Neutral Citation Number: [2025] EWCA Civ 214

Case No: CA 2024 002524

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT LEEDS
Her Honour Judge Astbury
LS23C50594

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/03/2025

Before:

LADY JUSTICE KING
LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE WILLIAM DAVIS

- -

In the matter of:

M (A CHILD) (Placement Order)

- -
- -

Teertha Gupta KC and Deborah Shield (instructed by **Ison Harrison Solicitors**) for the **Appellant**
Will Tyler KC and Emily Reed (instructed by **Switalskis Solicitors**) for the **1st Respondent Local Authority**
Matthew Brookes-Baker (instructed by **Makin Dixon Solicitors**) for the **2nd Respondent Mother**
Semaab Shaikh acting pro bono (instructed by **Petherbridge Bassra Solicitors**) for the **3rd Respondent Father**
Christopher Styles (instructed by **Lumb and Macgill Solicitors**) for the **4th Respondent Child's Guardian**

Hearing date: 30 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 11.00am on 6 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lady Justice King:

1. On 30 January 2025 this Court dismissed an appeal against a Placement Order made by HHJ Astbury ("the judge") in respect of a little boy M who is 18 months old. M is a British Citizen of British/Asian ethnicity. The statutory imperative found at section 32(1)(a)(ii) Children Act 1989 ("CA 1989") is that an application for a care order should be disposed of within twenty-six weeks "beginning with the day on which the application was issued". At the hearing of the appeal, contrary to that imperative, M had been subject to care proceedings throughout his life, that is to say a total of 62 weeks.

2. In order to avoid any further delay in identifying a permanent home for M, the Court told the parties at the conclusion of the hearing that the appeal would be dismissed. What follow are my reasons for doing so.

Background

3. M's mother ("the mother") has four children from a previous relationship ranging in ages from 17 years down to 5 years. On 25 October 2022 shortly after the mother entered into a relationship with the father of M ("the father"), all four of her older children were accommodated by the local authority under s.20 CA 1989. On 29 October 2022, against the strong advice of the police and social worker, the mother and father travelled to Pakistan where they remained until 10 December 2022. Care proceedings were instigated upon their return to this country.

4. The father has five children from a previous marriage. There are serious untested allegations of domestic abuse against him in relation to him and his then wife.

5. The care proceedings in respect of the mother's four older children were concluded on 19 December 2023. The two older teenage children returned to the mother, and the two younger children were placed respectively with their natural father and a foster carer.

6. During the currency of the care proceedings in relation to the older children, pre-birth assessments were carried out in anticipation of M's birth in August 2023. M was placed initially with his mother under an interim care order with an injunction excluding the father attached to the order. The parents did not abide by the safely plan and injunction and as a consequence, M was placed in foster care on 25 October 2023, where he has remained ever since.

7. The final hearing of the care proceedings in relation to M were heard over five days in October 2024 by which time the mother was once again pregnant with the father's child. The mother sought an adjournment of the final hearing for there to be further assessments of her to care for M on her own. The judge, having heard all the evidence, found the threshold criteria to be satisfied in terms set out in the order of 24 October 2024. The findings related not only to the father's drugs and alcohol misuse, but also to the mother's significant mental health issues which had led to her older children's reception into care and her emotional and physical neglect of her children. The judge refused the mother's application for an adjournment and found that M would be at an unacceptable risk of significant harm if returned to his mother's care. There is no appeal from that decision.

8. As is the usual procedure in care proceedings, the parents had been asked to put forward alternative potential family placements. The mother proposed her sister and brother-in-law ("the aunt and the uncle") who live in Pakistan with their three children, the youngest of whom is two years old. From April 2024 to early August 2024, this was an option actively pursued by the local authority at which time they changed direction and issued an application for a Placement Order with a care plan for M to be adopted in this country.

9. The aunt and uncle were given party status and were represented at the final hearing. They did not at that stage put themselves forward as a realistic option for the immediate placement of M with them, rather they too sought a significant adjournment for further assessments of them to be carried out in this country. The judge refused that application and, having done so, made a Care Order and a Placement Order. This Court was told that as of the date of the hearing of the appeal that there were two culturally appropriate families who were expressing an interest in adopting M. It was in part in order to allow exploration of both those families without any further delay for M that the Court announced its decision immediately at the conclusion of the hearing.

10. The aunt and uncle now appeal against the making of the placement order and the mother was given late permission to file two additional grounds in support of the appeal.

The Children and Families Across Boarders ["CFAB"] assessment

11. The local authority having conducted a positive viability assessment of the aunt and uncle, commissioned a CFAB assessment of them conducted in Pakistan by an experienced social worker, Sadia Rafiq. The report is dated 6 February 2024. All concerned have nothing but praise for the thorough and helpful report prepared by Ms Rafiq which was prepared following interviews with not only the aunt and uncle, but family members including their children, neighbours, their doctor and the head teacher at their children's school.

12. The aunt told Ms Rafiq that financial strain is a significant source of stress for the family and that their income is only just sufficient to meet their needs. For a period of eight years the uncle worked in Dubai in order to earn more, but returned as "he was feeling homesick and was tired of living abroad". If M came to live with the family, the uncle said that he would take on an extra shift/overtime but, he told Ms Rafiq, construction work is very challenging and exhausting and the extra hours would mean working from 7am to 10pm with two one-hour breaks. The uncle explained that even though he works hard, he doesn't make much money and "my children's wishes aren't being fulfilled, so sometimes I get stressed. I want to give my children a very good life, but sometimes I get a little worried about it". The aunt told Ms Rafiq that as the children grow older and cost more, the time will come when, even with overtime, the uncle would not be able to meet the family's needs and he would then, once again, have to move to Dubai.

13. The financial constraints on the family were reflected in the condition of the house which Ms Rafiq described as "very poor". The building, she explained, needs significant maintenance and is sparsely furnished. By way of example, the children's bedroom has only a bed and no other furniture in it. The family do not have the resources to renovate or furnish the property. A Health and Safety checklist was attached to the CFAB report. The checklist is designed to ascertain whether a home fulfils acceptable safety standards in line with National Care Standards. The checklist

confirms the many limitations of the accommodation even taking into account the different cultural norms, and records by way of example, that M would not have his own bed/cot should he live with the aunt's family.

14. So far as the broader landscape of care which would be provided for M should he move to live in Pakistan, Ms Rafiq recorded that there is no statutory agency for Children's Services in the area to support and monitor a child but that her agency, Sanjog, would be able to conduct post placement visits if requested.

15. The aunt and uncle's children attend a "Government School" (Deference Public Girls Elementary School). M would also go there as the aunt and uncle would not be able to afford to send M to what they described as "the very good school" nearby. Whilst it is clear that she meant no disrespect either to the head teacher, Muhammad Mahbood, to whom she spoke, or to the efforts he made to educate the children attending the Government School, Ms Rafiq with her unchallenged understanding and knowledge of the local schooling system, described the proposed school for M as "a very basic street school" which in her opinion would be inappropriate for M to attend. Money would therefore have to be provided by the local authority to cover school fees for the duration of M's education with the unsatisfactory consequence that his cousins with whom he would be living, one of whom is very close in age to him, would be attending a different school, that is, the Government School.

16. The aunt and uncle were unable to assist Ms Rafiq with any contingency plan should one be necessary. They had not discussed the placement with anyone else and so could not say who might be able to assist in caring for M if they were unable to do so.

17. In her conclusions Ms Rafiq records a number of undoubted positives for M were he to be placed with his aunt and uncle which include the cultural "fit", that the aunt and uncle have a positive relationship with the mother and father, that at such a young age it would be easier for M to adjust to a new life in Pakistan and, importantly, that they understand the importance of emotional warmth.

18. Ms Rafiq however highlighted the basic level of education which would be available to M, the family's financial insecurity and the negative impact on the whole family if the uncle worked extended hours or moved abroad. She noted also the absence of any statutory agency, but again noted that her agency could provide post placement support.

19. Ms Rafiq's ultimate recommendation was that the aunt and uncle "are suitable to be considered to care for the children *(sic)* if they are provided with financial support. If financial support cannot be given to the prospective carer, then I am not recommending this placement". If such financial support were to be forthcoming, she then set out a number of conditions which would be necessary if M was to be placed in Pakistan. These concerned contact with the mother and father, the necessity for a mirror order to be made in the Pakistan courts, the resolution of M's legal status so that he could remain in Pakistan whilst retaining his British Citizenship and that at least six post placement visits were completed in the first six months of placement.

20. In the light of Ms Rafiq's report, advice was sought from Mr Asad Ali Khan, a dually qualified expert experienced in Pakistan's courts and with Pakistan's family law. His report is dated 28 June 2024 and an addendum is dated 14 August 2024.

21. Mr Khan informed the Court that there is no automatic procedure for a mirror order in Pakistan so it would be necessary to obtain an order conferring rights of guardianship under section 7 of the Guardian and Wards Act 1890, the welfare of the child being the paramount consideration. Under Pakistan's law, the family courts, he explained, are bound to decide cases within a period of six months and the procedure is extremely expensive. Such an order should "ideally" be obtained from the family court in Pakistan before the child arrives in Pakistan.

22. A Special Guardianship Order would be the most likely order to be most compatible with Pakistan law and provide the best protection in terms of being enforceable. Mr Khan went on to highlight in his main report and again in his addendum that it would be open to a party to vary the order and accordingly the parents could assert their rights and seek an order to remove M on the basis that they are the natural guardians of their child. The argument that the carers should be permitted to retain the child "could be rejected by the court in Pakistan if the real parents turn against continuing with this".

23. I note in this context that the aunt and the mother speak every day according to the CFAB report and that they "cherish the times they spend together" when the mother comes to Pakistan every couple of years for a protracted stay. Further in the section of the report dealing with managing future contact, the aunt said that she would "keep the child until the court tell them to return him to the care of his parents and she would respect the court's decision".

Timescales for Assessment of the Aunt and Uncle

24. It should be emphasised that the aunt and the uncle have done everything asked of them by all concerned. Notwithstanding the considerable pressure that would be put on them as a family financially should M come to live with them as well as the significant disruption to their family life which would have been occasioned by the whole family, none of whom speak English, having to come to England for the assessment, they were, and are, wholly committed to offering M a home.

25. With the benefit of hindsight and the objectivity which comes with some distance, it seems to me to be clear that in fairness to all concerned, a decision should have been made not to pursue the aunt and uncle as an option for placement for M upon receipt of the excellent (CFAB) assessment discussed above and at the very latest upon receipt of Mr Khan's June report. This is a view which, on reflection, was shared by the social worker Ms Darkens who had spearheaded the attempts to see if a placement with the aunt and uncle could be achieved. The judge rightly regarded Ms Darkens as impressive and "*passionate and committed to help the children and families within her caseload*". The judge said at [53] (emphasis added):

> "It was abundantly clear that she had done all she could to try and achieve M being cared for by his family. *In reflective and thoughtful evidence, she said that with hindsight she had become too focussed on M's identity needs and his need to be within family, if possible, at the expense of looking at his holistic welfare needs, including the need for permanence without harmful delay"*.

26. The CFAB assessment was received by the local authority on 4 April 2024, by which time proceedings had already been in train for approaching eight months. A number of case management directions were not thereafter complied with for various reasons and in May 2024 the local authority sought yet more time to consider if the aunt and uncle were a viable option. They were directed by the judge, who did her absolute best at all times to control the timetable and minimise delay, to file a statement by 14 June 2024 setting out detailed plans. It was clear that, if a placement with the aunt and uncle was to be achieved, it was critical for there to be a full assessment of the family and for M to be introduced to them, a process which would take place over a number of weeks in this country. The local authority considered that of equal importance was the exploration of the cost of raising a child in Pakistan, how money would be provided to the aunt and uncle, contingency planning and whether given the family dynamics, there were any potential influences or pressures from the wider family.

27. On 24 June 2024, the Court was informed that the aunt and uncle had still not obtained passports and that there had been delays in transferring funds to them to pay for passports and visas. This was due to the difficulties regarding the sending of local authority money to international banks. The funds did not in fact arrive until 11 July and by 1 August 2024 the aunt and uncle had still been unable to access the money which had been sent through.

28. The judge and the Children's Guardian's increasing anxiety as to whether it was realistic to continue to seek to place M in Pakistan is reflected in the judge's detailed order of 1 August 2024. In the recitals the judge sought clarification about funding and expressed her concern as to the local authority's *"linear outlook on the care planning"* and invited it to "*ensure it keeps in mind the realistic options available to M balanced with delay for him having permanency"*.

29. On 9 August 2024, a child planning meeting concluded that M's need for permanency would be a plan for adoption and at a hearing on 19 August 2024, the local authority confirmed that their care plan would be for Care and Placement Orders.

30. All this meant that when the matter came on for a final hearing before the judge, over 14 months after proceedings had been issued, visas had yet to be obtained, a process which the judge found would take at least six weeks. If visas were granted, which was by no means certain, funds would then have to be transferred to the aunt and uncle, a process which had previously been fraught with difficulties. The family would then have to make arrangements and come to England which would require the uncle to leave his job, the children be taken out of school and their house left unattended.

31. If all that had been successfully achieved there would then be a detailed assessment over a number of weeks made more challenging bearing in mind that the aunt and uncle are complete strangers to M and speak a different language. The plan was that, if that went well, the aunt would spend increasing amounts of time looking after M and would thereafter remain in the UK with her youngest child for a further period of time before returning to Pakistan with him when legal proceedings in both the UK and Pakistan were concluded.

32. In the meantime, negotiations would have to take place with regard to funding as without the costs of M's care (and schooling) being covered in their entirety, the aunt and uncle would not be in a position to offer him a home. The banking system in

Pakistan is such that the local authority could not safely give the aunt and uncle a lump sum to cover the future cost of M's care, it would have to be made by a periodic payment. In addition, the house itself is unsafe and not suitable for M, so work would be required and need to be paid for by the local authority in order for it to become an acceptable placement. All these additional matters were important. As Mr Tyler KC on behalf of the Local Authority reminded the court, the assessment, and therefore the decision to be made, was as to *placement* for M which took into account all the extraneous matters in addition to the assessment of the aunt and uncle themselves as potential carers.

33. The next stage would be further court hearings leading, if approved by the court, to the making of a Special Guardianship Order. The advice of Mr Khan was that a Guardianship Order should be obtained in Pakistan before M moved there. In terms of timescales, that in itself could take up to six months and, as noted above, with the anticipation that the aunt and her youngest child would remain in the UK separated from the uncle and her other children until the Guardianship Order was obtained. The granting of that order would not, however, relieve the concern that it is unclear whether the Pakistan courts would be prepared to uphold any permanency plan of the UK court in the event that the mother (who is in close contact with the aunt) went to Pakistan and sought the return of M to her care.

34. As Mr Styles on behalf of the Children Guardian observed in oral submissions, this uncertain and protracted process was only going to start when the proceedings had already been in train for over a year and in circumstances where there would now be immense challenges for the local authority to obtain approval from the relevant resources committee to fund the placement with the aunt and uncle now that the care plan had been changed to one for adoption.

The Judge's Judgment

35. The judge set out the law applicable to care proceedings and applications for placement orders. The law is well settled and there is no need in this judgment to rehearse it. The appeal is in essence an attack on the judge's evaluation of the evidence which had led her to conclude that M's welfare interests required the making of a placement order and therefore that a further adjournment was not necessary in order to resolve the proceedings justly.

36. The judge described the background of the mother and father and the events which had led to the removal of M from the care of his mother. She then moved on to set out a clear and fair account of the attempts made to carry out an assessment of the aunt and uncle in this country. The judge summarised the evidence of the parents, Ms Darkens and the Children Guardian. No one required the aunt or uncle to give evidence.

37. The judge set out the evidence of the Guardian who had explained that whilst she had been supportive of the need to assess the aunt and uncle, recognising as she did the importance of family and M's culture and heritage, she was of the view that even having in mind the advantages of a placement in his family, the ongoing delay was deeply harmful to M and she could not support any further delay in order to explore whether a placement with the aunt and uncle was in M's interests and achievable.

38. The judge having reached her conclusions in relation to placement with the mother, proceeded, against the background of the welfare checklist, to consider whether it was in M's best interest to adjourn the proceedings in order to *"explore whether it is in fact in [M]'s best interests to be placed in Pakistan, and whether such a placement is actually achievable in [M]'s timescales".*

39. The judge recorded that the aunt and uncle accepted that:

> "...Further assessment is needed, as had been the LA's original intention following the CFAB assessment, to look at how finances would work, how to build up a relationship with M who does not know them and has never been introduced to them, how contact to the parents would be managed and any risks from the parents dealt with, and a contingency plan in case the arrangements broke down. They also accept that more needs to be done to clarify how M could safely be placed in Pakistan both practically and legally…… they concede that there is no clear timescale for this to be achieved, although a timescale of a few months to reach the end of the assessment process seems inevitable, with further time needed for the court process to take its course."

40. The judge said at paragraph [76] that the plan to place M with his aunt and uncle was "fraught with uncertainties". She then particularised issues such as the need to obtain visas, that the local authority were no longer willing to fund a UK assessment, the further delay occasioned by the assessment itself followed by further court proceedings and the need for a mirror order.

41. The judge emphasised the importance of timescale because of the impact on M. The judge went on at [78-79]:

> "…there is sadly no clear and confirmed timescale for the assessment to be completed, and no guarantee that it will be positive (though I accept, there are grounds for optimism that it would be based on the CFAB assessment). [M] has no existing relationship with the Aunt and Uncle (although they have seen him over video calls in the first few weeks of his life, he does not know them, and they speak a different language
>
> 79. I have balanced these very real and in my judgment legitimate concerns with the potential positives in the court sanctioning delay for assessment to take place, because, if positive, it would enable [M] to be placed with an extended family member, in a cultural and religious match, with the possibility for ongoing relationship (even if limited) with his parents and other family members."

42. The judge held at [81] that the adjournment would have to be at least three to four months to complete the assessment and return to court, and probably "more akin to six to twelve months before successful placement could be achieved if the assessment were positive". There would, she said, be a real possibility that the assessment would not be

positive and/or that M could not be placed with the aunt and uncle, which would lead to further delay. The timescales for adoption were, she held, "both shorter and more certain". She accepted the evidence that a match could be found within a reasonable timescale with placement within months.

43. Against the backdrop of her findings, the judge reached the conclusion at [82] that it was not in M's best interests "even when judged by the yardstick of considering his lifelong best interest" to continue the process of assessment with the aunt and uncle "despite all the detrimental consequences that flow from such a decision".

44. The judge concluded by saying that whilst it had been a difficult case, it was not a finely balanced one. She expressed her empathy with the aunt and uncle "who have done all in their power to offer their nephew a home". However, "further delay for an unknown length of time and for an uncertain outcome is quite contrary to M's needs".

Grounds of Appeal

45. The Grounds of Appeal upon which the aunt and uncle rely focus on the judge's decision to refuse a further adjournment and can be summarised as follows:

The judge was wrong to:

i) Accept that a plan to place M with his aunt and uncle was "fraught with uncertainties".

ii) Conclude that it would be akin to 6–12 months before a successful placement could be achieved if an assessment of the aunt and uncle were positive.

iii) Conclude that there was a real possibility that the assessment would be negative.

iv) Conclude that an adjournment was not within M's reasonable timescales for achieving a permanent placement absent direct evidence as to timescales to place M for adoption.

v) Fail to consider if a "robust and focused timescale" could have been imposed to lead to an expeditious resolution of proceedings following further assessment of the aunt and uncle.

46. Permission was granted for the mother to rely on two additional Grounds, namely:

i) The judge failed to apply the CA 1989 or the ACA 2002 welfare checklists leading to a flawed balancing exercise.

ii) The decision deprived the mother from adducing additional welfare evidence in the form of further assessments.

47. So far as the two additional Grounds are concerned, there is no basis for the submission that the judge failed to consider either or both of the relevant welfare checklists found in the Children Act 1989 and the Adoption and Children Act 2002. If one has the checklists to hand it is more or less possible to cross check each item within them to the judgment. It should be noted in particular the judge's emphasis on the benefit of M living with family members if it was in his welfare interests to do so.

48. The second additional Ground that the judge deprived the mother from adducing additional welfare evidence in the form of further assessments adds nothing to the substantive Ground that the judge should have allowed the adjournment. If (which is not wholly clear) this was intended also to be a late appeal by the mother against the judge's refusal to adjourn the matter so far as placement with her is concerned, it was not pursued in oral submissions and played no part in the appeal.

49. Ground (iv) of the Grounds (timescales for adoption) and the mother's two additional Grounds can be dealt with in short order. No request was made by any party for direct evidence of the likely timescales for adoption to be adduced to the court. The evidence given by the social worker, having consulted the appropriate agency, One Adoption, was that, given M's young age and characteristics, a culturally appropriate family could be identified within six weeks with a further six weeks for the matching process to take place. She was therefore contemplating placement three months from the making of a placement order. The judge was entitled to accept that evidence and proceed to conduct her balancing exercise on the basis that on the one hand the aunt and uncle were not currently able to put themselves forward as a realistic option as providing a home for M, while the alternative was a permanent placement secured by adoption within about three months.

50. I turn then to the heart of the appeal for which Baker LJ granted permission to appeal (at Grounds (i)–(iii) and (v)), namely did the judge fall into error by being unduly and pessimistic as to the timescales and prospects of succeeding in placing M with his extended family in Pakistan against the backdrop of the Local Authority's previous enthusiasm to achieve such an outcome for M?

51. Mr Gupta KC on behalf of the aunt and uncle wisely did not focus on Ground (i) (that the judge had been wrong to conclude that the plan to place M with his aunt and uncle was "fraught with uncertainties"). He conceded that the plan was uncertain, although he would have omitted the word "fraught". Mr Gupta also did not seek to persuade the Court with any real enthusiasm that the judge had fallen into error in her assessment that once one put together all the elements necessary to achieve a placement, a further six to twelve months could be lost in achieving permanence for M (Ground (ii)).

52. Mr Gupta instead focused on Grounds (iii) and (v):

    iii) That the judge erred in concluding that there was a real possibility that the assessment would be negative.

    v) That the judge failed to consider if a "robust and focused timescale" could have been imposed to lead to an expeditious resolution of proceedings following further assessment of the aunt and uncle.

53. That there was a real possibility that the assessment might fail was in my judgment an inevitable consequence of the uncertainty inherent in the whole complicated plan; for example, it may simply not have been viable because the funding was no longer available from the cash-poor local authority or the applications for visas may be refused. M may himself have found the introduction to his aunt and uncle with the language barrier just too difficult and, as had been identified by Ms Rafiq, there were issues with schools and the home conditions. These were all potential stumbling blocks. For my part I can see that there was also a significant risk that the demands on the aunt

and uncle might be simply too great. Should the matter have been adjourned then, providing they managed to obtain visas, the family would have relocated to a strange country for an unspecified period of time for assessment and, if successful, the uncle would then return to Pakistan with the two older (but by no means grown up) children. Once home they would have to manage without their primary carer while their father worked punishingly long hours, potentially for many months, whilst court proceedings took their course in both the UK and Pakistan, proceedings which would be necessary in order to provide essential protection for M's position in Pakistan.

54. The judge did not ignore the positive aspects of the CFAB assessment or the cultural advantages to a family placement, and in conducting her finely tuned balancing exercise specifically said, as recorded at [41] above, that there were grounds for optimism based on the CFAB assessment. However, as Ms Styles rightly submitted, optimism is all well and good but when considering the future of M, a hard-edged evidential approach is necessary.

55. Notwithstanding the commitment shown by the aunt and uncle to offering M a home and the undoubted advantages if it can be achieved, and that it is in a child's best interests to have a family placement, in my judgment there were a myriad of reasons why the plan to place M in Pakistan might fail. Given the long delay which had already taken place in getting the proceedings to trial, that the assessment might not be successful was a feature which the judge was bound to have at the forefront of her mind. As in any case where it is hoped that a family placement can be achieved it is important, as was perhaps not recognised until too late in this case, that there is no presumption or right for a child to be brought up by a member of his or her natural family. In *Re W (A Child) (Adoption: Grandparents Competing Claims)* [2016] EWCA Civ 793, McFarlane LJ said:

> "71. The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged. In *Re H (A Child)* [2015] EWCA Civ 1284 this court clearly stated that there is no presumption in favour of parents or the natural family in public law adoption cases at paragraphs 89 to 94 of the judgment of McFarlane LJ as follows:
>
> > '89. The situation in public law proceedings, where the State, via a local authority, seeks to intervene in the life of a child by obtaining a care order and a placement for adoption order against the consent of a parent is entirely different [from private law proceedings], but also in this context there is no authority to the effect that there is a 'presumption' in favour of a natural parent or family member. As in the private law context, at the stage when a court is considering what, if any, order to make the only principle is that set out in CA 1989, s 1 and ACA 2002, s 1 requiring paramount consideration to be afforded to the welfare

> of the child throughout his lifetime. There is, however, a default position in favour of the natural family in public law proceedings at the earlier stage on the question of establishing the court's jurisdiction to make any public law order. Before the court may make a care order or a placement for adoption order, the statutory threshold criteria in CA 1989, s 31 must be satisfied (CA 1989, s 31(2) and ACA 2002, s 21(2)).
>
> …
>
> 94. It is clear that for Russell J the outcome of this case did not turn on the deployment of the 'presumption' that she describes, and this point was not taken within the appeal. My attribution of some prominence to it is not therefore determinative of the appeal. My aim is solely to point out the need for caution in this regard. The House of Lords and Supreme Court have been at pains to avoid the attribution of any presumption where CA 1989, s 1 is being applied for the resolution of a private law dispute concerning a child's welfare; there is therefore a need for care before adopting a different approach to the welfare principle in public law cases. As the judgments in *Re B*, and indeed the years of case law preceding *Re B*, make plain, once the s 31 threshold is crossed the evaluation of a child's welfare in public law proceedings is determined on the basis of proportionality rather than by the application of presumptions. In that context it is not, in my view, apt to refer to there being a 'presumption' in favour of the natural family; each case falls to be determined on its own facts in accordance with the proportionate approach that is clearly described by the Supreme Court in *Re B* and in the subsequent decisions of this court.'
>
> 73. It may be that some confusion leading to the idea of their being a natural family presumption has arisen from the use of the phrase 'nothing else will do'. But that phrase does not establish a presumption or right in favour of the natural family; what it does do, most importantly, is to require the welfare balance for the child to be undertaken, after considering the pros and cons of each of the realistic options, in such a manner that adoption is only chosen as the route for the child if that outcome is necessary to meet the child's welfare needs and it is proportionate to those welfare needs."

56. The judge was alive to the challenges and spoke of "two contrary principles having pulled the court in different directions, the importance of children's welfare of being brought up by natural family where it is safe and achievable, and the harmful effects of delay". Ultimately the judge concluded that M's welfare demanded that he be placed for adoption and that when she performed a proportionality cross check she said she was "satisfied that, despite its draconian nature and lifelong consequences, adoption is a necessary and proportionate interference – in short, nothing else will do".

Section 32(5) CA 1989

57. That then leaves the question as to whether, given that for many months the aim had been to try and achieve a placement with the aunt and uncle, the judge should even at this late stage nevertheless have allowed the assessment to proceed supported by a "robust and focused" timetable.

58. Mr Gupta KC submitted that the court, having waited so long already, did not now have to "bring down the guillotine". He accepted that there was uncertainty but, he submitted, it would have been necessary and proportionate in the circumstances to have granted the application whilst focussing on a tight timetable. The timetable should, he submitted, be extended pursuant to the power under s32(5) CA 1989 which permits an extension of the 26-week disposal provision. Indeed, it does. That permission has, however, to be read against the actual wording of the subsection, namely that a court can grant an extension "but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly".

59. In *Re S (a child) (Interim Care Order: Residential Assessment)* [2015] 1 WLR 925, Sir James Munby P considered at [33] those cases where it may be appropriate to extend the timetable under s32(5) CA 1989. This included, as highlighted by Mr Gupta, at para. [33(i)(c)] of his judgment "cases with an international element where investigations or assessments have to be carried on abroad". He went on, however, at [34] to say (my emphasis):

> "I repeat, because the point is so important, that in no case can an extension beyond 26 weeks be authorised unless it is "necessary" to enable the court to resolve the proceedings "justly". Only the imperative demands of justice – *fair process – or of the child's welfare will suffice"*.

60. The court was also taken to Peter Jackson LJ's judgment in R*e S-L (Children)* [2019] EWCA Civ 1571; [2020] 4 WLR 102, in which he considered the use of s32(5) CA 1989. In relation to a case where improper use had been made of the provision, he made an observation which applies equally to all cases:

> "12. In cases involving children, there can sometimes be good reasons for adjourning a final decision in order to obtain necessary information. The overriding obligation is to deal with the case justly, but there is a trade-off between the need for information and the presumptive prejudice to the child of delay, enshrined in section 1(2) Children Act 1989. Judges in the family court are well used to finding where the balance lies in the particular case before them and are acutely aware that for babies and young children the passage of weeks and months is a matter of real significance. Sharpening this general calculation, public law proceedings are subject to a statutory timetabling imperative. Section 32(1)(a) provides that the court must draw up a timetable for disposing of the application without delay and in any event within 26 weeks; subsection 32(5) allows an extension only where the court considers it necessary to enable the proceedings to be resolved justly.

> 13[…] the recorder's decision to adjourn therefore squarely engaged the above provisions in relation to both children and she was obliged to explain why an extension of the timetable was necessary. In any event, she was under a general obligation to ensure that an adjournment was justified. Adjourning a decision should never be seen as 'pressing the pause button': it is a positive purposeful choice that requires a proper weighing-up of the advantages and disadvantages and a lively awareness that the passage of time has consequences".

61. It was agreed by all parties that at 18 months old M is in a critical phase for making long term healthy attachments and that the older he is the more likely he is to encounter attachment difficulties and the harder it would be to find a match if he were to be adopted. Ms Darkens, again in reflective mode, when asked in oral evidence about M's timescales said that "the timeframe for the optimum outcome for him was months ago".

62. Mr Styles highlighted that many matters critical to the outcome are simply outside the judge's control. Three areas spring to mind:

> (i) Obtaining funding from the Resource Panel: the Panel would have to approve the essential funding notwithstanding that the local authority's care plan is no longer to place M with the aunt and uncle;
>
> (ii) Obtaining a visa from the Home Office: Mr Gupta accepts that visas have to be obtained and that the courts cannot put pressure on the Home Office. He says, however, that it is routine for the Home Office to be asked to expedite an application for a visa. I agree that the local authority could do that, but they certainly could not do so by reference to a court-prescribed timetable;
>
> (iii) Obtaining a Guardianship Order in Pakistan: the uncontradicted evidence of Mr Khan is that it is preferable for an order to be obtained in Pakistan prior to placement there. The evidence is that this can take up to six months. It goes without saying that even the most rigorous timetabling by a UK judge can have no influence on the processes of the courts of a foreign jurisdiction.

63. These and other matters which are outside the control of the Court have to be taken into account when deciding whether a further extension of the proceedings are to be permitted. Further, it has to be remembered that "Day 1" for the consideration of acceptable timescales is not by reference to the date that a court agreed to adjourn the final hearing, but is the date on which the care proceedings were issued, as Peter Jackson LJ said in R*e S-L* (cited above), any court should be "acutely aware that for babies and young children the passage of weeks and months is a matter of real significance".

64. Notwithstanding Mr Gupta's realistic submissions, supported by Mr Brookes-Baker on behalf of the mother, and Ms Shaikh on behalf of the father, the judge's careful and sympathetic analysis of the application for an adjournment for further assessments of the aunt and uncle cannot be faulted and in my judgment she reached the right decision given the uncertainties inherent in the proposed plan for placement in Pakistan and the urgency of achieving permanency for M.

Conclusion

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.

67. For these reasons I dismissed the appeal against the making of a placement order.

Lady Justice Elisabeth Laing:

68. I agree.

Lord Justice William Davis:

69. I also agree.