable to read. Realistically, the father accepted that the threshold for making public law orders was met at the time the local authority issued its application for a care order. However, he attributed the risk and concern in the case to the mother's behaviour rather than to his own and felt that the risks identified in the threshold document could be managed or avoided in future.

30. Throughout his involvement in the proceedings, the father has sought for H to be placed either with him and the mother or with his family. He said in the documents filed on his behalf that he could help the mother meet H's basic needs and that they could jointly care for H. In his oral evidence, the father told me that there was no need for them to have support from the local authority with their parenting as the mother could parent both H and the baby even if he were to be out at work. In 2021, the father accepted that

he did not attend some sessions with the social worker or the family worker. This was because he had to work to pay rent and to buy food. He complained that many of the assessment meetings had been arranged on dates when it was difficult for him to participate.

31. The father opposes H remaining in the care of the local authority or being placed for adoption. In his initial statement, the father told the court he owned a house in Romania which he shares with his brother. At that time, the father proposed that, if H returned to his care, he could live in that property and have access to help from family and friends. The mother would live with them. As I have already indicated, in March 2021, the father changed his mind about these proceedings being transferred to Romania. He said that he wanted to remain in the United Kingdom.

32. In his final evidence, the father described, ideally, returning to Romania with the mother and with H. He was given permission to file a statement setting out clear proposals for that move but no statement identifying those details has been filed on his behalf.

33. H is represented through his children's guardian. He is, of course, a child of Romanian origin born in the United Kingdom to Romanian parents of Roma heritage. His wider family, including his half-brother live in Romania and his parents have told the court at various times that they planned to return to Romania in the future. H has pre-settled status which was granted on 18 October 2021 which subsists until 19 October 2026.

34. In 2021, H was diagnosed with Klinefelter syndrome. This is a random mutation which means that he has inherited an extra X chromosome from his parents. Dr Groves, a consultant paediatrician, has explained that H does not have one of the more severe types of Klinefelter syndrome but that his condition may lead to some future problems, which can include learning, social, or behavioural difficulties. When H is older, he may need support, medicine, and counselling to help him live with his condition. However, H is presently too young currently for anyone to say how he will be affected by this syndrome. H has been referred to the genetic service.

35. The children's guardian on H's behalf supported the local authority's applications. He invited the court to make care and placement orders and highlighted the following features. Firstly, H was currently developing normally. He was a young child who would be adaptable to change if supported by a safe and loving family. Any move for H should be a final move and the decision about where he should live should not be delayed. The children's guardian recommended that returning to his birth parents would not be safe for H because he may be neglected or even inadvertently physically harmed in their care. Because the parents did not accept that they were a risk to H or that there were any limitations to the mother's ability to care, the children's guardian could not envisage any support which would help them to parent H safely. He was concerned that, if H moved back to Romania with his parents, there was no clear picture about where they would live, how they would live, or who could help them.

36. On H's behalf, the children's guardian pressed for an amendment to the local authority's care plan, namely that the local authority should be able to explore with culturally appropriate prospective adopters the possibility of direct contact between H and his birth family. The children's guardian emphasised the importance of that discussion in order to try and preserve a link between H and his heritage should the court decide that H should be adopted.

37. The parties' positions have been modified, to some extent, in closing submissions. The local authority's position is essentially unchanged as I have recorded it. In closing submissions on behalf of the mother, the Official Solicitor through Mr Fikry accepted that the mother could not care for H. He submitted that the father could and that he would safeguard H if he were told to do so. Mr Fikry cautioned me against a too ready acceptance of the local authority evidence that it could not provide financial or other support to the family, and submitted that parental disability and poverty were unattractive reasons to justify the lifelong separation of a child from its parents. Additionally, the Official Solicitor pressed upon me the advantages of long-term fostering so that, if I decided that H could not return to the care of his parents, he would not lose his lifelong link with his family.

38. On behalf of the father, Ms Sapstead was critical of the local authority's conduct in this case and contended that the father had been set up to fail. There had been no effort to formulate a plan for support. She said that the father would do whatever was asked of him. If he was asked to safeguard, he would. She too endorsed the submissions made by the Official Solicitor in relation to long-term foster care.

39. The children's guardian reiterated his concerns that even if the father were present, he could not accept that the mother posed any risk to H and drew attention to paras.11 - 12 of his supplemental report which I read now in full:

> "From my recent interview with [the father] and having considered his evidence at the last hearing, I wonder also if there is not perhaps a lost in translation issue, firstly at a language level, and, secondly, in a cultural sense that might also go some way to explain his answers and the perception of him by the social workers. When I interviewed him and [the mother], I gained this impression. I also tried to get as much information from both of them via my questions but I thought it would be additionally helpful to both me and the court in determining the right future for [H]. I also do not think that a lost in translation explanation gives the complete picture either. I believe that [the father] finds it hard to accept or does not want to hear that [the mother] has difficulties that impair her parenting abilities. I also do not believe that [the father], despite it being explained to him many times, has any real understanding as to why this would place [H] and the new baby in danger."

40. I turn now to the law which I am required to apply. Given the agreement between the parties that the s.31(2) threshold test was satisfied, I have not set out the law in this regard. No further fact-finding in respect of threshold is required. However, the satisfaction of the threshold test is of critical significance. In *Re H (A Child)* [2015] EWCA Civ 1284, McFarlane LJ (as he then was) noted the following:

> "In the context of private law disputes relating to children, there is no presumption in favour of a parent... In a private law case, whilst the fact of parenthood is to be regarded as an important and significant factor in considering which proposals better advance the welfare of the child, the only principle is that the child's welfare is to be afforded paramount consideration."

> "The House of Lords and Supreme Court have been at pains to avoid the attribution of any presumption where CA 1989, s.1 is being applied for the resolution of a private law dispute concerning a child's welfare; there is therefore a need for care before adopting a different approach to the welfare principle in public law cases. As the judgments in *Re B*, and indeed the years of case law preceding *Re B*, make plain, once the s.31 threshold is crossed the evaluation of a child's welfare in public law proceedings is determined on the basis of proportionality rather than by the application of presumptions. In that context it is not, in my view, apt to refer to there being a 'presumption' in favour of the natural family; each case falls to be determined on its own facts in accordance with the proportionate approach that is clearly described by the Supreme Court in *Re B* and in the subsequent decisions of this court."

41. The law is well known and is unlikely to be controversial in circumstances where the threshold criteria have been crossed. When that is the case, the court must consider whether an order should be granted and, if so, what type of order, applying the principle that the child's welfare is the paramount consideration having regard to the matters set out in the statutory welfare checklist contained in s.1(3) of the Children Act 1989. The court must not make any order unless it considers that doing so would be better for the child than the making of no order at all.

42. In this case, the court is required to undertake a holistic analysis of competing care options with the child's welfare as its paramount consideration, having applied the welfare checklist. It is also self-evident that the Art.8 rights of H and his family to respect for their private and family life are engaged in this process of judicial determination. Where those rights are in conflict, H's rights as a child must prevail. The level of state intervention should be no greater than is necessary in order to secure H's welfare.

43. I have borne in mind when coming to my conclusions in this case the matters which are set out in paras. 22 - 24 of the local authority's opening document. I incorporate those matters set out therein into this judgment:

> "22. In Re B-S [2013] EWCA Civ 1146, [2014] 1 WLR 563 at [18 - 28], Munby P set out the fundamental principles to be applied when the court is considering adoption, emphasising the severe nature of adoption and the need for rigorous and careful analysis of the options where the starting point is the natural family. Extracts from [18 – 28] are set out below:
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> '18. We start with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. …The overarching principle remains as explained by Hale LJ, as she then was, in Re C and B [2001] 1 FLR 611, para 34:
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> "Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be

> devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child."

To this we need only add what the Strasbourg court said in YC v United Kingdom (2012) 55 EHRR 33, para 134:

> "family ties may only be severed in very exceptional circumstances and … everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing."

20. Section 52(1)(b) of the 2002 Act provides, as we have seen, that the consent of a parent with capacity can be dispensed with only if the welfare of the child "requires" this. "Require" here has the Strasbourg meaning of necessary, "the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable": Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 535, [2008] 2 FLR 625, paras 120, 125. This is a stringent and demanding test.

21. Just how stringent and demanding has been spelt out very recently by the Supreme Court in In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33, [2013] 1 WLR 1911. The significance of Re B was rightly emphasised in two judgments of this court handed down on 30 July 2013: Re P (A Child) [2013] EWCA Civ 963, para 102 (Black LJ), and Re G (A Child) [2013] EWCA Civ 965, paras 29-31 (McFarlane LJ). As Black LJ put it in Re P, Re B is a forceful reminder of just what is required.

22. The language used in Re B is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option", a "last resort – when all else fails", to be made "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do": see Re B paras 74, 76, 77, 82, 104, 130, 135, 145, 198,215.

23. Behind all this there lies the well-established principle, derived from s 1(5) of the 1989 Act, read in conjunction with s 1(3)(g), and now similarly embodied in s 1(6) of the 2002

Act, that the court should adopt the 'least interventionist' approach. As Hale J, as she then was, said in Re O (Care or Supervision Order) [1996] 2 FLR 755, 760:

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

25. Implicit in all this are three important points emphasised by Lord Neuberger in Re B

26. First (Re B paras 77, 104), although the child's interests in an adoption case are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.

27. Second (Re B para 77), as required by section 1(3)(g) of the 1989 Act and section 1(6) of the 2002 Act, the court "must" consider all the options before coming to a decision. As Lady Hale said (para 198) it is "necessary to explore and attempt alternative solutions". What are these options? That will depend upon the circumstances of the particular cases. They range, in principle, from the making of no order at one end of the spectrum to the making of an adoption order at the other. In between, there may be orders providing for the return of the child to the parent's care with the support of a family assistance order or subject to a supervision order or a care order; or the child may be placed with relatives under a residence order or a special guardianship order or in a foster placement under a care order; or the child may be placed with someone else, again under a residence order or a special guardianship order or in a foster placement under a care order. This is not an exhaustive list of the possibilities; wardship for example is another, as are placements in specialist residential or healthcare settings. Yet it can be seen that the possible list of options is long. We return to the implications of this below.

28. Third (Re B para 105), the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. So "before making an adoption order … the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support." …..'

23. As the local authority's plan for the children is adoption, the court must also be guided by s. 1 of the Adoption and Children

> Act 2002. Specifically, s.1(2) of the ACA 2002 provides that 'the paramount consideration of the court or adoption agency must be the child's welfare, throughout his life'. S.1(4) of the ACA 2002 sets out the factors the court has to consider in coming to a decision about the local authority's plan for adoption.
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> 24. The court must be satisfied before making a placement order that the child's welfare requires the parents' consent to be dispensed with: s.51(1) ACA 2002 (see also Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 535). The superior courts have emphasised the strict test the local authority has to satisfy before a court can approve a plan for adoption. As Baroness Hale said in Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33:"the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."

44. Additionally, I have borne in mind the following because it is particularly apposite in a case which involves a parent with learning disabilities. In such a case, the court should remind itself of the judgment of Gillen J in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8 and the summary provided by Sir James Munby President (as he then was) in *Re D (A Child) (No 3)* [2016] EWFC 1 in [25] and [30]:

> "25. In a case such as this it is vitally important always to bear in mind two well-established principles. The first is encapsulated in what the Strasbourg court said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:
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> > 'Family ties may only be severed in very exceptional circumstances and ... everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. *It is not enough to show that a child could be placed in a more beneficial environment for his upbringing.* However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained (emphasis added).
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> ...
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> 30. All that said, as I made clear in *In re R (A Child) (Adoption: Judicial Approach)* [2014] EWCA Civ 1625, [2015] 1 WLR 3273, para 44:
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> > 'Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders. The fact is that

> there are occasions when nothing but adoption will do, and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs'."

45. I have also borne in mind the provisions of Art.15 of BIIA. These proceedings were issued before 31 December 2020 and therefore that instrument applies. By Art.15, the court may, by way of exception, request that the courts of another member state assume jurisdiction for proceedings or part of proceedings concerning a child. The court may only do so if it considers that:

> "...the court of the other state would be better placed to hear the case or a specific part thereof and where this is in the best interests of the child."

46. The construction of Art.15, paragraph (1), offers a three-stage process to that consideration. Does the child have a particular connection to another member state? If so, would the court of the other member state be better placed to hear the case or a component of it? If so, would transferring the case to the other member state be in the best interests of the child?

47. The stages depend on one another. Unless all are answered in the affirmative, the court may not consider requesting a transfer. If they are all answered in the affirmative, then the door is open for the court to consider requesting a transfer. Stages two and three may be influenced by similar factors. The key focus is on any benefits of the transfer itself. In *Re N (Children)* [2016] UKSC 15 at [43] - [44] *per* Baroness Hale:

> "The question is whether the *transfer* is in the child's best interests. This is a different question from what eventual *outcome* to the case will be in the child's best interests. The focus of the inquiry is different, but it is wrong to call it 'attenuated'. The factors relevant to deciding the question will vary according to the circumstances. It is impossible to be definitive. But there is no reason at all to exclude the impact upon the child's welfare, in the short or the longer term, of the transfer itself."

48. The court may invoke Art.15 on the application of a party to the proceedings or of its own motion or on the application of a court of another member state. When it decides to do so of its own motion or an application by the court of another member state, any transfer requests must be accepted by at least one of the parties.

49. Judicial guidance suggests that the option of requesting a transfer should be considered in any s.31 set of proceedings involving a potential connection with a European state (*Re E (A Child)* [2014] EWHC 6 (Fam) *per* Sir James Munby President). I note that Art.15 is permissive rather than mandatory. It places no obligation on a court to request a transfer, simply that the court may consider it if all the conditions are met. Article 15 also makes clear that a request to transfer the proceedings is an exceptional step.

50. I turn now to the evidence in these proceedings beginning with that of the social worker. I make it plain, as I have done already, that I have read all of the written material and my focus in this summary will be the oral evidence.

51. The social worker has been allocated to this case since 11 September 2020 and therefore has the benefit of some continuity. She relied upon the parenting assessment of the mother which concluded in March 2021. Following twelve sessions of work with the mother which were appropriately adapted to her learning difficulties and focused on basic parenting, SB concluded that the mother could not retain the information given to her. SB said the mother:

> "...would require ongoing support and supervision to ensure her child's needs were met in all areas of basic care. She needed constant prompts and reminders to complete tasks required to meet a child's changing needs."

52. The social worker undertook a parenting assessment of the father in May 2021 as both a joint and sole carer of H. That piece of work expressed concern that the father did not accept the worries about the mother's parenting capacity. Though there were positives, these were outweighed by the negatives.

53. In her oral evidence in November 2021, the social worker accepted that she had not analysed what support could be available to the family but made the point that any assistance would come via a children's centre for children under the age of 5 and would be limited to short-term work. At that stage, the family's plan was to move to Romania with H, according to a conversation with the father that she had had in July 2021. She acknowledged the significant financial pressures on the family and also accepted from the children's guardian the need to amend her care plan to the effect that the local authority would search for a family who may be in a position to offer direct contact between H and his parents.

54. Following the adjournment, the social worker completed an assessment, together with the mother's adult social care worker, as directed by my order of 18 November 2021. That concluded negatively. During that assessment, the father vacillated from session to session both as to whether the mother had any difficulties with parenting and whether the family needed help or whether he would accept such help. Worryingly, the father did not accept H's diagnosis of Klinefelter syndrome and accused the local authority of fabricating this.

55. In her oral evidence, the social worker explained that the local authority could not fund significant childcare for the family so as to enable the father to work. This was, in part, due to the interaction between the services on offer and the family's disqualification from means tested benefits. The social worker accepted that she was unfamiliar with the 2016 Good Practice Guidance on working with families with a learning disability but she rejected the contention that she had prejudiced the outcome of her most recent assessment of the father. She confirmed that there was no long-term funding for nursery provision within the local authority.

56. The mother's adult social care worker, Mr SV had conducted an assessment of the father and mother jointly with the social worker. He outlined in his statement the support that the mother would receive from adult social care. In essence, adult social care could not provide support to the mother with parenting but could refer her to the maximising independence team who would help her maximise her independence by learning and practising skills such as those needed for the activities of daily living. That would not be long-term assistance though the team could accept rereferrals in a new

skill area if a further deficit was identified. His opinion was that the mother's cognitive needs would make it likely that she would struggle to cope with and recognise the evolving needs of a child and that she would be unable to manage risks and provide appropriate care.

57. He concluded that the mother needed help with most aspects of parenting. In her own right, she presently struggled with preparing food; managing appointments; attending health appointments; accessing community resources; shopping; laundry; the care of the home; and being emotionally supportive.

58. Appended to SV's statement was a letter from the occupational therapist dated 9 December 2021. On the third page of that document, she presented her initial observations and overall conclusions:

> "[The mother] needs support to complete complex tasks or tasks that have not been part of her routine for a long time. [The mother] has had limited educational opportunities when she was a child and so some difficulties she currently has may be due to lack of opportunities to learn and develop when she was younger. [The mother] appears to need verbal prompts to do unfamiliar tasks to a good standard. [The mother's] husband advised he is helping her to learn new tasks but that [the mother] needs lots of repetition and seems to forget what he has tried to teach her. Therefore, [the mother] may benefit from accessible information with pictures or photos to break down tasks so that she can remember how to do them."

59. The oral evidence of the adult social care worker did not significantly depart from the conclusions set out in his statement.

60. I turn now to the oral evidence given by SB, the family support worker. I have already indicated that all her assessments were conducted with the benefit of the cognitive assessment of the mother. Her assessment sessions also used the same interpreter throughout. She was, I found, a helpful and straightforward witness. She had role modelled parenting tasks, encouraged the mother, and revisited parenting work several weeks later. In her oral evidence, SB was asked to describe the mother's processes and told me that the mother struggled to retain information:

> "At times, she was able to remember some things. For example, when we were making a bottle using the flat side of a knife. She could remember that and get that right every session but the numbers, the ratios, she could not show that she had remembered that from session to session."

61. She pointed to the example of the mother boiling water in a pan with the handle facing the room which was very unsafe. Once the mother was shown how to plug in the electric kettle but she had tried to pour the boiling water from the kettle out of the open lid instead of the spout.

62. When her sessions with both parents were arranged in advance and the father did attend, he took on board information that he was given. He was able to retain and demonstrate his learning. During one session when bottle-making, the mother had interrupted the

father filling the bottle to tell him he was doing it wrong even though he was following what SB had told him to do.

63. SB had sent all her work sheets to DS who supervised contact so that he could use the same materials in his pre-contact sessions. She also liaised closely with him before and after her sessions with the family so that he too could role model what had been taught. SB knew that DS would, to some extent, make up with the father sessions he had missed but her expectation had been that she would deliver the teaching and DS would check the parents' ability to retain that information. Over the twenty weeks of her work, SB delivered lots of teaching and role modelling. She did not necessarily tell the mother she was wrong but tried to guide her in the right way to approach tasks. SB is, I note, a very experienced social care worker. Prior to her role as a parenting assessor, she worked in specialist family support services, undertaking parenting assessments and working with families, some of who had learning needs.

64. DS, the contact social worker, was also a very helpful and insightful witness. He described contact as a positive family time. The parents attended together for the most part and both were focused on H. The father was more focused on playing with H using toys and the mother tended to verbally interact with H rather than play with him. The father was very proactive. DS had no concerns about what he had observed but noted that this was a supervised session. There were not many dangers within the context of a supervised contact session. Thirty minutes were allowed before each contact session to recap the parenting work, and in his pre-contact sessions, DS used pictorial aids and worksheets, the same as those used in the parenting assessments, to recap and evaluate whether the parents remembered what SB had taught them.

65. DS was very clear that contact had been a positive and loving time for H and his parents. He told the court that the parents could meet H's needs within a ninety-minute session but that this was not a natural environment. He was most concerned about the mother's ability to anticipate danger and to understand and keep pace with H's development as he got older.

66. I turn from the professional evidence to that of the father. Prior to the father's evidence in January, I was told that his position was that the family would stay here if H were to return with a package of support. If there was no support on H's return, the family would have to go back to Romania as the father needed to work to support the family.

67. In his oral evidence in November 2021, the father was asked about his plans for the future. He told me:

> "I personally would look after him. It is not true that mother cannot look after him. She is his mum and she feels very painful when she hears this."

68. Later on, he told me that, if he could be with the mother twenty-four-seven, he would let her look after H. Despite all of that, he thought she could care for H if he went to work but that he would prefer H to go to a nursery. His evidence made plain not only his desire to work and provide but the financial struggles faced by him and his wife.

69. When the father gave his evidence yesterday, he was emphatic that the mother could care for H if he was working. The only support the family would need was advice with H's routine. They had no need of financial support as he could work. The plan for the

family was that they would return to Romania, not really because this was better for H but to prevent the local authority becoming involved with the unborn child. The father told me it was hard to find work in Romania. It was, however, clear to me from both occasions that the father gave evidence just how much he loved his son. He was moved to tears by the end of his evidence.

70. The mother has not been present at the hearing in January but I saw and heard from her informally and not by way of sworn evidence in November 2021. At my invitation, she showed me pictures of H in contact together with videos. It was clear to me that, as with the father, she adored her son.

71. I turn now to the evidence of the children's guardian who has provided two helpful and detailed reports. In his evidence to me in November 2021, he spoke of his conversation with the parents. Then, the father's view was that the mother was the mother and should care for H. She could care and the father wanted that to be the decision of the court. The children's guardian did not think that there was additional professional support which could be offered to the family which would enable them to care for H safely. However, he told me he thought that the father was an instinctive parent who could adapt to H's needs as he got older.

72. When I asked him why he did not think that support from the local authority would be good enough, he told me that:

> "I think the worries I would have were that the support could be there for some time but the rest of the time we would rely on father to look after H and I am not sure or convinced that he might not, with the best of intentions, be tempted to go to work. I do not think it would cover the weekends. Because of the worries I have about mother's ability or inability to anticipate H's needs, I would be worried that would risk H being scalded or walking out into the road, not getting enough food, not having the right clothing. Despite the support, the essential is for the father to be with the mother all the time and I am not sure that would be the case."

73. I have already referred to the exchanges I had with the children's guardian which caused me to adjourn this hearing for further assessment. Both his reports recommended that adoption was the preferred option for H and recommended the exploration of direct contact between any prospective adopters and the birth family. He also recommended there should be a match with the family from a Roma heritage if possible but, if not, a family where at least one adult was Romanian speaking.

74. The children's guardian's most recent report affirmed his view that adoption was the right option for H. It contained a detailed account of his interview with both parents on 12 January 2022. He had asked the father to identify what the mother's problems were and the father had told him that these were to tell the time and that she was unable to organise a routine. The father thought the mother needed new glasses and dental help and help to access the local Romanian community. He was clear that, when he worked for five or six days, the mother could care for H who would be safe with her. The plan of the parents, as expressed to the children's guardian, was for the mother to return to

Romania with H with the father possibly joining later. She would be supported by the extended family and live in the house that the parents owned in Romania.

75. In his oral evidence, the children's guardian reiterated his view that nothing could be realistically provided by the local authority for H to be safe with his parents, either in the short or the long-term. If H could remain with his current foster carer long-term, that would be an appealing option but he could not. Balancing the pros and cons for H and taking into account his age and needs, the children's guardian remained firmly in favour of adoption because of the lifelong nature of that legal status. If there could be direct contact, that would be positive and could possibly take place twice a year. Though the children's guardian indicated that it had been difficult to reach a decision in this case, he stressed that this had not been a finely balanced decision.

76. I turn now to my analysis and I begin first of all with the welfare checklist. I have employed the extended welfare checklist set out in s.1(4) of the Adoption and Children Act 2002.

77. H is a very young child. I have taken into account that he has a close and loving relationship with his foster carers and I have also taken into account the loving and attentive contact that he has with his parents. I have borne in mind that, wherever possible, H would wish to be brought up in his family of origin.

78. Turning to H's needs, I have already indicated that he has Klinefelter syndrome and that he may or may not have difficulties associated with learning and with his social or behavioural development. He will need ongoing medical review. Otherwise, H has no other needs above and beyond those which are normal for a child of his age and development, save for his needs arising from his Romanian and Roma heritage. In due course, he may need skilled life story work to help him understand why he cannot live with his family of origin and why contact to his family members has either ceased or been significantly reduced.

79. Turning to the changes which H may face, these include the likely effect of having ceased to be a member of his original family and becoming an adopted person. H is still young enough to adapt to change in his placement and contact arrangements. His next move should be a final one, the timescales for which are uncertain but anything else has the potential to compound any future attachment difficulties. Notwithstanding his needs, his young age means it is likely that there will be a successful placement with a long-term family. Life story work would be enhanced by some form of post adoption contact to his family of origin or contact but only if this were safe.

80. I have, of course, had at the forefront of my mind that H is a child of Roma heritage and of parents who speak Romanian and who are of Romanian nationality. I have also taken into account the harm which H was likely to suffer at the time he was removed from the care of his parents. Given the outcome of the parenting assessment, this harm must be said to persist.

81. Turning to the capability of the parents, I say first of all that I have absolutely no doubt of the deep love that the parents have for H. It illuminated their very being when they spoke to me of him. However, the weight of the evidence suggested that it would be unsafe for H to return to the care of either or both of his parents. There is a serious risk of his needs being neglected which no amount of available support could ameliorate. Neither parent accepted that there were deficits in the mother's ability to care which

were not amenable to guidance or instruction. The reality is, sadly, that the mother herself cannot adapt herself to H's changing needs. The parenting task for her will become increasingly complex as H grows older and as the focus widens not only to include physical care but emotional care and learning. That will be a challenge, a very significant one. H will need much, much more in the years to come than cuddles and kisses.

82. Though the father seeks to persuade me to return H to his care and that of the mother, he too cannot care for H without stopping work. Yet, the family require his income. He is unwilling to stop work and leave the mother to care for H and does not accept significantly there is anything wrong with the mother's parenting. I am also extremely concerned that the father does not accept H's diagnosis of Klinefelter syndrome despite the careful explanations which he has been given. I am concerned that he told the local authority that he thought this diagnosis was fabricated.

83. I have already indicated in my summary of the evidence that the father has vacillated in what he has said to both professional witnesses and to the court about the mother's needs and the role that he must play. Nevertheless, I have taken into account the fact that the father has demonstrated skills as a parent and that he has been assessed to be a parent with innate parenting ability and with the ability to learn. I have, in particular, thought very carefully about whether the provision of support to the family would make good any difficulties in parenting. Sadly, I have concluded that it cannot.

84. First of all, and because this is a feature that has assumed greater importance in this case than perhaps it might in others, I have considered very carefully the impact of the financial circumstances in which the family finds itself. The family has no recourse to means tested benefits because they have not been here for the requisite five years to qualify for universal credit. Though the mother may be entitled to Personal Independence Payments as a non-means tested benefit and the father to Carers' Allowance, this would not bridge the financial gap so as to allow the family to pay for housing and also to meet their needs for food and other basic amenities. Means tested benefits are important because they passport to assistance with housing and council tax. In that regard, the family is facing eviction in February or possibly March 2022 due to unpaid rent and they have very significant council tax debts of over £1,000.

85. Though the local authority may be in a position to provide assistance with monies, it is not the role of the local authority to step into the shoes of the Department of Work and Pensions for what would be the provision of financial support, at least for several years, until the parents have been here long enough in order to qualify for benefits. However, financial reasons are not sufficient to separate a parent and child. I make it clear that, if I had thought that the absence of financial or other support was the barrier to the reunification of this child with his parents, I would have explored this with the local authority and adjourned for the local authority to provide further information about what it could provide in that regard.

86. Fundamentally, all the evidence to which I have referred in my judgment points to the fact that the mother cannot manage her own needs let alone keep pace with those of a developing child. The addition of a new baby would mean both children being cared for in circumstances where she would seriously struggle to meet their needs. Her difficulties are not intentional but unintentional. She cannot help who she is. The help available from adult services would not plug the gap and equip the mother soon enough

to resume H's care. The list of basic tasks with which she requires assistance in her own right is significant. If she is expected to parent on top, my assessment is, on the basis of the evidence I have heard, that she will fail and most likely place H at risk of serious neglect. On the father's case, as explained to the children's guardian, and indeed to the social worker, and in fact to me, the father sees little wrong with her care apart from her ability to formulate a routine for H and to tell the time.

87. There has been a great deal of work with both parents. I am satisfied that the assessments and support offered to the mother by SB and DS were everything that could have been sought on behalf of a parent with learning difficulties and accorded with the advice given in the psychological assessment. The assessment of the mother's ability to parent was fair, enabling, and comprehensive. Sadly, those assessments had little impact upon the mother's abilities and, though the father showed he could learn parenting skills, his evidence was that he regarded the mother as an able parent. Many opportunities have been offered to him to explore the mother's difficulties as the children's guardian indicated.

88. I have taken into account the points made in the children's guardian supplemental report and borne in mind the difficulties of culture and language which may have impacted upon the discussions that the father has had with professionals. However, the father cannot, in my view, be the protective parent that H requires. I do not accept that he was set up to fail in the most recent assessment. His understanding of the mother's difficulties was sought and explored. That is how it should be. Telling him what was wrong and telling him what to do would, in my view, have run the risk that the father's true insight and understanding would have been obscured and H's welfare put in doubt. Telling the father how to safeguard was not the point. He must understand the need for it. That understanding does not have to be a sophisticated one but it was patently absent over many assessment occasions and interviews and, sadly, in the father's evidence to me.

89. If I were to adjourn for further work or assessment, or to place H with the parents in the community, I cannot be confident that those charged with supervising H's welfare would get an accurate picture of what was happening in the family home in circumstances where the parents would be anxious to succeed and anxious to gloss over any difficulties that they might have with respect to H's care. I note that recently, which caused me a little disquiet, the father attempted to silence the mother when she spoke about difficulties on two occasions during one of the parenting visits. That evidence has not been challenged in cross-examination.

90. The plans that the parents put forward have fluctuated. On some occasions, they have evinced an intention to remain in this jurisdiction, sometimes to go back to Romania. The picture is, if I may say so, entirely unclear. There was no proper evidence before me as to what was available to the family by way of support in Romania and, indeed, the assessments received from the Romanian authorities indicated that the extended family's own resources, such as accommodation, barely met their own needs. The Romanian authorities sadly concluded that, were H to be placed within the extended family, he would be at risk of neglect, poverty, and social exclusion.

91. There are no kinship care options which are safe for H. All the assessments were either negative or ended prematurely. They have not been challenged. I have also taken into account the relationship which H has with his relatives, the likelihood of those

relationships continuing, and the ability of relatives to provide the child with a secure environment where his needs can be met. I have assumed that H's parents and relatives would wish for him to remain in his family of origin and not be adopted or placed away and I have considered their capabilities.

92. I have also considered the commitment from the local authority to identify a culturally appropriate placement with adopters open to some form of direct contact. I say now that, if it is my decision, that H should be adopted, the local authority should discuss his Roma heritage with prospective adopters on the basis that his heritage should be celebrated and cherished. A written commitment to do so should be contained in an amended care plan but neither that nor the requirement to discuss direct contact with prospective adopters should fetter the local authority's search.

93. I turn now to the balancing exercise. There are three realistic options for H's care: firstly, placement with his father and mother; long-term foster care; and adoption. Looking at the positives of placement with his parents, this would preserve H's identity and he would live with parents who love him deeply. He could develop positive relationships with other members of his extended family if the family returned to Romania. However, there are significant difficulties with parental care. I do not intend to repeat what I have already said about the difficulties that the mother herself has or the father's own understanding about the mother's capabilities.

94. Long-term foster care is also an option for H. There are positives to that. It would allow H to maintain a relationship by direct contact with his parents assuming that they remained in the UK though I note there may be some doubt about that. It would also positively maintain the links between H and his Roma heritage, and maintain links with his Romanian language. However, I have no evidence before me which explains whether there is a long-term foster home for H which can meet his needs until the age of 18; in which one of his carers may speak Romanian; or, indeed, where such a placement may be. That would, I suspect, require a very similar search to that required for an adoptive home. There are also negatives arising from the disadvantages to H of the local authority being a corporate parent throughout the remainder of his minority.

95. There has been some discussion within these proceedings about a variety of research studies seeking to compare adoption with long-term fostering. Whilst such material is helpful, it is, in my view, no substitute for a close scrutiny of this child's attachment, contact, and permanence needs. I quote from para.38 of the children's guardian's second report:

> "H's attachment, contact, and permanency needs and his medical (his Klinefelter diagnosis) cultural identity, birth roots and diversity needs, his living circumstances, his parents' particular circumstances and intentions, and/or their support or not for whatever permanent option, as well as the proposed local authority plans for H are some of the important, bespoke, and relevant factors for H that inform the best welfare plan for him."

96. Adoption would provide legal stability for this child within a nurturing family environment with positive attachments where all of H's needs could be met and, in particular, where his need not just for legal but emotional and psychological permanence can be met. Nevertheless, adoption is a draconian order. It severs the legal

relationship with his parents and H would not be brought up in his family of origin. There are some risks associated with adoption. Those, of course, can be minimised for a child of H's age by an appropriately matched placement, good preparation, and life story work.

97. I must stand back and review the wide canvas of evidence before me, and balance all of the matters in the welfare checklist to come to a conclusion. I have done so very carefully indeed. I have thought long and hard about the father's proposals. There is real uncertainty about what is proposed by his parents if I were to return H to his family. On the one hand, the parents have at times indicated that they would wish to stay here. On the other hand, both parents have indicated their desire to leave this jurisdiction because they do not wish to have local authority involvement with their unborn child. There is, if I can put it this way, no flesh on the bones of the father's stated wish to return to Romania.

98. What support is there? I have already referred to the assessments conducted of the extended family which indicate that resources are limited, that they lack an understanding of the problems with the parental care and that, in my view, undermines their ability to safeguard. The problem is a very fundamental one. There is simply no evidence before me as to the benefits of a return to Romania in circumstances where there must be very, very significant concerns about the mother's ability to manage the care of both H and the unborn baby.

99. In that context, I make it plain that, of course, at an earlier stage of the proceedings, the court had been seised of an application for an Art.15 transfer. The father withdrew that application and though H has a connection with Romania through his parents and his nationality, he has never lived there. I am unpersuaded, looking again at matters, that the court of another member state would be better placed to make a decision about H's future. All the evidence in this case has been generated here. There have been detailed assessments of parenting which have taken place here and I am also unpersuaded that the benefits of transfer would be in H's best interests. I note that transfer may result in significant delay in resolving his future.

100. The Romanian Consulate has been involved in the proceedings throughout and it has a chosen not to attend the proceedings. It has however written to the local authority in the following terms:

> "We consider that if a Romanian child is adopted abroad without his parents' agreement, without the other member state's approval, disobeying the provisions of both national and international legal framework, the best interests of the child might be affected. Please receive the assurance of our full cooperation with a view to safeguard the best interests of the Romanian children. We would kindly ask you to inform the court on the above-mentioned considerations. We confirm we will not attend the court hearings but we are requesting to keep us updated about this case."

101. I have taken account of those views in coming to my decision. Nevertheless, I have come to the view that the conditions for an Art.15 transfer request of my own motion are not made out and that I am best placed to make decisions about H's welfare on the

basis of the evidence before me. I remind myself of [4] of *Re N (Children)* [2016] UKSC 15:

> "Just as we must respect and trust the competence of other member states, so must they respect and trust ours."

102. I have also taken into account the evidence of the family finder that there is a degree of optimism that H could be placed within an adoptive family where at least one person is of Romanian origin. I am told that there are seven approved prospective adopters on Link Maker who fulfil that condition. I also am pleased to note that the local authority has agreed to amend its adopted plan in relation to contact and has confirmed that it will also discuss with prospective adopters H's Roma heritage in the manner I have described.

103. So, standing back and looking at all of the factors, I make a care order based on the local authority's plan for H to be adopted. I am also satisfied that a placement order should be made and that I should dispense with the consent of H's parents. His welfare requires that such an order should be made. For all the reasons previously articulated, I am also satisfied that the contact arrangements proposed by the local authority as amended are consistent with a H's welfare and in his best interests.

104. I have already indicated to the advocates that my decision will be an enormous blow to H's parents. I do not underestimate the life changing consequences for H and for them of the orders that I have approved today. My decision is hugely and uniquely painful for H's parents but I ask them to support him in future with the love they so evidently have for him. I wish them the best for the future.

105. The Official Solicitor asked me to give some guidance that may be helpful in cases where a parent has a learning disability. I propose to do so concisely, distilling the learning points from these proceedings.

106. It is clear to me that learning about the Good Practice Guidance on Working with Parents with a Learning Disability, first published in 2007 and then amended in 2016, and then again in 2021, should be more widely disseminated to both children and family social workers and adult social care workers. It must be an essential part of continuation training for such social workers and their managers. It was not in this case. That guidance should also be at the forefront of local authority planning. That would give intellectual focus and rigour to the evaluation of parental strengths and weaknesses in cases, whether before the courts or not. Cases which come before the courts involving a parent with learning disabilities should, as a matter of good practice, be capable of demonstrating that the guidance has been taken into account in any care planning or proposals put forward by a local authority.

107. There must be timely referrals to adult social care for a parent with learning difficulties in their own right and, when I say a timely referral, that means a referral accompanied by meaningful social work, not a referral followed by a very lengthy gap. That is blindingly obvious. It did not happen in this case.

108. Parents with learning difficulties involved with children's social care where a child is on a child protection plan should have their own advocate as a priority. A referral should be made for that service as soon as practicable. Further, the support available to a parent with learning disabilities in their own right should be distilled into a simple

document identifying what is available, how often it is available, the timescales for its availability, and who is responsible for its delivery. Pending assessments should be noted and followed up on a regular basis. That document should be shared with children's social care if they are involved and, ideally, it should be discussed with a parent in the presence of their advocate. Likewise, support with the care of a child which is available and which is being delivered should also be distilled into a simple document: what; how often; the timescales; and who is responsible. That document should be shared with adult social care. Again, it should be discussed with the parent in the presence of their advocate. All of this amounts to the joined up thinking and planning advocated by the Guidance.

109. That is my decision.

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