



Neutral Citation Number: [2021] EWHC 1774 (Fam)

Case No: FD21P00159

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2021

Before :

MR JUSTICE KEEHAN

Between :

**THE CHILD AND FAMILY AGENCY OF
IRELAND**

Applicant

- and -

MOTHER

1st Respondent

-and-

FATHER

2nd Respondent

-and-

A LOCAL AUTHORITY

3rd Respondent

Mr H Setright QC and Mr C Barnes (instructed by **Bindmans**) for the **Applicant**
Ms C McCourt (Solicitor) (instructed by [redacted]) for the **1st Respondent**
Ms J McGovern (Solicitor) (instructed by [redacted]) for the **2nd Respondent**
Ms K Barker (instructed by **Legal Services**) for the **3rd Respondent**

Hearing dates: 17th June 2021

Approved Judgment

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

.....
MR JUSTICE KEEHAN

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

The Hon Mr Justice Keehan :

Introduction

1. In July 2020, AB was born in the Republic of Ireland. His mother is CD and his father is EF. On 6th August 2020 the Garda exercised their emergency powers and placed AB into the care of the Child and Family Agency of Ireland ('CFA')
2. The CFA commenced proceedings in respect of AB on 12th August 2020. After a hearing on 26th August 2020 he was made the subject of an interim care order by the Metropolitan District Court at Dublin.
3. On 22nd January 2021 His Honour Judge Simms sitting in the district court in Dublin made a request under Article 8 of the Convention of 19th October 1996 on Jurisdiction Applicable Law Recognition Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Convention') for a transfer of the care proceedings from the Courts of the Republic of Ireland to the Courts of England and Wales.
4. The CFA's application to give effect to this transfer request was first listed before this court on 20th April 2021.
5. Mr Setright QC and Mr Barnes, counsel for the CFA, told me and I accepted that this is the first application made by the CFA for a transfer request pursuant to Article 8 of the 1996 Convention rather than the previously used provision of Article 15 of the Brussels II Revised regulation ('BIIR').

Background

6. Over the course of many years a number of child protection agencies, most latterly Local Authority 1 ('LA1'), were involved with the parents and their older children as a result of the risk of neglect, the parents' drug and alcohol misuse and domestic abuse within their relationship. AB's older half siblings had been made the subject of supervision orders in favour of LA1. His older full sibling was ultimately made the subject of care and placement orders in favour of LA1.
7. On or about 28th June 2020 whilst in the late stage of her pregnancy and at a time when AB's full sibling was the subject of an interim care order, the mother travelled to Ireland. Soon afterwards the father travelled to Ireland. Neither of them had given notice of the move to Ireland to LA1.
8. In July 2020, LA1 notified the CFA that the mother, the father and AB's half siblings were resident in Ireland. The mother and the half siblings, but not the father, were provided with accommodation.
9. The mother gave birth to AB in hospital in July 2020. She was discharged with AB a week later. Whilst she had been in hospital AB's half siblings had been cared for by relatives of their father (not the father of AB). On a date in August 2020 the mother and father attended the property of these relatives with AB to collect the half siblings. The parents were both incapacitated as a result of intoxication with alcohol and a fight ensued. The Garda attended and removed AB.

10. By September 2020 the mother and the father had both returned to this jurisdiction but were now living in the area of Local Authority 2 ('LA2').
11. His Honour Judge Simms handed down his judgment on the issue of the Article 8 transfer requested on 31st March 2021. He noted that the mother had consented to the transfer of proceedings to this jurisdiction. In the course of his judgment HHJ Simms made the following observations:

"Mr. Flynn deposes to his belief that CD came to Ireland to evade social work intervention in the UK, that prior to her departure the then unborn AB was subject to a Child Protection Plan and that on his birth the UK social services had intended to commence care proceedings. CD returned to the UK, her habitual residence, on 18th September 2020. AB's full sibling, currently resides in the UK in a long-term foster placement. Mr. Flynn, in evidence on 22nd January 2021, stated that a possibility proposed by the Agency and the UK Authority was that AB would be placed with his full sibling should he be received into care in the United Kingdom. Having regard to all of the foregoing, the Court is satisfied that AB has a substantial connection to the United Kingdom for the purposes of article 8 (2) (d) of the Convention."

And later in his judgment HHJ Simms concluded:

"The relevant history of social services engagement with this family resides in the UK and with that knowledge, the Social Services in the UK are in a better position to make informed decisions with regard to the short, medium and long-term care of AB. His full sibling is currently in long-term foster placement in the UK and the reasons for decisions in relation to his care are likely to inform planning for AB. This family only became known to the agency in Ireland in July 2020 and the requisite assessments for threshold consideration have not commenced in Ireland. Having regard to CD's consent to the Article 8 application and EF's non-engagement with the Agency, any such assessments would be difficult (if not impossible) to complete in Ireland. In these circumstances the Court is satisfied that the Courts of England and Wales are better placed to assess AB's best interests, fulfilling the exception provided in Article 8 (1) of the Convention."

12. The application by the CFA in respect of the Article 8 transfer request was first heard by me on 20th April 2021.

The Law

13. Mr Setright QC and Mr Barnes helpfully referred me to a number of leading authorities which set out the procedure to be adopted when a court is considering a transfer request made under Article 15 of BIIR and, in particular, where the application was made by the CFA.
14. In the case of *Re LM* [2013] EWHC 646 (Fam) Cobb J gave comprehensive guidance on the procedure to be adopted in Article 15 transfer requests. In the course of his judgment he said:

"9. This judgment serves two principal purposes:

- i) It discusses the legal and practical complications arising in seeking to achieve a transfer of jurisdiction in these circumstances;
- ii) It seeks to provide solutions in the instant case, to achieve the move of LM to this jurisdiction in the near future, and

the transfer of care proceedings to this Court, initially to the Family Division of the High Court.

10. This judgment further serves to highlight how futile, and potentially damaging to the infant child, was the course which the parents embarked upon in June 2012. I am advised that there are other parents who have considered leaving this jurisdiction (and indeed been advised by campaigning groups to do so, as the mother indicated she had been) to avoid public authority intervention in their lives, and to achieve some juridical advantage through process in the Irish Courts. Quite apart from the fact that the parents themselves in this case apparently soon came to realise that this was not a good solution for LM or themselves, this judgment will underline how effectively the Courts of England and Wales and the Courts in Ireland, and the public authorities in each State, are able to co-operate to achieve the transfer of a child, and the public law proceedings concerning that child under the Council Regulation (EC) 2201/2003 of 27th November 2003 (hereafter 'BIIR'), where it is demonstrated to be in the interests of the child to do so. The approach of the English Courts and the Irish Courts appears to be similar; the Irish Constitution exhibits no intention to establish Ireland as a sanctuary for families from other jurisdictions: see the Irish Supreme Court's decision in *Nottinghamshire County Council v B* [2011] IESC 48 (at paragraph 72, per O'Donnell J.).”
- “22. This request was transmitted by way of the Central Authorities designated under BIIR. Notwithstanding this formal request, on 21st December 2012 the mother appeared in person (without notice to any other party) before the Urgent Applications Judge of the Family Division in London (Mostyn J); it appears that the mother was seeking to accelerate the transfer process by engaging directly with the English courts. Mostyn J was informed by the mother (as it so appears from the recital on the face of the order) that "on 20th December 2012 Mr. Justice Birmingham, sitting in the High Court in the Republic of Ireland, invited this court to assume jurisdiction in relation to [LM] pursuant to Article 15 of [BIIR]". His Order contains the request that "the High Court of the Republic of Ireland do confirm that veracity of the aforesaid representations and do produce a copy of the said request to the office of Lord Justice Thorpe to liaise to establish all facts and matters relevant to the aforesaid."
23. On 4th January 2013, the Department of Justice & Equality (Ireland) sent the request for transfer to the Central Authority of England and Wales. On 11th January 2013, the

Irish High Court Judge designated as the liaison judge for BIIR purposes (the 'Network' Judge) contacted the office of Lord Justice Thorpe (having liaised with Birmingham J) to inform that office of the transmission of the Article 15 request through the offices of the Central Authorities. On the 15th January 2013, the English Central Authority sent the request to the Clerk of the Rules, who placed the request before Roderic Wood J; he requested information from X County Council as to its interest in the welfare of LM, having regard to the earlier proceedings in which it had been the Applicant concerning C, R and L. A detailed summary of X County Council's involvement with the mother and her family was sent by e-mail from the lawyer at the council to the Clerk of the Rules, who then placed the information before me, sitting as the Urgent Applications Judge, on 5th February 2013.

24. Recognising the range and complexity of the jurisdictional and practical difficulties in accepting the request for transfer, and the apparent desirability of doing so, I instigated enquiries of Irish Network Judge as to whether -
- i) Direct judicial communication could be facilitated between Birmingham J and myself, and
 - ii) Whether the Irish High Court could forward copies of any documents prepared by the mother or other parties for the purposes of the proceedings before Birmingham J, so that I could more fully understand the background to the Article 15 request.

In fact, before any direct judicial communication could be achieved, the HSE instructed solicitors in England, Messrs Bindmans, who contacted my clerk to request a hearing in this jurisdiction in order to facilitate the resolution of the Article 15 request.

25. This hearing, which took place over 12th and 13th March 2013, was accordingly arranged. Before notice of this hearing had been communicated to all parties, the mother once again appeared in person before a judge of the Family Division, this time before Eleanor King J (again without notice to the other parties). Upon sight of a number of documents (precisely which documents it is not clear) Eleanor King J made an order listing the matter for consideration on 6th March 2013, directing attendance by a representative of Y County Council. Once Eleanor King J became aware of the listing of this hearing, she adjourned her listed return date to 12th March.

26. At this hearing, on the matters relevant to and consequent upon the Article 15 transfer request, the position of the parties is as follows:

i) The mother: The mother initially proposed, and continues to support, a transfer of the proceedings to this jurisdiction, stating that it is clearly in LM's interests that such a transfer should be effected. Towards the conclusion of her submissions, she appeared to suggest that her agreement to the Article 15 transfer was in fact conditional upon the receiving authority being identified as Y County Council rather than X County Council. I note the mother's position in this regard and discuss it further below. That her acceptance of transfer is said to be conditional on the identification of a specific local authority as applicant in this country is of no real consequence, given that effective transfer relies on 'acceptance' by one party only to the Irish proceedings; in the instant case, the HSE has indicated its unconditional acceptance.

ii) The father: By letter dated 6th March 2013 from the father's Irish solicitors, I was advised that he "continues to support his wife's Article 15 request and consents to the transfer of the public law proceedings in their entirety to the jurisdiction of England and Wales. Our client is content that his position be confirmed by Counsel on behalf of the HSE to the English court on 12th March 2013." In fact the father attended, from Scotland, for the second day of this hearing and confirmed that he supported the transfer but (corresponding to the position of his wife) wished me to identify the proposed applicant authority as Y County Council;

iii) The HSE: The HSE unconditionally 'accepts' the transfer and supports the court taking effective steps to achieve transfer of the proceedings to this jurisdiction; it invites me to be satisfied that it is in the best interests of LM that the proceedings are so transferred; the HSE is neutral on the identification of the appropriate 'receiving' authority;

iv) The Guardian ad Litem in the Irish proceedings: The Guardian, by letter dated 11th March 2013, confirms that it is her opinion:

"that the application being made is in the interests of [LM] and should be proceeded with as a matter of urgency"

The Guardian expresses her concern that "a transition plan" should be devised to achieve the physical transfer of the infant LM to this jurisdiction ideally to "a long term placement should the decision outcome of care proceedings in England and Wales be that [LM] remain in long term State care". She supports a transition plan "strictly on the basis that" LM is placed in the care of a specific local authority (she had proposed X County Council) and recommends that a Guardian ad Litem be appointed for LM.

27. The legal complexities associated with the request for transfer of the proceedings, and of LM herself to this jurisdiction should I accept the transfer, are further complicated by a disagreement between X County Council and Y County Council (both of which are represented before me), as to which should be the authority responsible for LM in the interim, and the applicant authority in any public law proceedings in the courts of this jurisdiction. In this hearing, I have been requested by the parties to identify which authority should be nominated to be the applicant in public law proceedings; I have been asked to select the authority by reference to the criteria relevant to the 'designation' of such authority in the event that a care order were to be made. It has been agreed between X County Council and Y County Council, entirely responsibly in my judgment, that the authority which I identify will accept responsibility for LM, and stand as the applicant in proceedings relating to her.

The issues:

28. This Article 15(1) request of 20th December 2012 generates a number of jurisdictional, legal, and practical complications upon which my judgment and guidance is sought. I am specifically asked to consider:
- i) First, whether this Court should accept the transfer request under Article 15. In determining this issue, I have been invited to consider whether my role is to determine simply the 'best interests' limb of the Article 15 test, or whether I am entitled to (and/or should) consider all of the 'transfer' criteria;
 - ii) If a local authority is to be engaged here to accept responsibility for the care proceedings, how could or should that be done?
 - iii) If there is to be a transfer, how should the transfer be effected to the Courts of England and Wales (given that there are no current proceedings here and the child is not physically present here)?

- a) If an authority is to take responsibility under transferred proceedings, should it be X County Council (in whose area the events occurred which prompted the public law proceedings concerning LM's half-siblings, and in whose area LM's half-siblings continue to reside), or Y County Council (where the mother contends that she now ordinarily resides)? Each authority contends that the other should be responsible;
 - b) If the proceedings are to be transferred, what transitional arrangements should be made for LM, and for the proceedings, in what jurisdiction, and how?
29. Having read the documents filed herein, the position statements of the parties, and having heard oral submissions over 1½ days, and given the urgency of a determination, I informed the parties as to the conclusions which I had reached in relation to the questions posed above (which I have set out again below at paragraphs 76 to 84); I indicated that this, my reasoned judgment, would follow.”

“Article 15 Request for Transfer

30. The relevant legal framework for the transfer of proceedings between the courts of Member States is contained with Article 15 of BIIR. There has been no issue before me that Article 15 applies as much to public law proceedings as it does to private law proceedings (see further on this point the judgment of Mostyn J handed down on the second day of this hearing: *Re T (A child: Article 15 of BIIR)* [2013] EWHC 521 at paragraph 23 and 24(i)). Article 15 provides as follows:

"Transfer to a court better placed to hear the case.

- (1) By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child;
 - (a) Stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) Request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

(2) Paragraph 1 shall apply:

(a) Upon application from a party; or

(b) Of the court's own motion; or

(c) Upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's motion or by application by a court of another member State must be accepted by at least one of the parties.

(3) The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State;

(a) becomes the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located, and the case concerns measures for the protection of the child relating to the administration, conversation or disposal of this property.

(4) The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

(5) The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within 6 weeks of their seisure in accordance with paragraph

(1)(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

The courts shall co-operate for the purposes of this Article, either directly or through the Central Authorities designated pursuant to Article 53".”

- “31. There is no doubt that the Irish Courts properly have the sole habitual residence based jurisdiction as to the "substance of the matter" concerning LM at present. At the instigation of the mother, as I have referred above, Birmingham J declared himself satisfied that the three-fold criteria for transfer of the proceedings to this jurisdiction were indeed established, though I have no record of his reasoning. Although not expressly specifying under which criterion he determined LM's "particular connection" with the jurisdiction of England and Wales, there is no doubt that this jurisdiction is the place of LM's nationality: see Article 15(3)(c), and section 2(1)(a) British Nationality Act 1981. The mother is a British citizen by birth.
32. It is almost certain that the mother is currently habitually resident in England and Wales; she plainly asserts that she is. This would in fact found another basis upon which LM could have a "particular connection" with this jurisdiction.
33. Birmingham J. considered that this Court would be "better placed to hear the case", and in this respect he was entitled to have regard to the fact that the mother has now returned to this jurisdiction after her relatively brief stay in Ireland, and that there is no indication that she harbours any intention of returning. Further, the evidence which justified public authority intervention in this family's life in 2012 originates in this jurisdiction, in the area of X County Council. The mother has indicated an intention vigorously to oppose any final public law order; given her residence in this jurisdiction now, it would be preferable for her to have that opportunity in the courts of the country in which she now lives. For all these reasons, I recognise that this Court is indeed *prima facie* "better placed to hear the case".
34. The request for transfer under Article 15 was further predicated upon a conclusion that it is in LM's "best interests" for the transfer to be made to this court. It is suggested on behalf of HSE that the best interests test is amply satisfied by a combination of the following factors, in summary:

- i) LM is British; her parents, siblings and kinship carers are British.
 - ii) LM has no family in Ireland. Her only connection with Ireland is that she is physically present there because of a tactical international move made by the mother to avoid the jurisdiction of the English courts.
 - iii) The mother is now in this jurisdiction and has indicated a wish to remain here. Were LM to be returned to this jurisdiction, this would render easier the facilitation of contact between her and her mother. Assessments of family relationships will be more effective if mother and daughter can be seen regularly together; and
 - iv) The background history of LM's older half siblings originates entirely in the area of X County Council; this evidence is likely to be important in any determination of LM's future care.
35. It is clear from Article 15(5) that the request for transfer must be considered judicially rather than administratively. Hence this hearing. However, a question arises whether the function of a court in the requested State determining a 'transfer request' is limited to a consideration of "best interests" only, or whether the court has a wider remit to review for itself all of the criteria for transfer. In considering this question, I must be careful not to arrogate to myself a function properly within the exclusive jurisdiction of the foreign court: see *Munby J (as he then was) in AB v JLB (Brussels II Revised) [2009] 1 FLR 517*.
36. My reading of Article 15(1) and Article 15(5), taken together, leads me to the conclusion that my function is limited to a "best interests" determination only. Article 15(1) appears to contemplate that it is in the courts of the Member State having jurisdiction as to the substance of the matter, requesting transfer, that the question of whether the child has a "particular connection" with the court of another Member State which would be "better placed to hear the case" should be considered. The role of the court of the requested State appears, by Article 15(5), to be limited to a consideration of "best interests" having regard to "the specific circumstances of the case"; the "best interests" evaluation will necessarily not be as profound as on a full hearing of an application for substantive relief with the benefit of the full evidence. While not relevant for my determination on these facts, if a court of a requested State considered that, contrary to the determination of the requesting State, the child did not in fact have a "particular connection" with the requested State

in accordance with Article 15(3), and/or that the court of the requested State was not in fact "better placed to hear the case", it would surely reasonably easily reach the conclusion that it was not in the "best interests" of the child to accept the request for transfer, and would therefore decline it.

37. This approach appears to be consistent with the text of the Practice Guide to BIIR which, although only advisory, is nonetheless of assistance. In its section relating to Article 15, the text reads as follows:

"The court which has received the request for a transfer must decide, within 6 weeks of being seised, whether or not to accept the transfer. The relevant question should be whether in this specific case a transfer would be in the best interests of the child. The Central Authorities can play an important role by providing information to the judges on the situation in the other Member State. The assessment should be based on the principle of mutual trust and on the assumption that the courts of all Member States are in principle competent to deal with a case." [emphasis added].

38. Having regard to all of the circumstances of this case, and drawing upon the factors identified in paragraph 34 above in particular, I am wholly satisfied that it is in the best interests of LM that the public law proceedings should indeed be transferred to this jurisdiction. It follows that the courts of England and Wales will accept the request for transfer of the proceedings, and jurisdiction to determine the case concerning LM."

- "40. The Article 15 transfer takes effect between the general jurisdiction of the requesting State and the general jurisdiction of the requested State. I need therefore to turn next to the arrangements domestically for giving effect to the transfer."

15. In respect of the role of the CFA, Cobb J said:

"Under Article 15(6) (see above) it is to be noted that the courts of the Member States are expected to co-operate for the purposes of transfer requests, either directly or through the Central Authorities. I would like to observe that there has been a good degree of co-operation between the Irish and English authorities in pursuit of an outcome which will promote the best interests of the infant child LM. That co-operation has been significantly enhanced by the assistance offered to this court by the HSE which has co-ordinated and presented material to facilitate the speedy and informed resolution of this application. The HSE still has an important role to play in achieving the transition of LM, and these proceedings, to this jurisdiction, but as indicated above

its role will cease at the very point at which I next have cause to consider the application. In the circumstances I wish to extend the gratitude of this court to the HSE, and those whom they instructed for the purposes of this transfer request hearing.”

16. This approach was endorsed by the then President, Sir James Munby, in the case of *In the Matter of HJ (A Child)* [2013] EWHC 1867 (Fam). In the course of his judgment he observed:

“There is no need for me to go through Article 15 or to rehearse the jurisprudence. That has been done in masterly fashion by Cobb J in his judgment in *Re L-M*. I agree with his judgment. Without in any way seeking to limit the generality of that last observation, it may be useful if I spell out that I agree wholeheartedly with the sentiments Cobb J expressed in para [10] as to the futility of the course adopted by the parents in that case and, I might add, by the parents in the present case; that I agree with his analysis in paras [35]-[37] of the limited function of the court of the requested state; that I agree with his analysis in paras [56]-[67] of the operation of sections 31(8) and 105(6) of the Children Act 1989 in cases such as this; and that I agree with and would respectfully endorse his various observations in paras [39]-[42], [70]-[73] as to the practical steps to be taken in such cases.

In the present case the matter is all one way. Birmingham J was, if I may be permitted to say so, obviously right to conclude as he did and for the reasons he gave. More specifically, and focusing on the key question of how HJ's interests will best be served, there is really in this case, just as there was in *Re L-M*, only one possible answer: for the reasons given by Birmingham J it is plainly in HJ's best interests that his future be determined, as Birmingham J thought it should be, by the courts in this country.

I add one thing. As Cobb J has explained, the function of the court of the requested state in a case such as this is fairly limited. Moreover, it is highly undesirable as a matter of general principle that unnecessary delay should be permitted in what is intended to be a relatively simple and straight forward process under Article 15(5). Unnecessary satellite litigation in such cases is a great evil. Proper regard for the requirements of BIIr and a proper adherence to the essential philosophy underlying it, requires an appropriately summary process. After all, too ready a willingness on the part of the court to go into the full merits of the case at this preliminary stage can only be destructive of the system enshrined in BIIr and lead to the protracted and costly battles over jurisdiction which it is the very purpose of BIIr to avoid.

In many of these cases – and both *Re L-M* and this case are good examples of the point – the proper answer to a request under

Article 15 is pretty obvious. Plainly, where, notwithstanding the decision of the requesting court, there is some real point for the court of the requested state to consider, some solid point of substance, it may be appropriate for the judge at the initial without notice stage to give directions for a hearing on notice at which the parents or the local authority can argue that the court should not accept jurisdiction. But this should not be automatic. Where, as here, the case appears clear cut, the court can, and ordinarily should, make an order nisi, that is, an order that will take effect without any further hearing unless the parents (or the local authority) give notice of their wish to make representations as to why the order should not be made.”

17. I was also referred to the cases of *Re M (A Child)* [2014] EWCA Civ 152 and *The Child and Family Agency (Ireland) v M and Others (Article 15(5) BIIA Transfer Request: CJEU Preliminary Reference: Care Jurisdiction)* [2018] EWHC 1597 (Fam).
18. Mr Setright QC and Mr Barnes submitted that there are no differences or distinctions of material significance between the provisions of Article 15 of BIIR and Article 8 of the 1996 Convention. Accordingly they submitted that the court should adopt the procedure set out in the authorities above, especially in *Re LM* and *In the Matter of HJ*.
19. I agree and I have adopted this procedure in determining the outcome in this case.

Analysis

20. In his reserved judgment of 30th March 2021 HHJ Simms comprehensively set out his reasons for making the Article 8 transfer request. I respectfully agree with his decision. The case for making a transfer request was overwhelming. Accordingly at the hearing on 20th April 2021 I made the order nisi as sought by the CFA.
21. An issue arose as to whether LA1 or LA2 should be the designated local authority as defined by s.31(8) Children Act 1989. I received written submissions from both local authorities: both submitted the other should be the designated local authority. Having considered these substances and, not least because the mother and the father were now living in LA2, I decided that LA2 should be the designated local authority.
22. On 16th June 2021 LA2 issued a care application in respect of AB.

Conclusion

23. On 17th June 2021 and with the consent of all parties:
 - i) I made a final order accepting the transfer request;
 - ii) I made AB the subject of an interim care order in favour of LA2; and
 - iii) I re-allocated the case for a case management hearing to the Designated Family Judge for the area of LA2..