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

Neutral Citation: [2022] EWFC 69 | **Case No: LS21C50154**

IN THE FAMILY COURT | **Leeds Family Court**

SITTING AT LEEDS, REMOTELY | **Westgate, Leeds**

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF Y (A MINOR)

Before :

Mr. William J. Tyler QC, sitting as a Deputy High Court Judge

RE Y (A MINOR) (NO. 2) (BRUSSELS II REVISED: JURISDICTION AFTER ARTICLE 15 TRANSFER: WELFARE)

- -

Between :

A LOCAL AUTHORITY — **Applicant**
- and -
THE MOTHER
THE FATHER
Y (A MINOR)
THE AUNT
THE FOSTER CARERS — **Respondents**

Hearing date: 13, 16, 17 & 18 May 2022
Judgment circulated in draft on 20 May 2022
Final judgment handed down on 24 June 2022

FINAL JUDGMENT

Richard Harrison QC and **Elle Tait** (instructed by the legal department) for the local authority

Lisa Phillips (instructed by Switalskis) for the mother

Henry Setright QC and **Harry Langford** (instructed by Ramsdens) for the father

Aidan Vine QC and **Annie Sayers** (instructed by Ridley and Hall) for the child

Jonathan Sampson QC and **Andrew Leong** (instructed by Wilkinson Woodward) for the aunt

The foster carers acting in person

Parties, applications

1. On 16 December 2021, I handed down a lengthy judgment in relation to the jurisdictional regime which should apply to decision-making for the future of a little Hungarian girl, referred to in this judgment as **Y**, then, as now, three years old.

2. That judgment is reported (in redacted form) and publicly available as *Re Y (A Minor) (Brussels II Revised: Jurisdiction after Article 15 Transfer)* [2021] EWFC 107. In it, I did my best to unpick complicated issues arising from a care case having been transferred from England to Hungary but the child at the heart of the case not having been so transferred, the situation then becoming further complicated by a number of significant changes of circumstances, not the least among which was the Covid-19 pandemic. I decided, in essence, that it should be the Family Court of England and Wales which adjudicated between the rival claims for the care of Y.

3. During this last week, I have heard the final hearing in that case.

4. The underlying care proceedings are brought by a local authority in the North of England (**"the local authority"**) pursuant to Part IV of the Children Act 1989 (**"CA 1989"**). Y, the subject of that application, was born in August 2018, in England. Y's mother (**"the mother"**) is the first respondent. Her father (**"the father"**) is the second respondent. Ys paternal aunt (**"the aunt"**), joined by me to these proceedings, is the fourth respondent. Y's foster carers since a week after her birth (**"the foster carers"**) are joined as fifth and sixth respondents to the care proceedings by virtue of my decision in December. As of right, but reinstated and proceeding pursuant to my decisions in relation to jurisdiction, the foster carers have applied for a special guardianship order (**"SGO"**) in relation to Y, to which application all of the other parties in the Part IV CA 1989 proceedings are respondents.

5. Y, both of her parents and the aunt are all Hungarian. Y lives with the foster carers in England. The mother also lives in England. The aunt lives in Hungary. The father currently lives in another EU member state.

6. Before me at this hearing, the representation has been as follows:

   - The local authority has been represented by Richard Harrison QC and Elle Tait;

- The mother has been represented by Lisa Phillips through the Official Solicitor (The mother lacking capacity);
- The father has been represented by Henry Setright QC and Harry Langford;
- Y has been represented by Aidan Vine QC and Annie Sayers;
- The aunt has been represented by Jonathan Sampson QC and Andrew Leong; and
- The foster carers have represented themselves.

Factual background

7. The essential background is as follows.

8. The mother and the father are both Hungarian. The mother has lived in England since moving to the country, aged 13, with her mother. The father also came to England as a child, moving to the country with his aunt and uncle. The parents commenced a relationship in or around 2015. Both were living in England at the point of Y's conception and birth.

9. At the point the local authority learned of the mother's pregnancy, significant concerns for the unborn child were apparent, these relating to the mother's mental health (which has led, in this country, to at least three periods of compulsory detention under the Mental Health Act 1983), both parents' drug misuse (including, at least in the mother's case, a history of the use of crack cocaine) and domestic abuse. Beginning in mid-April 2018, the local authority undertook an assessment of the parents' ability safely and appropriately to care for the then unborn Y, whether either of them individually or both together. The assessment, with which the mother refused meaningfully to participate, was negative. This negative assessment has not been challenged either on behalf of the mother (who is represented through the Official Solicitor) or by the father.

10. In the circumstances, the local authority was bound to issue care proceedings. It did so the day after Y's birth. Within a few days an interim care order was granted. At the end of August 2018, Y was placed with the foster carers, in whose care she has remained these past three and a half years, and where she remains, settled and thriving.

11. The father served a period of imprisonment in England due to his commission of offences involving domestic abuse of the mother. He was subsequently deported to Hungary.

12. For a period during the proceedings, the mother's whereabouts were unknown to the local authority. Since October 2019, however, the local authority has known where the mother is living in England. There has been sporadic contact with the mother by social workers and, latterly, by her legal team. Her situation does not seem markedly to have improved.

13. In these circumstances, there has been no challenge to the inevitable conclusion that Y cannot live with either one of her parents. The current position in relation to the mother is that she has had no direct contact with Y since August 2019 and is intermittently very difficult to track down and to engage with. The father, some time after his deportation to Hungary in November 2019, moved to another EU country, where he continues to live and work. Although he has received updates on and photographs of Y since his deportation, his last direct contact was in May 2019. Work is currently being undertaken to reintroduce him to Y, via indirect contact, following a positive risk assessment earlier this year.

14. Given the negative assessments of her parents, and her entirely Hungarian nationality and heritage, assessments were undertaken of various members of Y's family in Hungary. Viability assessments were undertaken of both Y's maternal grandmother and her paternal grandmother. These were negative.

15. In 2019, Y's paternal aunt was also assessed, both by Hungarian authorities and by the allocated social worker in England. The latter was undertaken in circumstances in which the local authority did not consider the positive Hungarian assessment to have been *'sufficiently robust'*. The English local authority assessment, however, was also positive.

16. The final evidence in the initial care proceedings included the local authority's positive assessment, which in turn led to the local authority confirming a care plan involving Y's being placed with the aunt and her husband in Hungary.

17. The proceedings, even pre-Covid-19, were beset with many delays, which I described at length in my earlier judgment, with the repeating of which description I shall not burden

this judgment. Suffice it say that a substantive hearing took place before HHJ Anderson on 11th November 2019 as to whether the case should be transferred, pursuant to Article 15 of BIIa. The case and Y were both by then 15 months old. The judge made the Article 15 transfer sought and agreed by all. The reasoning contained in the judgment included this:

> *'The child clearly has a connection with Hungary. Her parents are from Hungary and she is a Hungarian national. The child has family in Hungary. It would be in her interests to be cared for in Hungary if this is possible. The Hungarian Authorities I find are now in a better position to deal with the welfare aspects of this case.*
>
> *I transfer the case now in the knowledge that the Hungarian authorities and the court there will have the benefit of the assessments completed of the parents, the assessment of the paternal aunt and her partner and all the other relevant documents.*
>
> *The most significant reason to transfer the proceedings is that this little girl has relatives in Hungary who have been positively assessed as carers for her and are ready able and willing to care for her. If she stayed in the UK the plan of the Local Authority would likely be permanence through adoption and it is clear this child should be cared for by her family in Hungary where her carers can provide care, knowing the Hungarian culture and her family and, if it is felt safe, for her to have contact with her mother and her father at the determination of the Hungarian courts.*
>
> *Therefore applying the law to this case it is clear that the case should be transferred to Hungary and the Hungarian Authorities have the opportunity to accept that invitation.'*

18. As I wrote in my earlier judgment:

> *'[…][A]lthough a final welfare determination does not seem formally to have been made, the Art. 15 decision explicitly relies on the judge's finding that 'it is clear that this child should be cared for by her family in Hungary' and […], reading the judgment and assessing the state of the proceedings as a whole, that can only have meant that the judge had decided – the parties all agreeing the same – that placement, in Hungary, and with the aunt, was at that stage the appropriate welfare outcome for Y.'*

19. As I have previously found, a valid Article 15 transfer of the care proceedings was effected by the request having been made and accepted, and the relevant Guardianship Authority

in Hungary went on to make a *'temporary Guardianship order'* in favour of the paternal aunt, which, on 6 January 2020, was converted to a *'final'* Guardianship order.

20. Plans progressed for the placement of Y in Hungary. The aunt was to come to England in late January 2020 in order to meet Y, the foster carer to take Y to Hungary the following week. Personal issues prevented that from happening and the proposed visit and then transfer of Y to Hungary were put back by a couple of months. The aunt, accompanied by one of her children, travelled to England between 6th and 12th March 2020. The aunt had daily contact with Y. For reasons which have never become quite clear, the aunt seemed to be under the impression that she would leave England together with Y, when she returned to Hungary. In fact, this had never been the plan. Instead, it was intended that the foster carers and an English social worker would travel to Hungary with Y on 23rd March 2020 and would spend some time there settling her in to what was to be her new life living with her aunt, uncle and cousins.

21. However, in the intervening period the pandemic arrived in Europe, lockdowns were introduced and international borders were closed. During the next few months, various hearings were listed in the English court, and were either vacated or were essentially ineffective.

22. By September 2020, the language of the local authority had changed somewhat, as it *'inform[ed] the court that they intend to undertake an updated needs assessment of [Y] and to review the assessment of the proposed carers for [Y]'*. The case was relisted on 26th October 2020. By the point of this hearing, while international travel remained impossible, the local authority had *'provided an updated needs assessment of [Y] and an updated assessment of the carers and it continues to be the plan to place [Y] in Hungary when this becomes possible'*. The case was put over until a hearing on 8th February 2021.

23. On 18th December 2020, the children's guardian's legal team issued an application in Form C2, requesting a hearing, she, the guardian, being very much less than impressed with the local authority's efforts in relation to familiarising Y with and beginning to enable her to develop some ability in the Hungarian language. The rider to the application included this:

> *The Guardian is concerned that should [Y] move to Hungary that the proposed plans to develop [Y]'s language prior to this occurring remain insufficient.*

> *The Local Authority have also provided parties with an email on the 14th December 2020 stating that "further to previous correspondence, the current position of the Local Authority is that it is reviewing the plan in connection with [Y] – I will keep you informed as to the progress of matters". Following receipt of this email those representing the Father sought further clarity as to what this meant and urged the Local Authority if there was a significant change to return the matter to Court.*
>
> *The solicitor for the child spoke to the Local Authority solicitor on the 14th December 2020 and again urged that the Local Authority return the matter to Court and that if they did not that the Guardian would. No further response has been received from the LA and they have not lodged any C2 seeking a hearing.*
>
> *This matter is currently before the Court next on the 8th February 2021 and on behalf of [Y] it is felt that an earlier hearing is required in order for there to be clarity as to the Local Authority's position and to address what language provisions are being put in to place for [Y].*

In my earlier judgment, I noted the creeping in of the word *'if'* in relation to Y's placement in Hungary and the suggestion that the local authority was *'reviewing the plan in connection with [Y]'*. However, the local authority's officially stated plan continued to be of placement in Hungary, including at a hearing in January 2021, albeit that the possibility of a change of plan was then explicitly contemplated. By the point of a hearing on 8th February 2021, the difficulties previously hinted at were clearly rather more pronounced, the sole *'Key Issue in the Case'* being described as whether the needs of the child or the position had changed such that transfer of the case back to England from Hungary was indicated. By this stage, the aunt had legal representation and the foster carers were clearly contemplating making their own application in relation to the permanent care of Y.

24. On 17th February 2021, the foster carers, with whom Y had been placed continuously since the end of August 2018 (so, by then, some 2½ years), applied for joinder in the care proceedings and for leave to apply for a special guardianship order. On 9th March 2021, again as described in greater detail in my earlier judgment, HHJ Hillier dismissed both of the applications of the foster carers *'for lack of jurisdiction'*. The judge, expressly confining her judicial actions to those *'appropriate under the residual jurisdiction'*, directed explanations from the local authority and the guardian in relation to what had been done in relation to orders it was known had been made in Hungary, what arrangements had been made to

effect the move of Y to Hungary, and why there had been such enormous delay (the case – and so the child at its heart – being, by then, more than two and a half years old).

25. HHJ Hillier heard the case again on 23rd March 2021. The *'key issue in the case'* was described by the judge in her order as being, *'The timetable for placing [Y] in the care of her paternal aunt in Hungary'.* The judge directed the local authority to serve a *'transition plan outlining the transfer of care from her foster carers to her paternal aunt'.*

26. In early April 2021, the aunt's husband, who of course had been an integral part of the earlier assessments, died by suicide. Although it had become apparent in mid-April 2021, via an interpreter overhearing conversations in Hungary, that there may have been a bereavement, it was not until 12th May 2021 that the social worker was able to speak to the aunt and was informed by her that that her husband had died. The aunt refused or was simply emotionally unable to provide further information, promising to write, although this did not happen.

27. As I have previously described:

> *'On 14th July 2021, however, the local authority applied in Form C2 (in the Family Court) for a 'Declaration of the court as to best interests of [Y]'. The application set out a series of asserted facts which cast some doubt on the ongoing suitability of the proposed placement of Y with the aunt. It seems that, acting in good faith in furtherance of HHJ Hillier's instruction to give effect to the transfer of the case (or, more particularly, the child) from England to Hungary, a plan was developed which would have seen the aunt travelling to England to meet Y on 10th May, to return with her to Hungary after 'a period of introductions'. During the course of the planning, and only via the interpreter having somehow discerned this, [the fact of the husband's death was discovered]. Details subsequently received suggested that there was a likelihood that a number of significant domestic and safeguarding issues had been kept from the local authority during the assessment process and subsequently.'*

28. The case first came before me on 12th August 2021. On 27th September 2021, the local authority issued a further and fresh application for a care order in relation to Y.

29. The jurisdictional issue was heard by me on 30 September and 1 October 2021. I handed down my final judgment (which had been circulated earlier in draft) on 16 December 2021. That judgment paved the way for the local authority's second Part IV application

to continue and the foster carers' SGO application to be revived, both to be heard in the English Family Court.

30. There followed an SGO assessment of the foster carers in December 2021 and further assessment of the aunt by the local authority social worker in January and February 2022. On 8th February 2022, I heard and dismissed an application on behalf of the aunt to instruct an independent social worker to carry out a further and fresh assessment of her.

31. The aunt has not cooperated with further scheduled assessment appointments with the social worker, nor with any recent appointments to meet the guardian, nor with efforts for her video contact with Y to be observed by professionals. (I shall describe in greater detail below the longstanding concern in relation to the video contact which has been arranged between Y and her.)

The shape of the final hearing

32. As long ago as 8 February 2022, I listed the case for final hearing. The time estimate initially allowed was ten days, this to allow for judicial reading, hearing all of the contested evidence, oral submissions and preparation and delivery of judgment.

33. The case came before me for an Issues Resolution Hearing on 4th April 2022. In the days beforehand, the parties had been told at an advocates' meeting that the aunt intended to reengage with the proceedings, she having failed to file the statement which was by then long overdue. In light of what the local authority considered serial and entrenched non-engagement by the aunt, Mr Harrison QC invited me, effectively summarily, to proceed to make a final SGO at that hearing. I declined to do so. The case fell short, it seemed to me, of one in which, it would be appropriate to do so – there was a real issue to be tried. It would be, I considered, an unfair exercise of case management powers to prevent a genuine contender for Y's care from putting her case and challenging that put forward by others. Instead, I extended the time for the father and the aunt to file their final evidence, setting out in a little detail the matters to be addressed in the aunt's statement. The aunt was to file her statement by 19th April 2022, by which date I also directed that she issue any such application as she intended to make (for example, for permission to apply for a child arrangements order).

34. There was a further Issues Resolution Hearing before me on 26th April 2022. The aunt's statement had come in the day before the hearing, six days late; there had still been no recent contact between the aunt and Y; and the aunt had not made herself available to speak to the social worker. No application had been issued by her or on her behalf in relation to her contention for the long-term care of Y. Again the local authority invited me to make final orders. Again I declined to do so. I reduced the time estimate of the final hearing from ten to six days, the first day to be set aside for judicial reading. It was understood and anticipated by all that the aunt would be present – remotely – throughout the hearing.

35. I understand that at an advocates' meeting shortly before the final hearing, those acting for the aunt indicated that she was unable to obtain time off work for the whole of the fixture, but would instead attend – remotely, of course – on the first day of evidence, Monday 16th May, being her day off work, to give her evidence out of turn, but would not be able to attend on the other days to hear the evidence of the social workers, the foster carers or the guardian.

36. Taking a pragmatic approach to the issue, the parties accepted this proposal, as did I. On the morning of Monday 16th May, however, the appointed time for the aunt to give her evidence, I was told that she had not attended (remotely), had not responded to recent communication from her solicitors, and had sent no message to indicate the fact of or the reason for her non-attendance either before or during that morning. I stood the matter down for urgent enquiries, suggesting that the father might be able to contact his sister. He duly informed his lawyers that she had told him that she had not been able to take the day off work, and that she would not be able to do so all week. The father facilitated contact between the aunt and her lawyers, who were eventually told by her that she had been asked by her employers to attend work, so had been obliged to do so. She would be unable to give evidence or to attend at any point during the week during normal sitting hours. Her legal team were not able to give me a reason for the aunt not having notified them or the court when she learned that she would not be able to attend court, even for the single day.

37. I decided at that stage that it would be disproportionate to allow for all of the witnesses to be fully challenged on the various disputed factual matters referable to the dispute as to where and with whom Y should live; I indicated that I would hear cross-examination

on the various other, more peripheral matters (set out more fully below), but would deal with the principal issue on the basis of written evidence and oral submissions. There would be little point, it seemed to me, in entertaining hours of challenge to the local authority's and the foster carers' cases in circumstances in which the aunt, effectively by her own volition, was unable to speak to, or to be challenged in relation to the detail of, her own written evidence.

38. In the event, then, I heard live evidence from the local authority social worker (**"the social worker"**), the male foster carer and the children's guardian.

39. I have also read the bulk of the written material, including, of course, the assessments of and the two written statements by the aunt. (If I do not refer below to much of the detail included in that material, it is not because it is not in my mind, but because the material is voluminous, and this judgment must be kept within reasonable bounds and must be delivered with relative expedition.) I heard extensive and very helpful oral submissions from each of the parties' leading counsel and from the male foster carer.

The issues

40. **Placement.** The principal issue between the parties is where and with whom Y should live. The foster carers, strongly supported by the local authority and the children's guardian, contend that she should remain with them, the underpinning regime to be transposed from one of local authority control to one of special guardianship. The Official Solicitor, on the mother's behalf, also supports this contention. Conversely, the aunt, with the support of her brother, Y's father, seeks Y's placement with her in Hungary. Although there is no application from the aunt in relation to how, legally, this would be achieved, it would not be particularly difficult to effect the move, if it were appropriate, nor to craft the appropriate legal regime to allow for this, not least as the aunt is already the beneficiary of a final guardianship order in relation to Y in Hungary.

41. **Name change.** In the event that Y continues to live with them, the foster carers seek permission to cause her to be known by a new, or at least an extra, name, that is to inject their surname into the given and familial names she already carries. Their preference would be that her current surname (which she takes from her father, not her mother)

would be the first half of a double-barrelled surname, theirs to be the second half, so, [forename] [father's surname]-[foster carers' surname]. They are not wedded, however, to this particular configuration. This proposal is supported by the children's guardian, but is 'vehemently' opposed by the father, and fairly strongly opposed by the aunt and the local authority. The mother, although lacking capacity and so represented by the Official Solicitor, is noted to be broadly supportive of the proposed change.

42. **Contact.** If Y is to remain in this country, the question of contact with her parents and the aunt must be considered. While there is a measure of agreement, questions arise (a) as to whether there should be an order for contact or merely the recording of the agreed arrangements in recitals to the order, and (b) as to the appropriate frequency for the aunt's contact. It should be noted that currently – and this might well change in the future – what is anticipated is either indirect contact, or direct, but remote (i.e. video-call) contact, rather than in person, direct contact. In the future, it may well be appropriate for Y to see any or all of the father, the mother and the aunt in direct, face-to-face contact, whether in this country, Hungary, or even somewhere else.

43. **Technical international issues.** Potential pitfalls arise if Y is to remain in this country, pursuant to an SGO, while she remains both a citizen of Hungary and the subject of a Hungarian guardianship order in favour of her Hungarian aunt. There have been evidence and submissions in relation to registration and recognition in Hungary of any English order, the appropriate means to effect the revocation of the Hungarian order and the role of the local authority in relation to both of these, whether directly, or by lending its assistance (including financial support) to either or both of the foster carers and the aunt.

The evidence – placement

a. Placement with the aunt

44. The aunt has two other children, now aged 8 and 4, the elder from a previous partner, the younger from her husband, who took his own life in April 2021.

45. When first asked, the aunt was initially somewhat ambivalent about the prospect of caring for her brother's baby. She wanted her parents to be considered first and before her, and

was prepared to contemplate thinking about putting herself forward to care only if they could not. This is perhaps not surprising. She was a young mother of two small children and she and her husband both worked long hours. She came round to the idea, put herself forward and fell to be assessed as a carer.

Assessments of the aunt

46. Since initially putting herself forward and to date, there have been a number of assessments of her:

a. first, entitled 'home study,' or 'environmental study,' the Guardianship Office of the relevant part of Hungary undertook what may better be described as an 'inspection' than an 'assessment', which provided an inventory of the household members (together with the occupations and earnings of the adults), property type and domestic amenities as at April 2019, a time when the aunt lived together with her husband and their children in their property in Hungary;

b. second, a 'Family and Friends / Connected Persons Assessment', undertaken by the local authority social worker and completed in October 2019; this was a detailed and thorough assessment, comprising, initially, telephone calls, then a visit to Hungary, during which the assessing worker met the aunt, her husband and their children; the assessment concluded that the aunt (together with her husband) should look after Y, pursuant to an order giving the aunt *'overriding parental responsibility'* for Y;

c. the children's guardian's final analysis (received shortly before the Art. 15, BIIa transfer) of November 2019; this, too, was positive in its conclusion;

d. an updated assessment, completed by the same social local authority worker in October 2020, which dealt with various 'concerns' which had arisen; the assessment coincided with and must be read together with an updated 'Needs Assessment' of Y; taken together, the 'concerns' were dealt with to the satisfaction of the social worker, who continued to recommend placement of Y with her aunt and uncle;

e. a further updated local authority assessment, undertaken between January and March 2021, undertaken by the same social worker;

f. a further updated social work assessment, undertaken by a different social worker and completed in late January 2022;

g. an addendum to that assessment completed in mid-February 2022.

47. As I have referred to above, two particularly significant incidents intersperse the time period of these assessments:

a. first, in the Spring of 2020, the Covid-19 Pandemic took its grip; in consequence, although the aunt's travel to England for introductions to be made to Y had taken place, the planned subsequent permanent relocation of Y to her aunt's care in Hungary did not occur and was subsequently long and repeatedly delayed;

b. second, while the local authority's updated assessment of March 2021 had led to the renaissance of the plan for the aunt to come to England to be reintroduced to Y as a prelude to placement in Hungary, the death by suicide of the aunt's husband, her keeping this fact for a period from the local authority, and a number of safeguarding concerns which only became apparent in consequence of all of this, combined to prevent this from taking effect.

48. I have described in my earlier judgment the *'jurisdictional quagmire'* which ensued. When the mire was eventually forensically drained and the jurisdictional pathway opened up in England, the assessment described at (f) (above) took place. This was the first assessment to have been undertaken since the various seismic events of the spring of 2021. Early in that updating assessment, the author writes:

> *There have already been a number of assessments undertaken in regards to [the aunt] which has [sic] included her family history, her education history and community facilities so I will not make reference to this here. I have been instructed to compile this as an updated assessment specifically looking at the following –*
>
> - *Changes in [the aunt]'s circumstances and how this may impact on her ability to care for [Y] full time.*
>
> - *Concerns regarding information not being shared with the Local Authority about [the aunt's husband]'s alcohol use and mental health in previous assessments*

- *Concerns regarding inconsistency around contact with [Y]*
- *[the aunt]'s commitment to caring for [Y] and her understanding of [Y]'s needs.*
- *Areas of contention within previous assessments*

Nearly 30 pages later, the assessment concludes:

> *'It is important to consider that at the time of the planned move in March 2020 [Y] was 19 months old. She is now nearly three and half years old. It is always best where possible to place a child within their own family, and as part of this assessment I have weighed up the importance of [Y] being placed with a family member in her own culture. However, in light of the above I do not feel that it is in [Y]'s best interests to be placed with [the aunt]. Whilst there are strengths within the assessment and [the aunt]'s intentions to care for [Y] need to be commended, I do not feel that there is strong enough evidence to support [the aunt]'s ability to protect [Y] or meet her needs in the way she requires.'*

49. The body of the assessment set out, among many other issues, the author's concerns that the aunt continues to minimise the impact on the children of her late husband's behaviour and of his death. The aunt gave inconsistent reasons for not having mentioned his alcohol issues during the initial assessments, viz. (a) not having considered there to have been issues with drinking at the relevant times, yet (b) having been ashamed to raise the issue. The assessor also considered the aunt to underestimate the significant additional pressure it would inject to her parental role if Y were placed with her (*'She does not believe that having a third child "would impact on [her] much".'*).

50. The addendum assessment attempted to analyse what support would be available to the aunt if Y were placed with her in Hungary and how that support might help to reduce and manage the identified risks and concerns. The worker experienced significant difficulty in making contact with the Central Authority and the Guardianship Authority, found that consent had not been given for her (despite what the aunt had told her) to speak to the aunt's son's kindergarten and was unable, despite efforts, to make contact with the paternal grandmother. She did speak to the paternal grandfather, although the net result was that she was more, rather than less, worried about the quality of care which would await Y in Hungary.

51. The conclusions of this addendum report, then, were as follows:

> *24. The court is referred to my assessment as regards the risks identified in summary these are:*
>
> *a. Risks posed by [the father] and concern about [the aunt] being able to:*
>
> *i. understand this risk and*
>
> *ii. to manage this risk*
>
> *b. [the aunt]'s lack of honesty and whether she would share current or future concerns*
>
> *c. [the aunt] prioritising and protecting herself and [her late husband] rather than prioritising [Y]'s needs and wellbeing.*
>
> *d. the impact upon her own children of the placement*
>
> *e. the impact upon [Y] of a move to Hungary – which I note has been analysed in detail by [the social worker].*
>
> *25. My conversation with the paternal grandfather has only succeeded in increasing my concerns regarding their understanding of [the father]'s risk towards [Y], and the impact of his behaviour upon her. My concerns have heightened in the ability of the family to protect [Y] as a result, when previously the grandparents were considered to understand the risks, [the father] posed.*
>
> *26. In conclusion, attempts to clarify and establish what support can be offered to [the aunt] and what impact this would have on her ability to care for [Y], have been largely unsuccessful. However, when considering the above risks and concerns it would be hard to identify what support would satisfactorily reduce the risks identified above – particularly if a carer lacks honesty and does not prioritise the welfare of a child.*
>
> *However, attempts will continue to be made and in the event that significant information is obtained this will be considered and shared with the parties.*
>
> *27. My recommendation remains the same as that of my previous assessment and I have no further evidence to support [the aunt]'s ability to protect [Y].*

The aunt's commitment, openness and insight

52. There is no doubt as to the aunt's good faith: she puts herself forward to care for her niece because of her loyalty to and love for all members of her family, including Y. It is to her credit that she should continue to do so, notwithstanding the almost indescribable trauma she has experienced in the last year or so.

53. However, very significant question marks have been raised in relation to the aunt's actual commitment and to her ability and capacity, given the many other calls on her time and emotional and physical resources, to offer Y all that she would need. The local authority also questions her ability to protect Y from the aunt's brother, Y's father, and her capacity for openness and honesty.

54. In a document helpfully produced to supplement their closing oral submissions, Mr Harrison QC and Ms Tait marshal under helpful headings the evidence which I have read and heard, which they say justifies the local authority's position. Largely maintaining their headings, that document can be summarised as follows:

   a. **Ambivalence about wanting to care for Y.** The aunt was initially less than clear that she (then together with her husband) wanted to put herself forward to care for Y. While she changed her mind in due course, she also acknowledged that her brother had put pressure on her to do so and belatedly admitted that her husband had required a deal of convincing.

   b. **Relationship with the father.** The local authority notes inconsistencies in the description of the aunt's relationship with the father. More recently she describes a close relationship, speaking to him often, him sending money to the degree that he is supporting her financially, and telling the social worker that she did not recognise the risks *'that you can see about [the father]'*.

   c. **Lack of openness and honesty in relation to her husband's mental health and alcohol issues (and subsequent inconsistency).** The aunt variously made no reference to, or, if asked in terms (for example about drug or alcohol use) denied any issues in relation to her husband's mental health and alcohol issues. This was notwithstanding that they were being jointly assessed to care for Y. It transpires that, at the very time that the local authority was actively planning to place Y with her aunt,

her husband's issues were becoming more pronounced, heavy alcohol intake occurring daily, and of course the husband eventually took his own life.

d. **Failing to inform the local authority of her husband's death.** It was more than a month after his death that the aunt told the local authority, proffering no details and not forwarding these in writing as she had promised. It was more than two and a half months after his death that she confirmed the basic details. This was a period during which it remained the local authority plan to place Y with her.

e. **Not taking time off work / lack of insight.** The local authority points to the aunt having indicated a plan to take time off work at the point of the intended placement in Spring 2020, but that, as the time approached, it became clear that she intended to return quickly to work. More recently she has claimed that she would take a significant period off work if Y is placed with her and that she will soon have greater flexibility. She has told the social worker that work is flexible and that she can take time off, for example when her son is ill. She has used the inability to do so, however, as a reason for missing contact and not attending court hearings.

f. **Failure to obtain more appropriate accommodation.** The local authority complains that the aunt constantly indicated an intention or plan to obtain a larger property, properly able to accommodate three children, but that this never materialised, and that there is no evidence to support her claim that this has now been obtained.

g. **Failure to engage with recommendations of Emotional Wellbeing Clinic.** Various plans were put in place with a view to easing Y's transition to what would on any view have been an unknown family, in a country and environment alien to her. These included, for example, providing a blanket which smelt of the aunt and her home, family recipes, electronic photographs, sound files to upload into a 'talking teddy'; despite giving her agreement and being provided with funds to do so, the aunt provided none of this.

h. **Contact on Skype post-Covid restrictions.** Although she had previously confirmed that she used Skype, when asked to set it up to speak to Y at the point of the first international and domestic lockdown, it was not until mid-July that the aunt took up virtual video contact by WhatsApp. Even in the early months of this, the aunt's take-

up of the pre-planned sessions was highly inconsistent, with many scheduled sessions missed.

i. **Failure to show an interest (around and during contact).** Acknowledging the difficulties in engaging a small child who does not speak the same language on a video call, the local authority points to a marked lack of interest or effort in the aunt (who had an interpreter for contact) asking about Y, or her interests, and to the fact that birthdays and Christmases have gone entirely unacknowledged. The aunt is said to have made virtually no effort to learn English words or phrases, knowledge of which might have helped her to interact in these calls.

j. **More recent issues around contact.** The local authority makes due allowance for a drop-off in contact around the time of the aunt's husband's death, but points to many, many missed sessions between October 2021 and April 2022, including a number which were to have been observed by the social worker or the children's guardian.

k. **Commitment to the court process.** The local authority notes that the aunt did not provide authority for her child's school to speak to the social worker, did not file a statement on time (on several occasions), disengaged from her English solicitors, did not attend the IRH on 4th April 2022, and despite indicating on 10th May that she could take at least the day of 16th May off work, attended neither the pre-hearing meeting with her solicitors nor the first day of the court hearing, when she was due to give her evidence; she did not let her solicitors or the court know in advance or during the morning.

l. **Meetings with the social worker.** The aunt has failed to answer or has rejected calls on 7th April, 14th April, 22nd April (x3), 28th April and 12th May (pre-arranged) 2022 and has not replied to recent emails. She did not attend the contact sessions the social worker was due to observe.

m. **Meetings with the children's guardian.** The aunt failed to attend a scheduled meeting on 9th March 2022 and missed the contact sessions in January and (despite three separate attempts) in March which the children's guardian was due to observe.

The aunt's evidence and case

55. In her first statement, in January 2022, the aunt reaffirmed her love for Y and her commitment to caring for her.

56. She wrote of the devastating effect of the unexpected and traumatic loss of her husband, during the isolation of the pandemic.

57. She explained not having told the social workers during initial assessments of her husband's alcohol misuse as this *'seemed to have subsided […] [he] seemed to have resolved his historical problems with drinking'*.

58. She accepted inconsistency in attending the contact sessions, but blamed poor internet connectivity.

59. She criticised the local authority's assessment plan and asked instead for an independent social work assessment.

60. In her second statement, in April 2022, she described her current circumstances, new, more spacious accommodation in a quiet, residential area. She was working, she said, in a restaurant kitchen. While this had entailed long hours, this was to reduce as the restaurant took on more staff. She would take a month off work, she said, if Y were placed with her. She described her proposals for kindergarten and medical care for Y.

61. As to linguistic issues, she thought it unfair to criticise her for not having learned more English. In any event, a cousin who speaks English would be able to help out if Y moved to Hungary, and she could help Y to pick up Hungarian with the help of an app, confident that with immersion in her family and at school, Y would soon settle and achieve fluency in Hungarian.

62. She spoke of support from Family Support Workers, if needed, from her own mother, and, if required, financially from the government.

63. Her sporadic contact attendance she put down to working long hours at the restaurant.

64. She felt that the local authority had been dismissive of her, certainly since it had *'made its mind up as to the plan for [Y] to remain in her current placement'*. She apologised for missing appointments with the children's guardian and for not rearranging them. She blamed her internet on missing the last court hearing.

65. The aunt was keen to explain the significance to Y in terms of her identity and cultural heritage of being able to live with aunt in Hungary:

> *'I know that [Y] is settled and doing well, and it could be seen that moving her to Hungary could cause her. However, I am of the view that it remains in [Y]'s best interests for her to live with her family, and that I can offer her a safe and stable home, where all her needs will be met, including her cultural needs. [Y] is a Hungarian girl and should have the right to live with her birth family, if it is deemed safe enough to do so. I think that [Y] will suffer emotional harm and will struggle with her cultural identity should the Court decide that she is to remain with [the foster carers].'*

66. If the court were to maintain Y's placement with the foster carers, the aunt thought the proposed 6-yearly contact proposed between her and Y far too low: it should be fortnightly *'to allow for me to continue a positive relationship with Y'*.

The guardian's evidence

67. The guardian was at pains to point out in her report that she acknowledged the positive early assessment of the aunt and her husband and that their *'genuine motivation and commitment to caring for [Y] can be gleaned from the papers and their ability to care for their own children is confidently acknowledged'*.

68. The children's guardian wrote:

> *'[27] When I consider the totality of professional assessments where it relates and identifies [the aunt]'s strengths as a potential carer, there is no doubt that she is a good parent to her own two children and that she puts their needs first. Further she offers a valuable link to Y's birth family, and to her Hungarian heritage. There are multiple difficulties however with respect to her assessment to care for [Y] specifically, and most pertinently not being able to understand the significance of [Y]'s overall welfare needs. Furthermore, there is doubt about her protective capacity and her motivation to care. Despite attempts, [the aunt] continues to have a limited relationship with [Y] and therefore a recommendation of [the aunt] to care for [Y] would mean transitioning [Y] from an established foster placement with secure attachments to a relative stranger in an entirely new and unfamiliar country.'*

And, noting the lack of commitment to video contact, providing the photos, recordings, recipes etc., and the absence of interest or acknowledgment of birthdays and Christmases, wrote:

'[34] The detrimental impact of poor engagement with contact and transition work cannot be underestimated. Like any relationship, positive development relies on regularity and consistency, in this case to give [Y] the best chance of establishing a familiar and meaningful relationship with her aunt and wider family. Unsurprisingly, to the best of my knowledge, there is little evidence to suggest [Y] has any familiar relationship with [the aunt] or any of her wider family; essentially, they remain virtual strangers.

[35] In the absence of meeting with [the aunt] and not having sight of her final statement, it's difficult if not impossible as [Y]'s Guardian to provide an objective and balanced opinion about a plan that [Y] relocates to Hungary. Indeed, [the aunt]'s disengagement with professionals including with me and her own legal team is striking, especially if she still pursues full- time care, which for [Y] is a complex and life-changing proposition.

[36] Based on the available information, I echo the comments expressed by the social worker and Independent Reviewing Officer, that whilst placement with [the aunt] would meet [Y]'s familial and cultural needs by virtue of being a birth family relative, I question [the aunt]'s present motivation and overall have little confidence in her ability to care for and meet [Y]'s holistic needs as a sole carer and to work reliably to protect her now and in the long term.

[37] I have no understanding as to why [the aunt] has been so absent and unavailable to [Y]. If there have been problems such as connectivity issues, as she has previously suggested, or problems with how to provide or send items, I query why at the very least she has not been proactive in resolving this with her own solicitor or subsequently responded to the missed calls/messages from the interpreter following the missed contacts given how critically important it is to [Y]'s welfare, irrespective of who is caring for her.

[38] I do not doubt the sincerity of [the aunt]'s commitment to care for [Y] as previously assessed alongside her husband […], however her commitment since March 2021, has proven unreliable and could go some way to evidence that caring for [Y] is no longer a legitimate pursuit that the Court can rely upon.'

69. Learning in the aunt's belated statement of her proffered reasons for the various shortcomings the guardian identified, she did not in any way change her assessment.

b. Placement with the foster carers

70. Y was placed with the foster carers just before she was two weeks old, although they had been meeting her care needs in the neonatal ward for a week before then. She has lived with them at all times since then.

71. The foster carers are experienced parents in their own right. They have brought up five children, two from the female carer's first marriage (cut short by the unexpected natural death of her first husband) and three whom they have adopted. All are now adults, although two still live with the foster carers. Older than birth parents would be, the male foster carer is 64 years and the female is nearly 70 years old.

72. The foster carers are also highly experienced as foster carers, having fostered for more than 25 years (with a break during the period of the adoption of each of their three children).

73. The male foster carer has had a long career as a child social work professional.

74. The foster carers have, throughout, been alive to Y's cultural needs, in many ways, at least in the early months, rather more proactively than the local authority social work team. The foster carers made the point, even in their first statement:

> *We have adopted three children and have always ensured they understood this and their background. If [Y] was to remain in our care we would have the same approach and ensure she understands that we are not her birth parents and help her to understand her journey and her background*
>
> *We are exploring locally for Hungarian communities where we might be able to introduce [Y] in time to assist her with her Hungarian identity.*

We remain very open to ongoing communication with [Y]'s birth family, recognising that they would wish to receive updates about her progress. We understand that we will likely need to seek support of translation services for this.

75. The foster carers were as good as their word in relation to seeking out Hungarian resources. The local authority sought out language tutors, but, unsurprisingly, perhaps, given Y's age, this was never really a viable possibility. The foster carers, through their enquiries with an interpreter who was retained by the local authority to assist with contact, discovered a relatively local Hungarian School, which meets at weekends, which Y now attends and where she is exposed to Hungarian language, in songs, nursery rhymes and games, supported throughout by the foster carers. Through people they have met there, the foster carers have started to become involved in the local Hungarian community and network and have discovered a number of Hungarian families very local to them, some with children around Y's age.

76. I was struck, when the male foster carer gave evidence, of the openness the couple have provided for their own adopted children in relation to their heritage and life stories. As well as conventional birthdays, the children of the family have had an annual nominated 'Adoption Day', which is used both as a celebration of the children's coming into the family and also, importantly, as an opportunity to talk specifically and openly about the child's background, heritage and life story. If Y were to remain in their care pursuant to an SGO, the same sort of arrangement would pertain, in addition to the various efforts to incorporate Hungarian friends, culture and food into their, and so Y's, everyday lives.

77. The foster carers have been the subject of a Connected Persons Assessment. The assessment descends into the usual granular detail about the couple, their histories, and their current living and familial circumstances, which I need not include in this judgment. They are described as warm and caring individuals, in a very longstanding, healthy and mutually supportive relationship, who have offered love and stability to their own children as well as to countless others during a long fostering career. The assessment describes how Y is embedded not just in the lives of her two carers, but in the broader, richer family life which incorporates the couple's adult children (two of whom live with them) and their grandchildren who *'have built a significant relationship with [Y] and view her as a 'cousin' who resides in their grandparents' care,'* one of the couple's adult children reporting that her two children *'have an established relationship with [Y] and care for her deeply'*.

78. The assessment recognises two *'difficulties'*. The first is the couple's relative advanced years, given that Y is only three years old. The second is that they *'do not share the same cultural heritage as [Y]. Furthermore, they are not able to speak or understand that Hungarian language, customs or traditions.'* The conclusion of the assessment was that if the decision is made for Y to remain in England, then an SGO in favour of the foster carers should be made *'so that [Y] can be offered permanence and maintain her strong attachments to the [foster carers'] family.'*

79. The children's guardian's assessment of the foster carers is overwhelmingly positive:

> *'[The foster carers] clearly love and adore [Y] and are more than capable of meeting her needs. They are visibly committed to caring for her through to adulthood, helping [Y] understand and accept what has happened in her young life.'*

80. In relation to their ability to manage the heritage and identity issues, she writes:

> *'Valuing her as an individual will be key to helping [Y] build a strong sense of identity, which for [the foster carers] will be especially important as their ethnicity differs. Indeed this 'difference' is part of [Y]'s inheritance to the UK and sense of mutual belonging to what started as a placement in a foster family 'with the [foster carers]', as well as belonging to a wider Hungarian family. [Y] will need to be helped to access information about all her connections, both British and Hungarian.'*

c. Y's characteristics

81. Y is described by the children's guardian as *'a gregarious little girl with an energetic and spirited personality.'* When at ease she is confident, chatty and mischievous. She is clearly wholly settled with the foster carers, who have experienced no significant behavioural difficulties, save for a long period when her sleep, so theirs as well, was much disturbed. Other than a degree of delay in speech development, there are no significant issues in relation to her.

82. Y has settled in well at nursery, where she is demonstrably *'energetic, sociable and inquisitive'*.

83. Both the guardian and the social worker see a little girl who is very clearly thriving.

84. Self-evidently, she has been deprived the possibility of any meaningful attachment relationship with her birth parents, the impact of which will only be seen in the fullness of time. However, she has been placed with high quality carers since she was barely a

week old and, crucially, has remained in their care at all times in the more than three years since. This has allowed for the formation of healthy, secure attachments with her primary caregivers, the advantages of which are already becoming visible in the confident and relaxed way in which she interacts with other members of her familial and social circle and with the wider world.

85. Of course, the other of Y's characteristics which it is crucial to note are that she is a fully Hungarian child, born of Hungarian parents, with only Hungarian birth relatives, and so with a lineage and culture which derive wholly from Hungary. This is a vastly important aspect of her being and of her identity.

The evidence – name change

a. The foster carers

86. The foster carers did not know that it was possible to effect a change of name for a child placed under an SGO until the lawyers providing them with advice in relation to these proceedings told them so.

87. Y's name is currently [forename] [father's surname]. The foster carers would like to change that name to the extent of adding their surname into her current name, preferably so that her surname becomes double-barrelled, [forename] [father's surname]-[foster carers' surname].

88. Their reasons for doing so, they tell me, have nothing to do with trying to water down, still less to side-line or extinguish Y's Hungarian heritage. Rather, it is to reflect her lived reality throughout childhood: she will be a Hungarian child, who lives in England, speaks English and has English carers. She will be – always – the birth child of her parents; but she will also be a member of the foster carer's family, in both a nuclear sense, but also very much as part of a close-knit, wider family group, comprising her foster parents' older children and their children, who will be, effectively, de facto uncles, aunts and cousins. The foster carers point out that their three adopted children all took the foster carer's surname, and that, save for their adopted daughter, who has chosen to be known by her husband's surname, the family group remains distinguishable by that name. The foster carers consider that the addition of their surname is likely to make it easier for Y at school

and socially given that part of her name will the same as that of those who are to look after her throughout her childhood.

b. The father

89. The father is described as being *'vehemently opposed'* to Y's name being changed in this way. Although he is described as being very grateful to the foster carers for having looked after Y so well these past few years, and fully supports Y's staying with them if she cannot live with his sister in Hungary, he considers that it would be wholly wrong to allow Y's name to be changed to take on a name which is hers neither through birth nor through association with anything in her birth heritage.

90. It is not suggested on his behalf that the father would be so upset by the insertion of this name that it would prevent him from progressing the contact which is planned, through indirect, to direct video contact, possibly one day moving to direct face-to-face.

c. The aunt

91. The aunt takes the same view as the father.

d. The local authority

92. The local authority also opposes the proposed name change. The social worker's evidence to me was that Y remains and always will remain a Hungarian child, with whom the local authority is committed to promoting as much contact with her birth family as is possible. She is concerned that, in due course, especially if she has contact with her birth family, and as she becomes curious about her identity, Y may come to question why her name was changed. Further, confident that there will be at least some ongoing contact with birth family, the authority does not want to condone a course which may be the cause of tension, to create, as Mr Harrison QC put it, *'a running sore'*.

e. The children's guardian

93. The children's guardian took a different view. She considers that adding the foster carers' surname takes nothing away, but adds an important component which then allows her name to reflect both sides of her identity, that is her identity begotten by birth, parentage and nationality, and her identity created from her day-to-day lived experiences as an English-speaking girl, being brought up in England by an English family.

94. The guardian did not accept the argument put to her, in particular by Mr Setright QC, that, by definition, to add a new component to a name will dilute the effect or import of the original components.

The Law

a. Placement options

95. The law is settled, well-known and easily stated.

96. When it comes to making decisions about long-term outcomes for Y, her welfare is paramount (s.1(1), CA 1989). I am to take into account the non-exhaustive list of factors contained in the so-called welfare checklist when assessing where her welfare lies (s.1(3), CA 1989).

97. Where there are competing options for her long-term future, I am to undertake a global, holistic evaluation of each, taking into account benefits and negatives, and am then to compare the options, one against the other. (See *Re G (Care Proceedings: Welfare Evaluation)* [2014] 1 FLR 670, *per* McFarlane LJ; *KH v A CC & Others* [2020] 1 FLR 1057, *per* Baker LJ).

98. As to the tension, often apparent in cases such as this, between the advantages to a child of not having her status quo, and so her attachments, disturbed and the advantages of being placed in an extended family placement, in *M'P-P (Children)* [2015] EWCA Civ 584, McFarlane LJ stated:

> *'[51] It is not my purpose in this judgment to express a view upon the relative importance of attachment/status quo arguments as against those relating to a placement in the family. Each*

case must necessarily turn on its own facts and the weight to be attached to any factor in any case will inevitably be determined by the underlying evidence. In any event, for reasons to which I have already adverted, it is not necessary to do so in this case as, unfortunately, the judge does not appear to have engaged in any real way with the effect on the children of moving them from the care of their primary, and only, attachment figure or with the value to them of maintaining that relationship.'

99. Of the trial judge's analysis of the foster carer in that case, McFarlane LJ noted:

> '*[54] Conversely, when the judge came to list the positive features with respect to Y, the fact that the children had established a strong and entirely beneficial primary attachment to her is not mentioned when it should surely have been at the top of the list; the fact that they were attached to her and she was not simply their current foster carer was, on her side of the case, what the case was all about, yet it does not feature as a factor. The judge's reference to the establishment of 'a family life together' which is entitled to 'proper and full weight' has the ring of an argument based upon rights rather than, more importantly in the context of the children's welfare, their emotional reality.*'

100. The Court of Appeal defined the fundamental issue thus:

> '*[55] […] [T]his, at bottom, was a choice between the life that the children had firmly established with an individual who was not related to them, on the one hand, and future placement with a close family member who had only met them on one occasion and who lived in circumstances very different from those with which they were familiar.*'

101. It was noted in the judgment that the 'status quo' argument was generally not a substantial factor in public law cases given that the child would often be in a home which was temporary [§47] and it was also noted in submissions that there was a danger of a status quo forming simply due to the passage of time and repeated interim orders. However, the Court of Appeal also cited Ormrod LJ in *D v M (Minor: Custody Appeal)* [1982] 3 All ER 897:

> '*... it is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds is to be avoided whenever it is possible to do so. Where, as in this case, a child of two years of age has been brought up without interruption by the mother*

(or a mother substitute) it should not be removed from her care unless there are strong countervailing reasons for doing so. This is not only the professional view, it is commonly accepted in all walks of life. Factors in any particular case relating to the status quo will fall to be considered in a case to which CA 1989, s 1 applies under s 1(3)(c) where the court must have regard to 'the likely effect on [the child] of any change in his circumstances.'

102. McFarlane LJ noted:

'[These observations of Ormrod LJ] have been borne out by the enhanced understanding of the neurological development of a young child's brain that has become available, particularly, during the past decade. As a result, the importance of a child's attachment to his or her primary care giver is now underpinned by knowledge of the underlying neurobiological processes at work in the developing brain of a baby or toddler.' [§49]

103. Translated to the present case, I derive from these various judicial utterances an understanding that, into my holistic analysis, I must inject a careful evaluation of the benefits to Y of continuing to live in the home in which she has been settled and formed secure attachments over a very prolonged period (and the converse potential damage of moving from it), alongside a similarly assiduous assessment of the benefits to Y of being brought up by a close relative, in the country of her heritage, with all of the associated benefits in terms of identity and culture (and the converse disadvantage of not doing so).

104. We come full circle, then: I must evaluate – with precision and in detail – the advantages and disadvantages of each of the viable options, and then compare them, side by side.

b. Name change

105. I should acknowledge that I am very grateful to Messrs. Setright QC and Langford for their work in shepherding the various jurisprudence in relation to the court-sanctioned changing (or not) of a child's name and to Messrs. Sampson QC and Leong for supplementing this work slightly.

106. Section 14B, CA 1989 provides:

Special Guardianship Orders: Making

[…]

(2) On making a special guardianship order, the court may also –

(a) give leave for the child to be known by a new surname;

[…]'

107. The starting point, for current purposes, is the modern *locus classicus*, *Dawson v Wearmouth* [1999] 2 WLR 960, [1999] 1 FLR 1167. In that case, Lord Jauncey of Tullichettle said at 1175H:

'A surname which is given to a child at birth is not simply a name plucked out of the air. Where the parents are married the child will normally be given the surname or patronymic of the father, thereby demonstrating its relationship to him. The surname is thus a biological label which tells the world at large that the blood of the name flows in its veins. To suggest that a surname is unimportant because it may be changed at any time by deed poll when the child has attained more mature years ignores the importance of initially applying an appropriate label to that child.' (1175H)

Lord Jauncey then referred to a number of decisions demonstrating the importance attached to a child bearing its father's name. He then said at 1177A:

'My Lords I accept, of course, as the authorities make clear, that the changing of a child's surname is a matter of importance and that in determining whether or not a change should take place the court must first and foremost have regard to the welfare of the child. There are many factors which must be taken into account, not only those pertaining to the present situation but also those which are likely to affect the child in the future. Just as the fact that the mother happens to bear a different surname from the child is not a sufficient reason for changing the child's surname (Re WG (above), in Re C (Change of Surname) [1998] 2 FLR 656), so the fact that mother and child bear the same name should not necessarily be sufficient reason for refusing a change if there are valid countervailing reasons.' (1177A)

108. It was from the speeches in *Dawson* that Butler-Sloss LJ in *Re W, Re A, Re B (Change of Name)* [1999] 2 FLR 930 derived the following propositions:

'[…]

(e) On any application, the welfare of the child is paramount and the judge must have regard to the s 1(3) criteria.

(f) Among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration but it is not in itself decisive. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.

(g) The relevant considerations should include factors which may arise in the future as well as the present situation.

(h) Reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight;

(i) The reasons for an earlier unilateral decision to change a child's name may be relevant.

(j) Any changes of circumstances of the child since the original registration may be relevant.

(k) In the case of a child whose parents were married to each other, the fact of the marriage is important and I would suggest that there would have to be strong reasons to change the name from the father's surname if the child was so registered.

(l) Where the child's parents were not married to each other, the mother has control over registration. Consequently, on an application to change the surname of the child, the degree of commitment of the father to the child, the quality of contact, if it occurs, between father and child, the existence or absence of parental responsibility are all relevant factors to take into account.'

Butler-Sloss LJ was at pains to point out:

'I cannot stress too strongly that these are only guidelines which do not purport to be exhaustive. Each case has to be decided on its own facts with the welfare of the child the paramount consideration and all the relevant factors weighed in the balance by the court at the time of the hearing.'

109. In _Dawson_, the section 1(5) CA 1989 principle that a court shall not make a relevant order *'unless it considers that doing so would be better for the child than making no order at all,'* resonates in the House of Lords reasoning:

> *'[…] [I]n my opinion on a fair reading of the decision of the Court of Appeal they were suggesting not that the registration was conclusive of the issue in the present case but that in order to justify changing the name from that which was registered circumstances justifying the change would be required and they concluded in the exercise of their discretion that there were no such circumstances of sufficient strength to do so in the present case. In that situation, in my opinion, the argument on the Convention has no separate validity from the earlier arguments for counsel for the father to which I have referred.*
>
> *This is a difficult and narrow case but on a fair reading of the judgment of the Court of Appeal as a whole, I am satisfied that they correctly applied the provisions of the Act of 1989 and in particular section 1 in the exercise of their discretion to refuse to make an order for change of name in the present case. For these reasons I would dismiss this appeal.'* (Lord Mackay of Clashfern, at 321)

110. Fast-forwarding two decades, King LJ, in _C (Children) (Child in Care: Choice of Forename)_ [2017] Fam 137, posed the question, *'What is in a name?',* answering her own question thus:

> *'40. One of the first questions asked by friends and relatives following the birth of a child is 'what is the baby's name?' It may be thought that any individual who has had the happy experience of debating with his or her partner possible forenames for their unborn child would be astonished at the proposition that the choice of the name of their child could be regarded as other than their right as the child's parents, and their first act of parental responsibility. The name given to a child ordinarily evolves over the months of the pregnancy through a bundle of cultural, familial and taste influences. The forename finally chosen forms a critical part of his or her evolving identity. The sharing of a forename with a parent or grandparent or bearing a forename which readily identifies a child as belonging to his or her particular religious or cultural background, can be a source of great pride to a child and give him or her an important sense of 'belonging' which will be invaluable throughout his or her life.*
>
> *41. If a baby cannot be brought up by his or her parents, often the forename given to him or her by their mother is the only lasting gift they have from her. It may be the first, and only, act of parental responsibility by his or her mother. It is likely, therefore, to be of infinite value to that*

child as part of his or her identity. That remains the case, even if the name used in his or her new family and thereafter throughout their lives, is different from that given to him or her by their birth mother.'

111. Roberts J, in X County Council v A [2020] EWHC 3638 (Fam), on an application for care and placement orders, stated:

'149. As Lady Justice King acknowledged in Re C, the name given to a baby by his or her mother is an important aspect of the exercise of her parental responsibility. As here, in circumstances where GC cannot be brought up by her natural parents, it forms an important part of her identity and it has the potential to remain a lasting link to her birth family. Any attempt to change her forename or surname represents a significant step in GC's life and an obvious interference in her own and her mother's Article 8 rights. Before the court can interfere in those rights, it must be satisfied that there are good reasons for doing so.'

112. In *Re L (A Child)* [2007] EWCA Civ 196, [2007] 2 FLR 50, the Court of Appeal (Ward, Wilson, and Toulson LJJ) considered an appeal against a decision of Black J whereby she had refused an application by the maternal grandparents, in respect of whom she had made an SGO, to change the surname of the child. The material part of Black J's decision was recorded by the Court of Appeal thus:

'36. The judge refused to permit any change of name. Her reasons were these:

"In a case where there is as much anxiety as there is here about the way in which [E's] identity is dealt with, it would be completely contrary to her interests, in my view, for her now to be known by a different surname. Her welfare is most likely to be secured, it seems to me, by keeping her circumstances as faithful to reality and the truth of her situation as possible. Whilst I accept that some explanation of names will be required, for instance, doctors and schools, I do not consider that that will be an insuperable problem in the context of a special guardianship order. A simple explanation that [E's] parents are unable to care for her so we, her maternal grandparents, are looking after her with an SGO should be sufficient."'

37. Thus the crucial element in the judge's findings is that vexing problem of identity. This, it will be recollected, was at the forefront of the guardian's concerns and the social workers' concerns as

they reported at first in the adoption proceedings and then in these proceedings. The judge made several findings about this:

> *'59 There is no doubt that the question of identity is a serious one which has the potential to be harmful for [E] if it is not resolved and possibly disruptive of her relationship with her grandparents as she grows older. … [E] will have at least two major added issues to cope with as she grows up in that she will be a mixed race child and, rather than living with her parents, she will be living with her white grandparents. Each step must therefore be taken at every stage to ensure that her upbringing puts her and the adults in her life in a position to deal with this in the best possible way.*
>
> …
>
> *61 The guardian said in her March 2006 report that she had 'major concerns' in the area of [E's] identity needs. She considered, quite rightly that [E's] emotional needs can never be fully met if she is to be cut off completely from any knowledge of her paternal family.*
>
> …
>
> *63 GM's oral evidence about the whole issue of fathers and mothers was disturbing …*
>
> *64 The overall thrust of the grandparents' evidence was that they agreed in principle that [E] needed to know who her mother and father were but they were not proposing to raise the issue of parents with [E] until she raised it with them. The sense I got was that they remained unpersuaded that [E] should be given a normal basic child's understanding of mother and father but thought that she should have the concepts put over to her in a way which recognised that her parents were not actually acting in the capacity of parents to her, hence the use of terms such as "birth mother" and "birth father". … GM disagrees forcefully with the normal social services' practice of starting a life story book with the child's parents and says, "I hope the [social services] are not going to force me to do it in that way".'*

113. Ward LJ (with whom Wilson and Toulson LJJ agreed) stated:

> *'39. Sympathetic though I am to their [the grandparents'] predicament and their hurt, their concerns overlook the value of the lesson we are all taught at our mother's knee: honesty is the best policy. This family must honestly face up to its fractured constitution. E must learn to live with the fact that she is being brought up by her grandparents not her parents. It should not be difficult*

to say to E, "Darling, your surname is L, not S, because L is the name you were born with, it is your parents' surname." That is a fact she will soon absorb and with which she will soon be comfortable. It avoids the much more difficult questions that will be asked when she wishes to know "why am I S if my parents are L?".

40. Although I would allow permission to appeal this issue, I would dismiss the appeal because I am satisfied that the judge's order was rightly made in the best interests of E. I wish to add, as emphatically as I can, that the rejection of this appeal should NOT be seen as any denigration at all of the stupendous effort [the grandparents] have made to bring order and normality into their granddaughter's life. I commend them for that. I urge them, however, not to exaggerate the importance they attach to this issue. In the scale of things in this child's life, her surname is a fact of little real significance. Far more important is the knowledge E will have that she has been much loved by her grandparents who have brought her up.

41. I have deliberately refrained from addressing the argument that because the Court is given the reminder to consider a change of name when making a SGO, there is some bias in favour of such an order being made. It could be argued that the degree of permanence inherent in this arrangement has a change of name as a concomitant, just as in adoption. This argument has not been fully addressed in this appeal. Miss Boyd's answer on F's behalf is that if adoption is not appropriate and if maintenance of some link with the parents is to be achieved, then the natural corollary is to preserve the parents' name. This is not the case where that dispute needs to be resolved. Ultimately the welfare of the child concerned is the litmus test and here the welfare of the child so overwhelmingly justifies the judge's decision that no presumption or starting point one way or the other makes any material difference.'

114. I have to say that for my part, and with the greatest possible respect, I find it difficult to see how the argument to which Ward LJ refers *'that because the Court is given the reminder to consider a change of name when making a SGO, there is some bias in favour of such an order being made'* could be met with anything other than instant rejection. The facts of every case are different. For as long as we remain bound by the truism, in fact and law, *'Each case has to be decided on its own facts with the welfare of the child the paramount consideration and all the relevant factors weighed in the balance by the court at the time of the hearing,'* there can surely be no room for any sort of presumption (or *'bias'*) in any direction in any particular type of case, and especially in the context of SGOs, an order appropriately deployed in such a very wide range of circumstances. For my part, I certainly shall not proceed on the basis that there

is anything even resembling a presumption in either direction when I come to consider this question.

115. In S v B and Newport City Council [2007] 1 FLR 1116 Hedley J made an SGO in favour of a 6-year-old child's maternal grandparents, in whose care the child had resided since he was 6 months old pursuant to a care order. The birth parents were each unable to meet the child's needs and were identified as being volatile. A s.34(4) order permitting the prohibition of contact between the child and his parents had been in place. The judge, in addition to making the SGO (which discharged the s.34(4) order, and the care order) made a PSO prohibiting contact with the children. Additionally, and as an ancillary order, the judge made an order under s 14B(2)(a), giving leave for the child to be *'known henceforth for all purposes'* by the surname of the maternal grandparents.

116. In even more extreme factual context, Cobb J considered the question of the change of two older children's names in *Re B and Another (Change of Names: Parental Responsibility: Evidence)* [2017] EWHC 3250 (Fam), [2018] 1 FLR 1471. Alongside the Judge's granting of a suite of far-reaching orders which effectively and significantly curtailed the parental responsibility of a father who posed a grave risk to his two children and their mother, he also allowed the children's names – in full – to be changed. Of the applicable law, Cobb J said this:

> *'[33] A surname defines, and is defined by, familial heritage and genealogy. A person's forename invariably identifies gender, and often personifies culture, religion, ethnicity, class, social or political ideology. A forename and surname together represent a person's essential identity. From very earliest childhood, one's name is an intrinsic part of who you are and who you become. Thus, the naming of a child 'is not a trivial matter but an important matter', and any change in the name 'is not a question to be resolved without regard to the child's welfare' (Dawson v Wearmouth [1999] UKHL 18, [1999] 2 AC 308, [1999] 2 WLR 960, [1999] 1 FLR 1167, per Lord MacKay of Clashfern). […]'*

The judge went on to quote from *Dawson v Wearmouth* and *Re W, Re A, Re B*, before going on:

> *'[36] There is a growing recognition that a forename or given name is no less significant. In Re C (Children) (Child in Care: Choice of Forename) [2016] EWCA Civ 374, [2017] Fam 137, [2016] 3 WLR 1557, sub nom Re C (Children: Power to Choose Forenames) [2017] 1 FLR*

487, at para [40], contrasting the position taken by Thorpe LJ in Re H (Child's Name: First Name) [2002] EWCA Civ 190, [2002] 1 FLR 973. King LJ described it thus:

> *'The forename finally chosen forms a critical part of his or her evolving identity. The sharing of a forename with a parent or grandparent or bearing a forename which readily identifies a child as belonging to his or her particular religious or cultural background, can be a source of great pride to a child and give him or her an important sense of 'belonging' which will be invaluable throughout his or her life.'*

Plainly the longer the child has carried, and been associated with, that forename the stronger the connection with it, and the more powerful the reasons required to change it. As King LJ went on to say in Re C, at para [51]:

> *'... given the fact that in the twenty-first century a child will predominantly use his or her forenames for most purposes throughout his or her life, that forename is now every bit as important to that child, and his or her identity, as is his or her surname.'*

[37] In Re D, L and LA (Care: Change of Forename) [2003] 1 FLR 339, Butler Sloss LJ said (at 346) that:

> *'To change a child's name is to take a significant step in a child's life. Forename or surname, it seems to me, the principles are the same, in general. A child has roots. A child has names given to him or her by parents. The child has a right to those names and retains that right, as indeed, the parents have rights to retention of the name of the child which they chose. Those rights should not be set to one side, other than for good reasons ... Having said that, one has to recognise, in reality, that names do change. Children acquire nicknames and even nicknames sometimes take over from the name that they were given as their chosen name. Children do have diminutives and they may themselves, as they get older, prefer their third name to their first name and choose to be called by it.'*

117. I set out the full jurisprudential landscape, including that relating to whole name change, to full surname substitution and to change of a child's given name, even though none of these accurately describes the particular question which I must determine. I do so in order that all of the various principles and all of the arguments which have found favour (or not) with earlier and higher courts can be seen. Ultimately, I will be guided entirely by Y's welfare, determined in the context of her own very particular circumstances, past

present and future, and bearing fully in mind the importance of her heritage, of the reasons for and the meaning of her original name, and of truth and authenticity in relation to her identity.

c. Adverse inferences from not giving evidence

118. I am invited by the local authority to draw adverse inferences from the fact that the aunt has effectively chosen not to participate fully in this trial. Having made two written statements and having told the court, through her representatives, that she would attend on the first day to give evidence, she did not attend (remotely), did not forewarn the court or her lawyers, and only on fairly extensive efforts being made indicated that she would not be attending, she having been called in by her employer, she said, to work on a day off.

119. Mr Harrison QC and Ms Tait point to the comments of Lord Sumption JSC in *Prest v Petrodel Resources Ltd and others* [2012] UKSC 34, [2013]2 AC:

> *[44] In Herrington v British Railways Board [1972] AC 877, 930—931, Lord Diplock, dealing with the liability of a railway undertaking for injury suffered by trespassers on the line, said:*
>
> > *"The appellants, who are a public corporation, elected to call no witnesses, thus depriving the court of any positive evidence as to whether the condition of the fence and the adjacent terrain had been noticed by any particular servant of theirs or as to what he or any other of their servants either thought or did about it. This is a legitimate tactical move under our adversarial system of litigation. But a defendant who adopts it cannot complain if the court draws from the facts which have been disclosed all reasonable inferences as to what are the facts which the defendant has chosen to withhold. A court may take judicial notice that railway lines are regularly patrolled by linesmen and Bangers. In the absence of evidence to the contrary, it is entitled to infer that one or more of them in the course of several weeks noticed what was plain for all to see. Anyone of common sense would realise the danger that the state of the fence so close to the live rail created for little children coming to the meadow to play. As the appellants elected to call none of the persons who patrolled the line there is nothing to rebut the inference that they did not lack the common sense to realise the danger.*

> *A court is accordingly entitled to infer from the inaction of the appellants that one or more of their employees decided to allow the risk to continue of some child crossing the boundary and being injured or killed by the live rail rather than to incur the trivial trouble and expense of repairing the gap in the fence."*

The courts have tended to recoil from some of the fiercer parts of this statement, which appear to convert open-ended speculation into findings of fact. There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party's failure to rebut it. For my part I would adopt, with a modification which I shall come to, the more balanced view expressed by Lord Lowry with the support of the rest of the committee in R v Inland Revenue Comrs, Ex p TC Coombs & Co [1991] 2 AC 283, 300:

> *"In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly H explained, even if not entirely justified, the effect of his silence in favour of the other party, may be either reduced or nullified."*

Cf Wisniewski v Central Manchester Health Authority [1998] PIQR P324,

[45] The modification to which I have referred concerns the drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings, which have some important distinctive features. There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings although in form adversarial have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing. I refer to the husband

> *because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is.'*

120. By extension, says the local authority, in these CA 1989 proceedings (which include applications pursuant both to Part II (the SGO application) and Part IV (the underpinning care proceedings)), I am entitled to draw adverse inferences against a party who is claiming to assert a positive case, and who stands by her statements of evidence, but who does not take advantage of the clear ability to give – and to be tested through – oral evidence.

121. Of course, the aunt's duty to attend derives not only from the fact that she advances a positive case, the evidence in support of which should be tested, but also from the requirement under the rules to attend all hearings *'unless the court directs otherwise'* (see FPR 2010, r.12.14(2)(a)).

122. In answer to the notion that there may be some rule of law that adverse inferences can be drawn against a non-attending party, Mr Sampson QC for the aunt draws my attention to the judgment of the Supreme Court in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, [2021] 1 WLR 3863 in which the *Wisniewski* line of reasoning was dealt with thus:

> *'[41] The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.'*

123. Although it was not cited before me, the decision of Williams J in *Re K (Cocaine Ingestion: Failure to Give Evidence)* [2020] EWHC 2502 (Fam), [2021] 2 FLR 349 is of considerable assistance on this question. Dealing with a mother who declined to give evidence during a fact-finding hearing in Part IV CA 1989 proceedings which were investigating the most serious allegations (she claiming to be *'not in the right frame of mind'* to attend to give evidence, being *'extremely muddled and confused'*, and *'that her mind had blocked out much of what happened'*), the Judge said this of the approach to be taken to her effective refusal to attend:

> *'[39] In Re O (Care Proceedings: Evidence) [2003] EWHC 2011 (Fam), [2004] 1 FLR 161 Johnson J was very clear. He said, at para [13], that:*
>
> > *'As a general rule, and clearly every case will depend on its own particular facts, where a parent declines to answer questions or, as here, give evidence, the court ought usually to draw the inference that the allegations are true.'*
>
> *The power of the court to draw adverse inferences is found elsewhere, for instance in relation to failures to participate in or comply with other directions of the court designed to assist the court in determining a case justly; for instance a failure to participate in an expert assessment can also allow the court to draw inferences against an individual: see Re C (A Child) (Procedural Requirements of a Part 25 Application) [2015] EWCA Civ 539, [2016] 1 FLR 707, [2015] All ER (D) 111 (Jun), at para [34]. However, as the closing submissions of the mother and the guardian argue (and indeed the general rule proposed by Johnson J is subject to 'particular facts') the statutory framework and the jurisprudence suggest a more nuanced approach which takes account of the circumstances of the refusal or failure to give evidence and the nature of the issue and the evidence which is given by other parties.*
>
> *[40] Although the general approach is that any fact which needs to be proved by the evidence of witnesses is generally to be proved by their oral evidence (FPR 2010, r 22.2(1)(a)) facts may also be proved by hearsay evidence. The effect of s 96(3) of the Children Act 1989, Children (Admissibility of Hearsay Evidence) Order 1993 is to make all evidence given in connection with the welfare of a child admissible notwithstanding its hearsay nature. This would commonly include local authority case records or social work chronologies which are very often hearsay, often second or third-hand hearsay but also extends to witness statements. The court should give it the weight it considers appropriate: Re W (Fact-finding Hearing: Hearsay Evidence) [2013] EWCA Civ 1374, [2014] 2 FLR 703 and where hearsay goes to a central issue the court may well require the maker of the hearsay statement to attend to give oral evidence.*

[41] The provisions of ss 1 and 4 of the Civil Evidence Act 1995 also make provision for the court to admit and rely on hearsay evidence and set out a range of factors that the court should consider in assessing the weight to be given to and the reliability of hearsay evidence. These include matters such as the circumstances in which the statement was made and whether the circumstances suggest an attempt to prevent proper evaluation of its weight.

[42] Cases from other fields such as R v Inland Revenue Commissioners and Another ex parte TC Coombs and Co [1991] 2 AC 283, [1991] 2 WLR 682 and Wisniewski v Central Manchester Health Authority [1998] Lloyd's Rep Med 223, [1998] PIQR P324 support a more nuanced approach. Brooke LJ said in the latter case:

> *'From this line of authority, I derive the following principles in the context of the present case:*
>
> *(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*
>
> *(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.'*

[43] I consider that the approach outlined by Brooke LJ more fully reflects the proper approach. These are inquisitorial proceedings rather than adversarial, where the welfare of the children is at stake and where the authorities on fact-finding require the court to survey all the evidence and to avoid compartmentalisation. The legislative framework allows for the admission of hearsay evidence. The approach to lies in Lucas requires a more measured approach. At one end of the spectrum, there will no doubt be cases where the court is satisfied that a person has deliberately refused to come to court to support their written statement and where there is no excuse or explanation. In that scenario, the court might take a bright line approach and refuse to place any weight on any of

their evidence and draw inferences against them that any allegations are true. In other cases, the court will need to consider the circumstances of their failure to give evidence, any explanations offered or which present themselves and the evidence itself and the issues it goes to. Where there is compelling evidence explaining an inability to attend full weight might be given and no inferences drawn. In between will be cases where the court might determine it is appropriate to rely on and give weight (even full weight) to some evidence but not to other evidence and to draw some but not necessarily all possible inferences.'

124. It seems to me that the 2020 decision of Williams J in *Re K* (in the Family Division of the High Court) is entirely supported by the subsequent 2021 decision in *Efobi* (in the Supreme Court, on appeal, via the Court of Appeal, from an employment tribunal). I may draw adverse inferences from a witness's failure to testify. I am not obliged to do so and there is no strict system of rules to be traversed in deciding whether to do so. In considering whether to draw inferences, and if so which, I will have a close eye to all the circumstances and must adopt an approach which accords with common sense.

Analysis: Placement

a. Identity, heritage, nationality

125. Central to the aunt's argument, skilfully and forcibly put on her behalf, albeit in her absence, by Messrs. Sampson QC and Leong, is the indisputable fact that Y is a Hungarian child. Her father is Hungarian, although now he lives in another EU country, and her mother is Hungarian, although she lives, and has done so for many years, in England. Although Y herself was born in England and has lived in England for her three, rising four, years of life, and although she has been brought up thus far to speak English, she is, and will always be of Hungarian heritage.

126. Much complaint is made on the aunt's behalf of the slowness (on her case) with which the local authority grappled with the need to promote – in a meaningful way – Y's Hungarian roots. This is especially egregious (again, on her case) in light of the fact that placement in Hungary was always on the cards, and for a long time was not only the preferred plan, but the court-sanctioned plan, not actioned only because of the global petrification created by the Pandemic.

127. Certain it is that on 18th December 2021, the children's guardian's legal team applied on her behalf for a hearing in light of and to address the guardian's significant concern that the local authority was not doing enough to promote and develop in particular Y's Hungarian language, given that she was (still, at that stage) to be placed there. It is also clear that, at various points in the long history of this case, judges formed an adverse view about what was being done to deal with the fact of Y's being Hungarian and, perhaps more pressingly, the possibility of an imminent move to Hungary. For example, I included in my order of 12th August 2021 the following recital:

> *AND UPON the court expressing significant concern that the Local Authority is still not adequately promoting [Y]s Hungarian language and cultural heritage, noting that it is likely to be grossly inimical to [Y]'s best interests if this matter is not adequately addressed, and requiring that the Local Authority urgently address this deficit.*

128. Further, while significant criticism is levelled by the local authority at the aunt in relation to her frequent non-attendance at contact, and her often fairly limited engagement when she did attend, the aunt counters with the complaint that very little was done to enable the contact to be successful. Given the child's age, and so reduced ability to concentrate on and to participate in video-contact via an interpreter, that it was not a roaring success is perhaps no surprise, the aunt would say.

129. Also to be considered, I have already set out the many, proactive and ingenious ways in which the foster carers, if Y remains with them, will ensure her exposure to, at times her immersion in, at the very least Anglo-Hungarian culture.

130. What, then, should I make of all of this?

131. On the one hand, it is incontrovertibly true that the only way to ensure Y's upbringing <u>fully</u> within, and her <u>full</u> exposure to, her Hungarian heritage is for her to be raised in Hungary, by Hungarian-speakers.

132. However, it should at this point be mentioned, and more than purely parenthetically, that this was never Y's parents' plan for her. If it were not for subsequent intervening events (the local authority's removal of Y from their care, the father's incarceration and deportation, etc.), presumably Y would be living with one or both of them in England, speaking Hungarian and English and about to embark on a childhood in English

mainstream education. If Y's historic, genetic heritage is entirely Hungarian, she is the product of two parents both of whom have substantial and longstanding links to England, and that too is certainly an important part of her story.

133. On the other hand, this is not a 'zero sum game'. While placement with the foster carers could scarcely equate – regardless of any effort on their part – with living in Hungary, their openness and enthusiasm, as described above, would go a very long way to ensuring, at the least, that Y would grow up fully aware of, with a fair degree of knowledge about, and with a wholly positive view of, her Hungarian heritage. Furthermore, the foster carers' entirely open and inclusive attitude towards post-final-placement familial contact would ensure that Y will have as much time with and exposure to her birth relatives (in particular, her mother, father and aunt) as is safe and otherwise in accordance with her best interests.

b. The aunt's commitment

134. The aunt is 26 years old. She has two children, aged 8 and 4. She endured, recently and during the isolation of the Covid-19 lockdowns, the death by suicide of her husband, the father of her younger child. Without descending into florid and distressing detail, the circumstances – for her – were about as traumatic as one could imagine. The impact of this trauma must have been compounded by the fact that, for a significant period of time before her husband's death, whether or not in a fluctuating pattern, her husband had grave issues with alcohol and with his mental health. No doubt all of this is the more horrendous for the aunt to bear because her husband was, in other ways, a good man and a loving husband and father.

135. Now, as then, the aunt evidently works very long hours in Hungary in order to provide for her children. There is no evidence to suggest that they are not well provided for. This court has nothing but admiration for the aunt – she is the committed and devoted mother who will do everything she can simply to ensure the wellbeing and the survival of her children.

136. However, as if these various vicissitudes were not enough, fate has also decreed that it is she who is the only family member able to represent herself as a viable carer for young Y, who will otherwise be all but lost to the family.

137. I have no doubt that Y is loved by her aunt. Nor do I doubt that the aunt demonstrates wholly admirable loyalty to all of her family, including her brother, Y's father.

138. Referring back to my discussion above in relation to the law, in family proceedings, as to when adverse inferences can be drawn from non-attendance, I have no need in this case of hard and fast rules or presumptions. Nor, in fact, do I consider myself to be particularly disadvantaged by the aunt's not being, or feeling, able to attend on the day on which she was to give her evidence.

139. Taking into account her entire conduct, over these regrettably very prolonged proceedings, including, but certainly not limited to, the acute non-attendance at the final hearing, it seems to me that I am well placed to reach a fairly complex conclusion.

140. That conclusion is this:

- Y's aunt is a good, decent and hard-working woman; moreover, she is a devoted mother to her two children. She is also a loyal sister and daughter, such that she has put herself forward – initially in good faith – to be the full-time surrogate mother of her niece, Y.

- Although in good faith, it is clear that the aunt was acting largely in consequence of her loyal desire to assist all members of her family, and motivated at least in part by a degree of pressure from some of them. (This is not unusual; it is not necessarily sinister; it is, however, instructive.)

- However, even in the early days, she was overstretched in her aspiration to help everyone. In order to persuade English social workers that she could care for Y, she was obliged to hide from them what must have been in her life the obvious, and at least occasionally acutely problematic, issues relating to her husband. Even in those early days, the aunt – probably motivated by nothing other than a visceral desire to help her family – hid from authorities and assessors the difficulties in her life.

- The death of her husband marked – unsurprisingly – a complete watershed. It is entirely natural that the aunt found it difficult, even impossible, to tell English social workers what had happened. Doubtless, her husband's death and its circumstances would have made even more complex her feelings in relation to the thought of caring for her niece. She may have recognised, at least at a cerebral level, that taking a new, young, non-Hungarian-speaking child into the newly single-parent home would have represented a formidable challenge; yet she was not emotionally able to withdraw her status as a contender for Y's care, given that this would be, for her and for the family, to lose Y into a foreign country's care system, and so yet more loss.

- Without any need to resort to any inflexible rule of law (see above), I consider that much can be inferred from the aunt's difficulties in attending for (remote) contact, from her sporadic dis-engagement from her lawyers, from her frequent non-engagement with English social workers and the guardian, from her non-attendance at most of the recent court hearings and from her absence from the final hearing. In accordance with my earlier expressed views, above, the inferences I draw are the product of an assessment of the entire circumstances (overlain, I hope, with a dose of judicial common-sense):

    - the aunt is already encumbered, to the point of being overborne, by the pressures of her current life (that 'current life' being the one which this (unexpectedly single) parent is forging for her two children, in the aftermath of a personal tragedy and a global pandemic);

    - the aunt feels great loyalty to her own family, including her brother (the father) and her parents (the paternal grandparents), and a strong sense of responsibility as the only member of the birth family potentially able to care for Y;

    - the aunt's difficulty / inability to make herself available for contact speaks to the simple fact that Y cannot be afforded full priority in the aunt's day-to-day life, given that the aunt is the single carer of two young children who is required to hold down a job which demands unforgivingly long hours;

    - the aunt's non-attendance at this hearing is telling in the same way; whether or not her employer did ring her and ask, even demand, that she attend work, I do not know; it is clear, however, that if she had really wanted to, if she was

desperate above all else to persuade the court that she could and should care for her niece, she would have found a way to be available for a few hours during this working week.

- My clear impression is that, while she may forever be unable directly and explicitly to accept as much, the aunt will struggle to summon the emotional, or indeed temporal, resources to add to her fold another, even more demanding (even if much loved) infant. I strongly suspect that the other members of Y's birth family know this to be so, at least at some level; it would be better for Y if this could in due course be acknowledged.

c. The impact of separation from the foster carers

141. Messrs. Sampson QC and Leong submitted to me that there is no evidence to support the notion that Y would suffer any harm, still less significant harm, if she were to leave her foster carers' care to be placed with her aunt in Hungary.

142. I cannot accept that submission.

143. The social worker devoted an entire statement to the potential impact on Y of separation from the foster carers and placement with the aunt. She wrote this:

> *'5.3 It would not be unreasonable to say that given how strong [Y]'s attachment is to her carers that she would be resilient to a move to [the aunt]. However, the magnitude of the change must be considered, along with how able [Y] would be able to understand such a change.*
>
> *5.4 It would be very hard to explain to [Y] what was happening and why it was happening. In addition [Y] may be too young to articulate how she is feeling about a move – which would be compounded by the language barrier that exists. When I consider a move from her perspective – she would be moved to a stranger without understanding why and would be unable to communicate effectively.*
>
> *5.5 In addition to the confusion that she will inevitably feel she will have lost the care givers who have afforded her unconditional love and support her entire life. I consider that the circumstances*

> *would be traumatic and such a move could potentially lead to development delays and the trauma itself impact on any further attachments to care givers. Research from the N.C Division of Social Services and the Family and Children's Resource Programme, Vol 2, No. 4, 1997, suggests "research indicates that removing children from their homes interferes with their development. The more traumatic the separation, the more likely there will be significant negative developmental consequences".'*

144. The children's guardian's expertise leads her to a very similar conclusion:

> *'A move to Hungary would demand a disruption to the secure attachment relationship [Y] has with [the foster carers], the only carers and primary and secure attachment figures she has ever known. Indeed, the longer- term impacts of this could well be profound. I am therefore concerned about the emotional trauma [Y] will almost definitely experience, especially if decisions favour a placement where her holistic needs are unlikely to be met, by a virtual stranger/family member with whom she has no familiar or meaningful relationship, and where Hungarian is the only spoken language.'*

145. In Re M'P-P (*supra*), McFarlane LJ, having mentioned the early work of John Bowlby and others on Attachment Theory, went on to speak of *'the enhanced understanding of the neurological development of a young child's brain that has become available, particularly, during the past decade. As a result, the importance of a child's attachment to his or her primary care giver is now underpinned by knowledge of the underlying neurobiological processes at work in the developing brain of a baby or toddler.'*

146. Y has known no other primary carers than the foster carers since she was a week-old premature neonate in hospital. She is now rising four years old. She has a healthy, secure attachment with the foster carers. The aunt, despite the contact which has taken place by WhatsApp, is a relative stranger to Y; she is a complete unknown *qua* caregiver. And there is a language barrier such that Y and the aunt do not speak each other's language.

147. It seems to me, in those circumstances, that there is nothing theoretical about the potential harm which Y would suffer if she were to leave the care of her foster carers to be placed with an unknown carer who speaks only a language alien to Y. It is a certainty, in my view, that she would suffer harm going well beyond disruption, that she would feel abandoned, frightened and alone, that she would long harbour a deep sense of loss, made

all the worse by the fact that her age would render it impossible to explain to her why her life had taken such a turn.

d. Analysis of the options

Placement in Hungary

148. If Y were to be placed with her aunt in Hungary, she would be living (a) with a close member of her birth family as caregiver, (b) alongside other close members of her birth family, her cousins, (c) with ready access to other close members of her birth family, viz. her grandparents. She would eventually learn to speak, and thenceforth have as her first language, what is, by virtue of her birth, her mother language. She would grow up immersed in her culture and heritage of birth. Throughout her childhood she would be aware in a real sense of who her birth parents are, and would very probably be able to have contact with them, certainly with her father, whether remote or, in time, face-to-face. There would never be a time when she yearned for her birth country, or when she asked why she did not live there or with a family member.

149. Moreover, Y would live with a good, loving carer, whose abilities have been positively assessed and who is bound by nature to love Y and motivated by the loyalty of blood to care for her.

150. However, as I have found, she would be living with someone who is already struggling to manage the significant burdens of her life, and who will, again on my findings, face even greater difficulties attempting to add another young child to her household. Importing into this analysis the findings I set out at paragraph [140] above, there is a significant likelihood that the care given to Y would slip below acceptable levels.

151. Further among the problems the aunt would face is the management of her brother, Y's father, in relation to the risk posed by whom the aunt will likely find it difficult to protect Y.

152. More potent even than these negative aspects of a placement with the aunt is the certainty that Y would be profoundly detrimentally affected by separation from the foster carers, no matter how carefully the handover of care were managed. The subsequent process of

adjustment would be hampered, in my view, by the huge shock to Y's system she would experience by virtue of living in a place where everything is different, this further compounded by the fact that she would be all but cut off from the world around her for many months by virtue of the language barrier. I remind myself of Y's age – she is coming up for four, and the sheer length of time she has known just one set of surrogate parents. She would be bewildered by the move, she would grieve what she had known, and it seems to me she would be affected, probably harmed, into the long-term.

153. There is reason to consider that Y's secure attachment to her foster carers would make her more resilient than a child without that benefit to such a move and that that attachment could successfully transfer to her aunt; but these are far from certainties and, even if achieved, could not prevent the process from being deeply painful for Y.

Continued placement with foster carers

154. If Y continues to live with the foster carers, she will have the benefit of an entire childhood with one single set of primary attachment figures: she would enter adulthood in the same home and with the same 'parents' as she experienced when she left the neonatal ward at two weeks of age. Those carers are tried and tested, not only by virtue of the fact of their exemplary care of and the existing secure attachment with Y, but also by reason of their parenting and fostering of their own and scores of other children.

155. As well as her primary attachment to the foster carers, Y would grow up at the heart of a large and vibrant extended family, living alongside and among her carers' adult children (and their partners) and their grandchildren, who are, in terms of age, of her generation.

156. She would also grow up with full knowledge of her background. The foster carers have demonstrated a desire and a capacity for total openness and honesty in relation to the truth of Y's backstory and heritage. Moreover, they have shown initiative and determination in finding for and giving to Y as much exposure to her Hungarian culture as their particular corner of England allows. The foster carers are also wholly open to ongoing contact between Y and birth family members including her parents and her aunt, yet they are and will be responsible in ensuring that this takes place only to the extent that it is safe and is in Y's best interests.

157. The principal downside of a placement with the foster carers is, of course, the flipside of the factors I set out in paragraph [148] above. However assiduous is the foster carers' attention to Y's culture and heritage, it will never be anything but a dim reflection of that to which she would be exposed if she were to live in Hungary, with Hungarian-speaking relatives. If she grows up in England, whether or not she has friends in the local Hungarian community, and whether or not she celebrates certain Hungarian festivals, abides by certain Hungarian customs, eats certain Hungarian food and learns some of the Hungarian language, she will still be living in England, speaking English and attending an English school. No matter what contact arrangements are put in place, she will not know or fit in with her Hungarian relatives in the same way as if she had lived with and among them. These are the realities of life in England.

e. Comparison of the options

158. My lodestar, of course, is Y's welfare. I have considered at some length above factors which resonate with those set out in the s.1(3) CA 1989 checklist. I have her age, her background and her characteristics firmly in mind.

159. Her ascertainable wishes and feelings and the likely effect on her of a change in her circumstances, I can take together. In my estimation, as I have set out above, Y would be distraught at the prospect of leaving her foster carers and would be damaged if that came to pass.

160. There may well be cases in which a step which causes such harm is necessary or otherwise proportionate, for example if the benefits of the alternative placement are all but overwhelming or if there are inherent deficits in the current placement. However, in this case, the opposite is true. The current placement – as well as being one in which Y is wholly settled and thriving and where she has forged strong, healthy, secure attachments – is also of the highest quality in every other way. Conversely, as I have found, placement with her aunt, despite good intentions, would be a course fraught with a number of serious potential dangers for Y.

161. In the final analysis, it seems clear to me that it is overwhelmingly in Y's interests to continue to live with her foster carers. I come to that conclusion with my eyes wide open

to what Y will lose in terms of exposure to her birth heritage which would be the corollary to living and growing up in Hungary, but confident in the knowledge that her foster carers will do all in their power to mitigate that loss for Y.

162. Y will continue to live with the foster carers. I shall make a Special Guardianship Order in their favour.

Analysis: Name Change

163. I have set out at some length above the competing arguments in relation to the proposal to change Y's name by adding to it the foster carers' surname.

164. In summary, it is said against the proposal that Y is Hungarian, that she is, in law and fact, the child of her birth parents, and that she will always be both of these things. She would scarcely be exposed as standing out at school in this day and age by virtue of having a different surname to the people who drop her off and with whom she lives. If she were ever to ask why she has a different name to the family she lives with, the answer can simply be given, and the very act of doing so will helpfully reinforce her understanding of her heritage and life story. Her birth family, it is said, is so resolutely opposed to the proposed change that it would create an issue which could become a 'running sore'. It might be inconvenient to her to be known by a different name to that on her birth certificate, amendment of that not being a possibility. Finally, if ever the time were to come when name change were indicated, it could take place then.

165. In favour of the proposal, it is pointed out that Y's heritage includes the fact that she was born in England, her parents lived in England, she has always been, and now, pursuant to my ruling, will always be resident in England, living with English carers. Her carers are surrounded by family members most of whom also bear their name. And what is proposed is to add an important indicator of heritage and belonging, while subtracting nothing.

166. It is an important factor that Y's current name represents the agreed choice of her birth parents. Originally bearing her mother's surname, she now, by their agreement, bears the forename they have chosen and her father's surname.

167. It is also significant that the father (in common with other paternal family members, although not, notably, the mother) objects very strongly to the proposal. Relevant though this factor is, I do not consider it remotely likely that the father, or any other family member, would be so affronted by a name change that it would impact on any decisions they were to make in relation to whether and how to take up contact with Y.

168. It is important, in my view, to look carefully at the nature of Y's placement. It is to be underpinned by an SGO which, it has rightly been pointed out to me, is a very different beast to an adoption order. The principal relevant difference is that under the SGO, while the foster carers will gain status, the birth parents will not lose status: Y remains, in law, their child. However, notwithstanding the type of order, it is a fact that Y was placed with the foster carers when a tiny baby and will remain with them, now as special guardians, for her entire childhood. They will be the only acting parents she will ever know as a child. Conversely, Y has never been, and will never be, looked after by either of her birth parents. It is hoped that she will see her parents in contact, but even that is some way off and by no means a certainty.

169. I am struck by the fact that Y will have to make sense of her place in the foster carers' family. The process of explaining why she does not live with her birth parents may, perhaps oddly, be rather easier than explaining how she fits into her now permanent family. Her special guardians each have one or more of their own children by birth; they share three adopted children, now adults; and they have grandchildren, far closer in age to Y than are her adult 'siblings' (by virtue of the SGO). Given the fact that she is now the only child for whom her special guardians are responsible, she will occupy an absolutely central place in their household, regardless of whether other adult children live there or visit with grandchildren. Moreover, while an SGO does not have the legal finality of an adoption order, as a matter of fact, this SGO is intended to be permanent and final, and it represents a placement with two people which began when Y was a week old and will continue until she is an adult. It seems to me, in these most unusual circumstances, that there would be a real benefit to Y in linking her, by name, with her carers and their family.

170. It further seems to me that the argument against the change based on Y's heritage militates rather more strongly in the other direction. Undoubtedly Y's birth heritage is Hungarian; and Y's birth parents chose her Hungarian name. However, Y's lived reality has always

been and will now always be that she resides in England, with English carers, speaking English, attending an English school. She is not a visitor, nor a temporary charge in her special guardians' care and she must be secure in that knowledge. In those circumstances, the proposed name change would represent a tangible link to the other, the lived, aspect of her identity.

171. I am fortified in my decision by the fact that this is a placement and a household in which Y's birth heritage will never be swept aside, still less hidden, but rather explored, discussed and celebrated. This is the opposite to the scenario facing Black J in *Re L*, where the otherwise well-intentioned grandparents did not feel able to promote, even proactively to discuss with the child, her birth parentage, and where the proposed name substitution would serve to obscure rather than to illuminate the truth.

172. Y's truth, it seems to me, is that she is, and will always be the Hungarian child of her birth parents, but, save only for the first week of her life, she will also always be the child of her foster carers, now her special guardians. In those circumstances, it can only enhance her sense of belonging, as she struggles to establish her view of self standing astride these two different worlds, that her name embraces both.

173. Accordingly, I give permission for Y to be known, for all purposes, as [Forename] [Original surname]-[Special guardians' surname].

Analysis: Contact

174. I can deal with this issue briefly.

175. There are plans for the development of contact with the father, moving from the indirect exchange of video clips, to direct, but video, contact. There is the prospect, in the future, of face-to-face contact, subject to established commitment, risk assessment and practicalities (the father lives in a different country and, having been deported, is not permitted to re-enter the UK).

176. There are similar plans for the development of contact with the mother, provided that she engages with a contact risk assessment, albeit that there would need to be further assessment after a period of exchanging introductory video clips.

177. It is proposed that video contact with the aunt continue, but that it is at an initial frequency of six times per year.

178. Two questions arise. First, should any of the arrangements be reduced to an order, or should they simply be recorded in recitals to my final order? Second, should the aunt's contact be more frequent: she contends for its taking place fortnightly?

179. I am of the clear view that there should be no positive order. The arrangements are all, necessarily, relatively vague and are contingent on further steps being taken and, crucially, commitment being demonstrated by the various birth family members. There is no doubt but that the special guardians will honour their side of the agreement, such that I see no reason for them to be bound by the terms of an order. This is especially so, given that it is not difficult to envisage circumstances in which the terms of any order ceased to be appropriate, potentially obliging the special guardians to return to court to seek its variation.

180. Broadly the same reasoning underpins my decision not to order (or otherwise recommend) that the aunt's contact should be more frequent than is proposed. The history leads me to believe that if contact is taken up as agreed, if it is proactively and positively managed by all parties, and if, in consequence, it is a genuinely positive experience for Y, then the special guardians will readily agree to an increase in its frequency, if this is indicated. Conversely, sadly, history suggests that any greater frequency than that proposed is unlikely to be honoured with any regularity by the aunt, leading to disappointment for Y and frustration for her carers.

Technical International Issues

181. I have today made a Special Guardianship Order in favour of Y's erstwhile foster carers. It is the clear intention of that order that Y should remain in their sole care for the remainder of her childhood. However, even though she never lived with her and has never even been to Hungary, Y's aunt is, as matter of Hungarian law, the beneficiary of a guardianship order in relation to Y.

182. The potential problem has long been a feature of international family law. Many years ago, the now perhaps unfortunate phrase *'limping child'* was coined, described thus by Cheshire:

> *'to impose a status on a child in conflict with that which he possesses in his domicile of origin, to create as it were a 'limping child', would be a doubtful blessing to bestow upon him'* (Cheshire's Private International Law, 7th edn, 1965, p 1159).

183. Clearly it will be most unsatisfactory if Y has a different status in England than in Hungary. The issue may progress from unsatisfactory to actively problematic if, for example, Y were to be effectively prevented from safe travel to Hungary (perhaps to see the country of her heritage, perhaps to have contact with birth relatives) by virtue of uncertainty as to whether she might be unable to leave.

184. The two-fold solution, I hope, is fairly simple. First, given that Y is now not going to live with the aunt in Hungary now, or at any point in her childhood, the guardianship order should be revoked. Second, the orders I have made should be registered with a view to their recognition in Hungary, pursuant to the provisions of Chapter IV of the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (**"Hague 1996"**).

185. I hope and expect that the local authority will do all that it can to ensure that these joint aims are achieved. It seems to me that to do so is pre-eminently the appropriate substance of special guardianship support services. This might involve liaising with authorities in Hungary, making the relevant applications in Hungary and/or assisting either the aunt or the special guardians to make such applications or to signal their consent to the various necessary steps.

186. One of the principal purposes of regularising Y's status in the ways I have described is to enable her safely to have contact (if otherwise indicated) with family members.

187. Hague 1996 provides, inter alia:

> *Chapter V – Co-operation*
>
> *Article 29*

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

[…]

Article 30

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

(2)

[…]

Article 35

(1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

[…]'

188. I very much hope, and I respectfully request, that the Hungarian Central Authority, on being requested to do so by the Central Authority for England and Wales and on being provided with a copy of this judgment and my order, does all that it can to assist in regularising Y's status and situation.

189. I also appeal to the aunt to do all she can to enable this process to take place. I have no doubt that she continues to want what is best for Y, as she has throughout. That now requires Y to have a single, settled status, throughout the world, and to be able to travel freely, in particular to Hungary, when the time comes.

190. Y's immigration and citizenship status is also somewhat complicated. She is of Hungarian nationality, resident in the UK pursuant to having EU settled status. She is likely to be eligible, at least in time, for UK citizenship. I hope that the local authority will consider it part of their duty to Y and to her special guardians, previously their foster carers, to assist in relation to any necessary process when the time comes.

Conclusion

191. Y, not yet four years old, has been the subject of an almost unparalleled series of legal twists and turns. Never in the care of her birth parents, she has been the subject of two sets of care proceedings, a private law application, an Article 15 BIIa transfer, a failed attempt at a cross-jurisdictional placement and now has different status in two different countries, necessitating, no doubt, yet more complex legal action.

192. She has also been adrift in legal proceedings, her future uncertain, for an unconscionable amount of time.

193. Happily, she has been wholly unaware of and largely unaffected by all of this. She left hospital a couple of weeks after she was born into the care of two extraordinary people, in whose care, by virtue of this judgment and the order which will emanate from it, she will remain for the rest of her childhood. She is settled and thriving, securely attached to the only caregivers she has known.

194. Her birth family, though no doubt they will be bitterly disappointed by my decisions, have all shown the good grace to register their appreciation of and gratitude to Y's carers. I am confident that Y will grow up with a full awareness of her place in the world and her Hungarian heritage; it is to be hoped that she will be able to know – in a real sense – her Hungarian birth relatives. She will also know that those relatives – and in particular her aunt – did all they could to offer themselves up to provide a home for her.

195. I make a Special Guardianship Order in relation to Y in favour of her foster carers. I give my permission for Y to known henceforth and for all purposes by the name [Forename] [Original surname]-[Special Guardians' surname]. The order will record in its recitals the proposals in relation to ongoing contact with birth family members, but will include no child arrangements order in relation to that contact.