Neutral Citation Number: [2020] EWCOP 42

Case No: WV18C00289

IN THE COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/08/2020

Before :

MR JUSTICE KEEHAN

- -

Re ND (Court of Protection: Costs and Declarations)

Between :

Shropshire Council	**Applicant**
- and -	
Nikolai D'Araille	**1st Respondent**
(By His Litigation Friend the Official Solicitor)	
-and-	
Malgorzata D'Araille	**2nd Respondent**
-and-	
Edouard D'Araille	**3rd Respondent**

- -

- -

Mr S Nuvoloni QC and Ms K Taylor (instructed by **Local Authority**) for the **Applicant**
Ms E Sutton (instructed by **Cartwright King**) for the **1st Respondent**
The 2nd Respondent did not attend nor was she represented
Mr J McKendrick QC (instructed by **Bindmans**) for the **3rd Respondent**

Hearing date: 3rd August

- -

Approved Judgment

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

.....
MR JUSTICE KEEHAN

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.

The Hon Mr Justice Keehan :

Introduction

1. In this matter I am concerned with one young person, Nikolai D'Araille (hereinafter 'ND'). ND is 18 years of age. He has a diagnosis of Autism Spectrum Disorder ('ASD').

2. His mother is Malgorzata D'Araille. She is a Polish national and lives in Poland with her five daughters. The father of all of the children is Edouard D'Araille. He is a French national who he lives in this country.

3. ND and the father wished to be named in this public judgment. The mother took a neutral stance.

4. On 31st May 2018 an application was made by Shropshire Council ('the local authority') for care orders under section 31 of the Children Act 1989 ('the 1989 Act') in respect of ND and his five sisters.

5. Just prior to the issue of these applications, on 26th May 2018, the mother left the jurisdiction to live with the girls in Poland. She and the girls have since remained living in Poland.

6. At hearings which took place on 9th and 10th April 2019:

    i) I ordered the transfer of the public law proceedings in respect of ND to the Court of Protection;

    ii) I discharged the interim care order, on the basis that the father agreed to ND being accommodated by the local authority pursuant to s.20 of the 1989 Act; and

    iii) I declined to make declarations pursuant to s.48 of the Mental Capacity Act 2005 ('the 2005 Act') that ND lacked capacity to make decisions regarding his residence and care, but was satisfied, on an interim basis, that ND lacked capacity to conduct these proceedings.

7. On 30th April 2019 I made a declaration that ND was a vulnerable young person and was satisfied that protective relief under the High Court's inherent jurisdiction was necessary in the interim pending expert evidence being obtained on the issue of ND's capacity to make decisions in the relevant areas.

8. In her second court report of 9th December 2019 Dr Rippon, the consultant psychiatrist instructed to assess ND's capacity, concluded that he had capacity in all the areas assessed, including the capacity to conduct these proceedings. Therefore, at a hearing on 17th December 2019, I declared that ND had capacity to:

    i) conduct these proceedings;

    ii) make decisions regarding his residence;

    iii) make decisions regarding his care and support;

iv) make decisions regarding the contact he has with others;

v) make decisions regarding his finances; and

vi) make decisions regarding social media/internet use.

9. At this hearing, the Official Solicitor invited the court to exercise its powers under section 15(1)(c) of the 2005 Act and declare that the local authority had acted unlawfully by:

i) failing to provide ND with a choate pathway plan in accordance with its duties to ND as a relevant and now former relevant child under section 23 of the Children Act 1989;

ii) failing to provide ND with a choate care and support plan in accordance with its duties under section 25 of the Care Act 2014 (to include identification of suitable accommodation) and court order; and

iii) failing to support ND having regard to its statutory duties under the Children Act 1989 and Care Act 2014 which has exacerbated ND's presentation, reinforced his poor view of the local authority, and resulted in ND being reluctant to engage with all professionals or seeking support should the need arise.

10. The Official Solicitor also invited the court to depart from the general rule on costs and make a costs order against the local authority, pursuant to Part 19.5 of the Court of Protection Rules 2017. I indicated at that hearing, having heard brief oral submissions on behalf of ND and the local authority, that I was minded to make the declarations sought on behalf of ND. However, due to a lack of notice to the local authority, I permitted written submissions to be subsequently filed by the parties. I then heard oral submissions from the parties at a hearing, held remotely, on 3rd August 2020, at which I reserved judgment.

Background

11. The local authority issued care proceedings in May 2018 after many years of concerns about:

i) the chaotic and poor home conditions in which all of the children lived; and

ii) the disruptive and unpredictable behaviour of ND who had not attended any state education for a number of years.

12. The mother and the father did not accept these concerns and disputed the threshold criteria relied on by the local authority. No finding of fact hearing was held because:

i) the mother removed the girls from the jurisdiction just before the care proceedings were issued; and

ii) a fact-finding hearing listed in respect of ND in the Court of Protection proceedings on 2nd October 2019 could not proceed in the absence of final evidence from the local authority. Nevertheless, there was a broad consensus on the appropriate way forward for ND.

13. On 31st May 2018, ND was made the subject of a police protection order when he was found alone at home and the police were concerned about his condition. He was then placed in a Care Home. He was subsequently made the subject of interim care orders after a contested hearing in June 2018.

14. ND underwent a looked after children's medical assessment on 18th June 2018. The community paediatrician noted he was underweight, had significant health issues and appeared delayed in his self-help skills and hygiene issues.

15. In August 2018 I made orders for the father to disclose the whereabouts of the mother and of the girls and for the parents to return the girls to the jurisdiction. Neither were complied with by either parent.

16. In November 2018 ND moved to another residential unit.

17. In early/mid 2019 ND began to abscond from his residential unit. He was variously found at Manchester Airport and at Dover. On every occasion he was seeking to make his way to Poland to see his mother and his sisters. On at least some of these occasions the father had been involved in facilitating these attempts to leave the jurisdiction.

18. The court, the local authority, the children's guardian and the Official Solicitor were concerned about the nature and quality of the care that was being provided to ND at his then residential unit. It was clear that he was very unhappy and unsettled at the unit and wanted to return to the care of his father. The father was similarly concerned about the care afforded to ND and wanted him to return to his care at the family home. The local authority contended that the father actively sought to undermine ND's placement and to unsettle him: the father denied the same.

19. On 20th June 2019, a witness statement was filed by social worker Jackie Davies. It made proposals as to a residential placement for ND at Heathcotes in Northampton, and a two-week transition plan. It did not include any assessment as to why the proposals were appropriate, nor why the level of support proposed was not replicated if and when ND returned home to his father.

20. At a hearing on 25th June 2019, I ordered that ND should return to live with his father by 5th July 2019, on an interim basis. I considered that despite there being risks associated with ND returning to live with his father, the balance of harm fell decisively in favour of ND returning home. I had no confidence that ND's local authority placement at Heathcotes would do anything to protect his health and well-being. I also ordered that a care and support plan be filed by 3rd July 2019, and a pathway plan by 29th July 2019.

21. The return of ND to the care of his father was not entirely successful. Although neither of them accepted there had been any difficulties, the behaviour of ND deteriorated and the father struggled to cope with ND's behaviour.

22. Having met with ND on a number of occasions before or after court hearings, I gave permission for ND to travel to Poland to spend time with his mother and his sisters.

23. A care and support plan was filed by the local authority on 3rd July 2019. However, it contained a range of deficiencies including that it proposed no direct care and support.

24. A pathway plan was filed by the local authority on 26th July 2019. However, this too was insufficient, with a significant amount of the document having been left blank.

25. At a hearing on 30th July 2019, I ordered the local authority to file an updated care and support plan and a pathway plan by 13th August 2019. I also ordered that the local authority should file its final evidence by 4th September 2019, to include a needs assessment, balance sheet analysis and care and support plan.

26. On 2nd August 2019, in a second witness statement filed by social worker Jackie Davies, the local authority confirmed that no pathway plan had been completed, without making an application to vary my earlier order. The local authority also objected to ND staying with his father because of concerns about his welfare, but it made no application to remove him from his father's care.

27. On 19th August 2019, I granted the local authority a second extension by which to file a care and support plan and a pathway plan, this time to 6th September 2019.

28. On 6th September 2019, the local authority filed a third witness statement from the social worker, Jackie Davies. It stated that an assessment of ND had not taken place due to challenges caused by a lack of engagement by ND. The local authority also submitted that if ND was found to lack capacity, the court was invited to authorise a deprivation of liberty in a placement for ND away from his father. However, no such alternative placement was proposed and thus I could not consider making any such order.

29. Another witness statement was filed on 9th September 2019, by the social worker Lisa Williams. Ms Williams stated that she had been unable to complete a full assessment of ND because she had only met him on one occasion prior to his two-week holiday to Poland on 19th August 2019, despite the proceedings having been issued by the local authority in May 2018.

30. A fourth witness statement from Jackie Davies was filed on 19th September 2019. Ms Davies stated that ND should reside in a supported living placement, but it did not provide any proposed locations for such a placement. Ms Davies also stated that the local authority would seek my 'advice and guidance' on the steps to be taken next.

31. A final hearing was listed for 2nd October 2019. However, the final hearing could not go ahead, as final evidence had still not been provided by the local authority. I made an order granting permission to the parties to jointly instruct Mr Keith McKinstrie (independent social worker) to provide expert evidence including an assessment of ND's needs, a care and support plan, and a best interests assessment regarding ND's long term placement options. Having heard submissions, I determined that the cost of this expert report should be borne solely by the local authority. The local authority was to finalise the care and support plan by 7th October 2019.

32. The local authority, by way of update, on 7th October 2019, stated that they were unable to meet the deadline, but it would provide the care and support plan the following day.

33. A care and support plan was duly submitted by the local authority on 8th October 2019. However, it was once again inadequate, and at a hearing on 9th October 2019, I granted a third extension by which the local authority was to file a final care and support plan and pathway plan, this time to 11th December 2019.

34. At the pre-trial review on 27th November 2019, Mr McKinstrie, an independent social worker appointed by the court, stated that he was unable to prepare a care and support plan as directed because placement options had not been communicated to him by the local authority other than in generic form. I ordered that by midday on 12th December 2019, the local authority was to file its final evidence including a final care and support plan and a pathway plan.

35. On 3rd December 2019 an urgent application for a hearing was made by the Official Solicitor on the basis that the local authority had failed to implement the care and support plan that I had ordered on 27th November 2019.

36. In her second report of 9th December 2019 Dr Rippon was critical of some aspects of the care afforded to ND by the local authority. This opinion resulted in the third declaration sought by the Official Solicitor, as set out in paragraph 8(iii) above. In light of the concerns about the care afforded to ND at his previous residential unit and more recent events, I understood and agreed with the opinions expressed by Dr. Rippon.

37. On 16th December 2019, the local authority provided a care and support plan. Once again, however, it contained a litany of deficiencies, and was therefore inadequate.

38. At the final hearing on 17th December 2019, I declared that ND had capacity in all relevant areas in light of the opinions of Dr Rippon as set out in her report of 9th December 2019. It was recorded in the order dated 17th December 2019 that the local authority had failed to file a choate care and support plan and pathway plan in accordance with the order dated 27th November 2019, and without application to vary. I directed that the local authority file a final care and support plan by 7th January 2020. This was the fifth extension granted to them, over a six-month period.

The Law

39. The power of the Court of Protection to grant declaratory relief is outlined in section 15 of the 2005 Act:

> "Power to make declarations:
>
> (1) The court may make declarations as to –
>
> Whether a person has or lacks capacity to make a decision specified in the declaration;
>
> Whether a person has or lacks capacity to make decisions on such matters as are described in the declaration;
>
> The lawfulness or otherwise of any act done, or yet to be done, in relation to that person.
>
> (2) "Act" includes an omission and a course of conduct."

40. The Court of Protection Rules relating to costs are found in COPR Part 19. The general rule for cases relating to personal welfare, and the grounds for departing from the general rule, are set out at rules 19.3 and 19.5 respectively:

> "19.3 Where the proceedings concern P's personal welfare the general rule is that there will be no order as to the costs of the proceedings, or of that part of the proceedings that concerns P's personal welfare."
>
> "19.5 –
>
> (1) The court may depart from rules 19.2 to 19.4 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances including:
>
> (a) the conduct of the parties;
>
> (b) whether a party has succeeded on part of that party's case, even if not wholly successful; and
>
> (c) the role of any public body involved in the proceedings.
>
> (2) The conduct of the parties includes –
>
> (a) conduct before, as well as during, the proceedings;
>
> (b) whether it was reasonable for a party to raise, pursue or contest a particular matter;
>
> (c) the manner in which a party has made or responses to an application or a particular issue;
>
> (d) whether a party who has succeeded in that party's application or response to an application, in whole or in part, exaggerated any matter contained in the application or response; and
>
> (e) any failure by a party to comply with a rule, practice direction or court order.
>
> (3) Without prejudice to rules 19.2 to 194 and the foregoing provisions of this rule, the court may permit a party to recover their fixed costs in accordance with the relevant practice direction."

41. In relation to both declaratory relief and costs, I was referred to a number of authorities by counsel, which I will refer to whilst setting out their submissions below.

Submissions

Declaratory relief

42. In relation to declaratory relief, counsel for the Official Solicitor, Ms Sutton, submitted that should the court not be minded to grant declaratory relief in this case, it was

difficult to envisage circumstances in which it would. Ms Sutton referred me to *R (J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin) and the words of Munby J (as he then was) at paragraph 56:

> "56. What I should say is this. The fact that a child is uncooperative and unwilling to engage, or even refuses to engage, is no reason for the local authority not to carry out its obligations under the Act and the Regulations. After all, a disturbed child's unwillingness to engage with those who are trying to help is often merely a part of the overall problems which justified the local authority's statutory intervention in the first place. The local authority must do its best."

Accordingly, it was the Official Solicitor's case that difficulties encountered by the local authority in engaging with ND were no justification for not providing him with adequate care and support.

43. Further, Ms Sutton highlighted that the local authority were aware that the Official Solicitor had intended to rely upon Dr Rippon's report for the purpose of seeking declaratory relief, with it having been raised in the Official Solicitor's position statement, dated 16 December 2019, for the hearing on 17 December 2019. The local authority could, therefore, have sought to challenge Dr Rippon on her conclusions in her report, but did not do so. On that same point, Ms Sutton pointed to the letter of instruction to Dr Rippon which had been agreed with the local authority.

44. In response, I heard submissions from Mr Nuvoloni QC on behalf of the local authority. The crux of the local authority's case in relation to the declaratory relief sought, was that it had provided evidence and a schedule of findings sought earlier in these proceedings which demonstrated the context in which it was operating. An analysis of the context was necessary to make the findings of fact and to provide a clear evidential basis for the declarations sought to be made. Such analysis could only have been carried out by hearing evidence. The other parties had had the opportunity to have those factual matters examined but had not sought to do so, and thus the subsequent application for declaratory relief was an abuse of process.

45. Further, it was submitted on behalf of the local authority that ND's presentation and behaviour were already a cause for concern long before he had entered the care system, and that their evidence demonstrated an improvement in his social and hygiene presentation whilst in institutional care. It was submitted that the behaviour of ND complained of by ND's father had only become evident from July 2019, when ND returned to his father's care. Prior to that, the local authority had not been concerned with ND's behaviour given his improvements. It was submitted that the father had sought to undermine ND's placement and had failed to engage with the social workers, all whilst encouraging ND to do the same.

46. With regard to those sections of Dr Rippon's second report upon which the Official Solicitor relied for the declarations sought, Mr Nuvoloni QC highlighted the scope of the instructions to Dr Rippon. It was submitted that it was unclear what materials Dr Rippon had available to her when writing that report, and that should the court be minded to make declarations which rely upon Dr Rippon's comments, the local authority should be given the opportunity to test her evidence in cross-examination.

47. I was referred to the cases of *Re MN (Adult)* [2015] EWCA Civ 411, and *N v ACCG* [2017] UKSC 22; from the latter, I was referred to the judgment of Lady Hale and in particular the following:

> "40. The Court of Protection has extensive case management powers. The Court of Protection Rules do not include an express power to strike out a statement of case or to give summary judgment, but such powers are provided for in the Civil Procedure Rules, which apply in any case not provided for so far as necessary to further the overriding objective. The overriding objective is to deal with a case justly having regard to the principles contained in the 2005 Act (Court of Protection Rules 2007, rule 3(1)). Dealing with a case justly includes dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues and allocating to it an appropriate share of the court's resources (rule 3(3)(c) and (f)). The Court will further the overriding objective by actively managing cases (rule 5(1)). This includes encouraging the parties to co-operate with one another in the conduct of the proceedings, identifying the issues at an early stage, deciding promptly which issues need a full investigation and hearing and which do not, and encouraging the parties to use an alternative dispute resolution procedure if appropriate (rule 5(2)(a), (b)(i), (c)(i), and (e)). The court's general powers of case management include a power to exclude any issue from consideration and to take any step or give any direction for the purpose of managing the case and furthering the overriding objective (rule 25(j) and (m)). It was held in KD and LD v Havering London Borough Council [2010] 1 FLR 1393 that the court may determine a case summarily of its own motion, but their power "must be exercised appropriately and with a modicum of restraint".

48. Finally, the local authority submitted that given the court had already granted permission for ND to disclose the case papers to any legal professional he may wish to instruct for the purpose of bringing a claim against them under section 7 of the Human Rights Act 1998, in the circumstances of the case, it was inappropriate for declarations to be sought in this matter pursuant to section 15(1)(c).

49. In the response to the local authority's written submissions, as summarised above, Ms Sutton made a few further points in relation to declaratory relief:

    i) the possibility of ND bringing a section 7 claim had no bearing on whether declarations could or should be made in this matter;

    ii) notwithstanding that the pursuit of such declarations was not unusual at a final hearing, the local authority had in any event been given notice of the Official Solicitor's position regarding declaratory relief, at first instance at the advocates meeting on 13 December 2019, and thus due process was followed;

    iii) *Re MN (Adult)* [2015] EWCA Civ 411 did not apply to the facts at hand, as that case concerned parties framing best interest decisions as declaratory relief; and

iv) the absence of a hearing to determine the factual issues raised by the local authority was no barrier to the declarations sought, as it was patently clear, as a matter of fact, that the local authority had failed to provide choate plans.

50. It was conceded on behalf of the Official Solicitor that the third declaration sought could be viewed as opinion evidence, and as such it was proposed that, should the court take that view, the following alternate wording could be used:

> "Failing to support ND having regard to it's statutory duties under the Children Act 1989 and the Care Act 2014, which has caused ND to feel unsupported and reinforced his poor view of the local authority and resulted in ND being reluctant to engage with all professionals or seeking support should the need arise."

51. Mr Nuvoloni QC submitted in response that the alternative wording was still an unfair categorisation of the local authority's efforts to support ND, and that the declaration would still require a full analysis of the factual matrix upon which it was sought to be based.

Costs

52. On the subject of costs, Ms Sutton referred me to a number of well-known authorities.

53. In *London Borough of Hillingdon v Neary & Ors* [2011] EWHC 3522 (COP), Peter Jackson J, as he then was, set out that the process for considering making an order is a two-stage one: is a departure from the general rule justified? If so, what order should be made?

54. With regard to how to approach the order itself, Peter Jackson J rejected the approach of breaking down the proceedings into stages, preferring to look at the matter as a whole and using 'an approach that was as simple as possible'.

55. In *Manchester City Council v G & Ors* [2011] EWCA Civ 939, Hooper LJ stated that a court making a costs order should avoid detailed arguments and instead adopt a 'broad brush' approach to who pays what.

56. In *MR v SR & Bury Clinical Commissioning Group* [2016] EWHC EWCOP 54, Hayden J described the making of a costs order as 'an intuitive art reflecting the judge's feel for the litigation as a whole'.

57. I was also taken to a number of authorities to illustrate the circumstances in which courts have previously made costs orders. One was the abovementioned case of *Neary*, in which costs were awarded due to unlawful removal of P, a failure to carry out proper assessments or consultation, and delay in bringing proceedings.

58. Finally, I was taken to two cases from the Family Division in which the court's view on non-compliance with orders has been made clear:

i) In *Re W (A Child) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1177, the then President, Sir James Munby, referred to, at paragraph 51:

> "the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders…"

ii) In *A Local authority v DG & Ors* [2014] EWHC 63 (Fam), I condemned a failure to comply with case management directions in care proceedings, on a number of occasions, and said as follows:

> "43. The conduct of the parties in this matter and the wholesale failure to comply with case management directions is lamentable. Family practitioners must wake up to the fact that, whatever the difficulties presented by public funding issues and/or the pressure of work, the court will no longer tolerate the failure of parties to comply timeously with court orders. Those failures simply lead to unacceptable delays in the court proceedings which are wholly inimical to the welfare of the children involved."

59. Ms Sutton submitted that the local authority's decision-making lacked urgency, specificity and made no reasonable adjustments for ND's needs, and that it is impossible to ignore the disorganised thinking, planning and management that has caused delays in these proceedings. Examples given highlighted not just non-compliance with court orders, but the unnecessary time and resources wasted due to a lack of communication by the local authority, and their filing of documentation that was wholly insufficient.

60. The Official Solicitor's case was that an award of costs against the local authority now limited to her costs of the hearings on 17th December 2019 and 3rd August 2020 would be justified in the circumstances.

61. Mr McKendrick QC made the same submissions on behalf of the father and adopted the submissions made on behalf of the Official Solicitor.

62. Mr Nuvoloni QC, in response, referred to the following facts:

i) the local authority, upon receiving Dr Rippon's report from the Official Solicitor on 11th December 2019, confirmed via leading counsel that the conclusion as to capacity was unchallenged, and queried the need for the hearing on 17th December 2019;

ii) after the Official Solicitor had sought clarification from Dr Rippon of issues in her second report, which had been received and circulated on 13th December 2019, counsel for the local authority confirmed the same points again; and

iii) The local authority, on 16th December 2019, requested an adjournment due to difficulties in preparing its final evidence, however after I had approved the adjournment, I re-instated the hearing at the behest of the Official Solicitor.

63. Mr Nuvoloni QC submitted that the hearing on 17 December 2019 could have been avoided as all of the orders made could have been made by consent, and in relation to its final evidence, the local authority had mitigated against a waste of costs by applying for an adjournment of the hearing. Mr Nuvoloni QC also highlighted that the Official Solicitor only clarified her position on declarations on the morning of the hearing, necessitating continuation of the proceedings beyond that hearing.

64. It was also submitted that to allow costs to be recovered for work critically scrutinising a local authority's documentation goes too far, and would introduce a 'winner takes all' approach to Court of Protection proceedings that would go against the spirit of the costs rules.

Analysis

Declaratory relief

65. The declarations sought by the Official Solicitor are as follows: that the local authority acted unlawfully by:

    i) failing to provide ND with a choate pathway plan in accordance with its duties to ND as a relevant and now former relevant child under section 23 of the Children Act 1989;

    ii) failing to provide ND with a choate care and support plan in accordance with its duties under section 25 of the Care Act 2014 (to include identification of suitable accommodation) and court order; and

    iii) failing to support ND having regard to its statutory duties under the Children Act 1989 and the Care Act 2014, which caused ND to feel unsupported and reinforced his poor view of the local authority and resulted in ND being reluctant to engage with all professionals or seeking support should the need arise.

66. I propose to make the three primary declarations sought by the Official Solicitor for the following reasons:

    i) between June and December 2019, it was necessary for me to grant five extensions to the deadline for the local authority's final evidence, due to a series of non-compliance;

    ii) during that period, the local authority had submitted plans on a number of occasions, however it became a recurring theme that the evidence submitted was not fit for purpose. On one occasion, the local authority sought my 'advice and guidance' on the steps to be taken. I agree with the submission made on behalf of the Official Solicitor, that the court is not an 'advice centre'.

    iii) I accepted the submission of the Official Solicitor that the hearing on 17th December 2019 could have been avoided had the local authority complied with court orders;

    iv) I have in mind the words of then President, Sir James Munby, as well as my own words, in the case law cited by the Official Solicitor highlighting the importance of compliance with directions;

v) I am also persuaded by the case of *R (J) v Caerphilly County Borough Council* [2005] EWHC 586 (Admin) that the difficulties in ND's behaviour and his failure consistently to engage positively with the social workers do not justify or excuse the failures of the local authority referred to above; and

vi) whilst there may be occasions when a local authority is faced with difficulties and does all that it can to make progress, but to no avail, the difficulties faced by the local authority in this case are not sufficiently cogent reasons for their failure to have progressed the matter in a more satisfactory and timely manner.

67. I acknowledge the dictum of Lady Hale in *N v ACCG*, as cited by the local authority, which I have referred to in paragraph 46 above. However, I do not consider that a full fact-hearing hearing is or was required in order to obtain the necessary context in which to consider the declarations sought by the Official Solicitor. Given the clear pattern of non-compliance by the local authority, which I do not consider to be justified, I am content to make the declarations sought based upon what is already known. In particular, I am able to rely upon the recitals made in my previous orders, which document the local authority's repeated failure to comply with the court's directions.

68. I also acknowledge the local authority's submission that these proceedings should now be ended, given that there are no further welfare issues to be determined and that ND can, if he so wishes, pursue a claim against the local authority under section 7 of the Human Rights Act 1998. However, that submission does not recognise the reality that the very purpose of section 15(1)(c) is to give this court the power to make such declarations as those sought by the Official Solicitor, and that power is not fettered by the option of a party seeking such findings via an alternative route. Furthermore, I am able to make the declarations sought without the need for any further hearings for the reasons set out above.

Costs

69. I have taken full account of the authorities to which I was referred. However, given my findings in relation to declaratory relief, which are contrary to the case advanced by the local authority, I am satisfied that there are cogent reasons which justify me from departing from the usual rule on costs, namely an order for no costs should be made.

70. I have had regard, in particular, to COPR r. 19.5(2)(a) & (e) in relation to the conduct of this local authority and its failures to comply with court orders. I am satisfied for the reasons which caused me to make the declarations against the local authority that I should award costs against the local authority in favour of the Official Solicitor and the Third Respondent father. I shall order that their respective costs shall be subject to a detailed assessment, if not agreed.

Conclusion

71. I am satisfied that the facts of this case warrant and justify me making the declarations sought by the Official Solicitor against the local authority as set out in paragraphs 64(i)-(iii) above.

72. I am also satisfied that I should make a costs order against the local authority in favour of the Official Solicitor and the Third Respondent occasioned by the hearings on 17th

December 2019 and 3rd August 2020. I will therefore make the order as submitted in draft form by Ms Sutton.

73. For the avoidance of any doubt, I recognise the very real challenges presented by ND and his father in working with the social workers on the ground. I do not doubt the professionalism and dedication of the social workers allocated to this case. Nevertheless, for a concatenation of reasons, ND was failed by this local authority.