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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**14/10/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

MS TA

First Respondent;

MR K

Second Respondent;

MR C

Third Respondent;

MR and MRS SB

Fourth and Fifth Respondent/Applicants.

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IN THE MATTER OF SAM AND LEAH (MINORS)
(RESIDENCE ORDER: DECLARATION: CONTACT ORDER)

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Mr Toner QC with Ms Davidson BL (instructed by DLS) for the Applicant
Mr Simpson QC with Ms Rountree BL (instructed by CMS Solicitors) for First Respondent
Ms O'Connor BL (instructed by Rafferty and Boyle) for the Second Respondent
Mr C appeared as a litigant in person
Ms O'Grady QC with Ms Murray BL (instructed by Wilson Nesbitt Solicitors) for the Fourth and Fifth Respondents/Applicants
Ms Smyth QC with Ms McCloskey BL (instructed by Macaulay Wray Solicitors) for the children instructed by the Guardian Ad Litem

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KEEGAN J

As this case involves two children I have anonymised it with the agreement of all parties. Nothing must be published which would identify the children or their families. The names I have given to the children are not their real names.

Introduction

[1] I have previously issued a judgment in this case which was delivered on 10 September 2018 and is reported at [2018] NIFam 12. In that judgment I was asked to decide the arrangements for two children Sam who is now aged 14 and Leah who is now aged 11. That was some time ago and at that stage matters were contested in relation to where the children should live. Ultimately, I decided that they should remain subject to care orders in the care of their grandparents with contact to their respective fathers. As I explained in that judgment this was an imperfect option and I anticipated at paragraph [81] as follows:

> "I expect that things may change in the next few years as the grandparents get older and the children get older and indeed as they have more contact with their fathers. That might lead to a natural realisation that a move should happen but that would be with the support of the adults which is infinitely preferable to an enforced scenario. It may be that the children could have a trial period in the fathers' jurisdiction in the future before a permanent move."

[2] I also raised concerns about the grandparents' abilities in my judgment at paragraph [82] where I said:

> "I harbour some reservations about the grandparents' ability to abide by contact but at least that is a known risk. I also am influenced by the fact that contact has continued albeit there have been hurdles put in the way. The children have been allowed to have some relationship with their fathers it has just not been the best it can be. The grandparents have been able to abide by arrangements particularly in the last number of months. That may be due to the spotlight of the court but nonetheless it shows that they are capable of putting aside their petty differences with the other adults when they have to. I am pleased that the summer went so well but much more contact needs to take place between the children and their fathers. This must involve longer periods of staying contact in

> the fathers' jurisdictions. I also consider that contact arrangements require some imagination going forward. This may be best achieved by the fathers having a conversation about the children having contact together in their respective households, introducing them both to the two jurisdictions and coming together in Northern Ireland."

[3] I indicated at paragraph [83] that there is also a high price to pay if the situation deteriorated because the court would have no option but to place the two children in care. But I said that I was going to give the grandparents a last chance to adhere to a plan and I was prepared to see if it worked for a period of time. I did say:

> "However, I should say that the grandparents are teetering on the edge of having these children removed from their care. The alternative of foster care would be a shocking result for these children given the number of adults available to them. The better alternative is paternal care which cannot be entirely ruled out but which is unrealistic at present due to the complications I have referred to above."

[4] In relation to the fathers, I pointed out that they needed to build up their relationship with the children and that full time care would be a possibility in the future for them. As it happens the situation on the ground has now changed as of July 2019. That is rather earlier than I expected. The current case has been explained to me through the evidence of Ms Danielle Dang who is the social worker.

The Evidence

[5] Ms Dang gave evidence as follows. On 17 June 2019 the maternal aunt contacted the social worker to advise that her mother (Mrs SB) had been admitted to hospital and was extremely unwell. The aunt advised that her mother was in the Intensive Care Unit and in a critical condition and that she had been feeling unwell and had difficulties with her chest. Subsequently, Mrs SB was admitted to hospital and contracted severe pneumonia and sepsis. The aunt advised that she would be able to stay with the family and provide support for as long as necessary. On 20 June 2019 the aunt contacted the social worker again to advise that she would be returning home to France due to her own personal circumstances. The aunt advised her mother was making slight progress and hospital staff were hoping to unsedate the grandmother and bring her out of unconsciousness.

[6] Following this, the social worker and the link worker undertook a home visit on 21 June 2019 to complete a supporting role assessment in respect of the family's neighbours. This was successful and the neighbours indicated that they were able to

provide some support to the family whilst Mrs SB recuperated. On 9 July 2019 the eldest child Sam went on a planned holiday to Malaysia for contact with his father. A further home care meeting took place on 12 July 2019 and a record is available. It records a conversation with the grandmother that the grandfather had made inappropriate comments about his wife. The grandmother had been having some incontinence issues and she has a hearing impairment and the grandfather made comments about this which were entirely derogatory. At this stage the grandmother stated to the home care worker that "he shouts at me all the time and he has hit me three times. I can't wait until I'm better to get out of here". This was put to the grandfather who subsequently became frustrated with the points made and made a comment that he wanted social workers to "take the weans, I never asked for this."

[7] On 15 July 2019 the grandmother made an allegation that her husband "hits and shouts at her." On 17 July 2019 the youngest child Leah was removed from the grandparents care due to concerns regarding the grandmother's physical health and allegations she had made to a care worker and the adult safeguarding team in respect of her husband. Between 23 July and 24 July 2019 the social worker and a senior social worker completed a planned visit to Malaysia to see Sam and assess the situation there.

[8] This all resulted in a decision-making Looked After Children Review ("LAC") which took place on 23 August 2019 to review the children's long term care plans. At that LAC the following decisions were made:

(1) Both children to remain in their father's care permanently.

(2) The grandparents will be closed to the Trust Kinship Team as no longer providing a placement.

(3) Financial assistance for Sam's school admission fees and a bed for Leah to be sought.

(4) Ms Dang will be visiting Leah in Scotland on a monthly basis.

(5) Weekly phone contact to occur as a minimum between Sam and Leah. Once per year direct contact to occur as a minimum between Sam and Leah. Once per year direct contact for the grandparents, Sam and Leah.

(6) A core group to occur in the near future to define contact details as they will place a financial burden on Sam's father.

(7) Trust will seek legal advice in regards to an Article 33 application and also to consider if care orders remained appropriate.

[9] This is the background to developments which led to a placement change for each child and Trust applications for an order under Article 33 of the Children Order (Northern Ireland) Order 1995 "The Children Order" to regularise the placement of the two children with their fathers. These applications are dated 2 October 2019. Subsequently the grandparents brought an application pursuant to the Human Rights Act 1998 ("The Human Rights Act) for relief due to the alleged unlawful actions of the Trust in moving the children from their care and in breach of their human rights. This application is dated 5 March 2020. Mr K also brought an application dated 9 October 2019 for a residence order in relation to Sam. A supplementary application for the same relief was brought by his partner and is dated 21 January 2020. Ms TA brought an application dated 29 January 2020 for residence of Leah. Mr and Mrs SB also brought an application dated 18 February 2020 for various forms of relief including discharge of the care orders/residence of Sam and Leah.

[10] I pause to observe the dizzying array of applications which is characteristic of the litigious nature of this case. Happily, matters have now resolved substantially which means that this case can conclude with a final outcome. This accords with the welfare principles in the Children Order and the need for proportionality in children's proceedings.

The Issues

[11] I have already said that I heard the evidence of the social worker in this case and having done so I was made aware of the reasons for the current applications. It is important to note that during the course of the hearing concessions were made which mean that I can deal with matters in rather shorter compass than in the first judgment. These concessions were as follows. Firstly, the grandparents agreed to withdraw their application to discharge the care orders in respect of the children and they agreed to residence orders being made in favour of each father. I consider that this was an entirely appropriate concession given the time that has passed in this case and the inevitability to this outcome given the grandparents own fragilities and the queries in relation to their relationship. The grandparents have therefore been well advised to take this course and avoid further litigation which was bound to fail. The second concession was made by the Trust which again I consider was entirely appropriate in that the Trust conceded a breach of the Article 8 procedural rights of the grandparents in this case and agreed that the court should make a declaration in relation to this. The mother Ms TA also withdrew her application for a residence order in relation to Leah. Therefore, the issues have narrowed considerably to these:

(i) In what terms the court should make a declaration.

(ii) Whether or not the court should make a costs order against the Trust.

(iii) Whether or not the court should award damages as claimed by the grandparents for breach of their human rights.

(iv) Whether or not the court should make the residence order in favour of Sam and Leah until aged 18.

(v) What contact arrangements should be put in place for the grandparents.

(vi) Whether or not the court should make any other order including a supervision order which is advocated by the grandparents.

Legal Context

[12] The relevant domestic legislation is The Children Order. These children were made the subject of care orders pursuant to Article 50 of the Children Order. The residence orders which are now agreed discharge the care orders and bring the case into the realm of private law. Article 9(6) of the Children Order which relates to residence orders and is relevant in this case:

> "No court shall make any Article 8 Order which is to have effect for a period which will end after the child had reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional."

[13] Article 3 of the Children Order contains the relevant welfare tests as follows:

> "(1) Where a court determines any question with respect to:
>
> (a) the upbringing of a child …. the child's welfare shall be the court's paramount consideration.
>
> ….
>
> (3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to –
>
> (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
>
> (b) his physical, emotional and educational needs;
>
> (c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that –

(a) the court is considering whether to make, vary or discharge an Article 8 Order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(aa) the court is considering whether to make an order under Article 7; or

(b) the court is considering whether to make, vary or discharge an order under part V.

(5) Where a court is considering whether or not to make one or more orders under this order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

[14] Two provisions are relevant in terms of Trust obligations when it is proposed a child in care should live outside Northern Ireland. The first is Article 52 which deals with the effect of a care order, and which in Article 52(7)(b) states that while a care order is in force with respect to a child, no person may remove him from the United Kingdom without the written consent of every person who has parental

responsibility for the child or the leave of the court. Article 52(8) provides that paragraph (7)(b) does not prevent the removal of such a child for a period of less than one month with the written consent of the authority in whose care he is or apply to the arrangements for such a child to live outside Northern Ireland governed by Article 33. Having considered this provision I am not convinced that it is the main problem given that the grandparents never had parental responsibility for these children and the other parents did not seem to object to the plans. However, Article 33 goes beyond Article 52 when permanent living arrangements are contemplated because court authorisation is required. Article 33 provides as follows:

> "[1] An authority may only arrange for, or assist in arranging for, any child in its care to live outside Northern Ireland with the approval of the court.
>
> [2] An authority may, with the approval of every person who has parental responsibility for the child, arrange for, or assist in arranging for, any other child looked after by the authority to live outside Northern Ireland.
>
> [3] The court shall not give its approval under paragraph [1] unless it is satisfied that:
>
> (a) living outside Northern Ireland would be in the child's best interests;
>
> (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
>
> (c) the child has consented to living in that country; and
>
> (d) every person who has parental authority for the child has consented to his living in that country.
>
> [4] Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian or other suitable person."

[15] Article 16 of the Children Order allows the Court to consider family assistance in certain circumstances:

> "(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring an authority to make a suitably qualified person available, to advise, assist and (where appropriate) befriend any person named in the order."

[16] In addition the provisions of the European Convention on Human Rights and the Human Rights Act. There was no dispute that Article 8 is engaged and that the grandparents have rights to family life with these children. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[17] The relevant provisions of the Human Rights Act are as follows:

> "**6. Acts of public authorities**
>
> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

Section 7 deals with proceedings:

> "**7. Proceedings**
>
> (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
>
> (b) rely on the Convention right or rights concerned in any legal proceedings,
>
> but only if he is (or would be) a victim of the unlawful act.

…

(5) Proceedings under subsection (1)(a) must be brought before the end of—

(a) the period of one year beginning with the date on which the act complained of took place; or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances."

Also relevant is Section 8 which deals with judicial remedies:

"**8. Judicial remedies**

(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the

> award of compensation under Article 41 of the Convention."

[18] Applying the foregoing legal provisions, I can make a residence order for each child until age 18 if the case is exceptional. The exceptional requirement is not defined and given family cases will obviously depend on the facts and there should be a degree of flexibility, see *Fergus & Marcail* [2017] NICA 71 and the views sought of all. In this case it is particularly important that the Guardian ad Litem supports the application in Leah's case. Sam's case is uncontroversial as he needs the order to be extended for his visa. In relation to the contact application, I will apply the welfare tests as set out above. In relation to a family assistance order, I require the consent of all parties.

[19] In the Court of Appeal decision of *S* [2014] NICA 73 provides some guidance in relation to the application of Article 33 (paragraphs 30-31) as follows and the issue of consent (paragraphs 43-44):

> "[30] We commence with two preliminary, albeit important, issues. First, it is relevant to note that Article 33 of the 1995 Order deals with "arrangements to assist a child to live abroad". Article 52, which deals with the effect of a care order, records at Article 52(7)(b) that while a care order is in force with respect to a child, no person may remove him from the United Kingdom without the written consent of every person who has parental responsibility for the child or the leave of the court. Article 52(8) provides that paragraph (7)(b) does not prevent the removal of such a child for a period of less than one month with the written consent of the authority in whose care he is or apply to the arrangements for such a child to live outside Northern Ireland governed by Article 33.
>
> [31] We are satisfied in this instance that the proposed arrangements for the child to be taken to Fresh Start in Dublin do constitute "living" arrangements. The child will reside there for some months and presumably be schooled, nourished and cared for in that establishment. In all respects she is "living" there. However, we observe that the Trust in future should be cautious in seeking to invoke Article 33 for arrangements which would merely involve e.g. very short hospital or medical treatment outside Northern Ireland.
>
> [43] A purposive construction must be afforded to this Article in the overall context of the 1995 Order. The

consent of the child needs to be contextualised and considered in all the circumstances of the application necessitating the case for removal. It cannot be entirely divorced from the circumstances dictating the removal of the child.

[44] In order to have a sufficient understanding of the nature of her consent which she is being asked to give, the child must have the capacity to understand the context in which she is withholding her consent. She has to be able to recognise and understand the views of experts that her continuing relationship with her mother is damaging her, that at some stage she will have to live in the world at large without her mother and that Fresh Start can help her to do this in circumstances where there is no other place in Northern Ireland which can provide such a solution."

Conclusion on the six issues

Issue (i)

[20] The draft declaration proposed by the Trust reads as follows:

"It is hereby declared that:

(1) The decisions taken by the respondent commencing on 18 July 2019 through to 23 August 2019 to remove the children from the care of the applicants were in breach of the applicants' rights to respect for their family life with the children pursuant to Article 8(1) of the European Convention for the Protection of Human Rights and the Children (Northern Ireland) Order 1995 and policy namely:

(i) The respondent's interim decision of 18 July 2019 became embedded into the respondent's decision-making process such that the respondent's decision of 23 August 2019 was flawed.

(ii) The respondent's failure to adhere to its own formal decision-making processes.

(iii) The respondent's failure to properly consult with the applicants.

(iv) The respondent's failure to properly or fully explain its decision and decision-making process to the applicants.

(v) The respondent's failure to properly consult with the applicants before reaching those decisions.

(vi) The respondent's failure to properly document its decision-making process."

[21] In the argument filed by the grandparents further points are made in relation to the decision-making process. Some of these are not material to the declaration. I consider that it was appropriate to take into account the disclosures made by the grandmother about the relationship with the grandfather. In my view there is evidence of significant tensions which impacted on their ability to care for these children. I do not believe that there was really any issue in relation to the lack of sustainability of this placement. It is entirely unrealistic to think that the children would be staying with their neighbours. The grandparents were clearly in a position of failing health and instability. Also, in the crisis situation that arose it was clearly not realistic to bring Sam back to Northern Ireland to have him returned to Malaysia.

[22] Different issues arise in relation to Leah. It seems to me there is merit in the argument that better enquiries should have been made about her proposed placement given the issues with that which I have previously identified. Further, I consider that there is merit in the point that the children's wishes and feelings were not fully taken into account in relation to a proposed permanent placements abroad and that offends the provisions contained within Article 33. The issue of procedural irregularity is already conceded by the Trust, but I also agree with much of what the grandparent's submissions say about this in terms of the decision-making appearing to have been confirmed prior to the LAC review and communicated to the children. In effect, the children were being removed from the jurisdiction without the consent provisions being followed, in contravention of the contingency plans and without the permission of the court. I appreciate that the Trust was operating in an emergency situation and that thankfully arrangements worked out very well. However, the Trust should have ensured much more transparent decision-making in this case. It is wrong for the Trust to have issued Article 33 proceedings after interim removal and after the decision was made about permanent removal. Article 33 requires a court to approve a removal from the jurisdiction prior to it happening and this matter did not come to the court until October 2019. By the time the case came to me I queried whether Article 33 could actually apply and that led to the Trust suggesting that I invoke my inherent jurisdiction to deal with the issue. That is now a moot point but nonetheless I hope that practice will improve in this area as a result of this case.

[23] Accordingly, I agree that the declaration should be more fulsome and that it should set out that the Trust did not follow the law in relation to Article 33. Also, that the Trust changed the contingency plan without full consultation and without full consideration of the together or apart assessment. Finally, the declaration should state that the Trust made a decision in relation to permanent removal from the jurisdiction prior to the proper decision-making forum and therefore did not consult properly with the grandparents.

Issue (ii)

[24] The next point is in relation to damages and I have read the arguments in relation to this. The issue of damages arises where there has been a breach of the Convention and pursuant to Article 8(3) of the Human Rights Act 1998 the court has a discretion to award damages in relation to this if it is required for just satisfaction. *Hershman & McFarlane Children Law & Practice* at Volume 1 Section E 746-749 contains some useful guidance on the question of damages. In particular, reference is made to the case of *Anufrijeva v Southwark London Borough Council* [2003] EWCA Civ 1406 which states:

> "(a) The award of damages under the HRA 1998 is confined to the class of unlawful acts of public authorities identified by s6 (1)-see s 8(1) and (6).
>
> (b) The court has a discretion as to whether to make an award (it must be "just and appropriate" to do so) by contrast to the position in relation to common law claims where there is a right to damages-see s 8(1).
>
> (c) The award must be necessary to achieve "just satisfaction"; language that is distinct from the approach at common law where a claimant is invariably entitled, so far as money can achieve this, to be restored in the position he would have been in if he had not suffered the injury of which complaint is made. The concept of damages being "necessary to afford just satisfaction" provides a link with the approach to compensation of the European Court of Human Rights under Art 41.
>
> (d) The court is required to take into account in determining whether damages are payable and the amount of damages payable the different principles applied by the European Court of Human Rights in awarding compensation.

(e) Exemplary damages are not awarded."

[25] In the case of *Re C (Breach of Human Rights: Damages)* [2007] 1 FLR 1957 at paragraph [62] Wilson LJ says this:

> "In determining whether to award damages for infringement by a public authority of a person's rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention) and, if so, the amount of the award, the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41: Section 4 of the 1998 Act, set out by Thorpe LJ at paragraph 30 above. … The kernel of both is that satisfaction to the person whose right has been infringed must be just and that, if but only if, such be necessary in order to afford just satisfaction, an award of damages should be made."

[26] At paragraph [64] Wilson LJ also states:

> "In general the principles applied by the European Court, which we are thus enjoined to take into account are not clear or coherent see Anufrijeva at paras [57] and [58]. What is clear, however, is that the European Court generally favours an award of damages in cases in which local authorities have infringed the rights of parents under Article 8 to respect for their family life by shortcomings in the procedures by which they have taken children into care or kept them in care, whether temporarily or permanently: see the report of the Law Commission on Damages under the Human Rights Act 1998 Law Comm No: 266 Command 4853 at para 6.159 and 6.160 set out at paragraph [37] above. *W v The United Kingdom* [1987] 10 EHRR 29 and *R v United Kingdom* [1987] 10 EHRR 74, [1988] 2 FLR 445 are two of a batch of three cases (a fourth and a fifth being rather different) in which on 8 July 1987, i.e. prior to the coming into force of the Children Act 1989, the European Court of Human Rights held that determinations by our local authorities to take children into care, or make their care of them permanent, infringed the rights of the parents under Article 8 by virtue of a failure to consult them in advance."

[27] There is of course a spectrum of cases and each is fact specific. To illustrate the point I have been referred to a range of cases some of which are startling in terms of the extent of unlawfulness and the duration of unlawfulness which have led to awards of damages. There is a helpful table at Volume 1 Section E 747 of *Hershman & McFarlane*. This flows from a case of *Medway County Council v M & T* 2015 EWFC B 164. In *CZ v Kirklees County Council* [2017] EWFC 11 Cobb J confirmed that there is no specific formula or prescription for what amounts to just satisfaction but that the court was required to consider all the circumstances of the case.

[28] In determining whether to make an award, and the amount of any award the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention. Having considered the competing arguments it is my view the declaration in this case does provide just satisfaction to the grandparents. In *Re C (A Child)* [2007] EWCA Civ 2 the court reiterates the point that these cases are fact specific. I have considered all the circumstances of this case. Clearly, outcomes must bear a relationship to the facts and the reality of the family rights at issue. Having analysed this case I agree with the Trust that damages are not just or appropriate in this case. Whilst I have decided that there were procedural breaches in this case they did not practically effect the family rights of the grandparents. That is because the grandparents themselves were clearly not in a position to look after these children due to the crisis that arose due to the grandmother's health and the serious relationship issues which emerged.

Issue (iii)

[29] The Supreme Court considered the issue of costs in children proceedings in the case of *Re S (A Child) (Costs: Care Proceedings)* [2015] UKSC 20. In that the court endorsed two exceptions to the general approach that there should be no order for costs namely reprehensible conduct or an unreasonable stance in litigation. The court said that there may be other circumstances where exceptionally an order for costs may be justified in child proceedings. In this case I bear in mind that the application for relief pursuant to the Human Rights Act was brought once children proceedings had commenced and it was heard as part of those proceedings. Some aspects of that application became academic given that by the time it was lodged in March 2020 eight months had passed since the removal. The Trust proceedings were necessary to regularise arrangements. They were lodged in October 2019. In all of the circumstances, I cannot say that the Trust actions justify an award of costs against it in these proceedings. Whilst the proceedings were incorrectly founded they were necessary to finalise the arrangements in this case.

Issue (iv)

[30] I have already said that I will make residence orders for each child. I gave a brief judgment on the day of hearing in relation to this because I was concerned that there should be certainty for the two children who have expressed a wish to stay where they are and who wish proceedings to come to an end. I am concerned that I was not afforded the opportunity to fully consider arrangements myself given the fact that there was a move of placement undertaken before authorisation. However, I have heard from the social worker who confirms the stability of the placements and there is now consent among all parties to the making of residence orders. I am also told that the children are happy. The Guardian Ad Litem supports the applications and no welfare concerns have been brought to my attention which would militate against making these consent orders. It follows that residence orders will be made in the name of the fathers and their partners who are looking after the children. I have been asked to make the order for Sam until he is 18 given that that would assist with visa issues. That seems to me to be entirely appropriate and an exceptional circumstance. I can only make an order to 18 in exceptional circumstances and I consider these are exceptional. Leah does not have the same visa issues but given her connection to Sam, the jurisdictional issues, and the litigious nature of this case I agree with the Guardian ad Litem that I should not make a difference between the children and so I will make the same order for her.

Issue (v)

[31] The remaining issue is contact. I have received a number of different proposals in relation to the contact order. I am aware that the grandparents feel they have been blocked since the children were removed from their care. The flip side of this is that the carers feel the grandparents have bombarded the children. There is a sense of *déjà vu* about this because previously the fathers were saying that the grandparents were not promoting contact. However, I do not want this case to descend into another tit for tat squabble. The grandparents have been important people in the lives of these two children. They took up the mantle to care for them when the fathers were unavailable. The children should not be prevented from having a relationship with their grandparents and as such I am going to make a contact order in their favour which I expect to be honoured. Also, everyone should realise that as the children get older they will take control of arrangements themselves to a large degree particularly as regards indirect exchanges between themselves and their grandparents. Counsel have helpfully prepared a colour coded draft order which sets out the various positions. I note that contact between the mother Ms TA and the children is agreed which is helpful.

[32] I have been asked to adjudicate upon the remaining issues which relate to the grandparents contact without the necessity of a further oral hearing. I have reached a conclusion applying the tests set out in Article 3 of The Children Order. I am particularly aware that the two children now live in two different jurisdictions and so there are practicalities to consider. In particular there is a financial burden to contact and the grandparents clearly have health issues. So, it is important to construct a routine which is workable. Let me make it clear that the grandparents

should only have contact within stipulated times and also that the fathers should not block them.

[33] This type of situation demands some flexibility however given the tensions between the adults I understand that some framework is required. I am disappointed but not surprised that this cannot be agreed. It is not ideal that I have to set out the arrangements and I stress that the parties may alter the following framework by agreement.

For Sam who now lives in Malaysia:

- He should have indirect contact with his grandparents once a week.

- He should have contact at least twice per year with his sibling Leah in the UK.

- During those two visits he should have direct contact with his grandparents, ideally with Leah, one in Northern Ireland for up to a week, ideally during the summer and once in the United Kingdom, ideally at Christmas for extended daytime contact utilising the grandmother's family accommodation. I am not going to order that the latter contact be overnight but that may develop depending on circumstances.

For Leah, who now lives in Scotland:

- She should have weekly indirect contact with her grandparents.

- She should have contact at least twice a year with her sibling Sam in the UK.

- During those visits the grandparents will have contact on the same basis as with Sam.

- In addition the grandparents should have contact with Leah on two occasions during the year, one in Scotland and once in Northern Ireland around Easter and Halloween, by way of long weekends.

There will have to be some loose supervision of contact by those with residence orders for a period of time which can be up to 6 months given that I think this case requires a Family Assistance Order.

It goes without saying that the grandparents' phone numbers should not be blocked but equally given issues with frequency and the potential threat of placements being undermined the grandparents should not initiate contact outside of this pattern, but they may respond to the children:

- I think that the grandparents should receive school reports and a school photograph once a year.

- The grandparents should also be kept informed as to major life events and any major health issues.

- In addition there should be regular Facetime/Skype between the siblings no less than once a month.

- All direct contact should be on good notice between the adults and any cancellation should be on good notice.

- These orders will need to be registered in the relevant jurisdictions.

Issue (vi)

[34] I have considered whether or not I should make a supervision order. Threshold has already been established in this case and so I could make a supervision order alongside the residence orders. I have considered this and having done so I do not see that this would bring any additional benefit to this case given the various arrangements which now have to be taken forward by the adults. However, I do think that there will be a further period where there may be difficulties in managing some contact and so I would encourage the parties to agree a family assistance order for six months which will hopefully allow for matters to settle.

Overall Conclusion

[35] My final word is this. This has been a particularly protracted case which has exposed some ugly bitterness between the parents and other adults in this case. I do not consider that this has served the well-being of these two young children. I sincerely hope that everyone will reflect on what has happened and move forward in a respectful way. If they do not it will just hurt the children in the long term and that is not something that I think anyone wants. I am disappointed that the two children have now been split into different placements in different countries. The keeping of the siblings together was very much my aim in the original decision that I reached after considerable thought. In my view great efforts must be made to maintain sibling bonds through indirect and direct contact and that can go beyond the terms of any order I make particularly as the children get older. Finally, I would like the Guardian ad Litem to explain to the children that I have reached the decision as to where they should live with the consent of all of the adults and that I hope that they are now settled in their placement and that they will have good contact with each other and with their grandparents. Accordingly, I will make the orders as above. The family assistance order is subject to the consent of all. I ask counsel to submit a draft final order within one week. There is liberty to apply if any issues arise