In the Supreme Court of the United Kingdom

ON APPEAL
FROM HER MAJESTY'S COURT OF APPEAL
(CIVIL DIVISION) (ENGLAND AND WALES)

B E T W E E N :

JN and EN

Appellants

and

(1) LONDON BOROUGH OF HOUNSLOW

and

(2) AM

and

(3) ZN

Respondents

and

(1) THE AIRE CENTRE
(2) FAMILY RIGHTS GROUP
(3) THE INTERNATIONAL CENTRE FOR FAMILY LAW POLICY AND PRACTICE

Interveners

CASE ON BEHALF OF *FAMILY RIGHTS GROUP*

INTRODUCTION

1. *Family Rights Group* is the leading charity working with parents whose children are in need, at risk or in the care system, and with members of the wider family who are raising children unable to remain at home. It has also become the leading charity on kinship care (also known as friends and family care). It was established in 1974 to provide advice and support for families whose children were involved with social services.[1] Counsel and solicitors, Messrs. Goodman Ray, act *pro bono* for *Family Rights Group*.

2. *Family Rights Group* remains neutral as between the parties to this appeal. It has sought and has been granted permission to intervene and make submissions in relation to the following relevant areas:

   i) The proper nature and scope of the interaction between section 20 of the *Children Act* 1989[2] and the provisions of Part IV of the same Act where section 20 is utilised in substitution for an application under Part IV, and particularly where in the event of such an application Article 15 of *Council Regulation (EC) No 2201/2003* ("*Brussels II Revised*") would come immediately into play;

   ii) At what point in care proceedings any transfer pursuant to Article 15 of *Brussels II Revised* should be considered, and the nature and scope of the discretion, particularly the nature and scope of the "best interests" component of the test; and

   iii) Whether and to what extent, particularly in the absence of any harmonization of minimum standards of assessment, the Court considering transfer pursuant to Article 15 of *Brussels II Revised* should take into account the likely nature and quality of assessment of potential kinship carers abroad if the case is transferred.

[1] Further information about *Family Rights Group* is provided in the Appendix to this document.

[2] **FRG Authorities, Tab 3**.

(1) SECTION 20 OF THE CHILDREN ACT 1989

3. The delay in this case has not only had (on any view) a significant and deleterious impact on the children themselves (since they remain, fundamentally and in a very stark sense "in limbo") but it also has distorted, again in a very real sense, the forensic course the case has taken. Indeed, but for that delay, and its consequences, it is conceivable that this case might not have troubled this Court at all. A very significant part of that delay was caused because section 20 of the *Children Act* 1989 was used as an alternative to proceedings in circumstances where, in the submission of *Family Rights Group*, it should not have been used at all.

4. The proper scope, use and misuse of section 20 of the *Children Act* 1989 has become a significant issue in family courts at every level recently, as the President observed in the Court below (see §157 of the judgment of the Court of Appeal onwards). Perhaps as resources have dwindled and pressures on local authorities have increased (including through the process of "front loading" proceedings through the Public Law Outline[3] in order to meet the 26 week statutory requirement) section 20 has been used with increasing frequency either as a prelude to the issue of care proceedings, or indeed in substitution for them. The issue has also occupied some considerable time (although less recently) in the academic research.[4] Anecdotally, section 20 is presenting problems across the country.

5. The opportunity the Court of Appeal took in this case to comment upon the section 20 issue is, it is submitted, a consequence of mounting judicial concern about the use to which the section is put, and the impact upon children and families where it is used inappropriately or indeed unlawfully. Whilst technically the observations below were *obiter*, they will inevitably be treated as authoritative by practitioners in the field, having, as they do, the *imprimatur*

[3] See Practice Direction 12A of the *Family Procedure Rules 2010* [**FRG Authorities, Tab 6**].

[4] See, for example, J. Masson *et al* (2004) *Emergency Protection Orders: Court Orders for Child Protection Crises* (Bristol University), esp pp 58-61 and 69-72 [**FRG Authorities, Tab 15**]; P. Welborne, "Safeguarding Children on the Edge of Care" [2008] *Child and Family Law Quarterly* 335 [**FRG Authorities, Tab 18**].

of the President with the support of Black L.J. and Sir Richard Aikens. As a consequence, *Family Rights Group* makes submissions about some aspects of section 20 generally, and the use to which it may be put in particular where at the outset it is clear that the provisions of Article 15 of *Brussels II Revised* might be engaged were care proceedings to be issued.

6. *Family Rights Group* submits that, on the facts of this case, the long period of "voluntary accommodation" before proceedings were issued has added immeasurably to its complexity, not only for H.H.J. Bellamy at first instance but also for the Court of Appeal and this Court.

Section 20 and the scheme of the *Children Act* 1989

7. In terms of the policy aims of section 20, it appears that the provisions of this section emerged from the Government's White Paper. It is significant that section 20 appears in Part II of the Act ("Local Authority Support For Children and Families" (emphasis added)) rather than in the Parts of the Act dealing with compulsory intervention by the State where harm is alleged and/or proved: Parts IV ("Care and Supervision") and V ("Protection of Children").

8. The aim of section 20 (as "support" for children and families) is reflected in its wording: it creates a duty to accommodate where children are orphaned, lost, abandoned, or where parents are "prevented" (connoting a physical barrier, whether through illness, incarceration and so on) from looking after them,[5] and it permits a local authority to accommodate children in order to safeguard or promote a child's welfare, in the absence of objection[6] from those vested with parental responsibility.

9. Beyond the sphere of required "child protection", where there is no question of compulsory State intervention, the section is therefore used in many

[5] *Children Act* 1989, s 20(1) [**FRG Authorities, Tab 3**].

[6] *Children Act* 1989, s 20(4); s 20(7) [**FRG Authorities, Tab 3**].

situations: where parents are ill; where children are ill; and for periods of respite care, for example. Nothing in these submissions should be taken to detract from the broad applicability of section 20 where its use is either in accordance with the duty it imposes upon local authorities, or in order to achieve, for example, respite care, in cooperation with parents.

10. The problems arise in cases where section 20 is used either as a prelude to inevitable compulsory intervention (where, for example, the local authority is in the process of making an application to Court: see for, example, *Coventry City Council v C, B, CA and CH*[7]) or where section 20 is used as an alternative to proceedings in order to assess whether and if so what form State intervention should take. In the latter category (and the present case falls into it, in so far as it is possible to discern what the purpose of accommodation was at all) there will be many cases in which it is obvious from the outset that whilst parents are prepared to cooperate with assessment, their cooperation will cease if the assessment is negative and compulsory State intervention becomes necessary. Neither category of case sits easily with the notion of section 20 as a form of "support" for children and families.

11. In the first category of case ("tiding over" where an application is inevitable) the most prescient problem is the issue of "consent", since inevitably, or almost inevitably, there are significant pressures of time; in the second category of case, the problem which looms is that of delay, since the process unfolds without a Court directed timetable. In both categories a failure to issue proceedings deprives both parents and their children of full, independent, legal representation, unless they are able to pay for it. It also deprives them of adequate funding for interpreters and independent input into assessments that can have significant ramifications if proceedings are then issued.

12. *Family Rights Group* submits that:

[7] [2012] EWHC 2190 (Fam), [2013] 1 FLR 987 [**FRG Authorities, Tab 22**].

i) it will only very rarely, if ever, be appropriate for section 20 to be utilised as a prelude to care proceedings where those proceedings are inevitable;

ii) even where it is absolutely necessary, it should be for the shortest possible time, with proper and full consent, recorded in a proper form;

iii) it will only very rarely, if ever, be appropriate for section 20 to be utilised as a mechanism by which to assess whether care proceedings should be brought;

iv) again, even where it is necessary, it should be for the shortest possible time, with proper and full consent, recorded in a proper form; and

v) in particular where in the event that proceedings were issued an Article 15 point would *prima facie* arise, and irrespective of section 20 agreement, proceedings should be brought in any event and without delay. Of particular relevance in the Article 15 context is the danger that children might be placed in section 20 accommodation which does not meet their cultural, linguistic or religious needs without any judicial input or overview.

Section 20 as a prelude to proceedings

13. In cases of emergency, the State may intervene compulsorily to remove children either by way of an Emergency Protection Order, which may be granted without notice in appropriate cases[8] or by way of Police Protection Order.[9] Indeed, if there is an urgent need to assess the circumstances of a child, the Court also has power to make an Order for that specific purpose, which may also be made without notice: section 43 of the *Children Act* 1989.

[8] See section 44 of the *Children Act* 1989 [**FRG Authorities, Tab 3**].

[9] See section 46 of the *Children Act* 1989 [**FRG Authorities, Tab 3**].

14. Judges are available to deal with emergencies at all times: see Practice Direction 12J of the *Family Procedure Rules* 2010 and also, for example, *Re Aysha King*[10] and *Re M.*[11]

15. It is obvious that section 20 (whatever else it was designed for) was not designed to achieve the *emergency* protection of children: that much is clear from the provision that a parent may *remove* the child accommodated under section 20 at any time (see, section 20(8) of the *Children Act* 1989). Yet there is nothing in the Act, or the section itself, to preclude its use even where the alternative would be an Emergency Protection Order. Of course, if a child needs protection as an emergency, the presence of agreement by a parent does not itself increase or decrease the *emergency*. In such cases, because of their very nature, section 20, if utilized, will be utilised to achieve a "holding position" until an application is issued.

16. Similarly, and even where there is no emergency, agreement to accommodation might be sought in circumstances where a local authority intends to apply to Court for Orders separating children from their parents, and seeks to achieve a "holding position" whilst an application is prepared.

17. In either category of case, it will either be clear at an early stage that in due course proceedings are likely to be contested, and that agreement is simply a "holding position", or there will be a real possibility of such a contest. Either way, and notwithstanding section 20 agreement in the interim, the settled plan and expectation is that proceedings will be issued.

18. The danger of using section 20 in an emergency, or to achieve separation of children from their parents in circumstances where proceedings are inevitable, arises from the inequality of bargaining power between the State in the form of the local authority and the parents, some or many of whom will be vulnerable. Some, of course, might not even speak English, let alone have any

[10] [2014] EWHC 2964 (Fam) [**FRG Authorities, Tab 21**].

[11] [2015] EWHC 1433 (Fam) [**FRG Authorities, Tab 23**].

familiarity with the child protection system of England and Wales. The danger is that section 20 becomes compulsion in disguise: see *Re W (Parental Agreement with Local Authority).*[12] Notwithstanding the section's reference to the absence of "objection", the observation of Munby J., as he then was, that:

> *"Submission in the face of asserted State authority is not the same as consent. In this context, as in that, nothing short of consent will suffice"*[13]

is plainly right. This analysis, whilst it might arguably depart from the precise wording of the section, properly and necessarily acknowledges the fact that many of the parents involved in these types of situation will have many challenges, intellectual and otherwise, and as a consequence acquiescence cannot be treated as agreement.

19. For that reason *Family Rights Group* respectfully adopts and endorses not only the President's observations in the Court below about the fundamental importance of obtaining proper and fully informed consent (see §§164 – 165) but also his observations about the proper form of such consent (§170).

20. *Family Rights Group* also respectfully adopts and endorses the President's view that a parent cannot, in effect, contract out of their ability to withdraw their child from section 20 accommodation "*at any time*", as provided for in section 20(8) of the *Children Act* 1989 (see §169). Not only is this right a fundamental principle set out in terms on the face of the Act, but the statutory history[14] makes clear that an amendment to the Children Bill in the House of Lords which would have required a notice period prior to the termination of section 20 accommodation was specifically rejected by the Government.[15] The

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[12] [2014] EWCA Civ 1065, [2015] 1 FLR 949 at §34 [**FRG Authorities, Tab 25**].

[13] *R (on the application of G) v Nottingham City Council & Nottingham University Hospital* [2008] EWHC 400 (Admin), [2008] 1 FLR 1668 at §61 [**FRG Authorities, Tab 24**].

[14] The statutory predecessor to section 20 was section 3 of the *Child Care Act* 1980 [**FRG Authorities, Tab 2**] which specifically (if rather obtusely) provided in subsection (4) that notice served by a parent of an objection to local authority accommodation was effective only "on the expiry of fourteen days" from the service of notice.

[15] Hansard, HL Deb, 16 March 1989, vol 505 cols 369 – 371 (the Lord Chancellor) [**FRG Authorities, Tab 13**].

answer given by the Government to the concerns underlying the call for a notice period was that section 3(5)[16] of the Act permits anyone who has care of a child but who does not have parental responsibility to do "what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare".

21. *Family Rights Group* is acutely aware that it is the right of every parent with parental responsibility to agree to the accommodation of a child, whatever the circumstances. It also accepts that there is nothing in section 20 or anywhere else in the *Children Act* 1989 to preclude such agreement, whatever the circumstances.

22. At the same time, and going further than the judgment below, *Family Rights Group* submits that, where a local authority takes the view that a child must be accommodated as an emergency, or where irrespective of a parent's short term agreement it is inevitable that proceedings will follow, section 20 should be used actually to achieve separation between a child and her parents only in the rarest of circumstances, if at all. Where it is used, as in this case, as an alternative to an Emergency Protection Order, care proceedings should be issued without delay.

23. Such a stance does not undermine the fundamental liberty of any parent to agree to the accommodation of a child, nor does it undermine the "no order" principle (see, section 1(5) of the *Children Act* 1989[17]). Whilst the Act provides for a "no order" principle, it does not provide for a "no application" principle. It is always open to a local authority to apply for an Order (Emergency Protection Order or Interim Care Order) but seek no Order at the hearing because both it and the Court are satisfied that accommodation may properly be provided under section 20. This approach is not inconsistent with the duty to reduce the need to bring proceedings for care or supervision

[16] **FRG Authorities, Tab 3**.

[17] **Main Authorities, Tab 4**.

Orders[18], because it arises in circumstances where a decision has already been made to remove a child for its own safety and in an emergency. The duty is aimed at ensuring support in borderline cases rather than avoiding proceedings where a child's safety is suddenly and immediately jeopardised.

24. This approach has a number of clear advantages:

    i) it enables parents to be legally represented at the point at which agreement to accommodation is sought, or very soon thereafter;

    ii) it enables children to be independently represented in the same way; and

    iii) it enables the Court to have some substantial input, not only in relation to the suitability of the case for voluntary accommodation, not only in relation to the nature and extent of any agreement, but also in relation to timetabling, the landscape of proceedings, and the early identification and involvement of potential kinship carers.

25. It does not necessarily undermine either the "no order" principle (see above) or the capacity of the professionals to work in partnership with parents, since it enables agreement at Court and subject to the Court's endorsement.

26. In the end, it seems to *Family Rights Group* that precluding the use of section 20 in circumstances where what the local authority seeks to achieve is either the emergency removal of children from the care of their parents or a "holding position" before the inevitable issue of proceedings would constitute an impermissible gloss on the statute. But it is difficult to see why section 20 needs to be used as a prelude to inevitable proceedings at all, let alone for the eight months during which it was used in this case. It is difficult to see why the section needs to be used anything other than in parallel with the appropriate application so that the parties may be fully represented and the

[18] Paragraph 7 of Schedule 2 to the *Children Act* 1989 [**FRG Authorities, Tab 3**].

Court might have some control and overview. If it is to be used at all, it is submitted that it ought to be used for the shortest possible time (to be counted in days, for example the notice period for an application for an Interim Care Order) and in accordance with the President's observations.

Section 20 for the purposes of assessment

27. The other category of case in which the use of section 20 causes particular difficulty is where children are accommodated pending a local authority's assessment of whether or not it will be necessary to launch care proceedings. In these cases, whilst parents may be willing to give consent whilst assessments are performed, it is obvious that, in the event that the assessments are negative, there will have to be a contest about long-term welfare planning.

28. *Family Rights Group* repeats in this context the submissions it makes in relation to consent and the proper form thereof (see above at §§16 – 19).

29. It is fundamentally understood that, in the context of children's proceedings, delay is prejudicial to the welfare of children (see, section 1(2) of the *Children Act* 1989[19]). That principle finds further statutory form particularly in the context of public law proceedings in section 32(1)(a) the *Children Act* 1989,[20] which requires the court to draw a timetable that brings proceedings to a conclusion within 26 weeks, to include, for example, the completion of any social work or forensic assessment. Excessive or unnecessary delay also compromises the Article 8 ECHR rights of parents, particularly in circumstances where there are "fostering for adoption" placements.[21]

[19] **Main Authorities, Tab 4**.

[20] **Main Authorities, Tab 4**.

[21] *Family Rights Group* has voiced its opposition to the new sub-sections 22C(9A)-(9C) of the *Children Act* 1989 [**FRG Authorities, Tab 3**] (inserted by section 2 of the *Children and Families Act* 2014), which may lead to children who are accommodated in local authority care, with the voluntary agreement of their parents, being placed with potential adopters without any Court oversight, without parents having provided their informed consent, without parents being first notified or having legal advice, and despite there being potentially suitable family members available to care for the children involved.

30. Where a local authority seeks to accommodate children pursuant to section 20 in circumstances where it wishes to assess whether compulsory intervention might be necessary, and unless it does so in parallel with live proceedings, there is, obviously, no Court directed timetable at all, let alone any statutory time limit on the process. Unless parents withdraw their consent, the potential for delay is theoretically endless. The fact that a local authority perceives that, once proceedings are issued, it will "only" have 26 weeks to work with and assess parents is a reason for a more liberal interpretation of the 26 week "rule" in the right cases, not, it is submitted, for the misuse of section 20.

31. Furthermore, and as the President points out in the Court below at §158, in the absence of any application, or the parents triggering the same by withdrawing their consent, neither the parents nor the child have access to proper representation and the Court is deprived *"….of the ability to control the planning for the child and prevent or reduce unnecessary and avoidable delay.*"

32. Where it is clear at the outset that, in the event of negative assessments, the parents are unlikely to agree to the children remaining separated from them, and therefore compulsory intervention will become necessary, it seems to *Family Rights Group* that there is no real justification or excuse for failing to issue proceedings either in parallel with section 20 accommodation or for issuing proceedings within a matter of days, or at most weeks, after the children are accommodated.

33. Such a course does not offend against the section 1(5) of the *Children Act* 1989 "no order" principle, since issuing proceedings does not require the local authority to seek any Order in the interim, still less the Court to make an Order. Such a course does not offend against the aspiration that local authorities and parents should work in partnership for the benefit of children, since again it does not discourage, still less preclude, agreement pursuant to section 20. It enables the Court, in partnership with the parents, local authority and Children's Guardian, to determine and evaluate whether and if so what delay (even beyond 26 weeks) is planned, purposeful and in the children's

interests. It presents opportunities to the parents and the children (full representation as well as the Court's access to wider resources, for example) and most importantly of all it ensures that all parties are treated fairly throughout the process.

34. It avoids the risk that, even through the best of intentions, months (or even years) down the line, the Court is presented with a case in which proceedings were almost inevitable at some stage, but in which an irreversible *status quo* has developed, particularly in the increasingly prevalent context of "fostering for adoption" placements, where evidence (even evidence which goes to the section 31 of the *Children Act* 1989 "threshold" gateway) is stale and where, as a consequence of delay, the welfare decisions are (irreversibly) complicated.

35. Again, the plain wording of the section precludes any submission that section 20 should not be utilised for the purpose of assessment where but for consent to accommodation proceedings under Part IV would be issued, or where it is clear that in the event of negative assessment proceedings are inevitable.

36. *Family Rights Group* submits that circumstances in which section 20 "consent" may appropriately be sought for the accommodation of children pending assessment of whether to issue public law proceedings will in practice be extremely rare. Where it is inevitable that in the event of a negative assessment proceedings will have to be issued, those proceedings should be issued within a matter of days or at most a few weeks. Even in those circumstances, *Family Rights Group* specifically endorses the President's observations about consent and the proper form thereof at §§164 – 165 and §170 of his judgment below.

Section 20 and Article 15 transfer

37. For obvious reasons, *Family Rights Group* agrees with and endorses the President's view that the "misuse" of section 20 in a case with an international element is "particularly serious" (see §161). In this case, the consequences

may be seen all too clearly. In some cases, the delay involved might pre-determine the decision about transfer (because of a developed *status quo*, particularly where linguistic/cultural/religious needs have not been met in the section 20 accommodation, or where children are placed in "fostering for adoption" placements).

38. *Family Rights Group* submits that, where it is clear that:

    i) in the event that consent to section 20 were to be withdrawn the local authority would in fact issue proceedings for a public law order; and

    ii) in the event that it issued such proceedings, there would have to be consideration of Article 15 "transfer"

    the local authority should issue public law proceedings without delay. Nothing in that proposed course of action would prevent continued agreement between the parents and the local authority or compel the continuance of such proceedings should it prove unnecessary.

(2) THE ARTICLE 15 ISSUES

General observations

39. In this jurisdiction, we have arrived at a point (see below) where:

    i) Article 15 has to be considered in every case where there is a European dimension;

    ii) save in exceptional circumstances, Article 15 must be considered (and should normally be determined) at the beginning of the process; and

    iii) so far as the application of Article 15 involves a "best interests" test, Judges in this jurisdiction must apply a "forum based" "attenuated welfare test".

This position seemingly represents best practice in accordance with the relevant authorities although it is arguable that the wording of the Article:

i) does not impose any obligation that the Article be considered in *every* case with a European dimension;

ii) imposes no indication as to the point in proceedings at which it may (or must) be considered; and

iii) provides no guidance as to how the "best interests" component should be applied in any particular case.

40. Of further potential note, perhaps, is that we have arrived at this position through the rapid development in the domestic jurisprudence relating to Article 15 over the last three or so years. Until recently, there had been relatively limited authority in relation to Article 15. As Moylan J. remarked in *Re T (A Child: Art 15, Brussels II Revised),*[22] giving judgment in March 2013, the only authority bearing on Article 15 any counsel could find (including leading counsel), either domestic or European, was *AB v JBL*[23] from 2008, which was not on point. None of the lawyers could find any guidance or commentary on Article 15, academic or otherwise. In the last three years, however, there has been a remarkable proliferation of such authority.

41. One reason for this relatively recent development is that hitherto courts have managed public law cases with a foreign element in a different way. Where cases have a foreign element, whether it is European or not, domestic courts have always had the power to evaluate foreign *placement* options, and they have always had the power to *place* children abroad, following the welfare

[22] [2013] EWHC 521, [2013] 2 FLR 909 at §8 [**Main Authorities, Tab 62**].

[23] [2008] EWHC 2965 (Fam), [2009] 1 FLR 517 [**Main Authorities, Tab 31**]

evaluation.[24] There may be a danger, it is submitted, in analysing Article 15 as a mechanism by which *placement* of children abroad must inevitably follow and, secondly, as the only mechanism by which foreign placement options may be assessed. *Domestic* courts have assessed *foreign* placement options for many years (as well as the comparative mechanisms for securing orders abroad should children be placed there by domestic courts) with the cooperation of authorities across the world, not just in Europe, and applying a broad welfare test (taking into account issues around enforcement and so on).

42. *Family Rights Group* submits it remains <u>important</u> to remember, first, that transfer pursuant to Article 15 does not necessarily mean movement of the subject children from this jurisdiction to another, and, second, that there are other mechanisms through which domestic courts may place children abroad following a <u>full</u> welfare evaluation in cooperation with foreign authorities across the world: it happens very frequently, and has happened routinely for many years It is submitted that the increasing focus on Article 15 should not distract from the other powers available, in appropriate cases, for the assessment of and placement of children with kinship carers abroad.

43. Another reason, perhaps, for the recent increased focus upon Article 15 appears to be (and clearly was, in the Court of Appeal) a perceived tension between domestic approaches towards care planning for children in care and the approach of other European countries. The argument appears to be that, since the United Kingdom is very unusual amongst Member States (or better put Regulation States) in permitting non-consensual adoption, particular care must be taken over jurisdictional matters.

44. Indeed, at paragraph §7 of his judgment the President observed as follows:

> "*The background to these appeals is the fact that England is unusual in Europe in even permitting adoption without parental consent, indeed in*

[24] See, for example, paragraph 19 to Schedule 2 of the *Children Act* 1989 [**FRG Authorities, Tab 3**]; and *Care Planning, Placement and Case Review (England) Regulations* 2010, reg. 12 [**FRG Authorities, Tab 1**].

the teeth of parental opposition – what I shall refer to as 'non-consensual adoption' – and even more unusual in the degree to which it has recourse to non-consensual adoption, both domestically and in the case of children who are foreign nationals"'

The President in this paragraph in a footnote referred to the work of Dr. Claire Fenton-Glynn, a fellow of Jesus College, Cambridge and a lecturer in law at the university.

45. However, research compiled by the Council of Europe,[25] as well as a report commissioned by the European Union,[26] shows that other States do *permit* adoption without parental consent.[27] What is more important, however, is that England appears to be unusual in the *frequency* with which adoption is practised, and the *grounds upon which* such an intrusion into family autonomy can be exercised.

46. Unfortunately, statistics are not widely available concerning the number of children adopted in different European jurisdictions, though those that can be found suggest that England uses adoption on a much more frequent basis than other States.[28] Moreover, information is not available concerning the number of adoptions undertaken without parental consent.[29] Even in England, this information is not available. We know that of the 3,320 children whose status was, as of March 2015, "placed for adoption", only 380 (11 %) were "placed for adoption with consent" under section 19 of the *Adoption and Children Act*

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[25] O. Borzova, "Social Services in Europe: Legislation and Practice of the removal of children from their families in Council of Europe member states" (Council of Europe, Report to the Parliamentary Assembly, 13 March 2015) [**FRG Authorities, Tab 8**].

[26] C. Fenton-Glynn, *Adoption Without Consent* (Directorate General for Internal Policies of the EU Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, PE 519.236) [**FRG Authorities, Tab 12**].

[27] While the conclusions reached by these reports concerning exactly which states permit this practice differ marginally, both clearly show that it is a widespread mechanism.

[28] See *Adoption Without Consent* (note 27), p 27 [**FRG Authorities, Tab 12**].

[29] The claim on p. 20 of *Adoption Without Consent* that 96% of adoptions occur without parental consent is not correct. This figure refers to the number of placement orders under s. 21 of the *Adoption and Children Act* 2002, as opposed to placements under s. 19, and does not relate to whether parental consent was given to either placement or adoption. This point is subject to an erratum which appears at the start of the report.

2002, as opposed to 2,940 (89%) who were subject to a placement order sought by the local authority under section 21 of the *Adoption and Children Act* 2002. However, the government does not publish statistics concerning the number of cases where parental consent has been dispensed with under section 52(1)(b) of the *Adoption and Children Act* 2002.[30]

47. Similarly, we can see that whilst many countries allow adoption without parental consent where the child has been abandoned or there is a lack of interest in the child, where the parent has been deprived of parental rights, or where refusal to consent is abusive or not justified, England *is* unusual in permitting parental consent to be dispensed with solely on the basis of the child's best interests.[31]

48. However, as Dr. Fenton-Glynn has pointed out: "*[u]ltimately, the legitimacy of England's adoption system lies not in its congruence with other jurisdictions but in whether it adequately protects the rights of vulnerable children.*" [32] The question is not whether other countries act in a similar way, but whether England complies with its international obligations in relation to the rights of the child, and those of the parents.[33]

49. In considering adoption, the 1989 *UN Convention on the Rights of the Child* requires that the child's welfare must be the *paramount* consideration (Article 21). This is in contrast to the more general requirement that applies to the rest of the Convention rights, where the child's welfare must be "*a primary consideration*". As such, section 52 of the *Adoption and Children Act* 2002 is

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30 Department of Education, *Children Looked After in England, including adoption: 2014 to 2015* (https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2014-to-2015) [**FRG Authorities, Tab 10**].

31 See *Adoption Without Consent* (note 27), chapter 4 [**FRG Authorities, Tab 12**].

32 C. Fenton-Glynn, "Foreign Element Adoption" (2015) 45(12) *Family Law* 1433 [**FRG Authorities, Tab 11**].

33 *Ibid*.

in line with England's international obligations under this Convention, by putting the welfare of the child at the heart of decision-making.[34]

50. Likewise, the European Court of Human Rights has made clear that England's legislation on adoption, and in particular the mechanism for dispensing with parental consent if it is in the best interests of the child, is in conformity with the requirements of article 8 ECHR. In the case of *R and H v the United Kingdom*, the Court held that: "*[i]f it is in the child's interests to be adopted, and if the chances of a successful adoption would be maximised by [the relevant order], then the interests of the biological parents must inevitably give way to that of the child*".[35] This was also seen in the 2012 case of *YC v the United Kingdom*.[36] In this case, the applicants challenged the principle that the child's interests should be the paramount consideration in adoption proceedings, arguing that it was inconsistent with the balancing of rights inherent in the ECHR, and contrary to the rights of the parents. However, the Court held that in cases concerning adoption, the best interests of the child are paramount and held that: "*the considerations listed in section 1 of the 2002 Act…broadly reflect the various elements inherent in assessing the necessity under article 8 of a measure placing a child for adoption.*"[37]

51. The position appears to be, therefore, that whilst many European countries have mechanisms for adoption without parental consent, that mechanism is used with much more frequency in this jurisdiction, where there is positive political pressure for adoption. *Family Rights Group* is mindful of this reality and takes the view that, where the Court is dealing with the issue of transfer, the relative scarcity of non-consensual adoption in the potential receiving

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[34] Cf. B. Sloan, "Conflicting Rights: English adoption law and the implementation of the UN Convention on the Rights of the Child" (2013) 25(1) *Child and Family Law Quarterly* 40 [**FRG Authorities, Tab 17**]. Here, Sloan argues that the *Adoption and Children Act* 2002 gives insufficient importance to the relationship between the child and biological parents.

[35] (2012) 54 EHRR 2 at §77 [**FRG Authorities, Tab 19**].

[36] [2012] 55 EHRR 967 [**FRG Authorities, Tab 20**].

[37] *YC v United Kingdom* (note 36) at §35 [**FRG Authorities, Tab 20**]. For a further discussion of this case, see C. Simmonds, "Paramountcy and the ECHR: A Conflict Resolved?" (2012) 71(3) *Cambridge Law Journal* 498 [**FRG Authorities, Tab 16**].

State is relevant to the decision, but is not fundamental to the Court's approach to the welfare issues.

The history of Article 15: guidance

52. Article 15 provides a process for transfer of jurisdiction to a court better placed to hear the case, "by way of exception". The *Practice Guide for the application of the Brussels IIa Regulation*[38] describes Article 15 as an "*innovative rule*"[39] and goes on to state at p.35:

> "*The relevant question should be whether, in the specific case, a transfer would be in the best interests of the child. 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. The central authorities can play an important role by providing information to the judges on the situation in the other Member State.*"

53. It is apparent that no attempt at all is made to define what is meant by "best interests", or how that test should be applied, still less to circumscribe its content. What is clear is that the courts of one Member State (or Regulation State) are not entitled to take into account any evaluation of the competence or otherwise of the courts of the other States. That is a fundamental principle of comity rather than any comment on the content or application of a "best interests" test by the Court charged with a particular child's welfare.

54. Unfortunately there is a lack of information available in relation to the manner in which Article 15 has been interpreted across Member States (or Regulation States). However, research suggests that Article 15 may not be being harmoniously interpreted throughout the States subject to the Regulation.[40]

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[38] European Commission, *Practice Guide for the Application of the Brussels IIa Regulation* (European Union, 2014) [**Main Authorities, Tab 14**].

[39] *Ibid* p.34 §3.3.1.

[40] I. Curry-Sumner and M. Wright, "Article 15 Brussels II Bis: Two Views from Different Sides of the Channel" (2015) 17 *European Journal of Law Reform* 352 [**FRG Authorities, Tab 9**].

55. As a matter of background and history, there was no equivalent provision to Article 15 in the predecessors to the Regulation, although similar provision can be found within Articles 8 and 9 of the 1996 *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* ("The 1996 *Hague Convention on Child Protection*").[41] The two articles are parallel: Article 8 allows the authorities of the habitual residence of the child to decline jurisdiction in favour of the authorities of another State, where they are satisfied that such authorities will exercise the jurisdiction entrusted to them; and Article 9 allows the authorities of a State other than that of the habitual residence of the child to request that the competent authority of the State of the child's habitual residence abandon its jurisdiction, so that the authorities of this other State may take the measures of protection which they consider necessary.

56. The *Explanatory Report on the 1996 Hague Child Protection Convention*[42] addresses the "best interests" component of Article 8 of the 1996 *Hague Convention on Child Protection* at §56:

> "*The best interests of the child ought to be assessed in the concrete situation, 'in the particular case', as the text says, in other words at the moment when a certain need for protection is being felt, and for the purpose of responding to this need. The text should not therefore be understood as instituting a definitive transfer of jurisdiction to the requested authority. The transfer is limited to what is necessary 'in the particular case' which has been the occasion for it. Nothing, indeed, allows it to be affirmed in advance that under future circumstances the authority which has jurisdiction under Article 5 or 6 might not be better placed to decide in the best interests of the child.*"

[41] **Main Authorities, Tab 6.**

[42] P. Lagarde, *Explanatory Report on the 1996 Hague Child Protection Convention* (HCCH, 1998) [**FRG Authorities, Tab 14**].

57. Again, and in that context, it is observed that no attempt is made to define what 'best interests' means or to dictate how the test should be applied. There is no suggestion at all that it must be a "forum based" "attenuated welfare test". The only real guidance is that the test should be applied on the particular facts of a case at the particular time by the court decided to apply it.

"Attenuated welfare test"?

58. What does the "attenuated welfare test" mean? On the one hand, it could mean a *diminished* welfare test in the sense of a narrow welfare test the content of which is circumscribed. On the other hand it could mean a broad welfare test applied in a more summary way to the facts than might otherwise be the case. *Family Rights Group* takes no issue with the proposition that, in some cases, where Article 15 is engaged, the "welfare test" can and should be applied to the facts of a case in a summary way, at an early stage, in order to avoid satellite litigation and/or unnecessary delay. On the other hand, *Family Rights Group* does not agree as a matter either of law or common sense that the *content* of any "welfare test" should also be attenuated.

59. The danger of a narrow, "attenuated welfare test" is that it *will* require a first instance Judge to transfer a case to another jurisdiction where on an holistic, broad welfare evaluation, that judge might regard such a transfer as contrary to the child's broader welfare interests.

60. As counsel for the children point out in their Written Case from §74 onwards, a combination of Article 24 of the *Charter of Fundamental Rights of the European Union*[43] and Article 3(1) of the *United Nations Convention on the Rights of the Child* [44] creates, unarguably, a supranational aim that in decisions relating to children, their interests should be "*a primary consideration*". For obvious reasons, neither instrument attempts any definition of what is or is not a permissible factor to be taken into account

[43] **Main Authorities, Tab 3**.

[44] **Main Authorities, Tab 9**.

when evaluating children's interests. In the same way, whilst section 1(3) of the *Children Act* 1989 prescribes factors to be taken into account when evaluating welfare, it does not circumscribe them. Again, this is for obvious reasons: what is or is not in a particular child's interests at a particular moment in time depends upon myriad factors, all of which must be taken in the round, bearing in mind, of course, the potential consequences of the decision in issue at the particular time that decision falls for determination.

61. Indeed, and bearing in mind the instinctively holistic approach taken to questions of "welfare" throughout this jurisdiction, day in, day out, the term "attenuated welfare test" may be regarded to be an oxymoron to most specialist children law practitioners in all but a limited context (which we address presently).

62. There are, moreover, a number of first instance authorities (apart from H.H.J. Bellamy's decision) that demonstrate the potential tensions caused by the "attenuated welfare test":

    i) had MacDonald J. transferred proceedings in *Medway Council v JB and others,*[45] he would have done so contrary to the children's strongly expressed wishes and feelings, and therefore, in his assessment (and rightly) contrary to the children's broad welfare interests. A strict application of the "forum-based" "attenuated welfare test" would have precluded consideration of the children's wishes and feelings by precluding a broad welfare evaluation; and

    ii) in *CK (Children) (Care Proceedings, Habitual Residence, Article 15),*[46] Moylan J. refused to transfer proceedings partly because it would involve up-rooting the children in circumstances where he felt that, without further assessment, to do so would be contrary to their broad best interests. Again, it is submitted that a strict application of

[45] [2015] EWHC 3064 (Fam) [**Main Authorities, Tab 56**].

[46] [2015] EWHC 2666 (Fam) [**Main Authorities, Tab 39**].

the "forum-based" "attenuated welfare test" would have precluded consideration of this factor by precluding a broad welfare evaluation.

63. It is argued that the reality is that, whether the "welfare test" is described as "attenuated" or not, where the broad evidence on welfare points away from transfer, for whatever reason, or where further assessment might reveal such evidence, Judges may be reluctant to transfer simply because a narrow "forum based" analysis points in that direction. Some judges might regard such a transfer as an abdication of responsibility towards the children with whose broad welfare they are charged at that precise moment. On one view, if we insist upon applying a narrow, "forum based" "attenuated welfare test", there is a danger of inconsistent authority**.** There are obvious risks in Judges feeling constrained to say they are applying an "attenuated" test when in fact they are applying (as we submit they should) a broad based welfare analysis in a summary way.

64. Whilst in particular in the child abduction context, the role that welfare plays is relatively limited,[47] care proceedings of course are in general terms very different in nature: these are cases where the State is intervening in family life, where children are alleged to have been abused by their carers often in a multiplicity of chronic ways, and where the decision is not whether or not a child should be returned to a requesting State, or placed with one parent or the other (in accordance, or not, with a pre-existing order) but whether a child should be removed from the care of its parents altogether. Many of the subject children have been damaged by the abuse they have suffered. Many of the parents involved face significant challenges of their own.

65. It is respectfully submitted therefore that there is nothing in the wording of Article 15 which requires the application of an "attenuated welfare test", and, arguably therefore, it is wrong to import such a gloss into what is an

[47] See, for example, *In re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144 [**Main Authorities, Tab 43**] and Article 16 of the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* which essentially prohibits any adjudication by the courts of the requested State in relation to the merits of "rights of custody" until there has been a determination that the child is not to be returned under the 1980 *Hague Convention* [**Main Authorities, Tab 8**].

autonomous instrument. In that respect *Family Rights Group* respectfully adopts and repeats the submissions of the Children's Guardian at §70 onwards of her Written Case.

Assessments and international standards

66. *Family Rights Group* accepts absolutely that, as a matter of comity, in considering the "best interests" question, the Court may not indulge in what might be described as a beauty contest between child protection resources in this jurisdiction and in the potential receiving State. To that extent it agrees with the President's remarks in the judgment below at §113(v).

67. Nevertheless, it is perhaps notable that there is no nationally or internationally acknowledged minimum standard by which, for example, extended family members might be assessed. It follows, therefore, that in the event that the Court is faced with an application to transfer, for example, in which the position of extended family members is key, it might be faced with an assessment or piece of work that is incomplete, inadequate or substandard. *Family Rights Group* submits that Judges should be entitled and vigilant to undertake rigorous and searching evaluation of kinship carer viability assessments, whether they are domestic or relate to nationals of other countries.

68. In light of its submission that the applicable welfare test must be broad and untrammelled (although in the right circumstances applied in a summary manner), *Family Rights Group* submits that the adequacy of an international kinship carer assessment may well be relevant to the question of whether it is in a child's interests for a case to be transferred. That is not the same thing as directly comparing different child protection systems. In the same way that, in a child's interests, the domestic courts routinely evaluate the merits of assessments of this nature, they should also, arguably, be entitled to evaluate them in the context of any proposed transfer. No Judge should be obliged to transfer a case, and effectively the care of a child (where the alternative is

kinship care in another State) if he or she is faced with inadequate or incomplete information or assessment.

69. In the event that this Court endorses the view that Article 15 permits a broader "welfare test" than the "forum based" "attenuated welfare test", *Family Rights Group* submits it must follow that a Court is entitled to weigh in the balance the quality of the information it has from the potential receiving State.

Timing of Article 15 applications

70. It is submitted that, like any other interlocutory application in care proceedings, any application pursuant to Article 15 should be made as soon as practicable. In the vast majority of cases, it will be clear when Article 15 might be engaged.

71. *Family Rights Group* submits that any application or consideration of Article 15 should clearly be made without delay. However, the point at which any application is determined must depend upon the facts of each case.

72. There are cases where the jurisdictional "gateway" to State intervention (that is to say, the "threshold" required by section 31(2) of the *Children Act* 1989[48]) turns on a single issue, such as an isolated alleged inflicted injury (for example: an isolated "shaking" type injury, where specialist practitioners know very well there might be conflicting expert opinions on aetiology). In such a case it may seem disproportionate and wrong to transfer or to contemplate transfer at the outset, where perhaps the parents and/or children object, and where in due course the Court might have found no basis at all for State intervention in the first place. An "attenuated welfare test" applied at the earliest stages might result in an entire family (and in circumstances where the children are habitually resident in this country) having to litigate abroad (and even move abroad) against their wishes.

[48] **Main Authorities, Tab 4**.

73. There are also cases where, even though the "threshold" required by section 31(2) of the *Children Act* 1989 is multi-faceted, the end result might be minimal in terms of State intervention: there might be a Supervision Order, or indeed no public law Order at all. Again, in such cases, and perhaps particularly if an "attenuated welfare test" (as opposed to a welfare test applied in a summary or attenuated manner) is applied, the end result might be transfer not only of the proceedings but an entire family to a State where the children are not habitually resident and to which perhaps none of them wishes to return, where in due course the transferring Court might have reunited the family in this jurisdiction.

74. Whilst it is of course right, as Pauffley J. observed that:

> "*…it must be overwhelmingly more efficient and accord with the welfare interests of children, for jurisdictional decision making to occur, as a matter of priority, during the initial stages of the proceedings*",[49]

the question under Article 15 is not which Court has jurisdiction but whether the case falls into this particular Article 15 *discretionary* exception to the general rules on jurisdiction (see Article 15(1): "*By way of exception…"*).

75. It may also be of note, in this context, that the different language versions of *Brussels II Revised* are expressed with somewhat different emphasis or meaning from the English version "By way of exception":[50]

i) In Dutch: *bij wize van uitzondering* translates as "exceptionally";

ii) French: *À titre d'exception* translates as "by way of exception";

iii) Spanish: *excepcionalmente* translates as "exceptionally"; and

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[49] *Re J (A Child: Brussels II Revised: Article 15: Practice and Procedure)* [2014] EWFC 41 at §36 [**Main Authorities, Tab 50**], cited by the President at §115.

[50] Translations of Article 15(1) are provided in [**FRG Authorities, Tab 4**].

iv) German: *In Ausnahmefällen* translates as "in exceptional cases".

76. *Family Rights Group* submits that, whether or not "by way of exception" means the same thing as "exceptionally", or "in exceptional circumstances", there is no express suggestion in the Article itself that it has to be applied in every case where there is a European dimension.

77. Again, every case will be different. There will be cases where children habitually resident in this country will have large extended families willing to care for them abroad. In such a case, Article 15 is clearly relevant. There might be other cases where although the children are foreign nationals, they have lived here for most of their lives and have no family in their country of origin. Their identified placements might be entirely culturally appropriate. They and/or their parents might not want (for any number of reasons) any consideration of a transfer of the proceedings.

78. It is apt to observe that whilst the Court of Appeal (and all of the other reported cases, it would seem) in this case focused exclusively on *Brussels II Revised*, similar legal powers exist under Articles 8 and 9 of the 1996 *Hague Convention on Child Protection*. Accordingly, *Family Rights Group* submits that whatever decision this Court takes in relation to the application of Article 15 where there is a European dimension, it is likely to impact upon, *mutatis mutandis*, cases where the 1996 *Hague Convention* applies.[51]

CONCLUSIONS

79. In relation to the use of section 20 of the *Children Act* 1989, *Family Rights Group* submits that:

i) it will only very rarely, if ever, be appropriate for section 20 to be utilized as a prelude to care proceedings where those proceedings are inevitable;

[51] [**FRG Authorities, Tab 5**]. Perhaps importantly, the list of States that have ratified the 1996 Convention includes Denmark, which is outside the scope of *Brussels II Revised*.

ii) even where it is absolutely necessary, it should be for the shortest possible time, with proper and full consent, recorded in a proper form and with parents having access to free legal advice and appropriate interpreter and/or translation services;

iii) it will only very rarely, if ever, be appropriate for section 20 to be utilised as a mechanism by which to assess whether care proceedings should be brought and with (again) parents having access to free legal advice and appropriate interpreter and/or translation services;

iv) again, even where it is necessary, it should be for the shortest possible time, with proper and full consent, recorded in a proper form; and

v) in particular where in the event that proceedings were issued an Article 15 point would *prima facie* arise, and irrespective of section 20 agreement, proceedings should be brought in any event and without delay.

80. In relation to Article 15 of *Brussels II Revised*, *Family Rights Group* submits that:

i) Courts should be required to consider it at an early stage although determination may turn on the facts of each case;

ii) Courts should not be constrained to apply it at any particular stage in proceedings, although it should be considered at the earliest appropriate opportunity;

iii) Courts should not be constrained to apply a "forum based" "attenuated welfare test" but should be permitted to apply a broad welfare test, even if it is applied in a summary or attenuated manner; and

iv) in applying that broad welfare test, Courts should not be entitled to take into account, the competence or quality of child protection systems in other States, but should take into account the quality of the information upon which the transfer issue is to be determined.

81. This is the first time *Family Rights Group* has sought to intervene in an appeal before the Supreme Court. Much of the driving force behind and inspiration for this intervention came from Bridget Lindley, who was actively and tirelessly involved in the work of the organization for twenty-eight years. Since 2004 she was the Group's Deputy Chief Executive and Principal Legal Adviser. She died, suddenly, on 2 March 2016, days after first consulting with the authors of this document. It was obvious to the authors that she was a woman of fierce intelligence and great energy and it is hoped this document and the intervention may represent, in part, a tribute to her.

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15 MARCH 2016

APPENDIX

FAMILY RIGHTS GROUP

1. *Family Rights Group* works with parents whose children are in need, at risk or in the care system and with members of the wider family who are raising children unable to remain at home. It was established as a registered charity in 1974 in order to provide advice and support for families whose children were involved with social services and to campaign for improvements to childcare law and practice. Since it was established forty-two years ago, *Family Rights Group* has had a substantial influence on the formation of child protection law and policy, has become the leading charity on kinship care (also known as family and friends care) and has given parents a voice in policy circles. *Family Rights Group* aims to put forward workable solutions in the interests of the child and campaigns for reform in order to improve the lives of children and families.

2. It is a fundamental human right of every child to be raised by their parents, provided it is safe. Where this is not possible, there is strong evidence that children are more likely to thrive within their wider family network than within the care system. *Family Rights Group* believes that considerably more could be done to prevent children from needing to be taken into care in the first place, and that more could be done to enable more children who cannot live with their parents, to be safely raised by a family member who knows and loves them, whether in this jurisdiction or abroad.

3. *Family Rights Group* campaigns for these principles to be implemented and has influenced the development of law and policy, including the Children Act 1989 and its associated guidance.

4. *Family Rights Group* undertakes a number of roles. In particular, it:

(a) works with families, academic agencies, professionals, statutory agencies, community groups, and decision makers, in seeking to reform and improve child welfare law and policy;

(b) provides practical and real support for children and families in need through a number of services including: the telephone and web-based advice service, local support groups, events and campaigns. In addition, *Family Rights Group* has pioneered independent professional family advocacy, enabling families to participate in local authority planning and decision making about their children;

(c) seeks to influence policy and legislation by regularly producing joint briefing papers and responses to consultations. Recent policy and campaign briefings have addressed the care and adoption system and responses to consultations by Government and other agencies. For example, *Family Rights Group* set out its concerns in briefing papers to the House of Lords and House of Commons, meetings with Parliamentarians and in written submissions to the Joint Committee on Human Rights about how kinship carers would be adversely affected by proposals in the Welfare Reform and Work Bill 2015. The government responded by addressing some of these concerns, for example by exempting kinship carers from the two child limit to child tax credits so as not to undermine kinship care placements;

(d) runs a range of training courses for social workers and other practitioners including those who work with kinship carers, as well as holding conferences and events for families, policy makers and practitioners;

(e) undertakes and publishes research on child welfare law and policy, including recommendations for practitioners and policy makers about good practice at local and national level. Examples of recent research include, *Doing the Right Thing*, a report published on 13 October 2015, which highlighted difficulties facing both kinship children and their carers in the United Kingdom. The study was based on information drawn from over 6,000 callers to Family

Rights Group advice line and the largest ever United Kingdom kinship carer survey;

(f) undertakes projects designed to research and develop policy and practice towards families involved in the child welfare and family justice system. This has included developing information and support for mothers experiencing domestic violence and work to support young parents. The *Fathers Matter* research and best practice reports have placed *Family Rights Group* at the forefront of this important area of social work practice;

(g) has led the introduction of family group conferences in England and Wales and the development of family group conference standards. This has included providing extensive training and events, running the National Family Group Conference Network, developing Family Group Conference principles and an accreditation framework, publishing practice guides, and playing a key role in the European Family Group Conference Network;

(h) leads *The Kinship Care Alliance*, which comprises a number of member organizations working with kinship carers including: Grandparents Plus, BAAF and the Fostering Network. It has developed a joint policy agenda to:

- Prevent children from being unnecessarily raised outside the family
- Enhance outcomes for children who cannot live with their parents and who are living with relatives
- Secure improved recognition and support for family and friends carers.

The Alliance launched a campaign called *Agenda for Action 2015* that set out recommendations for change following the general election in 2015; and

(g) *Family Rights Group* also leads *Your Family, Your Voice*, an alliance of families and practitioners working to transform the system.

In the Supreme Court of the United Kingdom

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL (CIVIL DIVISION) (ENGLAND AND WALES)

JN and EN

Appellants

and

(1) LONDON BOROUGH OF HOUNSLOW

and

(2) AM

and

(3) ZN

Respondents

(1) THE AIRE CENTRE, (2) FAMILY RIGHTS GROUP, (3) THE INTERNATIONAL CENTRE FOR FAMILY LAW POLICY AND PRACTICE

Interveners

CASE ON BEHALF OF *FAMILY RIGHTS GROUP*

DATED 15 MARCH 2016

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