



Neutral Citation Number: [2021] EWHC 61 (Fam)

Case No: MA20P02172/NR18C01387

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 19 January 2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

Salford City Council
- and -

Applicant

W
-and-

First
Respondent

X
-and-

Second
Respondent

Y and Z
-and-

Third and
Fourth
Respondents

B, C, D, E and F
(Children acting through their Children's Guardian)

Fifth to Ninth
Respondents

Ms Ruth Cabeza (instructed by **Manchester City Council**) for the **Applicant**
Ms Lorraine Cavanagh QC and **Ms Niamh Ross** (instructed by **Fosters Solicitors**) for the
First Respondent

The Second Respondent did not appear and was not represented
Ms Elizabeth Isaacs QC and **Ms Yvonne Healing** (instructed by **Kenneth Bush Solicitors**)
for the **Third and Fourth Respondents**

Ms Caroline Leggeat (instructed by **Alfred Newton Solicitors**) for the **Fifth to Ninth**
Respondents

Hearing dates: 18 December 2020

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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. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 19 January 2021.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with the welfare of B, born in July 2009 and now aged 11, C, born in October 2012 and now aged 8, D, born in May 2011 and now aged 9, E, born in September 2014 and now aged 6 and F, born in April 2016 and now aged 4. The children are represented at this hearing through their Children’s Guardian, by Ms Caroline Leggeat of counsel.
2. There are at present three applications before the court with respect to the children. The first is an application for care orders pursuant to s.31 of the Children Act 1989, first issued on 20 December 2018 by Norfolk County Council. The second is an application by the mother of the children, Ms W, for a prohibited steps order pursuant to s. 8 of the Children Act 1989. The third is an application by the maternal aunt and putative special guardian of the children, Mrs Z, for a declaration under the inherent jurisdiction of the High Court regarding the children’s legal status for the purposes of Part III of the Children Act 1989.
3. The local authority now having conduct of the care proceedings in respect of the children is Salford City Council, represented by Ms Ruth Cabeza of counsel. The mother of the children is represented by Ms Lorraine Cavanagh of Queen’s Counsel and Ms Niamh Ross of counsel. The children’s father is Mr X. He does not appear before the court and is not represented. The children’s putative special guardians, Mrs Z and her husband, Mr Y, are represented by Ms Elizabeth Isaacs of Queen’s Counsel and Ms Yvonne Healing of counsel. The children have been in the care of Mrs Z and Mr Y since June 2017.
4. All parties agree that the placement with Mrs Z and Mr Y should continue and that the final order that best meets each of the children’s welfare is a special guardianship order in favour of Mrs Z and Mr Y. However, prior to the making of a special guardianship order the mother seeks an order prohibiting Mrs Z from giving effect to her stated intention to have each of the children take the sacraments of initiation in the Roman Catholic faith of Baptism, Confirmation and Holy Communion and the healing sacrament of Reconciliation (as included in the seven sacraments given by the Council of Florence (1439) and reaffirmed by the Council of Trent (1545–1563), the others being the healing of the sick, marriage and the taking of Holy Orders). The mother’s application for a prohibited steps order is opposed by Mrs Z and Mr Y and the Children’s Guardian. The local authority takes a neutral stance on that application.
5. Further, in circumstances where the local authority does not accept that the children are ‘looked after’ by it for the purposes of Part III of the Children Act 1989 and, thus, that it has no consequent obligation to pay remuneration to Mrs Z and Mr Y as former local authority foster carers pursuant to Reg. 7 of the Special Guardianship Regulations 2005, Mrs Z seeks a declaration under the inherent jurisdiction of the High Court that a duty on the local authority (or one of its predecessors) under s. 20(1) of the 1989 Act arose in respect of the children and thus that the children have been ‘looked after’ for the purposes of Part III of the 1989 Act. All parties submit that the court has jurisdiction to make such a freestanding declaration under its inherent jurisdiction notwithstanding that the application for a declaration claims no other remedy in the proceedings in which it is sought. However, the local authority submits that the court should not exercise that

jurisdiction, the appropriate forum for the determination of that issue being the Administrative Court.

6. Within the foregoing context, at this stage of the proceedings concerning the children the court is required to determine the following questions:
 - i) Is it in each of the children's best interests for the court to make a prohibited steps order pursuant to s. 8 of the Children Act 1989 prior to, or upon the making of a special guardianship order pursuant to s.14 of the Children Act 1989 prohibiting Mrs Z from allowing the children to take the Roman Catholic initiation sacraments of Baptism (the sacrament of initiation into the faith signifying freedom from original sin), Confirmation (the sacrament of initiation serving to confirm and strengthen a baptised person in their faith), Holy Communion or Eucharist (the sacrament of initiation signifying partaking of Christ's sacrifice on the cross) and the healing sacrament of Reconciliation (also known as Confession or Penance) until they are aged 16 years old and may decide for themselves their religious preferences?
 - ii) In the context of issues arising in this case with respect to the payment of financial support following the making of a special guardianship order, does the court have jurisdiction to make a freestanding declaration that the children were 'looked after' by one or more local authorities that have been engaged with the family within the meaning of Part III of the Children Act 1989 and, if so, should this court exercise that jurisdiction in preference to that issue being determined in the Administrative Court, that question having been left open by the Court of Appeal in *Re B* [2013] EWCA Civ 964?

BACKGROUND

7. As I have noted, the mother of the children is Ms W (hereafter, 'the mother'). The mother is of Romany heritage and of Welsh descent. The father, X, is of African heritage. The mother follows the protestant Pentecostal faith. The children have not been baptised into that faith, but the mother contends that the children were raised in the Pentecostal faith when in her care. Whilst the mother also now contends that the children should be able to choose their own religious path when older, in her statement dated 19 June 2020 the mother states that, but for the children being removed from her care, it had been her intention to christen the children in the Pentecostal faith.
8. The children first came to the attention of children's services in Suffolk in August 2009. This followed a referral from the police concerning a disagreement that had taken place between the parents. Thereafter, further referrals were received from health professionals regarding the mother's level of cognitive functioning. The involvement of Suffolk County Council in the welfare of the children, the precise nature and extent of which involvement remains in issue, continued over a number of years. During this period, significant evidence of neglect was noted, including the children being unsupervised outside, poor home conditions, lack of money and food and issues with housing. In addition, it was alleged that the maternal grandfather, a convicted sex offender, was being permitted contact with the children.
9. The involvement of Suffolk with the children continued for an extended period. On 11 September 2013 the mother and children were reported to be homeless. Suffolk

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undertook further assessments in June 2014 and August 2014 and convened a Child in Need meeting on 18 September 2014. On 27 September 2014 B, C, D and E were made the subject of Child in Need plans by Suffolk. Although Suffolk closed the case in January 2015, in April 2016, following the birth of F, Suffolk completed a further statutory assessment of the children.

10. In 2017 the mother entered a relationship with a male who exhibited mental health and anger management difficulties. Within this context, Suffolk received a high number of further referrals regarding the mother's partner's anti-social behaviour and aggression. On 10 April 2017 E, then aged 2 years old, was found by police to be wandering half a mile away from the family home. On 28 April 2017 a referral was made to Suffolk by the NSPCC regarding anonymous concerns that had been received concerning the alleged neglect of the children, their lack of supervision, a report of a baby being slapped, drug use and the children being left alone in the family home with unknown men. It was also reported to the NSPCC that the children had to walk to school alone and exhibited aggressive behaviour. Within this context, on 28 April 2017 Suffolk commenced a yet further assessment of the children and they were again made the subject of Child in Need plans.
11. Notwithstanding the implementation of Child in Need plans, the concerns with respect to the children continued. The mother and her partner were reported to have mental health issues and concerns were expressed regarding the aggressive behaviour of the mother's partner in front of the children. On 24 June 2017 D was found alone and distressed in the street. The police made a further referral to Suffolk. In June 2017 arrangements were made for the children to live with the putative special guardians, Mrs Z and Mr Y, and the children moved into their care in Salford. The manner in which those arrangements were made remains in dispute.
12. During August 2017, the mother sought the assistance of Suffolk to return the children to her care. The children's father contacted Suffolk objecting to such a course of action and supporting the children remaining with Mrs Z and Mr Y. On 23 August 2017 Suffolk requested a welfare check at the home of Mr Y and Mrs Z, which check demonstrated no welfare concerns in respect of the children. On 22 September 2017 Suffolk informed Salford City Council that the children had moved into Salford's area. Suffolk authorised the payment of £150 to Mr Y and Mrs Z for the purchase of school uniforms for the children. On 22 November 2017 the mother and father met with social workers from Suffolk. At that meeting the mother agreed to the children remaining in the care of Mrs Z and Mr Y. The father requested that the children return to his care. In February 2018 Salford City Council informed Mrs Z and Mr Y that the mother was again seeking the return of the children. Mr Y also contacted Suffolk for advice in February 2018.
13. In April 2018 the mother's partner committed suicide shortly after the mother had found out that she was pregnant with her sixth child. A pre-birth assessment of the mother was undertaken by Norfolk County Council, the mother having by that time moved to Norfolk. The child, G, was removed from the mother's care immediately following his birth and made the subject of an interim care order.
14. On 19 December 2018, Norfolk was informed that B, C, D, E and F were again in the care of the mother and the maternal grandmother, the mother claiming that the placement with Mrs Z and Mr Y had only ever been intended as a temporary

arrangement. As a result, on 20 December 2018 Norfolk issued care proceedings under Part IV of the Children Act 1989 with respect to the four elder children but requested that the court grant child arrangements orders in favour of Mrs Z and Mr Y. On 21 December 2018 the four elder children and F were made the subject of child arrangements orders in favour of Mr Y and Mrs Z.

15. There was a significant and unfortunate delay in transferring the proceedings from the Family Court sitting at Norwich to the Family Court sitting at Manchester. On 2 May 2019 Salford City Council commenced an assessment pursuant to s.37 of the Children Act 1989 in respect of the children pursuant to a prior order made by the Family Court sitting at Norwich. It identified no safeguarding concerns with respect to the children at that time. At a hearing on 9 May 2019 the proceedings were formally transferred to the Family Court sitting at Manchester, and Salford City Council became the designated local authority for the children by consent, with Norfolk being discharged as a party to the proceedings. In September 2019 Salford applied for permission to amend the original application for care orders.
16. The children remain placed with Mrs Z and Mr Y. It is accepted by all parties that the children are thriving in the care of Mrs Z and Mr Y and that there remain no safeguarding concerns with respect to the placement. The court has the benefit of a special guardianship assessment dated 20 December 2019 and an addendum to that assessment dated 18 March 2020. As I have noted above, Salford contends that the family do not meet the criteria for mandatory means tested financial support as former foster carers under Reg 7 of the Special Guardianship Regulations 2005 on the grounds that the children have not at any point been ‘looked after’. In addition, Salford contends that Mrs Z and Mr Y do not meet the criteria for discretionary means tested financial support in any event by reason of a failure to provide information sufficient to enable a financial assessment to take place.
17. Mrs Z is of Irish Romany heritage. Mr Y is of Romany heritage and of Welsh descent. Within the context of mother’s application for a prohibited steps order in the terms I have described, it is also necessary to note that Mrs Z is a devout and practising Roman Catholic (it is clear also from the papers that she comes from a family who are similarly devout Roman Catholics). Mrs Z considers that her Roman Catholic faith is a fundamental aspect of her life and her culture and wishes to involve the children in all aspects of her faith. Mr Y is not Roman Catholic but, rather, describes himself as a “Christian following a Protestant religion”.
18. Whilst the children have been in the care of Mr Y and Mrs Z they have attended Catholic church on a weekly basis and have been involved in all aspects of church life, which participation Mrs Z asserts is considered to be part of culture of both the immediate and extended family. The family celebrates all religious festivals. The children have also been taken by Mrs Z on spiritual trips to Lourdes and to Medjugorje in Bosnia Herzegovina. The children light a candle and pray the Rosary each evening. Mrs Z asserts that the children consider themselves to be Roman Catholics and carry holy medals and crosses around their necks. As will be seen, Mrs Z’ evidence concerning the nature and extent of the children’s involvement with the Catholic faith is corroborated by both the allocated social worker and the Children’s Guardian.
19. The court has before it a statement dated 16 December 2020 which details what Mrs Z and Mr Y contend has been a difficulty in enrolling B in a local Roman Catholic high

school. In particular, they contend that it has not been possible to meet the school's admissions criteria in circumstances where B does not have a Roman Catholic baptismal certificate. Mrs Z is concerned that the same difficulty will face C, D, E and F. Mrs Z further asserts that Roman Catholicism is the religious system the children are familiar with and participate in, and that were they not to be able to take Holy Communion this would risk them feeling left out with respect to the rest of the family and to feelings of not belonging to the community in which they live and will continue to live.

20. With respect to the views of the children themselves, in her most recent statement Mrs Z contends that the children consider themselves as devoted Roman Catholics and have done so since they came into the care of Mrs Z and Mr Y in 2017. Mrs Z further contends that the children live in close proximity to other children who are equally devoted to the Roman Catholic faith and who have already taken Holy Communion. Mrs Z contends that the children have been asking her why they cannot take their Holy Communion. With respect to the wishes and feelings of the children, Mrs Z also informed the Children's Guardian that when the subject of the children choosing their own religious path was raised with them by Mr Y and Mrs Z the children expressed that they enjoyed attending the Roman Catholic church.
21. As I have noted, Mrs Z's assertions are corroborated by what the children have told their social worker and their Children's Guardian. In her statement the allocated social worker, Nicola Jamieson, notes that the children each wear a cross around their neck, being a gift from Ms Z's mother and purchased whilst on a pilgrimage, and that these have been proudly displayed by the children to the social worker during home visits. The social worker further relates that the children have each been spoken to and each has voiced clearly that they enjoy prayer and that they all wish to take their Holy Communion. All were seen by the social worker to present as very proud of their Catholic faith. The social worker further notes that the faiths followed by Ms Z and by the mother are both socially accepted, with no aspects of the lifestyle choices consequent upon either of those religions impacting on the welfare of the children.
22. B informed the previous Children's Guardian, Ms Ward, that his current church is very important to him and that he and the other children want to go to the church. When asked how he would feel if he was not able to take Holy Communion, he stated that he would be upset and that everybody wants to do it together. Each of the other children expressed to Ms Ward the view that their religion was important, and each demonstrated to Ms Ward that they participate in daily religious observance.
23. The new Children's Guardian, Ms Parker, reiterates that each of the children identify as Roman Catholic. With respect to the children's up to date wishes and feelings, Ms Parker records that:
 - i) B, D and C stated that, by reason of the current COVID-19 restrictions, they go on FaceTime and pray together for about an hour each Sunday. B stated that they all take it in turns on the video to do their prayers.
 - ii) B, D and C explained their understanding of what happens during a baptism and also during Holy Communion. B described baptism as receiving holy water on your forehead and that's when you become one of God's children.

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- iii) The children are already aware of how they are perceived differently in the Roman Catholic church to their aunt and other relatives. They cannot receive the Holy Communion during the church service. They do receive a blessing from the Priest, but they stand in a separate line from their extended family and cross their arms to show that they are not baptised.
 - iv) The children have each expressed to the social worker and to Ms Parker a desire to be baptised. Ms Parker is confident from her discussions with the children and the reports filed in these proceedings that the children understand what this entails and what will change for them as a result of baptism. The children also spoke positively about their pilgrimage to Lourdes with Ms Z.
24. Within the foregoing context, Ms Ward concludes as follows in her report dated 22 July 2020:
- “I recommend that the children continue to practice the Roman Catholic Faith and no restriction by way of a Specific Issue Order (*sic*) is made to prevent this. Exclusion from this faith or prevention from progressing through the identified rites of passage in my opinion would create exclusion and segregation from their family and community. Any restrictions placed on their current and future religious practices could lead to a detrimental impact on the children’s emotional wellbeing. Any restriction could undermine the care arrangements given their carers are devout Catholics and the relationships surrounding them. Should the children not be baptised into the Roman Catholic Faith they will not be able to participate in mass as they would not take the sacrament of communion.”
25. Ms Parker reaches the same conclusion with respect to the question of the mother’s application for a prohibited steps order as Ms Ward. Ms Parker opines that the stability afforded to the children by their current placement will be undermined if they are unable to continue their active participation in the Roman Catholic faith, particularly given Ms Z’s own devout beliefs and how integral her religion is to her day to day life. In particular, Ms Parker considers that the fact that the children cannot receive Holy Communion during Mass and, instead, receive a blessing from the Priest, standing in a separate line from their extended family and crossing their arms to show that they are not baptised, in and of itself marks the children as outwardly different to their family and may cause them emotional distress when they are participating and otherwise enjoying their faith and associated practices. Ms Parker concludes that:
- “I respectfully recommend that the children are able to continue with their religious beliefs without restriction as the children are otherwise likely to experience segregation and exclusion within a faith that they proudly identify as belonging to.”
26. Finally with respect to the question of a prohibited steps order, both Ms Ward and Ms Parker express scepticism regarding the depth of the mother’s own religious commitment and her objections to the children taking the Catholic sacraments in circumstances where those objections are of relatively recent in origin and are made in the context of the mother having raised no objection at all to the children attending Catholic church for the past three years and being taken on pilgrimages. Within this context, I also note from the statement of the social worker that, when spoken to, the

mother did not provide any reasoning as to why she did not wish for the children to be baptised into the Roman Catholic faith.

27. Finally, with respect to the evidence before the court, I have before me a further statement from the allocated social worker and a statement from social worker Janette Toland which deal with the financial assessment of Mrs Z and Mr Y. The statements describe an initial financial assessment undertaken on 7 October 2019 as part of the special guardianship assessment and an updated assessment that was undertaken on 26 November 2019, which was further reviewed on 13 October 2020. The statement of Ms Toland makes clear that by reason of a lack of bank statements and evidence of previous self-employed income provided by Mrs Z and Mr Y the local authority has been unable to progress the DFES Standardised Financial Assessment and, accordingly, has been unable to progress a claim for financial support.
28. As I have set out above, within the foregoing context, the two issues that now arise for determination at this hearing are (a) whether it is in each of the children's best interests for the court to make a prohibited steps order pursuant to s. 8 of the Children Act 1989 prohibiting Mrs Z from allowing the children to take the initiation sacraments of the Roman Catholic faith and the healing sacrament of Reconciliation, and (b) does the High Court have jurisdiction to make a freestanding declaration that the children were looked after by one or more local authorities for the purposes of Part III of the Children Act 1989 and, if so, should this court exercise that jurisdiction in preference to that issue being determined in the Administrative Court?

SUBMISSIONS

Application for a Prohibited Steps Order

29. As I have noted, the mother contends that it is in each of the children's best interests for a prohibited steps order to be made prior to or at the time a special guardianship order is made in favour of the putative special guardians prohibiting Ms Z from allowing the children to take the Roman Catholic initiation sacraments of Baptism, Confirmation, Holy Communion and the healing sacrament of Reconciliation until they are aged 16 years old and may decide for themselves to change their religion. The mother relies on the following submissions by Ms Cavanagh and Ms Ross:
 - i) In circumstances where the children do not currently attend Roman Catholic schools, their current peer group will not move on to Roman Catholic schools and thus the failure to attend such a school will be unlikely to cause disruption for the children in terms of their peer group friendships in the future.
 - ii) The mother has no objection to the children attending church, taking part in Roman Catholic religious festivals and attending a Catholic school. The children will thereby be enabled to participate in the life and cultural practices of their family and community without any risk of them being alienated from either.
 - iii) There is no evidence that the failure of the children to receive the Roman Catholic sacraments to date has inhibited their enjoyment of family life or participation in the family's religious practices. There is likewise no evidence before the court to demonstrate that not receiving the Roman Catholic

sacraments will cause the children emotional harm. The assertion that the children “might” suffer such harm is not sufficient.

- iv) Within the context of Mr Y describing himself as a “Christian following a Protestant religion”, there is no evidence that Mr Y’s choice of religion has inhibited or disrupted family life or family relationships within what is in reality already an inter-denominational household. Within this context, Ms Cavanagh and Ms Ross submit that this demonstrates that Mr Y and Mrs Z can accommodate differing religious views. They further point to the fact that the impetus for the children to take the sacraments of the Roman Catholic faith is coming from Mrs Z rather than Mr Y, the children’s biological relative.
- i) The Special Guardianship Regulations 2005 evidence a particular focus on the cultural and religious heritage of children, requiring a Special Guardianship Assessment Report to address (a) the child’s religious persuasion (including details of baptism and confirmation), (b) the religious persuasion of the child’s parents, (c) the wishes of the child regarding their religious and cultural upbringing, (d) the wishes of the parent regarding the child’s religious and cultural upbringing, (e) the extent to which the putative special guardian is willing to follow the wishes of the child or his or her parents in respect of religious and cultural upbringing. A special guardianship order seeks, by contrast to an adoption order, to ensure that a child is raised in the context of a parents’ views and beliefs.
- ii) Within this context, decisions regarding the religious upbringing of a child are fundamental in nature. The participation in the sacraments of the Roman Catholic faith will have the effect, potentially, of constructing a lifelong philosophical narrative for each of the children. In any event, the effect of taking the sacraments is profound and permanent, with excommunication from the Roman Catholic church being the only mechanism by which the children could subsequently leave the Roman Catholic faith if they so choose.
- iii) Within this context, the court must consider the welfare of the children now, throughout the remainder of their minority and into and through adulthood. The receipt of the Roman Catholic sacraments will initiate the children into a particular faith and thereby set a directive and prescriptive path inherently incompatible with allowing the children to make their own choices regarding the nature and extent of their religious observance as they mature and thus premature. A decision to permit the children to choose their own religion in due course would reflect a mainstream view and would be to act as a “judicial reasonable parent”.
- iv) The receipt of the Roman Catholic sacraments will initiate the children into a particular faith not shared by either of their parents and introduce an element of philosophical difference between the parents and the children. The mother will, under a special guardianship order, remain a parent of the children with an important role in the children’s lives and her Pentecostal faith will remain a part of their religious and cultural heritage.

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- v) Within this context, in this case the court must bear in mind that the children have a mixed cultural heritage, will maintain a relationship with their mother and that the mother will continue to practise her religion.
 - vi) With respect to the wishes and feelings of the children regarding their religious upbringing, decisions of the gravity with which the court is concerned in this case “are not routinely hung on the peg of the wishes and feeling of the older children nor treating them as a homogenous group”. The children are each too young to make fundamental decisions about their future spiritual lives.
30. In her statement of June 2020, the mother further asserts that the children would not be accepted by her family or their father were they to take the initiation sacraments of the Roman Catholic faith. The mother asserts that in her culture this would not be an acceptable course of action and the children would thereby have no contact with the rest of their family. There is no evidence before the court to support this contention, which contention is denied by Mrs Z.
31. Whilst Mrs Z and Mr Y initially argued that the court could not make a prohibited steps order restraining the exercise of parental responsibility by a Special Guardian in matters of religion that argument is, sensibly, no longer pursued by Ms Isaacs and Ms Healing. Within this context, in opposing the mother’s application for a prohibited steps order in the terms she seeks, Mrs Z and Mr Y rely on the following submissions made by Ms Isaacs and Ms Healing:
- i) Under the orders agreed by all parties, Mr Y and Mrs Z will be caring for the children not as private foster carers but as special guardians, with the concomitant exclusive parental responsibility with respect of the children in their care. Parents and carers with parental responsibility are entrusted with the welfare decisions concerning the children in their care and this extends to deciding the nature and extent of a child’s religious observance without interference from the State.
 - ii) It is the impact on the *children* of the making or not making of a prohibited steps order and not the impact on the mother or her beliefs that is important. Within this context, the practical and psychological implications for each of the children of any restriction on Roman Catholic sacraments of initiation would be detrimental to their welfare.
 - iii) With respect to practical implications, in the absence of the Roman Catholic sacraments of initiation, one or more of the children may not be admitted to a Catholic school where a school had more Catholic applicants than available spaces (the evidence before the court being that the Roman Catholic school to which B sought admission requires a Baptismal Certificate for five of the nine criteria applied when places are oversubscribed).
 - iv) With respect to the psychological implications, in circumstances where the sacrament of Baptism is the rite of admission to the Roman Catholic faith (see *Catechism of the Catholic Church*, 2nd ed. Vatican: Libreria Editrice Vaticana, 2012, 1233-1234 and 1253), Confirmation is the rite completing initiation into the Catholic Church (see *Catechism of the Catholic Church*, 2nd ed. Vatican: Libreria Editrice Vaticana, 2012, 1285, 1302-1303 1306) and Holy Communion

is the rite by which a person fully enjoys the holistic, fulfilling and universally recognised experience of the Catholic faith (see *Catechism of the Catholic Church*, 2nd ed. Vatican: Libreria Editrice Vaticana, 2012, 1244), there is a very real potential for the children to become alienated from their local community if they are unable to receive the sacraments.

- v) Within this context, it is highly likely that the children would be treated differently, and would feel differently, from other children in their community, at school and at Sunday School as a direct consequence. The children would also not be able to participate fully in events with the immediate family that cares for them and would be excluded from benefiting from ceremonies that are a fundamental part of the history and culture of the family that cares for them, including the sacrament of marriage in a Roman Catholic church.
 - vi) In the foregoing circumstances, to restrict the children from participating in the crucially important rites of passage into the Roman Catholic faith is likely to cause emotional and psychological harm to the children now and in the future by reason of them perceiving that they are different to, or in part excluded from the family that is caring for them.
 - vii) In addition, to restrict the children from participating in the crucially important rites of passage into the Roman Catholic faith would render the mother's consent to the children attending church, taking part in Roman Catholic religious festivals and attending a Catholic school meaningless.
 - viii) The process of initiation into the Catholic Church contains well-defined and universally understood steps to ensure that no child commits to a life of faith without understanding, awareness and knowledge. A child is not able to take Holy Communion without first having been Baptised and the common age for a child to take their first Holy Communion is between the ages of 7 and 9 years old. Within this context, the preparation for the taking of Holy Communion will ensure that the children are able to understand the importance and relevance of the sacrament.
 - ix) Within the foregoing context, there is a high responsibility on the Court not to impose such the restriction sought by the mother without good cause.
32. The Children's Guardian likewise submits, through Ms Leggeat, that Mrs Z should be permitted to raise the children in the Roman Catholic faith and relies on the following submissions:
- i) It is a course that accords with the clearly expressed wishes and feelings given by the children, based on their experience over the course of the past two and a half years in the care of Mrs Z and Mr L.
 - ii) To prohibit the children from taking the Roman Catholic sacraments could lead to the children being excluded from full involvement of the activities of their immediate family with whom they reside and from the wider community which follows the same religious practices.

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- iii) The children have attended the Roman Catholic church throughout the time they have lived with Mr Y and Mrs Z. Were the children not to be permitted to continue this practice, this would represent a significant change in each of the children's lives.
 - iv) Should the children not be permitted to progress in the Roman Catholic faith they will be unable to consistently practise and develop the religion and religious practises they have become familiar with and have no carer who actively practises any alternative religion.
33. The local authority adopts a neutral position with respect to the mother's application for a prohibited steps order. On behalf of the local authority, Ms Cabeza notes that the children wish to be part of the same religious culture as their peers and partake of the same religious rituals, and that there is a concern expressed by professionals that they if they are not able to do so they will be socially isolated within their extended family and peer group, although there is no evidence that this has occurred during the course of the placement to date.

Jurisdiction to grant Declaration as to Looked After status

34. All parties submit that the High Court has jurisdiction to make a freestanding declaration that the children were looked after by one or more local authorities for the purposes of s.20(1) of the Children Act 1989 notwithstanding that the application for a declaration does not claim any other relief. The parties, however, differ as to whether it is appropriate for the court to exercise that jurisdiction in this case.
35. On behalf of Mr Y and Mrs Z, Ms Isaacs and Ms Healing submit that the question of fact as to whether the children were looked after for the purposes of s. 20(1) of the Children Act 1989 is a matter that relates to the upbringing and welfare of the children in circumstances where that question impacts on the nature and extent of support the children's carers will receive under the auspices of a special guardianship order. Accordingly, Ms Isaacs and Ms Healing submit that the question of whether or not to make a declaration to this effect falls properly to be considered by this court when determining whether or not to make the children subjects of special guardianship orders, in circumstances where the application for special guardianship orders cannot properly be determined without the court being clear as to what support Miss Z and Mr Y will receive under the Special Guardianship support plan. Within this context, Ms Isaacs and Ms Healing further submit that this court dealing with the question of a declaration would avoid delay caused by what they characterise as satellite litigation in the Administrative Court on an issue that is of direct relevance in the proceedings before this court.
36. On behalf of the mother, Ms Cavanagh and Ms Ross submit that it is plain that declarations of fact are not limited to the issues of status dealt with by Part III of the Family Law Act 1986 and can encompass the existence of other facts, relying on the observations of Peter Jackson J (as he then was) in *L v M (Application by Non-Biological Mother)* [2015] 1 FLR 674 at [36]. Within this context, Ms Cavanagh and Ms Ross submit that the court is properly seized of the question of whether, as a matter of fact, the children were looked after in circumstances where the court is required to scrutinise the Special Guardianship Support plan. They further submit that if the court were to make a declaration that the children were 'looked after', Salford would be

required to review its decision that Mr Y and Mrs Z do not qualify for financial support and, thus, that an application for judicial review of Salford's prior decision that Mr Y and Mrs Z do not so qualify would be premature. Finally, Ms Cavanagh and Ms Ross submit that had Mrs Z and Mr Y Z applied pursuant to section 7(1) (b) Human Rights Act 1998 for a declaration against the local authorities that it was unlawful within the meaning of an Art 8 not to treat the children as 'looked after' there could be no dispute that this court would be properly seized of that issue and the application for declaration of fact is, in substance, the same. Within the foregoing context, Ms Cavanagh and Ms Ross submit that dealing with the application for a declaration in these proceedings would be consistent with the overriding objective in FPR Part 1 and with the timescales for the children.

37. On behalf of the local authority, Ms Cabeza submits that whilst it is plain that the court has the power to make a freestanding declaration regarding the children's legal status having regard to the terms of s.19 of the Senior Courts Act 1981, that issue is more appropriately dealt with in the Administrative Court where the court would be able to deploy, with respect to what are administrative actions, the wider range of remedies provided by s.31 of the Senior Courts Act 1981. Ms Cabeza further points out that in this case the financial assessment undertaken by the local authority indicates that Mr Y and Mrs Z do not in any event meet the criteria for financial support within the context of a special guardianship order in circumstances where they have failed to provide the information necessary to determine whether the criteria are fulfilled.
38. On behalf of the children, Ms Leggeat submits that this court has the power to make a declaration regarding the children's current legal status under the inherent jurisdiction. As to whether the court should exercise that power in this case, Ms Leggeat helpfully drew the attention of the court to the decision of the Court of Appeal in *Re B* [2013] EWCA Civ 964, in which the Court of Appeal was concerned with a case in which the subject child was being cared for by her paternal grandparents under an interim residence order and the financial support available to the grandparents depended upon whether or not the child was looked after. In *Re B* Black LJ (as she then was) held as follows at [6]:

“[6] What should have happened is that the grandparents should have challenged [the local authority's] refusal to pay them a fostering allowance in the Administrative Court by way of judicial review proceedings. An alternative possibility, although we did not hear argument about whether this route would have been appropriate, may have been for an application to be made in the High Court under its inherent jurisdiction for a declaration that K is a looked after child.”

THE LAW

Application for a Prohibited Steps Order

39. The court has power to grant a prohibited steps order pursuant to s.8 of the Children Act 1989 to prevent the changing of a child's religion (see *M v H (Education Welfare)* [2008] 1 FLR 1400). A prohibited steps order must be grounded in objective evidence. In considering whether to grant a prohibited steps order pursuant to s.8 of the Children Act 1989 the best interests of each child are the court's paramount consideration and the court is required to consider the welfare checklist contained in s 1(3) of the Children

Act 1989 and the no order principle contained in s.1(5) of the 1989 Act. As Munby LJ (as he then was) noted in *Re E (Education: Religious Upbringing)* [2013] 1 FLR 677 at [27]:

“Evaluating a child’s best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child’s welfare and happiness or relates to the child’s development and present and future life as a human being, including the child’s familial, educational and social environment, and the child’s social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach. As Thorpe LJ once remarked *In re S (Adult Patient: Sterilisation)* [2001] Fam 15, 30), ‘it would be undesirable and probably impossible to set bounds to what is relevant to a welfare determination.’”

40. In *Re C (A Child)* [2014] 1 WLR 2182 at [15] Ryder LJ (as he then was) observed as follows with respect to the gravity of the decision to make a prohibited steps order against a holder of parental responsibility:

“[15] A prohibited steps order is a statutory restriction on a parents exercise of their parental responsibility for a child. It can have profound consequences. On the facts of this case, without commenting on the wisdom of any step that either parent took or intended to take when they were already in dispute, and in the absence of an order of the court, the father had the same parental responsibility as mother in relation to his son. Once the order was made, he lost the ability to exercise part of his responsibility and could not regain it without the consent of the court. That is because a prohibited steps order is not a reflection of any power in one parent to restrict the other (which power does not exist) it is a court order which has to be based on objective evidence. Once made, the terms of section 8 of the Children Act 1989 do not allow the parents to relax the prohibition by agreement. It can only be relaxed by the court. There is accordingly a high responsibility not to impose such a restriction without good cause and the reason must be given. Furthermore, where a prohibition is appropriate, consideration should always be given to the duration of that prohibition.”

41. Within this context, and in the particular circumstances of this case, it is further important to recall the key features of the special guardianship regime that all parties agree should, ultimately, be utilised in this case in each child’s best interests, the effect of a special guardianship order in terms of the nature and extent of the parental responsibility such an order confers on a special guardian and how such an order relates to an existing prohibited steps order.
42. With respect to the key relevant features of the special guardianship regime, it is important to note, as Wall LJ did in *Re S (A Child)(Adoption Order or Special Guardianship Order)* [2007] 1 FLR 819, the contents of the Government White Paper published in December 2000 entitled *Adoption: A New Approach* (Cm 5017) articulating the intended purpose of a special guardianship order:

“Special guardianship’

5.8 Adoption is not always appropriate for children who cannot return to their birth parents. Some older children do not wish to be legally separated from their birth families. Adoption may not be best for some children being cared for on a permanent basis by members of their wider birth family. Some minority ethnic communities have religious and cultural difficulties with adoption as it is set out in law. Unaccompanied asylum-seeking children may also need secure, permanent homes, but have strong attachments to their families abroad. All these children deserve the same chance as any other to enjoy the benefits of a legally secure, stable permanent placement that promotes a supportive, lifelong relationship with their carers, where the court decides that is in their best interests.”

43. Within this context, in *Re S (A Child)(Adoption Order or Special Guardianship Order)* at [41]Wall LJ (as he then was) summarised the main feature of the special guardianship regime as (a) giving the carer clear responsibility for all aspects of caring for the child or young person, and for making the decisions to do with their upbringing, (b) providing a firm foundation on which to build a lifelong permanent relationship between the carer and the child or young person, (c) preserving the legal link between the child or young person and their birth family, and (d) allowing proper access to a full range of support services including, where appropriate, financial support.
44. With respect to these key features of the special guardianship regime, on behalf of the mother, Ms Cavanagh and Ms Ross submitted that a special guardianship order is intended to go further than simply preserving the *legal* link between the child or young person and their birth family and is intended also to preserve something of the children’s heritage and cultural and religious inheritance. Ms Cavanagh and Ms Ross cite a number of authorities in support of this submission, namely *Birmingham City Council v R* [2007] 2 WLR 1130, *Re MJ (Adoption Order or Special Guardianship Order)* [2007] 1 FLR 691, *Re AJ (Adoption Order or Special Guardianship Order)* [2007] 1 FLR 507, *Re L (Special Guardianship: Surname)* [2007] 2 FLR 50 and *Re T (A Child: Refusal of Adoption Order)* [2020] 3 FCR 558. However, having considered each of these authorities, it is plain that the *primary* emphasis of each is on the need to determine the application on the basis of each child’s welfare needs and not to embark lightly on the making of such an order in light of the order preventing the exercise by the parents of their parental responsibility, rather than on the preservation of the children’s heritage and cultural and religious inheritance as being a key function of a special guardianship order.
45. In seeking to demonstrate that the special guardianship regime is intended to go further than simply preserving the legal link between the child or young person and their birth family by preserving something of the children’s heritage and cultural and religious inheritance as it existed prior to the making of the special guardianship order, Ms Cavanagh and Ms Ross further rely on the Special Guardianship Regulations 2005. Upon receipt of written notice of intention to make an application pursuant to s 14A(7) of the Children Act 1989 or a request from the court pursuant to s.14A(9) of the 1989 Act, the local authority must prepare a report on the suitability of an applicant for a special guardianship order and any other matters prescribed by the Secretary of State or which the local authority considers relevant. Pursuant to s 14A(11) of the Act, the court may not make a special guardianship order unless it has received the report. The

matters the local authority must include in the report are set out in Reg 21 of the Special Guardianship Regulations 2005 as amended by Special Guardianship (Amendment) Regulations 2016 and include the following with respect to the issue of religion:

- i) Schedule 1 Paragraph 1(e) of the 2005 Regulations as amended requires the report to detail the child's religious persuasion, including details of baptism, confirmation, or equivalent ceremonies.
- ii) Schedule 1 Paragraph 2(j)(ii) of the 2005 Regulations as amended requires the report to identify each parent's religious persuasion.
- iii) Schedule 1 Paragraph 3(a)(iii) of the Regulations as amended requires the report to detail the wishes and feelings of the children with respect to their religious and cultural upbringing.
- iv) Schedule 1 Paragraph 3(b)(ii) of the Regulations as amended requires the report to detail the wishes and feelings of the parents with respect to the religious and cultural upbringing of the children.
- v) Schedule 1 Paragraph 4(w) of the 2005 as amended requires the report to deal with whether the prospective special guardian is willing to follow any wishes of the child or his parents in respect of the child's religious and cultural upbringing.

46. However, whilst the 2005 regulations make plain that information regarding the children's religious and cultural upbringing is important and must be included in the report that is placed before the court pursuant to s 14A(8), I am not satisfied that the those regulations are designed to, or do demonstrate that the special guardianship regime is thereby intended to ensure the approach of the special guardian to the children's religious upbringing aligns with that taken prior to the making of the special guardianship order. Rather, the purpose of the regulations is simply to identify the children's welfare needs with respect to, *inter alia*, their religious and cultural upbringing, including the wishes and feelings of the children and their parents in respect of the same and the ability of the prospective special guardians to meet that welfare need, as a means of assisting the court in discharging its duty to decide whether a special guardianship order is in each child's best interests.

47. With respect to the effect of a special guardianship order in terms of the nature and extent of the parental responsibility, such an order confers on a special guardian, s.14C of the Children Act 1989 provides as follows regarding the entitlement of a special guardian to exercise parental responsibility to the exclusion of any other person with parental responsibility, save for another special guardian:

“14C Special guardianship orders: effect

(1) The effect of a special guardianship order is that while the order remains in force—

- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and

(b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Subsection (1) does not affect—

(a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or

(b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may—

(a) cause the child to be known by a new surname; or

(b) remove him from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.

(5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—

(a) each parent of the child with parental responsibility; and

(b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

(6) This section is subject to section 29(7) of the Adoption and Children Act 2002.”

48. With respect to effect of s.14C(1)(b) on the parental responsibility of a parent upon the making of a special guardianship order, in *Re L (Special Guardianship: Surname)* [2007] 2 FLR 50 at [33] Ward LJ noted that:

“It is apparent to me that the special guardian can trump the exercise of parental responsibility by a parent. The Local Authority have no parental authority and never have had in this case. Often a SGO will replace an existing care order and then by virtue of s. 91(5A) of the Children Act 1989 the SGO discharges the care order. All of this sits comfortably with the philosophy which lies behind the introduction of this new form of order. It is

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intended to promote and secure stability for the child cemented into this new family relationship. Links with the natural family are not severed as in adoption but the purpose undoubtedly is to give freedom to the special guardians to exercise parental responsibility in the best interests of the child. That, however, does not mean that the special guardians are free from the exercise of judicial oversight.”

49. Some months prior to the decision of the Court of Appeal in *Re L (Special Guardianship: Surname)*, in *Re S (A Child)(Adoption Order or Special Guardianship Order)* at [87], Wall LJ (as he then was) described a parent’s parental responsibility as being “effectively and largely neutered” by the operation of a special guardianship order.
50. As to effect of a pre-existing prohibited steps order on a special guardianship order, s. 14B(1)(b) of the Children Act 1989 makes clear that an order made under s.8 of the Children Act 1989, including a prohibited steps order, will survive the making of a special guardianship order, subject to the court having power to vary or discharge that order before the making of a special guardianship order. Section 14C(1)(b) further makes clear that the exercise of parental responsibility by a special guardian to the exclusion of any other person with parental responsibility is subject to the terms of any other order in force in respect of the children under the Children Act 1989, again including a prohibited steps order.
51. Finally, where the court is considering granting a prohibited steps order with respect to the question of the children’s *religious* upbringing, the following principles of general application must be borne in mind by the court.
52. In *Re E (Education: Religious Upbringing)*, Munby LJ, as he then was, articulated the relevant general principles as follows in a long passage that it is useful to set out in full:

“[35] Religion – whatever the particular believer’s faith – is not the business of government or of the secular courts, though the courts will, of course, pay every respect to the individual’s or family’s religious principles. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, after all, demands no less. The starting point of the common law is thus respect for an individual’s religious principles, coupled with an essentially neutral view of religious beliefs and a benevolent tolerance of cultural and religious diversity.

[36] It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are “legally and socially acceptable” (Purchas LJ in *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, 171) and not “immoral or socially obnoxious” (Scarman LJ in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244) or “pernicious” (Latey J in *Re B and G (Minors) (Custody)* [1985] FLR 134, 157, referring to scientology).

[37] The Strasbourg jurisprudence is to the same effect. Article 9 of the European Convention provides as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The protection of Article 9 is qualified in two ways. In the first place, the Convention protects only religions and philosophies which are “worthy of respect in a ‘democratic society’ and are not incompatible with human dignity”: see *Campbell and Cosans v United Kingdom* (No 2) (1982) 4 EHRR 293, [36]. I mention the point only for completeness; it plainly does not arise in this case, because the parents’ beliefs are in each case clearly worthy of respect. Secondly, whilst religious belief and thought are (subject to that overriding qualification) given absolute protection by Article 9(1), the “manifestation” of one’s religion in “worship, teaching, practice and observance” is subject to the qualifications referred to in Article 9(2).

[38] The important point for present purposes is that the Convention forbids the State to determine the validity of religious beliefs and in that respect imposes on the State a duty of what the Strasbourg court has called neutrality and impartiality: see, for example, *Moscow Branch of the Salvation Army v Russia* (2006) 44 EHRR 912, [58], where the court said that:

“The State’s duty of neutrality and impartiality ... is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs.”

[39] Within limits the law – our family law – will tolerate things which society as a whole may find undesirable. A child’s best interests have to be assessed by reference to general community standards, making due allowance for the entitlement of people, within the limits of what is permissible in accordance with those standards, to entertain very divergent views about the religious, moral, social and secular objectives they wish to pursue for themselves and for their children. We have moreover to have regard to the realities of the human condition, described by Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, [50]:

“... society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare

children all the consequences of defective parenting. In any event, it simply could not be done.”

[40] Where precisely the limits are to be drawn is often a matter of controversy. There is no ‘bright-line’ test that the law can set. The infinite variety of the human condition precludes arbitrary definition.

[41] Some things are nevertheless beyond the pale: forced marriages (always to be distinguished of course from arranged marriages to which the parties consent), female genital mutilation and so-called, if grotesquely misnamed, ‘honour-based’ domestic violence. Plainly, as I wish to emphasise, we are not here in that territory.

[42] Some aspects of even mainstream religious belief may fall foul of public policy. A recent striking example is *Westminster City Council v C and others* [2008] EWCA Civ 198, [2009] Fam 11, where this court held on grounds of public policy that a ‘marriage’ valid under both Sharia law and the *lex loci celebrationis*, despite the manifest incapacity of one of the parties, was not entitled to recognition in English law. Again, I emphasise, we are not here in that territory.

[43] Some manifestations of religious practice may be regulated if contrary to a child’s welfare. Although a parent’s views and wishes as to the child’s religious upbringing are of great importance, and will always be seriously regarded by the court, just as the court will always pay great attention to the wishes of a child old enough to be able to express sensible views on the subject of religion, even if not old enough to take a mature decision, they will be given effect to by the court only if and so far as and in such manner as is in accordance with the child’s best interests. In matters of religion, as in all other aspects of a child’s upbringing, the interests of the child are the paramount consideration.”

53. This is not a case in which the caveats set out by Munby LJ with respect to abhorrent practices and mainstream religious belief that falls foul of public policy arise. In this case the court is concerned with a conflict between two people who are, in all good faith, each following different mainstream religions, who are each entitled to their own beliefs and in respect of which beliefs there is no question of immoral or socially obnoxious practices arising to threaten the welfare of the children. Within this context, the only relevance of religious difference relates to the impact (if any) on the child’s welfare of those differences in all the circumstances of the case (see *M v H (Education Welfare)* [2008] 1 FLR 1400 at [29] and [30]). As L’Heureux-Dube J noted in the Canadian case of *P v S* 108 DLR (4th) 287 at 317:

“[I]n ruling on a child’s best interests, a court is not putting religion on trial nor its exercise by a parent for himself or herself, but is merely examining the way in which the exercise of a given religion by a parent throughout his or her right to access affects the child’s best interests.”

54. In these circumstances, it is also useful to note the observations of Scarman LJ (as he then was) in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239 as to

the proper approach of the court where there is no question of either religion being detrimental to the welfare of the children *per se*:

“It seems to me that when one has, as in this case, such a conflict, all that the court can do is to look at the detail of the whole circumstances of the parents and determine where lies the true interest of the children.”

55. In considering the best interests of each of the children in accordance with the principle that their best interests are the court’s paramount consideration and the factors set out in s. 1(3) of the Children Act 1989, each of the children’s wishes and feelings fall to be considered in light of their respective ages and understanding. The concepts of thought, conscience and religion imply a capacity to understand, appreciate and engage rationally with competing ideas and beliefs and, ultimately, the capacity to exercise choice in respect of those ideas and beliefs. These faculties will be ones that develop and become more sophisticated as a child develops and matures during the course of childhood. In relation to matters of thought, conscience and religion, children will move along a continuum from relying on the direction and guidance provided by their parents or carers to, ultimately, having their own ideas and making their own choices about matters of religion and conscience. Within this context, the older the child becomes, the less likely it is that a prohibited steps order will be made against the wishes expressed by the child (*Gillick v West Norfolk and Wisbech Area Health Authority and Anor* [1986] 1 FLR 224 and see also the dissenting judgment of Justice Douglas in *Wisconsin v Yoder* (1972) 406 US 205). Within this context it is also of note that a prohibited steps order does not prevent the child him or herself from taking the steps that are the subject of a prohibited steps order.
56. As Munby LJ articulated in *Re E (Education: Religious Upbringing)*, Art 9 of the European Convention enshrines the right to freedom of thought, conscience and religion. International law does not establish a minimum age above which a person enjoys freedom of thought, conscience and religion. Art 9 of the ECHR guarantees freedom of thought, conscience and religion to “everyone”. Art 14 of the UN Convention on the Rights of the Child provides that States Parties shall respect the right of the child to freedom of thought, conscience and religion.
57. In the circumstances of this case, it is also important to note that the child’s experience of religion is very rarely, if ever, devoid of context. Rather, the child’s experience of religion occurs within the broader ethical, moral, spiritual, cultural and social framework of, and is embedded within, the values of family and community, which families and communities will often have a cohesive religious dimension. Within this context, children being socialised and nurtured into a religious faith is not uncommonly an integral part of their life with, and their connection to their immediate and extended family and their wider community.
58. Finally with respect to the case law, I note that in *Re J (A Minor)(Prohibited Steps Order: Circumcision)* [1999] 2 FLR 678 Wall J (as he then was) held that it is only in unusual circumstances that a court would require a child to be brought up in a religion which was not that of the parent with whom the child was residing.

Jurisdiction of the High Court to grant Declaration as to Looked After status

59. As noted above, in *Re B* [2014] 1 FLR 277 the Court of Appeal was seised of a matter in which the child was being cared for by her paternal grandparents under an interim residence order and the financial support available to the grandparents depended upon whether or not the child was looked after. As in this case, the grandparents' position was that the child was looked after and as such they were entitled to a fostering allowance. The District Judge at first instance, in a decision endorsed by the Circuit Judge on appeal, found that the children had been 'looked after' for the purposes of the Children Act 1989. Within this context, at [6] Black LJ (as she then was) held that the county court (as it then was) had no jurisdiction to make such a determination and observed as follows (emphasis added):

“[6] What should have happened is that the grandparents should have challenged [the local authority's] refusal to pay them a fostering allowance in the Administrative Court by way of judicial review proceedings. An alternative possibility, although we did not hear argument about whether this route would have been appropriate, *may* have been for an application to be made in the High Court under its inherent jurisdiction for a declaration that K is a looked after child.”

60. In deciding whether the High Court does have jurisdiction under its inherent jurisdiction to determine a freestanding application for a declaration that the children have been 'looked after' for the purposes of Part III of the Children Act 1989 where no other claim for relief is made and, if so, whether it is appropriate for the court to exercise that jurisdiction, it is important to be clear that the aspect of the court's inherent jurisdiction with which the court is concerned is *not* the inherent jurisdiction of the High Court in respect of children but, rather, the High Court's inherent declaratory jurisdiction (see *Egeneonu v Egeneonu* [2017] 4 WLR 100 at [18]).
61. Beginning with general principles, by s.16 of the Judicature Act 1873, the High Court of Justice was created as a superior court of record. At the commencement of that Act the jurisdiction that was vested in or capable of being exercised by certain courts of common law and equity and certain other courts was transferred to and vested in the High Court. Section 19 of the Senior Courts Act 1981 stipulates that the High Court shall be a superior court of record, which court can, subject to the provisions of the 1981 Act, exercise all such jurisdiction conferred on it by the 1981 Act or any other Act and all such other jurisdiction as was exercisable by it immediately before the commencement of the 1981 Act. Within this context, s. 19(2)(b) of the Senior Courts Act 1981 subsumes and incorporates the inherent jurisdiction of the High Court previously exercisable by the superior courts under common law. The general jurisdiction of the High Court as defined in s.19 of the 1981 Act is vested in all the Judges of the High Court, irrespective of the Division to which they are assigned.
62. With respect to the specific question of declaratory relief under the inherent jurisdiction, the court has a discretionary power under its inherent jurisdiction (as subsumed and incorporated into s. 19(2)(b) of the Senior Courts Act 1981) to grant declaratory relief. As between the parties to proceedings, the court may grant a declaration as to the rights of the parties, as to the existence of facts or as to a principle of law (see *Financial Services Authority v Rourke* [2002] C.P.Rep. 14 and *L v M (Application by Non-Biological Mother)* [2015] 1 FLR 674). When considering whether to grant a

declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose, and whether there are any other special reasons why or why not the court should grant the declaration (*Financial Services Authority v Rourke* [2002] C.P.Rep. 14). A declaration may be refused if it would prejudice the fairness of future proceedings (see *Amstrad Consumer Electronics Plc v The British Phonographic Industry Ltd* [1986] FSR 159).

63. Declarations are *generally* sought together with other forms of relief and claims for declarations without a claim for any other remedy in the proceedings in which the declaration is sought are unusual. Within this context I note that, whilst CPR r 40.20 provides that the court may make binding declarations whether or not any other remedy is claimed (unlike the prior rule articulated by RSC Ord. 15 r.16, CPR r 40.20 does not distinguish between binding declarations and binding declarations *of right*), CPR r 40.20 is not replicated in the Family Procedure Rules 2010. Notwithstanding this however, with respect to freestanding applications for declarations without a claim for any other remedy in the proceedings in which the declaration is sought, in *Egeneonu v Egeneonu* [2017] 4 WLR 100 at [18] and [19] Sir James Munby P, having regard to the decision of the Court of Appeal in *Rolls-Royce Plc v Unite the Union* [2010] 1 WLR 318 at [120], held that the court does have jurisdiction to make a declaration in such circumstances and, on the facts of that case, decided that that jurisdiction should be exercised:

“[18] The parties, the CPS, the Secretary of State and the advocate to the court are, correctly, agreed that I have jurisdiction. Mr Hames submits that I do not, but his argument, which I do not find convincing, assumes that the inherent jurisdiction in play in relation to this aspect of the matter is the inherent jurisdiction in respect of children whereas it is, in my judgment, the inherent declaratory jurisdiction which is here in issue.

[19] The more problematic question is whether I should exercise the jurisdiction, not least bearing in mind, first, that neither the CPS nor the Secretary of State is a party and that, accordingly, neither will be bound by any declaration I may make and, secondly, that the court is traditionally, and for good reason, slow to grant declaratory relief in relation to the criminal law. I am, none the less, persuaded, having regard to the principles set out by Aikens LJ in *Rolls-Royce plc v Unite the Union* [2009] EWCA Civ 387; [2010] 1 WLR 318, para 120, that I should exercise the jurisdiction. Given the stance being adopted by Mr Hames on behalf of the father, I have the benefit of rigorously adversarial argument. And, at the end of the day, and despite the scepticism expressed both by the advocate to the court and by Mr Hames, I can see advantage, as indeed do both the Crown Prosecution Service and the Home Office, in the court which has determined the question of contempt also deciding whether the contempt is civil or criminal. As Ms Patel put it in her skeleton argument for the hearing before Newton J on 10 March 2016, the mother can properly seek to invoke the adjudicatory powers of the convicting court to clarify whether any of the contempts in question were criminal rather than civil in nature. Mr Summers went even further, submitting that “only the convicting court is able to determine the issue.” Ms White expressed scepticism, which I share, as to whether this latter point can be right, and I make clear that this is not the basis of my decision to proceed.”

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64. In *Rolls-Royce Plc v Unite the Union* [2010] 1 WLR 318 Aikens LJ had set out at [120] the following principles (expressed in the context of a civil claim) with respect to applications for declarations without a claim for any other remedy in the proceedings in which the declaration is sought:

“[120] For the purposes of the present case, I think that the principles in the cases can be summarised as follows.

- (1) The power of the court to grant declaratory relief is discretionary.
- (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
- (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
- (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.
- (5) The court will be prepared to give declaratory relief in respect of a “friendly action” or where there is an “academic question” if all parties so wish, even on “private law” issues. This may particularly be so if it is a “test case”, or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
- (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
- (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue.”

65. Within the foregoing context, it is also important in this case to keep in mind the *purpose* for which the freestanding application for a declaration is made by Mr Y and Mrs Z in these proceedings (namely, to support their contention that they are entitled to financial support within the context of a special guardianship order and the local authority is wrong to refuse the same) and the consequential legal context of their application for a declaration pursuant to the inherent jurisdiction of the High Court.

66. Section 14F of the Children Act 1989 and the Special Guardianship Regulations govern the provision of special guardianship support services. Section 14F of the 1989 Act provides as follows:

“14F Special guardianship support services

- (1) Each local authority must make arrangements for the provision within their area of special guardianship support services, which means—

- (a) counselling, advice and information; and
- (b) such other services as are prescribed,

in relation to special guardianship.

(2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.

(3) At the request of any of the following persons—

- (a) a child with respect to whom a special guardianship order is in force;
- (b) a special guardian;
- (c) a parent;
- (d) any other person who falls within a prescribed description,

a local authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Secretary of State so provides in regulations, they must do so if he is a person of a prescribed description, or if his case falls within a prescribed description, or if both he and his case fall within prescribed descriptions).

(4) A local authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

(5) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person.

(6) If—

- (a) a local authority decide to provide any special guardianship support services to a person, and
- (b) the circumstances fall within a prescribed description,

the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.

(7) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.

(8) The regulations may in particular make provision—

- (a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

- (b) about the way in which a plan is to be prepared;
- (c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;
- (d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
- (e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
- (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);
- (g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area;
- (h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.

(9) A local authority may provide special guardianship support services (or any part of them) by securing their provision by—

- (a) another local authority; or
- (b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,

and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.

(10) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(11) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority in England under this section as it applies in relation to the exercise of functions of a local authority under Part 3 and see sections 164 and 164A of the Social Services and Well-being (Wales) Act 2014 for provision about co-operation between local authorities in Wales and other bodies.”

67. Within the foregoing statutory context, the Special Guardianship Support Regulations 2005 as amended stipulate that when financial support is available to special guardians the local authority is required to make an assessment of the relevant needs of special guardians and to make appropriate financial support available to them based on that assessment. In doing so the local authority must comply with the Special Guardianship

Guidance issued under s.7 of the Local Authority Social Services Act 1970. Where financial support is appropriate, the local authority is expected to consider the fostering allowance as the starting point and then make appropriate adjustments to it (see *R(TT) v London Borough of Merton* [2012] EWHC 2055 (Admin)).

68. Further, pursuant to Reg. 7 of the Special Guardianship Regulations 2005 financial support for special guardians *may* include an element of remuneration for former foster carers. It is within this context that the question of whether the subject child has been ‘looked after’ becomes relevant. Reg.7 of the 2005 Regulations provides as follows in this regard:

“7.— Remuneration for former foster parents

(1) Financial support under this Chapter may include an element of remuneration but only where the decision to include it is taken before the special guardianship order is made and the local authority consider it to be necessary in order to facilitate arrangements for a person to become a special guardian in a case where—

(a) the special guardian or prospective special guardian has been a local authority foster parent in respect of the child; and

(b) an element of remuneration was included in the payments made by the local authority to that person in relation to his fostering the child.

(2) But that element of remuneration ceases to be payable after the expiry of the period of two years from the making of the special guardianship order unless the local authority consider its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.”

69. Finally, in *Suffolk CC v Nottinghamshire CC* [2013] 2 FLR 106 the Court of Appeal considered the situation that should pertain with respect to special guardianship support where more than one local authority has been involved in the family. Delivering the leading judgment, Hedley J made two key points by way of conclusion, emphasising in particular the administrative nature of the provisions regarding special guardianship support:

“[29] The law both prescribes the incidence of responsibility and provides for a high degree of flexibility. If a child is a looked-after child then responsibility lies with that authority; if not, it lies with the authority in whose area the child resides. It is therefore of critical importance when a child is placed out of area to have regard as to whether a child should or will remain looked after (i.e. under an interim care order or accommodated) or not (i.e. under a residence order). At the same time the local authorities involved should co-operate from the earliest stage in deciding who will in fact execute the statutory duties that arise and who will fund that work. Local authorities have powers to make sensible arrangements between themselves wherever primary legal responsibility may in fact lie.

[30] The role of the court should also be carefully considered. Section 14F imposes duties on a local authority but it does not empower the family court to direct how or (in some aspects) even whether such duties are to be performed. Moreover the statute gives the court no power to make directions as to payment of money or provision of services. Of course judges may properly express views to local authorities and are entitled no doubt to expect that they will receive serious consideration (just as judges can and do express views about adoption and care plans) and of course it is only the judge who in the end can make the special guardianship order.”

DISCUSSION

Application for a Prohibited Steps Order

70. I have decided that it cannot be said to be in any of the children’s best interests to grant to the mother a prohibited steps order preventing Mrs Z from permitting the children to take the sacraments of the Roman Catholic faith. My reasons for so deciding are as follows.
71. The mother is correct that there is no evidence before the court that Mrs Z and Mr Y, the extended family or the children’s wider community has, to date, caused the children to be left out or excluded by reason of the fact that they have not taken the initiation sacraments of Catholicism. Further, I accept that were each of the children to take the sacraments of initiation into the Catholic faith this would have the effect of casting a profound link for the children to the Catholic Church and of constructing a potentially lifelong philosophical narrative for each of the children. I further accept that this has the potential to result in the children observing a religion and developing a philosophical outlook that is different to that of their mother and the father. However, notwithstanding these matters, I am satisfied that to prohibit Mrs Z from allowing the children to take the sacraments of initiation into the Roman Catholic faith would not be in their best interests having regard to all the circumstances of the case.
72. The evidence before the court demonstrates that the children have now participated regularly and with some enthusiasm and dedication in central aspects of the Roman Catholic faith, without objection from the mother, since 2017. In particular, they have attended church each Sunday, pray the Rosary and light candles each evening, wear the religious symbols associated with the Catholic faith and have accompanied Mrs Z on pilgrimages to Catholic holy sites. During the course of the lockdown consequent upon the COVID-19 pandemic the children have continued their religious observance in an amended form. Further, since being placed with Mrs Z and Mr Y, the children have been involved closely with both members of the extended family and their peers, who are likewise adherents to the Roman Catholic faith. Whilst objecting to the children taking the sacraments of initiation into the Roman Catholic faith, the mother takes no issue with the children’s continued informal attendance at a Catholic Church and their continued participation community events centred on that religion.
73. With respect to the family in which the children are now cared for, I accept that Mr Y follows a different religion to Mrs Z, and thus the family may be considered, on one level, multi-denominational. However, it is clear on the evidence before the court that, by virtue of Mrs Z’ devout Catholic faith, and that of her extended family, Roman Catholicism is by far the dominant religious philosophy within the household. The

evidence before the court further demonstrates, and clearly, that Catholic religious observance forms a significant element of the children's daily lives within the family and is part of the rhythms of family life. The evidence before the court further demonstrates that the socialising and nurturing of the children into the Catholic faith has been, and continues to be, an integral part of their involvement in, and of their connection with, the family of which they are now a part. Each of the children is demonstrably conscious of, and comfortable with this situation.

74. Within this context, the evidence before the court further demonstrates not only that the children have participated informally in the rituals and ceremonies of the Catholic faith at home, at church and within the community, but that each of the children has developed an understanding commensurate with their age of the formal rites of passage of that faith comprised by the sacraments, of the events that mark those rites of passage and of the importance of those rites of passage within the family and the community in which the children are being, and will be brought up. The evidence is likewise clear that the older children in particular understand that their peers in the community, with whom they live in close proximity and with whom they attend church, do not face the same limitations with respect to these rites of passage as they do currently and would continue to face were a prohibited steps order to be made. I accept the evidence that the older children have enquired why they too cannot take Holy Communion as their peers have done. B in particular has questioned why he has not been permitted to follow the rites of passage taken by his peers and family members. I accept the evidence of the Children's Guardian that each of the children is also aware that they are perceived differently at church by virtue of not having taken the sacraments of initiation. For example, the fact they are at present required to stand in a separate line for blessing in circumstances where they are not entitled to take Holy Communion during Mass.
75. Within the foregoing context, I am satisfied that now to seek to restrain the option of formal progression for each of the children within a religion that each has followed with dedication and enthusiasm since 2017 (again without objection on the part of the mother) by way of a prohibited steps order preventing Mrs Z from allowing the children to undertake the long established rites of passage initiating them into the Roman Catholic faith, and limiting their involvement to that of informal religious observance in stark contrast to the family and community of which they are now a part, would be antithetic to each of the children's best interests.
76. To adopt the formulation of Munby J (as he then was) in *Re E (Education: Religious Upbringing)*, evaluating the children's best interests in this case involves a welfare appraisal in the widest sense, taking into account a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to the children's welfare and happiness or relates to their development and present and future life as a human being, including the children's familial, educational and social environment, and the children's social, cultural, ethnic and religious community, is potentially relevant and must, where appropriate, be taken into account. Within this context rites of passage, by which an individual leaves one group and enters another via a ceremony or ritual, may be important and, in my judgment, are important in this case.
77. In this case the family with whom all parties are agreed it is in the children's best interests to live is one in which the children's passage into the Catholic faith is considered to be an integral part of family life and of the life of the community of which the family is a part. Within this context, were a prohibited steps order to be made in

the terms sought by the mother, the children would be denied the option of participating in formal rites of passage that are a fundamental part of the ethical, social, moral, religious and cultural outlook of the family that now cares for them. Whilst the rites of passage in issue in this case are within the sacred rather than the secular sphere, placing a prohibition on these rites of passage within a family in which the sacred plays such a central role would, in my judgment, inevitably impact on the ability of the children to perceive themselves as fully part of, and integrated into the family and community to which all parties agree they should now belong. Further, in so far as rites of passage involve a process of separation, liminality and incorporation, to act to prohibit the children from the rites of passage comprised by the initiation sacraments of the Roman Catholic faith at this stage, after the children have spent a significant period observing the Roman Catholic faith in the context of family and community life, would be to leave the children in an undesirable liminal state within their family and community, with the concomitant emotional burden of feeling different, separate or excluded therefrom. This would not be in any of the children's best interests.

78. The foregoing conclusions are clearly supported by the evidence before the court. The unchallenged evidence of the allocated social worker and of the Children's Guardian is that a prohibited steps order would, in the children's eyes, mark them as outwardly different to their community and the family of which they are now to be members and cause them to perceive themselves as different, segregated or excluded within that context. Both the allocated social worker and the Children's Guardian consider that this would risk significant confusion and emotional distress for each of the children in circumstances where the evidence demonstrates that each identifies strongly with Roman Catholic faith and the family and community to whom that faith is important, threatening the destabilisation of their placement by precluding them from continuing their full and active participation in one of the family's central activities. Further, in the particular circumstances of this case, these difficulties are exacerbated by two additional factors.
79. First, the terms of the prohibited steps order sought by the mother are inconsistent with the nature of the final order that all parties now agree it is in each of the children's best interests for the court to make, namely a special guardianship order in favour of Mrs Z and Mr Y. Whilst maintaining the *legal* link between the children and their parents, a key purpose of the order is to provide a firm foundation on which to build, and to promote a lifelong *permanent* relationship between Mr Y and Mrs Z and each of the children. It is plainly in each of the children's best interests that the special guardianship order achieves that aim in their respective cases. Within the context of the matters I have set out above, I am satisfied that making a prohibited steps order in the terms sought by the mother would fundamentally undermine the purpose of the special guardianship order. For the reasons I have set out above, the effect of such a prohibited steps order would be to place a sharp brake on the children's integration into the family at the very point the court seeks to signal, through the making of a special guardianship order, that the court considers that they are now fully part of the family that has been caring for them since 2017. This can hardly be said to promote and secure stability for the children as the court seeks to cement them into their new family relationships.
80. In this context, I am further satisfied that to make orders that have obviously incompatible aims would risk from the outset undermining the children's current

placement, particularly in circumstances where the central purpose of a special guardianship order is to confer parental responsibility on the special guardians to the exclusion of the parents. Parents and carers with parental responsibility are entrusted with the welfare decisions concerning the children in their care, including deciding the nature and extent of a child's religious observance without interference from the State where there is no danger or risk from religion or religious practice in question. The effect of a special guardianship order is to confer parental responsibility on the special guardians to the exclusion of the parents. Within this context, there is a heavy responsibility on the Court not to impose restrictions on the exercise of parental responsibility without good cause. In these circumstances, and absent any aspect of the family's religious practice posing a risk to the welfare of the children, to grant a special guardianship order whilst at the same time heavily prescribing the exercise of Mrs Z' and Mr Y's parental responsibility with respect to welfare decisions that play a central role in the lives of the children and the family of which they are members risks undermining that placement, as well as again sending an entirely mixed message to the children about their permanence and security within the family. Again, this can hardly be said to promote and secure stability for the children as the court seeks to cement them into their new family relationships.

81. Second, the making of a prohibited steps order in the terms sought by the mother would be inconsistent with the expressed wishes and feelings of the children. Mrs Z asserts that the children consider themselves to be Catholics. This evidence is corroborated by that of the Children's Guardian and the evidence of the allocated social worker. All of the children expressed desire to be baptised and each expressed a wish to take Holy Communion, B in particular expressing strong wishes in this regard. Each of the children manifests their religion by the wearing of religious symbols and, on the evidence of the allocated social worker and the Children's Guardian, consider themselves proud to do so. I am further satisfied that Mrs Z' evidence regarding the children's view of religion is also consistent with the extended period of relatively intense involvement with the religious observance of the family that the children have had over the course of nearly three years. I accept the evidence that each of the children has, commensurate with their age and understanding, expressed a clear wish to continue their daily observance of tenets of the Catholic religion.
82. B and C are each 11 years old. D is 9, E is 6 and F is 4. Whilst I am satisfied that the children's wishes and feelings are not determinative with respect to the question of whether they should be prohibited from taking the sacraments of initiation into the Roman Catholic faith, they do serve to reinforce the conclusions I have drawn above regarding the detrimental impact that granting a prohibited steps order in the terms sought by the mother would have on the children's welfare. To not only expose the children to the risk of them perceiving themselves as different, separate or excluded within their family and community, but to do so against the consistently expressed wish of each of the children to proceed with the formal rites of passage comprising the initiation sacraments of the Roman Catholic religion would, in my judgment, serve to further and significantly exacerbate the difficulties I have identified.
83. In reaching my conclusion on her application for a prohibited steps order I have, of course, paid careful regard to the religious wishes of the mother (per *J v C* [1969] 1 All ER 788). However, the mother's evidence in this regard is somewhat unsatisfactory. As noted by both the allocated social worker and the Children's Guardian, the mother's

stance with respect to the children's religious upbringing arose relatively late in the proceedings and is not grounded in any previous objection being raised to the children participating in observance of the Roman Catholic faith whilst placed with Mrs Z and Mr Y. Further, I accept the evidence of the social worker (which was not challenged) that the mother failed to articulate any reason why she considered that the children should not take the sacraments of Roman Catholicism. Whilst the mother now also contends that part of her rationale for seeking a prohibited steps order is in order to allow the children to choose their own religious path when older, that being, she asserts, the tradition in her family, in her statement dated 19 June 2020 the mother states that, but for the children being removed from her care, it had in fact been her intention to christen the children in the Pentecostal faith.

84. I have also borne in mind the mother's evidence with respect to the children's previous religious upbringing. In considering the matters under the welfare checklist in s 1(3) of the Children Act 1989 the child's 'background' for the purposes of s. 1(3)(d) may include the child's religion (see *Re M (Infants)* [1967] 3 All ER 1071 at 1074). The children have not been baptised into that faith, but the mother contends that the children were raised in the Pentecostal faith when in her care. However, there is little evidence to support this contention and even less to demonstrate that this led to the children observing that faith in the way they have now taken to doing with respect to Roman Catholicism. In any event, in *Re C (MA) (An Infant)* [1966] 1 ALL ER 838 the court made clear that even where a child had been baptised in a particular faith (which, again, is not the case with these children) does not mean that the court will order the child to be brought up in that faith. For the reasons I have given above, I am unable to accept the submission of Ms Cavanagh and Ms Ross that one of the primary functions of a special guardianship order is to ensure the child's previous religious heritage is preserved by the special guardians. Once again, the test is the child's best interests based on all the circumstances of the case.
85. For the foregoing reasons, I am satisfied that it is not in any of the children's best interests to make a prohibited steps order prohibiting Mrs Z from allowing them to take the initiation sacraments of Baptism, Confirmation and Holy Communion and the healing sacrament of Reconciliation. This conclusion is *not* to pronounce judgment on the relative merits of the Roman Catholic and Protestant religions. As noted by the French anthropologist Claude Lévi-Strauss' in *Race et histoire* ((1952) UNESCO, p.12) "no section of humanity has succeeded in finding universally applicable formulas...it is impossible to imagine mankind pursuing a single way of life for, in such a case mankind would be ossified". Rather, the decision of the court is the product of the evaluation of each of the children's best interests by reference to the matters set out in the welfare checklist in s 1(3)(a) of the Children Act 1989 and holding each of the children's best interests as the court's paramount consideration. For the reasons I have given, it would not be in any of the children's best interests to prohibit their further progression in the Catholic faith by restraining their participation in the formal rites of passage of that mainstream religion.

Jurisdiction to Grant Declaration as to Looked After status

86. Having regard to the authorities set out above, I am satisfied that the court does have jurisdiction under its inherent jurisdiction (as subsumed and incorporated into s.19 of the Senior Courts Act 1981) to grant a declaration as to the children's legal status. As between the parties to proceedings, the court may grant a declaration as to the rights of

the parties, as to the existence or facts or as to a principle of law (*Financial Services Authority v Rourke* [2002] C.P.Rep. 14 and *L v M (Application by Non-Biological Mother)* [2015] 1 FLR 674).

87. With respect to the further question of whether it is appropriate for this court to exercise that jurisdiction in this case, notwithstanding that the application for a declaration is made without claim for any other remedy in these proceedings, I have decided that, in the very particular circumstances of this case and subject to giving directions to ensure a fair hearing for Suffolk and Norfolk County Councils, it is appropriate for the court to consider and to determine the application for a freestanding declaration with respect to the legal status of each of the children even though that application is made without claim for any other remedy consequent upon that declaration. My reasons for so deciding are as follows.
88. Leading and junior counsel for Mr Y and Mrs Z and for the mother did not cite any authority for the proposition that an application for a declaration that a child is looked after, without a claim for any other remedy consequent upon that declaration, is an appropriate alternative in this case to an application in the Administrative Court for judicial review of the local authority's decision that Mr Y and Mrs Z do not meet the criteria for financial support (the question left open by the Court of Appeal in *Re B*). However, the following principles can be distilled from the case law I have summarised above with respect to applications for declarations without a claim for any other remedy in the proceedings in which the declaration is sought:
- i) When considering whether to grant a declaration or not, the court should take into account justice to the applicant, justice to the respondent, whether the declaration would serve a useful purpose, and whether there are any other special reasons why or why not the court should grant the declaration (*Financial Services Authority v Rourke* [2002] C.P.Rep. 14).
 - ii) A declaration may be refused if it would prejudice the fairness of future proceedings (*Amstrad Consumer Electronics Plc v The British Phonographic Industry Ltd* [1986] FSR 159).
 - iii) When considering whether to determine an application for a declaration without a claim for any other remedy in the proceedings in which the declaration (a) the power of the court to grant declaratory relief is discretionary, (b) there must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them, although the applicant does not need to have a present cause of action against the respondent, (c) each party must, in general, be affected by the court's determination of the issues concerning the legal right in question, (d) the court must be satisfied that all sides of the argument will be fully and properly put and must therefore ensure that all those affected are either before it or will have their arguments put before the court and (e) in all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised and, in answering that question, it must consider the other options of resolving this issue (*Rolls-Royce Plc v Unite the Union* [2010] 1 WLR 318 and *Egeneonu v Egeneonu* [2017] 4 WLR 100).

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89. Within this context, in this case it is in the interests of justice for both Mrs Z and Mr Y and the relevant local authorities to know with certainty what the children's legal status is and, accordingly, whether the same gives rise to legal obligations on the part of one or more of the relevant local authorities to Mrs Z and Mr Y. It is likewise in the interests of justice for any dispute regarding these matters to be determined expeditiously and in a manner consistent with the overriding objective to deal with matter expeditiously and fairly whilst saving expense and allotting the matter an appropriate share of the court's resources.
90. Within this context, in my judgment it can be said in this case that determining the application for a declaration in these proceedings would, notwithstanding that the application claims no other remedy, serve a useful purpose. The disputed legal status of the children would be clarified, thereby allowing Mrs Z and Mr Y and the local authorities concerned to proceed on a clear factual basis. Further, this court is already seised of proceedings in which the question that the application for a declaration will determine is relevant (namely the entitlement of Mrs Z and Mr Y to remuneration under Reg. 7 of the Special Guardianship Regulations 2005 upon a special guardianship order to be made). As noted in *Suffolk CC v Nottinghamshire CC* [2013] 2 FLR 106, whilst s. 14F of the Children Act 1989 does not empower the court to direct how or (in some aspects) even whether the local authority's duties under that section are to be performed, the court may properly express views to local authorities and are entitled to expect that they will receive serious consideration, it being only the judge who in the end can make the special guardianship order. The court will be in a better position to undertake such an exercise (if necessary) following the determination of the dispute as to the legal status of the children.
91. With respect to ensuring fairness, determination of the application would only proceed once this court has given Suffolk and Norfolk County Councils an opportunity to be heard in relation to it, in order to ensure that all those affected by any declaration granted upon the application of Mrs Z and Mr Y are either before the court or will have their arguments put before the court. The necessary evidence to determine the application is already largely before this court and directions can be given to secure any relevant evidence that is outstanding, the parties having already considered the directions required ahead of this hearing. Within this context, I am satisfied that the application for a declaration is capable of being dealt with fairly in these proceedings.
92. It is plain that there is a real and present dispute between the local authority and Mrs Z and Mr Y regarding the nature and extent of their entitlement to financial support with respect to the children. Further, and within this context, it is equally plain that Mrs Z and Mr Y and the local authorities concerned will be affected by the court's determination of the issues concerning the matters in issue between them, that determination informing the nature of the financial obligation of the latter to the former under the relevant regulations, subject to assessment as to extent.
93. Finally, the court must ask itself if the course proposed by Mrs Z and Mr Y and by the mother is the most effective way of resolving the issues raised. Given that (a) determining the application for a declaration in these proceedings would, notwithstanding that the application claims no other remedy, serve a useful purpose in circumstances where the issue of financial support is relevant to the issue of special guardianship that is before this court, (b) that these proceedings are already on foot with much of the material relevant to the determination of the application for a declaration

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already before this court, (c) that in the circumstances the determination by this court of the application for a declaration may avoid the need for further and expensive proceedings in the Administrative Court depending on the response of the parties to this court's decision and (d) this court dealing with the issue would thereby likely reduce delay and expense in a manner consistent with the overriding objective to deal with matter expeditiously and fairly whilst saving expense and allotting the matter an appropriate share of the court's resources I am, on balance, satisfied that this court hearing the application for a declaration is the most effective way of dealing with the issue.

94. In all the circumstances, notwithstanding that the application by Mrs Z and Mr Y claims no other remedy, and that issues of this nature are more commonly dealt with in the Administrative Court, I am satisfied that, in the particular circumstances of this case it is appropriate for the court to determine the application for a declaration under the inherent jurisdiction in the manner contemplated by the Court of Appeal in *Re B*. This decision does not alter the general position, recognised in *Re B*, that the appropriate forum for challenging a decision of the local authority of the kind that gives rise in this case to an application for a declaration under the inherent jurisdiction will ordinarily be by way of judicial review.

CONCLUSION

95. In conclusion, I dismiss the mother's application for a prohibited steps order pursuant to s.8 of the Children Act 1989. I will adjourn the application of Mrs Z and Mr Y for a declaration regarding the children's legal status and give directions to ensure the involvement in the determination of that application of Suffolk County Council and Norfolk County Council. I will ask counsel to draft an order accordingly.
96. That is my judgment.