Neutral Citation Number: [2025] EWFC 202 **Case No: LS22C50502**

IN THE FAMILY COURT **Leeds Family Court**

SITTING AT LEEDS **Westgate, Leeds**

Date: 4 July 2025

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF D (A MINOR)

B e f o r e :

Mr. Recorder Tyler KC, sitting as a Deputy High Court Judge

- -

B e t w e e n :

LEEDS CITY COUNCIL **Applicant**

- and -

THE MOTHER

D (A Minor) **Respondents**

RE D (A MINOR) (CARE PROCEEDINGS: PLACEMENT IN FRANCE: HAGUE 1996, ARTICLE 33)

JUDGMENT

Neil Allerton of counsel for Leeds City Council, instructed by Legal Services

John Wilson, solicitor, of National Legal Service, for the mother

Clare Garnham and **Rebecca Musgrove** of counsel for the child, through his children's guardian, instructed by Ridley and Hall Solicitors

Preamble

1. This case is about a little boy who was born *[date redacted]* [in] October 2020, and so who is a little over four-and-a-half years old. In this judgment I shall refer to him as David, although that is not his real name. On 8 May 2025, David moved from England, where he had always lived, to France, and into the care of his paternal aunt, *[name redacted]* (**"the aunt"**).

2. This was because his mother, *[name redacted]* (**"the mother"**), who has many good qualities, due to her sadly insuperable difficulties with substance and alcohol addiction, is not in a position to look after him, because his father, *[name redacted]* (**"the father"**) died in March 2024, and because there were no other suitable family members or close friends in the UK in a position to provide him with a long-term home.

3. The placement was made with my imprimatur, through a suite of orders I made on 25 April 2025 aimed at achieving a safe transition to and providing legal security within his placement in France, and with the full, formal agreement of the French authorities.

4. By all accounts, the transition to his aunt's care, in which his excellent and devoted foster carers, *[names redacted]* (**"the foster carers"**), played an extensive and significant part, has gone very well, and David is settling well in his new home. One of the great advantages of this family placement is that David will continue to have some contact with his mother, sister and grandmother; this has already taken place via video calls on a number of occasions.

5. The particular feature of this case which singles it out from others and which casts a dark shadow over what would otherwise be a good news story is that the court proceedings which culminated in his placement in France were issued on 12 August 2022, a full two

years and nine months before David was eventually able to move to his long-term home. The potential placement with the aunt was identified relatively late in the proceedings, but still a full one year and ten months before David's move to the placement was actually achieved. Nor was this the first set of proceedings in relation to David. Care proceedings were issued on 26 October 2020 in the Family Drug and Alcohol Court (**"FDAC"**), when David was just three weeks old, concluding in a supervision order being made in September 2021, by virtue of which David remained in his mother's care. This was only eleven months before commencement of the second proceedings. By the point of his placement in France, of David's four years and eight months of life, he had spent three years and eight months as the subject of care proceedings. David has been significantly let down by 'the system': his long-term placement should have been determined and realized much, much sooner, so that he could forge attachments with his permanent carers at a far younger age than was ultimately achieved.

6. In those circumstances, it is inevitable that a significant portion of this reserved judgment should focus on what went so very badly wrong in this particular case in the hope that lessons might be learned.

Parties, representation and applications

7. **Leeds City Council** (**"the LA"**) issued proceedings pursuant to Part IV of the Children Act 1989 (**"the CA 1989"**) (care proceedings) in the Family Court in Leeds on 12 August 2022; those proceedings took place within the Family Drug and Alcohol Court (**"FDAC"**). On 17 December 2024, the LA issued an application, pursuant to paragraph 19 of Schedule 2 of the CA 1989 for court approval to place David outside England and Wales.

The LA has been represented during latter hearings by one or other of Iain Hutchinson and Neil Allerton, both of counsel.

8. The proceedings relate to **David**, born *[date redacted]* [in] October 2020, so rising two years old at the point of the application and four years and eight months old at the point of this judgment. David is of mixed White British and Black African ethnicity. David has been represented during latter hearings by Clare Garnham leading Rebecca Musgrove, both of counsel.

9. David's mother was born *[date redacted]* [in] 1989 so is 35 years old and is of White British heritage. The mother has been represented throughout by John Wilson, solicitor.

10. David's father was born *[date redacted]* [in] 1969. The father, who was of Black African heritage, died on *[date redacted]* [in] 2024. The father participated in and was represented in the proceedings until his death a little over a year ago.

Background and precipitating events

11. The relevant background can be relatively briefly stated, as it is not controversial, and nor is the proposition that the mother, David's only surviving parent, is not in a position to provide him with stable, long-term care.

12. The mother had a very difficult childhood, experiencing considerable trauma and loss. While the detail of this need not be set out in this judgment, the consequences for her in terms of her ability to function and to live a productive life have been significant and sadly indelible. Substance misuse (principally cocaine, codeine and alcohol) has been a pervasive feature in her adult life and she has been plagued by a repeated pattern of

forming relationships with partners who are, or who have become, abusive towards her. Both of these issues seem to be consequences of her significantly compromised self-esteem, no doubt largely the byproduct of her unhappy and traumatic childhood.

13. The mother has an older child, Y, who was born in 2007 (and who has a different father to David). Y has not lived with the mother for many years. The mother had support and involvement from Leeds Children's Services in relation to Y, dating back to 2009 and focussing on concerns around exposure to parental substance misuse, domestic abuse (including violence), neglect and emotional harm, this leading to Y moving to live with her father in 2016, pursuant to a Child Arrangements Order in his favour.

14. In 2020, when the mother's pregnancy with David became known, a pre-birth assessment was undertaken. The mother, who had at times worked productively with children's services, continued to struggle with substance misuse and there were concerns about her ability to keep a baby safe. David was born three weeks early, by planned Caesarean section. He remained in hospital with his mother for the first week of his life, and on 11 October 2020, mother and baby were discharged from hospital to an interim placement, before moving into a local authority child and parent placement on 8 November 2020.

15. A Part IV CA 1989 application was issued on 26 October 2020. Those proceedings took place in the FDAC. The father's involvement was quickly compromised by his remand in custody in November 2020 on charges of robbery, in relation to which he was subsequently convicted, receiving a three-year and four-month custodial sentence.

16. David remained in his mother's care throughout most of those earlier proceedings. Intensive support was provided by Children's Services and the FDAC Team. The mother was deemed to have made very good progress, in relation to both her engagement with

services and her ability to maintain abstinence. Her move into the community proceeded broadly successfully. The FDAC team recommended that David remain permanently in his mother's care. However, in August 2021, the mother had three relapses, the last of which was just six days before the IRH / Early Final Hearing. This led to the Early Final Hearing being adjourned. This notwithstanding, the LA's final care plan in September 2021 was for David to remain in the mother's care, the placement to be underpinned by a twelve-month supervision order. On 27 September 2021, DJ Shepherd approved this plan, which had the support of the Children's Guardian, and made a supervision order for twelve months.

17. The mother continued to drink until January 2022 when it is said she managed abstinence for 80 days. After the conclusion of the proceedings, she continued to receive support from FDAC, Stronger Families, and latterly a group called 'Women's Health Matters'. Despite this support she was unable to maintain abstinence and relapsed on a number of occasions. FDAC found themselves repeatedly having to extend their offer of support without any clear exit plan due to ongoing crisis intervention and safety planning.

18. On 3 July 2022 matters came to a head when a family member reported the mother to the police. Police attended the family home and found the mother under the influence of alcohol such that it was not safe for David to remain in her care. The mother agreed for David to be cared for by a friend for three days.

19. The LA did not take any further action until 22 July when, during a visit by a social worker and FDAC, the mother was again seen under the influence of alcohol. She agreed for David to be looked after for a further three days until 25 July. On 25 July, when the mother was again or still affected by alcohol, with her consent, David was accommodated by the LA pursuant to s.20 of the CA 1989.

The current proceedings

20. The LA issued these care proceedings on 12 August 2022. As set out above, this was the second set of care proceedings in less than two years. This was in circumstances in which it seems that there had never been any sustained period since the conclusion of the previous proceedings when the mother had been able to maintain abstinence from alcohol. The interim care plan was for David to remain in foster care.

21. On 15 September 2022, DJ Shepherd made an interim care order, in so doing approving David's ongoing accommodation in foster care, where he has remained throughout, save for a short period of attempted reunification with his mother between March and May 2023.

22. The first 53 weeks of these proceedings saw the case proceeding through the FDAC process. Given the very recent history of the previous proceedings and the failed placement with the mother, punctuated as it was by multiple relapses, it is difficult to see why this process was undertaken for a second time. At various points in that process, hair strand and blood testing suggested abstinence from substances and alcohol; at others, it indicated the use of cocaine, codeine and alcohol. From 6 March 2023, a gradual reunification of David with his mother began, leading to his full-time placement in her care by 26 April 2023. At an Issues Resolution Hearing (IRH) on 26 April 2023, a final hearing was listed to take place on 5 June 2023, with a time estimate of one-and-a-half hours (the relevance of this very short fixture being that it was anticipated that the case would conclude, with the consent of all and the agreement of the court, with David remaining in his mother's care). However, and clearly resonating with the previous proceedings, on 4 May 2023, the mother was found by the FDAC Team under the

influence of alcohol and, in a report dated 19 May 2023, FDAC formally revoked its recommendation that David remain in his mother's care.

23. The case was then listed through to a final hearing on 3 August 2023. It being the case at that stage that no potentially viable alternative family carer was thought to exist, the care plan would surely have been one of adoption.

24. By this stage, the proceedings were more than 12 months old. David had been the subject of care proceedings for two-thirds of his nearly three years of life and he was, self-evidently in need of a final placement with a carer or carers who would of necessity be neither his mother nor his then current foster carers, that is to say someone whom he had never met, let alone begun to form an attachment with.

25. However, by the point of that hearing on 3 August 2023, the paternal aunt had just been identified as a possible carer and a positive viability assessment had been undertaken. It is not clear to me why it had taken a year for her to have been put forward. The many previous orders throughout 2023 had repeated the warning that late identification of alternative carers may mean that they could not be considered, because of the impact on the child of the consequent delay. However, the order of 3 August 2023 does not suggest that any consideration was given to the impact of re-timetabling for the assessment of an aunt who a) lived in France and b) had never been actively involved in David's life. The order shows that all parties agreed to an adjournment for full assessment of the aunt. This position was approved by DJ Shepherd, and by the end of August 2023 the Court had approved the obtaining of an assessment by CFAB.

26. The CFAB assessment was received relatively quickly, in October 2023, the translated version following in November. The LA, having considered the assessment, wished to

fill some gaps within it by conducting further assessment of the aunt, in the UK, to include her being able to meet and to begin to get to know David. However, because the aunt's residence in France came by virtue of her status as refugee, and as her French residence permit was to expire on 20 December 2023, the process of enabling her to visit the UK without jeopardising her status in France was not straightforward. This held up the proceedings for 10 months, from November 2023 until September 2024, when she was eventually able to travel to the UK. She stayed in the UK between 15 and 29 September 2024, which enabled an addendum Special Guardianship Assessment to be undertaken. That assessment was entirely positive in relation to the aunt's parenting, her commitment to David, and her ability to meet his needs and to provide him with a loving and nurturing home.

27. It seems that some consideration was given at various points to the need to consider and to address the legal complications of a placement in France. In November 2023, the LA confirmed that legal advice had been 'sought' from both CFAB legal and counsel. The LA was directed to file, by 8 December 2023, a comprehensive plan, addressing immigration issues for the aunt and for David (in the event of placement in France), the question of legal orders in both jurisdictions, arranging for the aunt to attend the UK to carry out assessment work and to have introductory contact with David, post-placement contact between David and his mother, and any post-placement financial package for the aunt.

28. I am told that it does not appear that the plan was ever filed. Nor is it clear what came of the advice sought from CFAB legal and counsel. The LA subsequently obtained advice from French lawyers in February 2024. It seems, however, that, rather than acting on that advice, the proceedings then became distracted by the ongoing efforts to obtain a

visa to allow the aunt to travel from France to England for the purposes of the assessment. I have been told that the *'central legal issues that must be navigated in pursuing a placement outside of the jurisdiction'* were not given any real further consideration until 16 October 2024, that is to say, more than 14 months after the court and the parties had the positive initial viability assessment of the aunt. It is in DJ Shepherd's order of 16 October 2024 that the first reference is made to Art. 33 of the Hague Convention 1996, in a recital recording that the LA had contacted the central authority in France *'to seek approval for David's placement in France, if this is the plan approved by the court'*.

29. On 20 November 2024, the case was listed for the first time before HHJ Hillier, the Designated Family Judge for West Yorkshire. It had been reallocated to HHJ Hillier due to its being in its 118th week. By that point, there had been something like seventeen hearings (including judicial (non lawyer) FDAC Reviews) in the 26 months between 16 August 2022 and 16 October 2024, all, save for a CMH in February 2024, before DJ Shepherd. The order of HHJ Hillier includes the recital, *'The court reviewed the chronology of these proceedings and indicated that lessons must be learned in order that this is never repeated.'* I suspect the hearing was somewhat uncomfortable for those present, as I imagine that HHJ Hillier expressed some forthright views about the inexplicable lack of progress in the case over the preceding two years and three months, and in particular in the fifteen months since the LA had ruled out the mother as a potential safe carer for David. The LA indicated at that hearing that it would send an agreed letter to the French central authority to ask whether it would consent to David being placed with the aunt in the interim, while French authorities carried out their assessments, pursuant to an interim care order made by the English court.

30. HHJ Hillier reallocated the case to High Court Judge / Deputy High Court Judge level (within the Family Court) and listed the case before me for IRH/EFH on 9 December 2024. The LA was directed to file a detailed written opening, including a chronology of the proceedings to date. The LA indicated a commitment to the seeking of urgent advice from specialist counsel with expertise in international family law and from an immigration practitioner in France, and to funding independent legal advice for the aunt. HHJ Hillier directed final LA evidence be filed by 27 November 2024.

31. The case first came before me on 9 December 2024. Mr Hutchinson, instructed for the first time by the LA, had produced an extremely helpful and thorough written opening and chronology of proceedings. However, and through no fault of Mr Hutchinson, despite what I understand to have been the robustly expressed views of HHJ Hillier at the hearing on 20 November in relation to the need for absolute expedition and compliance, an inexplicably blasé attitude seems to have continued, at least within the LA.

32. Directed to file their evidence by 27 November 2024, the LA simply did not do so. It seems that the LA solicitor, Mr Jobsz, decided that this could not be done until the specialist international legal advice was obtained (this notwithstanding the fact that HHJ Hillier had been fully aware that the advice would not have been received by the date she had directed for the evidence to be filed). No application had made by the LA for relief from sanctions or variation of the order.

33. I learned at that hearing of a similarly unhurried approach having been taken by the LA to its dealings with the relevant central authorities, this both before and after the hearing before HHJ Hillier. In early February 2024, the LA had received formal legal advice from Delphine Eskinazi of Libra Avocats in Paris. Mme. Eskinazi is a specialist family lawyer, with particular expertise in international family law and is a very well-known and respected

figure on the international family law stage. Mme. Eskinazi's advice included specific and careful exposition of the workings of the 1996 Hague Convention, and in particular, for current purposes, of Article 33 and the consequences of placing outside the protocol created by the Convention. However, it was not until more than seven months later, on 12 September 2024, that Mr Jobsz contacted the French Central Authority ("FCA") directly to explain that the care proceedings were approaching the stage when it was hoped that David could move into his aunt's care in France, it being intended that he would travel with his foster carer to aid the transition. The FCA responded on 16 September 2024, setting out that in order for a child to be placed in France an Article 33 letter would be required, and Mr Jobsz was advised to contact the Central Authority for England and Wales ("ICACU" – the International Child Abduction and Contact Unit) to arrange for the submission of an Article 33 request. Despite the clear urgency, this request was not submitted until 10 October 2024. ICACU processed the request and passed on the FCA's response on 13 November 2024, which was that the FCA assessment of the paternal aunt, necessary to inform its Art. 33 decision, can take up to three months. ICACU pointed out that, while Leeds City Council might deem the matter urgent, if the request had been made in good time and via the central authority (in accordance with protocol) there would have been no need for a hurried last-minute request. An inexplicable 9 days passed between the hearing before HHJ Hillier and the question being asked of the FCA as to whether interim placement might be authorised while the FCA's assessment of the aunt was pending. Once the question was put, the answer quickly came back: interim placement would not be allowed without the Art. 33 approval letter.

34. At the hearing on 9 December 2024, I expressed in relatively robust terms my dissatisfaction with the glacial speed with which the case had progressed for more than two years and, in that context, the shocking ongoing failure to comply with orders or to

act with any sense of urgency, mindful of the previous delay. I directed the preparation of statements from Mr Jobsz, explaining various delays for which he seemed to be responsible, and from the Head of Legal Services at the LA, explaining why HHJ Hillier's clear order in relation to the filing of final evidence was simply not complied with. I made directions requiring the LA to make and to progress with expedition a visa application for David via the French Consulate General in London and I directed the LA to convene a 'round-table meeting' between the English social workers, their French counterparts, the Children's Guardian and the aunt, with a view to the creation of an agreed support and transition plan. I also set a back-stop date by which any application by the LA for approval for the arrangement of the placement of a child outside England and Wales (pursuant to para. 19 of Sch. 2 of the CA 1989) was to be made.

35. Bafflingly, to my mind, by the point of the hearing before me on 9 December 2024, the issue of the s.31 threshold criteria had not formally been dealt with, notwithstanding that the proceedings were then well over two years old. Mr Hutchinson's written opening identifies that it was recorded at the very first hearing in August 2022 that the s.31(2) CA 1989 threshold criteria were agreed in principle. The LA drafted a document setting out its assertions in relation to the criteria, and this was uploaded to the online case management platform ("the portal") on 15 September 2022. However, the document was not responded to, did not lead to formal findings, by concession or otherwise, in relation to threshold, and was then forgotten about such that orders between January and August 2023 repeatedly referred to the absence of any such draft document. An order on 23 August 2023 refers to the mother 'currently' agreeing to the LA's draft document, but no more was then said about the issue until it was flagged by Mr Hutchinson at the hearing before me. My order of 9 December 2024 formally recorded my findings, made on the written evidence and on the mother's sensible concession, in relation to the basis

for the statutory threshold having been met at the relevant date, being the point at which David was accommodated immediately prior to the institution of these proceedings. The risk of significant harm, as set out more fully in the findings, derived from the mother's history of substance and alcohol misuse, her inability to parent safely when affected by either, and her failure effectively to address these issues or to make and sustain sufficient changes to her lifestyle, with a number of specific instances of the mother's having been under the influence of alcohol while caring for David cited.

36. One of the matters to be addressed in the statement I directed from Mr Jobsz was the seven-month delay between receipt of the advice in relation to Art. 33 and the first approach being made to the central authority of either country (i.e. the FCA or ICACU). The explanation in the resultant statement was this:

> *'On 6th February 2024, I received (by e-mail) legal advice from two French Law Firms (Libra Avocats & Halimi & Hertier Avocats).*
>
> *On 14th May 2024, I contacted Libra Avocats by e-mail for a contact at the FCA. I received an e-mail response the same day giving details for my current FCA contact, Madame [CD].*
>
> *I then overlooked making contact with Madame [CD] at the FCA, as is good and expected practice where dealing with foreign jurisdictions, (until September 24) due to the other focuses of the case, in particular arranging for [the aunt] to visit the UK in order to progress introductions with David, and for the Local Authority to complete their Kinship Assessment of [the aunt].*
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> *In summary, I must concede that I delayed in acting upon the French legal advice to contact the FCA, and upon the e-mail contact provided to me on 14th May 2024. I was very much focused during the period between February and September 2024 in securing a VISA for [the aunt] to ensure that she was able to enter and stay in the UK for the purposes described above, which distracted me from contacting the FCA sooner than September 2024.'*

37. The explanation from Leeds City Council for its having entirely failed to comply with the direction of HHJ Hillier to file its final evidence by 27 November 2024 was similarly perplexing. I was told, in a statement from Mr Jobsz that the draft order submitted to HHJ Hiller after the hearing on 20 November 2024 purported to provide, in a recital to the order, for position statements from the parties, instead of final evidence from the LA, if the filing of final evidence *'is not be possible in advance of the 9.12.24 because of the need for the LA to obtain advice from specialist counsel prior to filing its final evidence'*. HHJ Hillier reviewed the draft order and struck this recital out, no doubt because it had not been raised at the hearing, had not been approved by her and was entirely inconsistent with her intentions. The order, as amended by the Judge, was sent through to the parties by email, and was uploaded to the portal. Mr Jobsz, it seems, did not read the order, as approved by HHJ Hillier, and did not appreciate that it was not the same as the draft which had been sent to the Judge. Nor did Mr Jobsz forward the approved order to his client department, that is social services, until the day after the deadline had passed. It was not until the solicitor for the child, on 3 December, chased the by then late evidence, that Mr Jobsz appreciated that the order was as it was. The work involved in instructing a specialist King's Counsel to provide urgent legal advice in relation to the international placement of children is relied on as the pressing matter which prevented the order from being read and its contents considered.

38. Rebecca Roberts, the Section Head of Social Care Legal at Leeds City Council, also filed, on my direction, a statement explaining the failure to comply with the order of HHJ Hillier in relation to the timely filing of the final evidence. The statement sets out the various processes in place within the legal department, but in relation to the actual failure does not leave the reader very much the wiser:

> *'We have systems in place to report back to our client department following a hearing, and for recording key dates on our files and in our central diary. On this occasion, that system did not work due to human error.'*

Ms Roberts did not address in her statement – although the fault was perhaps mine for not directing this – how the seven-month delay in acting on the advice in relation to Art. 33 could have coexisted with the *'bi-monthly 1-2-1 meetings with team leaders'*, which I take to represent an ongoing supervision process. Both Ms Roberts and Mr Jobsz were appropriately apologetic in their respective statements, and Ms Roberts sought to assure the court that she has put measures in place to reduce the chance of similar failings arising in the future.

39. Following the hearing on 9 December 2024, and in no small part due to the instruction by the LA and CG of experienced and able counsel, the case gathered the momentum it should have had over the course of the previous two years.

40. That said, as will be seen, it still took another five months before David in fact moved from England to France and was eventually placed in his aunt's care. This is a consequence of the myriad complications involved in the international placement of children.

41. On 17 December 2024, the LA issued an application pursuant to para. 19 of Sch. 2 of the CA 1989, for the court's approval of its arranging for David to be placed in France.

42. The next hearing was before me on 31 January 2025. The FCA and French social services had been very helpful in the interim period. The aunt had been positively assessed by French social workers and the FCA had very efficiently provided a letter, pursuant to Art. 33 of the Hague Convention 1996, permitting David's placement with the aunt in France.

43. Accordingly on the LA's application and with the full agreement of the mother and the approval of the Children's Guardian, I gave permission pursuant to para. 19 of Sch. 2 of the CA 1989 for the LA to arrange for David to live in France, and specifically to progress a visa application for him.

44. The formalities involved in procuring of a visa for David added yet further delay. Necessarily, the visa application could not be made until the Art. 33 permission was given by the FCA. Thereafter, differences of opinion emerged as to whether an order from the French court (in relation to the placement of David with his aunt) would be necessary before a visa could be granted. It transpired that this was not the case. An appointment was made and kept at the French Visa Centre in Manchester on 17 February 2025. Thereafter, further differences of opinion emerged as to what private medical insurance David did or did not need, in order to be entitled to the relevant visa.

45. It had been hoped that these issues would be resolved by the time of a hearing listed before me on 14 March 2025, but, despite the genuine best efforts of the relevant professionals, this was not possible. Ultimately, following the concerted labours of lawyers and social workers and the helpful assistance of French authorities, David's visa was approved and endorsed in his passport on 22 April 2025.

46. This allowed, at a hearing before me on 25 April 2025, final arrangements to be approved and the relevant orders to be made. The arrangements included pre-departure 'farewell' contact sessions between David and his sister and, separately, the mother. The foster carers were then to fly to France with David on 8 May 2025, to stay there in order to help him to settle in until 12 May, when they would return to the UK. With admirable speed and efficiency, a transition plan, a support plan and a contact agreement were prepared and agreed.

47. At the hearing on 25 April 2025, I was asked to approve the arrangements, which I gladly did. I was also asked to make final orders, concluding the case then and there. I declined to do so. It seemed to me more sensible to maintain the English proceedings for a few weeks after David's move to France so that, in the event of difficulties (and for as long as he had not lost his habitual residence in England) there was a court, already seised of proceedings, which could make such orders as might be necessary. Accordingly, I listed the case for hearing on 6 June (later having to adjourn it for a short period) with a view to making final orders bringing the proceedings to a close and handing down this judgment.

48. At that hearing on 25 April 2025, I made a 'lives with' child arrangements order in favour of the aunt. It was considered that this would a better order than a special guardianship order, not least as it is likely to be more readily comprehensible to lawyers, judges and other professionals working in another jurisdiction. The making of the 'lives with' child arrangements order in relation to a non-parent has the automatic effect under English law of vesting parental responsibility in that person while the order remains in force (s.12(2), CA 1989); the order also had the effect of discharging the interim care order in favour of the LA (s.91(1), CA 1989). The child arrangements order also provided for biannual face-to-face contact and weekly video contact between David and his mother.

49. I also made a specific issue order giving the foster carers express permission to transport David to France for the purposes of moving him into his aunt's care, just in case they might encounter any difficult with immigration or other authorities as they transported a child who was unrelated to them over international borders. (With hindsight, I have asked myself whether a specific issue order was the most appropriate order for me to have made, whether I was determining *'a specific question which has arisen, or which may arise, in connection*

with any aspect of parental responsibility for a child' (CA 1989, s.8(1)). While there is clearly jurisdiction to make such an order of the court's own motion, and even in relation to a person who would require leave to apply in their own right (see CA 1989, s.10(1)(b)), it might have been better instead to have made a similar order pursuant to the Family Court's inherent jurisdiction to make *'any incidental and supplemental orders of a kind that could be made under the inherent powers of the High Court where the purpose of such orders is to give effect to their substantive decision'* – see s.31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 and *Re K (Children) (Powers of the Family Court)* [2024] EWCA Civ 2, [2024] 4 WLR 9.)

50. On 8 May 2025, David was taken by his foster carers to France and was placed in his aunt's care. The careful work with him beforehand, the building up of his relationship with the aunt and the selfless efforts of his foster carers before and during the transition seem to have paid off. I am told that David has settled very well. He has had video contact with his mother and separately with his sister and grandmother; both have gone well. All practical matters (in relation to financial issues, health registration, engagement with French social services, translation of relevant documents, registration with school etc.) have been taken care of.

The law

Welfare

51. Whether contemplating making public law orders (pursuant to Part IV, CA 1989) or private law orders (pursuant to Part II, CA 1989), David's welfare is at all times to be my paramount consideration (s.1(1), CA 1989). When determining how his welfare is best to be promoted, I am to have regard to the (non-exhaustive) list of factors in the so-called

'welfare checklist' (s.1(3), CA 1989). When determining any question relating to the upbringing of a child, I am to have regard to *'the general principle that any delay in determining the question is likely to prejudice the welfare of the child'* (s.1(2), CA 1989).

52. In this case, it was not controversial that David cannot be placed in his mother's care. I am very glad to hear that the mother seems to being doing well in her current efforts to achieve and maintain abstinence. To her immense credit, though, the mother has accepted for some time that she is not in a position to look after David and that he needs to be settled in his permanent home. She has given her full support to the placement with the aunt. Accordingly, I need not burden this judgment with consideration of the criteria which would justify what is effectively the permanent separation of a child from their birth parent.

53. Both David and the mother have a right to respect for their private and family life (Art. 8, ECHR), David's right taking precedence in the event of conflict between the two. Notably, the arrangement now in place as to David's long-term placement means that the relationship between mother and son will endure, unsevered, albeit with the mother adopting a very different role to that she played when she cared for David.

International placement of children

54. The legal principles underpinning and setting the criteria for and practical requirements of placing children overseas are not controversial and are, or should be, relatively well known.

55. These have been public law (care) proceedings brought under Part IV of the CA 1989. This has two important legal consequences:

a. a local authority requires permission from the domestic court to arrange for a child in its care to live outside England and Wales (para 19, Sch. 2, CA 1989); and

b. an 'authority' contemplating the placement of a child in certain types of care in another country (if it is a contracting state to the 1996 Hague Convention) must consult the other country and obtain its consent to the placement (Art. 33, Hague Convention 1996).

56. As to the requirement for domestic approval, para. 19, Sch. 2, CA 1989 reads:

> *'19. Arrangements to assist children to live abroad*
>
> *(1) A local authority may only arrange for, or assist in arranging for, any child in their care to live outside England and Wales with the approval of the court.*
>
> *(2) A local authority may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by them to live outside England and Wales.*
>
> *(3) The court shall not give its approval under sub-paragraph (1) unless it is satisfied that—*
>
> *(a) living outside England and Wales would be in the child's best interests;*
>
> *(b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;*
>
> *(c) the child has consented to living in that country; and*
>
> *(d) every person who has parental responsibility for the child has consented to his living in that country.*
>
> *(4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard sub-paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, special guardian, or other suitable person.*

(5) Where a person whose consent is required by sub-paragraph (3)(d) fails to give his consent, the court may disregard that provision and give its approval if it is satisfied that that person—

(a) cannot be found;

(b) is incapable of consenting; or

(c) is withholding his consent unreasonably.

*(6) Section 85 of the Adoption and Children Act 2002 (which imposes restrictions on taking children out of the United Kingdom)**]** shall not apply in the case of any child who is to live outside England and Wales with the approval of the court given under this paragraph.*

(7) Where a court decides to give its approval under this paragraph it may order that its decision is not to have effect during the appeal period.

(8) In sub-paragraph (7) "the appeal period" means—

(a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal; and

(b) otherwise, the period during which an appeal may be made against the decision.

(9) This paragraph does not apply—

(a) to a local authority placing a child in secure accommodation in Scotland under section 25, or

(b) to a local authority placing a child for adoption with prospective adopters.'

57. In the context of para. 19, a child's 'best interests' are not strictly speaking paramount, but merely one of the four factors set out in subparagraph (3) (*Re G (Minors) (Care: Leave to Place Outside Jurisdiction)* [1994] 2 FLR 301, per Thorpe J). That said, any substantive order I make or discharge and any question I determine with respect to *'the upbringing of a child'* does require welfare to be my paramount consideration.

58. As to the obligations corollary to the UK's status as a Contracting State, Article 33 of the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-*

operation in Respect of Parental Responsibility and Measures for the Protection of Children (**"the Hague Convention 1996"**) reads:

> *'Article 33*
>
> *(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.*
>
> *(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.'*

59. The consequence of non-compliance with the requirements of Art. 33 can be significant. One of the central purposes of the Hague Convention 1996 is, of course, to achieve mutual recognition and enforcement of orders throughout and between the Contracting States, as provided for by Arts. 23 and 28:

> *'Chapter IV – Recognition and Enforcement*
>
> *Article 23*
>
> *(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.*
>
> *[…]*
>
> *Article 28*
>
> *Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.'*

However, there are exceptions to automatic recognition. As relevant to the current case:

> *'Article 23*
>
> *[…]*
>
> *(2) Recognition may however be refused -*
>
> *a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;*
>
> *b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;*
>
> *[…]*
>
> *f) if the procedure provided in Article 33 has not been complied with.'*

60. Compliance with Art. 33, then, is a necessary prerequisite to recognition. Clearly, given the need to communicate through central authorities and the fact that various different bureaucratic procedures will be involved, probably sequentially, and in two different countries (with different languages), a degree of delay is inevitable. The commentary in *Family Court Practice* (the 'Red Book') makes this point:

> *'The consultation should occur well before taking a decision about the placement or provision of care, and it should be as comprehensive as possible (including, among other things, a clear description of the measure of protection, status of the child, health (where appropriate) and family history, migration conditions of the child in the receiving country) in order to allow the respective authorities to take an informed decision in the best interests of the child. The decision on consent to the placement by the requested state should be provided as quickly as possible.'*

While one might have thought that the first part of this extract, the need for timely and thorough consultation, would be obvious to all, the history of this case suggests otherwise.

61. The *Parental and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010* (PRMPC (IO) (EWNI) Regs 2010) provide, at reg. 13 (insofar as relevant, post-Brexit):

> *'13 Local authorities and Northern Ireland authorities: requirement to provide a report*
>
> *(1) This regulation applies if a local authority in England and Wales or a Northern Ireland authority is contemplating –*
>
> *(a) placing a child in another Contracting State, within the meaning given by Article 33 of the Convention;*
>
> *[…].*
>
> *(2) Either the court or the local authority or Northern Ireland authority, whichever has jurisdiction under Articles 5 to 10 of the Convention ('the authority') –*
>
> *(a) must provide a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention, if the authority is exercising jurisdiction under the Convention;*
>
> *[…].'*

62. The procedure is further defined in the Family Procedure Rules 2010 ("FPR 2010"), at r.12.70:

> *'Request made by court in England and Wales for consultation as to contemplated placement of child in another Contracting State*
>
> *(1) This rule applies where the court is contemplating the placement of a child in another Contracting State under Article 33 of the 1996 Hague Convention, and proposes to send a request for consultation with or for the consent of the central authority or other authority having jurisdiction in the other State in relation to the contemplated placement.*
>
> *(2) In this rule, a reference to 'the request' includes a reference to a report prepared for purposes of Article 33 of the 1996 Hague Convention where the request is made under that Convention.*

(3) Where the court sends the request directly to the central authority or other authority having jurisdiction in the other State, it shall at the same time send a copy of the request to the domestic Central Authority.

(4) The court may send the request to the domestic Central Authority for onward transmission to the central authority or other authority having jurisdiction in the other State.

(5) The court should give consideration to the documents which should accompany the request.'

63. The commentary in the Red Book points out that it is for the requested state to determine what types of proposed placements might trigger the mandatory Art. 33 procedure:

> *'It should be recalled that arrangements such as special guardianship orders or even 'lives with' orders with a relative may, under the domestic law of the other Contracting State, amount to a placement in a foster family etc and so checks should be undertaken with the Central Authority, via the IFJO or through legal advice as to whether a proposed family placement should generate an Art 33 request.'*

64. The *President's Guidance: Public law children cases with an international element* of 21 January 2025 deals with the same point (and is similar terms to the preceding guidance, from Munby P, of 10 November 2014):

> *Possible placement of a child abroad (Article 33)*
>
> *If contemplating the placement of a child in another 1996 Hague Convention country, you must consider Article 33 of the Convention as the consent of the other country may be required before the order placing the child can be made.*
>
> - *whether or not the placement of a child in another 1996 Hague Convention country is a placement in a foster family or institutional care, as referred to in Article 33, is a question for that country not a question for the requesting country.*
> - *a placement which from a domestic perspective is a private law placement may be regarded as a public law placement by the requested country.*

- *a request for co-operation can be made to establish if, in principle, the consent of the other country would be required for placement even if the care plan for the child is not yet fully formulated.*

It is important that whenever a direction is made for a "connected persons assessment" of a person living in another 1996 Hague Convention country, enquiries are made at the same time about the Article 33 process and, if that assessment is positive, that the consultation and consent process is started on a timely basis.'

Delay

65. Giving statutory recognition to the well-known and significant harm caused to children by delay in decision-making in relation to their permanent placement, s.32 of the CA 1989 provides:

'Period within which application for order under this Part must be disposed of

(1) A court in which an application for an order under this Part is proceeding shall […] —

(a) draw up a timetable with a view to disposing of the application—

(i) without delay, and

(ii) in any event within twenty-six weeks beginning with the day on which the application was issued; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

[…]

(5) A court in which an application under this Part is proceeding may extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application,

but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly.

(6) When deciding whether to grant an extension under subsection (5), a court must in particular have regard to—

(a) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates, and

(b) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings;

and here "ensuing timetable revision" means any revision, of the timetable under subsection (1)(a) for the proceedings, which the court considers may ensue from the extension.

(7) When deciding whether to grant an extension under subsection (5), a court is to take account of the following guidance: extensions are not to be granted routinely and are to be seen as requiring specific justification.

(8) Each separate extension under subsection (5) is to end no more than eight weeks after the later of—

(a) the end of the period being extended; and

(b) the end of the day on which the extension is granted.'

66. The President's Guidance (*supra*) contains the following acknowledgment:

'A substantial number of public law children cases have an international element and courts often require information from other jurisdictions before being able to proceed. It is not always easy to know how to obtain this information.

While it may not always be possible to obtain the information sufficiently quickly to enable the court to hear these cases within 26 weeks […].'

67. The judgment of Lieven J in *Leicester City Council v The Mother (M)* [2024] EWHC 923 (Fam), [2025] 1 FLR 336 provides an example of a case in which the unavoidable delay

which would follow from the mandatory Art. 33 assessment of the subject child's family member in Switzerland was of such a degree (a further nine months, the proceedings, which had been issued when the child was born, already being seven months old by the point of the decision) that the direction to assess the relative was revoked and the case was listed to a much sooner final hearing.

68. Lieven J cited Hayden J's observations in *London Borough of Tower Hamlets v D, E, F* [2014] EWHC 3901 (Fam):

> *'Late identification of potential family carers abroad may bring two fundamental principles of the Children Act into conflict, namely the desirability, if possible, of a child being brought up in its extended family (where parents are for some reason unable to care for the child themselves) and the need to avoid delay in planning for a child's future. Neither principle should be regarded as having greater weight. The recent reforms to the family justice system have sought to emphasise why it was that the avoidance of delay was given statutory force by the Children Act and the real and lasting harm delay causes to children, particularly in public law care proceedings. There will, in my judgement, be occasions when the obstacles to assessment of family members abroad create such delays that to pursue the option will be inconsistent with the child's own timescales. These are taxing and exacting decisions but they require to be confronted with integrity and without sentimentality.'*

69. Lieven J's ultimate conclusion was as follows:

> *'[60] This is a difficult decision to make because if I discharge the assessment of the Aunt, then there will be no potential for A to be placed with a family member. This may well mean that A is ultimately placed in a placement that is not just a non-family placement, but also one that is less culturally appropriate for him. It will be not easy to find a long term placement, whether adoptive or long term foster care, in a Somali family. As Ms Thurlby points out, the decision will have lifelong consequences for the child. Equally it will be necessary when he is older to explain to A why he was not brought up by his family, even though his Aunt wanted to care for him.*

> *[61] However, it is inevitable that if the Aunt is to be assessed this will involve at least 9 months of further delay in this young child's life. As Ms Watkins submits, it is likely that an Issues Resolution Hearing could not take place until at least January 2025 and it might well not be possible for A to move to the care of the Aunt, assuming she is ultimately positively assessed, for 12 months. This is a very long time in the life of a young child and would make his bonding process with a new family significantly more difficult. There are a large number of hurdles to be gone through, the outcome of which is at this stage unknown. Therefore there is a real possibility that a final decision could be delayed for many months whilst the Aunt is assessed, but he cannot ultimately be placed with the Aunt.*
>
> *[62] I have reached the conclusion that it is not in the best interests of the child to continue the quest for the assessment of the Aunt, despite all the disbenefits that flow. It is in his best interests that this case proceeds as speedily as possible to the making of final orders so that a permanent placement can be found for A.'*

70. A similar example is found in Re M (A Child) (Placement Order) [2025] EWCA Civ, in which the Court of Appeal upheld the decision of the court at first instance effectively to abandon efforts to assess family members of the subject child in Pakistan in circumstances in which many months had already been spent trying to achieve a robust assessment but that, on any realistic view, real obstacles and a significant further delay remained. King LJ, giving the judgment of the court, concluded:

> *'[65] M has been in care all his life. At the date of the trial he was 14 months old and the aunt and uncle, through no fault of their own, were not in a position to say that they could, as of that date, be regarded as a realistic option for the placement for M with them.*
>
> *[66] In my judgment for all the reasons set out above, I would endorse the judge's observation that the decision was a difficult one but not a finely balanced one. What made it difficult was that the hopes of the family, and particularly the aunt and uncle, had been raised and then maintained long after a decision should have been reached that, for many reasons in addition to delay, the aspiration to place M with his extended family in Pakistan was not achievable within his timescales and that M's best interests could only be served by the making of a placement order with a view to his being adopted in the UK.'*

Discussion – welfare and placement

71. By the point of the hearing before me on 25 April 2025, David's paternal aunt had been rigorously assessed, by CFAB, by English social workers and by the receiving French social work team. By all accounts, she is dedicated to David and to offering him a home throughout his childhood and will do so to a high standard.

72. David, whose heritage is not uncomplicated and whose start to life has been difficult, will, if placed with his paternal aunt, have the benefit of a link to his deceased father and David's heritage on that side of the family. He will also be able to maintain a relationship with his mother (who, although she has the various problems described earlier in the judgment, still has much to offer David by remaining a part of his life) and his sister and grandmother.

73. At the point of the hearing before me in April 2025, sensible provision had been made for dealing with all foreseeable practical issues, including help for David in overcoming what will, at least to start with, be a potentially unsettling language barrier. The arrangements in France in relation to education, health, and initial oversight by social services had all been attended to. The initially difficult issues relating to Art. 33 permission and, once that had been given, obtaining a visa and ensuring that David's immigration position could quickly be regularised had also been dealt with.

74. In short, nothing stood in the way of David's placement with a loving and capable family member, willing and able to offer him a permanent home.

75. In those circumstances, the analysis was not a difficult one. It was clearly in David's best interests that he move, as quickly as possible, to live with his aunt, and that the appropriate

orders be made to underpin that and to provide for his long-term security in France and living with his aunt.

76. A more difficult question with which I have grappled is whether, at the point the case first came before me in December 2024, I was right to have carried on with what, by then, had been the extremely lengthy process of trying to achieve the placement with the aunt. The view I took at the time was that there seemed, at last, to be sufficient optimism that David could be placed within a short enough timescale to justify one final push to achieve that. While it ultimately took longer to achieve that placement than I had hoped (viz. five months, even from the December 2024 hearing), this was still quicker than any other final placement for him could have been. (I say this as the only viable alternative would have been placement for adoption, necessitating the issue and management of separate proceedings, due process, a final decision, various bureaucratic processes, family finding and then matching before the placement could take effect.)

Delay in proceedings – what went wrong?

77. David was born in October 2020. He has been the subject of care proceedings for the large majority of his life. The issues which sadly mean that his mother cannot safely care for him have been prevalent since well before his birth and throughout all of the time that two sets of care proceedings have run, and yet it took a full 21 months from the point, in the second proceedings, at which it was all but incontrovertible that he could not be placed with his mother to achieve a final placement for him. Although he was removed from his mother's care shortly after the first set of care proceedings at the age of 21 months old, it was not until he was four-and-a-half years old that he was placed with his

'forever family'. Something has or some things have gone badly wrong, and David has been significantly prejudiced in the process.

Second attempt at FDAC

78. These current proceedings have had two distinct phases. The first 53 weeks were focussed on FDAC and the mother's ability to care for David.

79. With hindsight, the decision to embark again on the FDAC process so shortly after the first proceedings was perhaps unusual. The first proceedings had lasted a full eleven months and had concluded with a decision for David to remain in his mother's care pursuant to a supervision order. However, this was followed, in short order, by a series of relapses by the mother and David's removal, for his own safety, into foster care. It seems surprising that the same process – which, if it is to be successful, is inevitably a time-consuming one – was embarked on all over again. While registering some perplexion at the decision-making at the time, I should acknowledge that Mr Hutchinson perhaps made a good point in his written opening:

> *'[T]his may equally be an occasion where hindsight gives an unfairly skewed perspective because it must be acknowledged that the FDAC came extremely close to successfully concluding with David in the Mother's care. The initial delays between 26 and 40 weeks came at the recommendation for extensions by FDAC due to the positive progress the mother was making.'*

Decision to assess paternal aunt

80. Whether or not the FDAC process ought to have been embarked on for a second time so quickly after the first attempt had failed, the fact that these proceedings were already a full year old by the point of the mother's further relapses and its being abandoned ought surely have led to a particularly focused approach being applied to the imperative to avoid any further delay for David from the point of those relapses.

81. Instead, the opposite seems to have been the case.

82. Acknowledging again Mr Hutchinson's point about the possibly unfair advantage afforded by hindsight, the decision to embark on assessment of the aunt was unusual. At the point that the process began, the mother had (effectively) been ruled out and it was known, or could readily have been determined, that the aunt, who lived in a different country to David, does not speak the only language David speaks, had played no prior part in David's life, was then entirely unassessed, and had less than straightforward immigration status in France. It should also have been recognised based on the collective experience of the many professionals involved in the case, that even relatively uncomplicated plans to place children in foreign jurisdictions are seldom susceptible of being realized quickly. Conversely, subject to the need for the various administrative and regulatory matters, meetings and authorisations necessary in order to progress a plan for adoption to have been undertaken, a final decision about David's final placement could have been made very quickly. Indeed, the hearing on 3 August 2023, at which the existence of and possible placement with the paternal aunt were first made known to the court, and at which the decision to adjourn to assess her was made, had been listed as the final hearing of the Part IV proceedings, presumably on the understanding at the time of listing that the local authority's care plan would almost certainly be one of adoption.

83. I have already referred to Re M (A Child) (Placement Order) [2025] EWCA Civ. The facts are not entirely dissimilar, and King LJ's reference to a point in that case at first instance at which *'a decision should have been reached that, for many reasons in addition to delay, the aspiration to place M with his extended family in Pakistan was not achievable within his timescales and that M's best interests could only be served by the making of a placement order with a view to his being adopted in the UK'* resonates with this case.

The length of time during which the assessment took place

84. Even if the decision to investigate possible placement with the aunt was appropriately made, a full ten months between November 2023 and September 2024 seem to have seen virtually no positive progress in the case save for efforts being made to enable the aunt to travel to the UK for assessment. This period saw court hearings on 20 November and 11 December 2023 and 22 February, 3 May, 8 July and 5 August 2024. It was only at the hearing on 13 September 2024 that it could be confirmed that the aunt was eventually able to travel to the UK and would be arriving imminently.

85. It is difficult to see why the view was not taken during this time, whether by the local authority, the children's guardian or, indeed, the court, that David's timescales were being eclipsed by the attempts to bring his aunt to the country, in order to be further assessed, during which process she would meet her nephew for the very first time. An image comes to mind of a head-office in an international business, with a series of clocks on the wall set to different time zones: the collective gaze in this case seems to have been on any clock other than the one named 'David's timescales'.

Non-engagement with the technical issues involved in placement of children overseas

86. As set out above, advice in relation to the need to activate the procedure pursuant to Art. 33 of the 1996 Hague Convention was received from Delphine Eskinazi of Libra Avocats in Paris. It is unsurprising that Mme. Eskinazi was fully aware of the importance of Art. 33 and of the dire consequences of non-compliance provided for by Arts. 23 and 28, given her well-known expertise in matters of international family law.

87. It is surprising, however, that neither the advocates nor the court in this case seem to have been independently aware of these provisions within the Hague Convention 1996 or the need to act on them in a timely manner. If the 1996 Convention was relatively little used and so relatively unknown to some English family lawyers while the Brussels II Revised Regulation (BIIR) governed jurisdictional issues between the UK and its then EU partners in precedence to the Convention, from the point of the EU membership referendum in 2016, it was well known and much talked about among such lawyers that Hague 1996 would assume a far greater prominence from the point of Brexit. And indeed, from 31 December 2020, the Hague Convention 1996 has been the primary instrument determining and governing domestic jurisdiction within England and Wales as well as jurisdictional issues involving other countries. It should not have taken a French avocat, or, later, a London-based King's Counsel with particular expertise in international children law to bring the existence and importance of Art. 33 to the attention of supposedly specialist public children law barristers and solicitors.

88. It is equally incomprehensible that no thought was given to acting on the advice of Mme. Eskinazi in the eight months after it was received.

89. While I have singled out the local authority and its legal department, it is worthy of note that David has been represented at all stages of these Part IV proceedings, by his children's guardian, by a solicitor and, at many of the multiple hearings, by counsel. It is also important to recall that the relevant wording of Art. 33 is as follows:

> *Article 33*
>
> *(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family [etc.], and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State.*

It is clear from the use of the words *'the authority'* and *'the authorities'* elsewhere in the Convention (e.g. in Art. 1, in the jurisdictional regime set out in Chapter II (Arts. 5 to 14) and in the recognition and enforcement regime set out in Chapter IV (Arts. 23 to 28)) that they are to be taken to refer to the courts of the contracting state (as well as, in some instances, the administrative authorities). (This is also clear from the wording of reg. 13 of the PRMPC (IO) (EWNI) Regs. 2010 and r.12.70 of the FPR 2010 (both set out above).). While in the current case, the responsibility for liaison with and provision of reports etc. to ICACU and the FCA was delegated to the local authority, the principal duty to consult lay with the court, and the principal duty to ensure, from a position of oversight, that the Part IV proceedings were conducted with as much efficiency as possible arguably lay on the team representing the child within those proceedings.

90. It is worth repeating at this point the passage I have quoted above from the *President's Guidance: Public law children cases with an international element*:

> ***Possible placement of a child abroad (Article 33)***

If contemplating the placement of a child in another 1996 Hague Convention country, you must consider Article 33 of the Convention as the consent of the other country may be required before the order placing the child can be made.

- *whether or not the placement of a child in another 1996 Hague Convention country is a placement in a foster family or institutional care, as referred to in Article 33, is a question for that country not a question for the requesting country.*
- *a placement which from a domestic perspective is a private law placement may be regarded as a public law placement by the requested country.*
- *a request for co-operation can be made to establish if, in principle, the consent of the other country would be required for placement even if the care plan for the child is not yet fully formulated.*

It is important that whenever a direction is made for a "connected persons assessment" of a person living in another 1996 Hague Convention country, enquiries are made at the same time about the Article 33 process and, if that assessment is positive, that the consultation and consent process is started on a timely basis.

This 2025 guidance is in largely similar terms to that issued by the previous President, Sir James Munby, in 2014, and so which was current throughout the relevant part of this case.

What has gone well in this case?

91. From the point of the case coming before HHJ Hillier in November 2024, and the proverbial Riot Act having been read, apart from the initially disappointing response from Leeds City Council (as described fully above), there has been a complete gear shift. The local authority instructed skilled and experienced counsel in Mr Hutchinson and later Mr Allerton, as did the children's guardian in Ms Garnham leading Ms Musgrove. After the LA was firmly checked at the first hearing before me in December 2024, they – in the

guise of Mr Jobsz as well as the social work team – have worked efficiently and diligently to progress the placement. The FCA, the French Consulate General and the French Visa Centre have been very helpful, and latterly there has been excellent liaison and joint planning between English and French social work teams.

92. It is worth pointing out that even with this huge collective effort, it took a full six months from the hearing before HHJ Hillier in November 2024 until the actual placement of David with his aunt in May 2025, and from the initial Art. 33 approach by the local authority to the FCA in September 2024 it took eight months to achieve that placement. On the one hand, these timings are not unexpected, given the number of different authorities and processes involved, in two different countries; on the other, they serve to underscore quite how important it is to identify a possible placement abroad at the very earliest juncture and to give the most careful forethought to the ways in which delays can be predicted and, by careful planning, minimized.

Conclusion

93. David has been placed with his paternal aunt in France and, by all accounts, is settling well in her care. Because this is a family placement, he need not lose contact with his complex heritage or his birth relatives. This is all much to his benefit.

94. However, the process which led to the placement went badly awry and David was exposed to huge delays which were, in my view, entirely unnecessary. In my judgement, those delays have led to real prejudice for the very child whose welfare should have been the paramount concern of all involved.

95. The purpose behind this judgment is not to criticise simply for the sake of doing so. Rather, it is delivered, and at this length, in the hope that lessons can be learned and awareness raised, and so the chance of similar mistakes being made in the future can thereby be avoided.

96. At the point of handing down this judgment, I will make an order giving the local authority permission to withdraw the Part IV CA 1989 application, which will bring these proceedings to their long-awaited and overdue conclusion. It seems very likely that this will coincide with David's habitual residence shifting from England to France and so this court's jurisdiction ceasing in any event.

97. I conclude by registering my gratitude to counsel instructed latterly in the case and to the social work team involved in effecting David's placement, none of whom should be associated in any way with the various criticisms I have made.