



Neutral Citation Number: [2024] EWFC 151

Case No: ZW22C50446

**IN THE FAMILY COURT**  
**SITTING AT THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/06/2024

**Before:**

**MR JUSTICE MACDONALD**

**Between:**

**LONDON BOROUGH OF HARINGEY**

**Applicant**

**- and -**

**N**

**First**  
**Respondent**

**-and-**

**P**

**Second**  
**Respondent**

**-and-**

**T**

**(through his Children's Guardian)**

**Third**  
**Respondent**

**Mr Christopher Hames KC and Ms Clarissa Wigoder (instructed by The LB Haringey Care Team) for the Applicant**

**Mr Henry Setright KC and Ms Finola Moore (instructed by Dowse & Co) for the First Respondent**

**Mr Damian Woodward-Carlton KC and Mr Richard Little (instructed by Burke Niazi) for the Second Respondent**

**Mr Mark Jarman KC and Ms Charlotte Georges (instructed by Williams & Co) for the Third Respondent**

Hearing date: 7 June 2024

**Approved Judgment**

This judgment was handed down remotely at 2.00pm on 28 June 2024 by circulation to the parties or their representatives by e-mail.

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## MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice MacDonald:**

**INTRODUCTION**

1. In this matter I am concerned with the issue of jurisdiction in care proceedings under Part IV of the Children Act 1989 in respect of T, born in February 2022 and now aged 2 years and 3 months old. T is represented at this hearing by Mr Mark Jarman of King’s Counsel and Ms Charlotte Georges of counsel. T’s mother (hereafter, “the mother”) is represented by Mr Henry Setright of King’s Counsel and Ms Finola Moore of counsel. T’s father (hereafter “the father”) is represented by Mr Damian Woodward-Carlton of King’s Counsel and Mr Richard Little of counsel. The proceedings are brought by the London Borough of Haringey, represented by Mr Christopher Hames of King’s Counsel and Ms Clarissa Wigoder of counsel.
2. The following issues fall for determination by the court in the context of the mother having removed T from the jurisdiction of England and Wales to the jurisdiction of Poland during the course of the proceedings:
  - i) Whether T remains habitually resident in the jurisdiction of England and Wales for the purposes 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 (hereafter the 1996 Hague Convention) or is now habitually resident in the jurisdiction of Poland.
  - ii) If T is now habitually resident in the jurisdiction of Poland, whether this court retains jurisdiction in respect of T by operation of Art 7 of the 1996 Hague Convention.
  - iii) If this court retains jurisdiction in respect of T by operation of Art 7, whether this court should now request that the jurisdiction of Poland assume jurisdiction, pursuant to Art 8 of the 1996 Hague Convention.
  - iv) If this court does not retain jurisdiction in respect of T by operation of Art 7, what steps the English court should take, if any, consequent upon the court losing jurisdiction during the course of extant public law proceedings under Part IV of the Children Act 1989.
3. In addition to the foregoing issues, in their Skeleton Arguments prepared on behalf of the local authority and the father respectively, Mr Hames and Ms Wigoder and Mr Woodward-Carlton and Mr Little submit that were the court to conclude that it retains jurisdiction in respect of T by operation of Art 7 of the 1996 Hague Convention then, in preference to granting the mother’s application under Art 8, the court should now declare that it acquiesces to the wrongful removal of T by the mother for the purposes of Art 7(1)(a).
4. In determining the issues before the court, I have had the benefit of reading the court bundle and the comprehensive and closely argued Skeleton Arguments lodged on behalf of each party. I have also had the benefit of oral submissions from leading counsel for each party. In light of the questions raised by the issues in this case, I reserved judgment.

## BACKGROUND

5. The mother was born in Poland on 15 July 1983, and is now aged 40 years old. Tragically, the mother was involved in a car accident in Poland as a child that resulted in the death of her father and in her sustaining serious head injuries. The mother now labours under an acquired brain injury that impacts her cognitive functioning and, the local authority asserts, her parenting capacity. The mother moved to England with her own mother in in 1994 or 1995.
6. The father was born in Afghanistan and is now 29 years old. The father arrived in this jurisdiction in 2010 as an unaccompanied asylum seeking child and spent time in foster care. The father's cognitive functioning is in the very low to borderline category. It is possible that the father also suffers from post-traumatic stress disorder. The father has indefinite leave to remain in the United Kingdom. He does not appear on T's birth certificate. However, a declaration of parentage in his favour was made on 14 September 2023 and he was granted parental responsibility for T on that date.
7. It is believed that the parents underwent an Islamic marriage ceremony in or around 2019. T was born on 19 February 2022. On 7 March 2022, a referral was made to the local authority by a neonatal nurse following concerns regarding the parents' ability to care for T. An Initial Child Protection Case Conference was convened on 30 March 2022 and T was made the subject of a Child Protection Plan. Thereafter, T resided with his parents at the home of his maternal grandmother. In November 2022 the father left the family home. This resulted in the local authority issuing care proceedings on 24 November 2022. At the first hearing on 19 December 2022 the court granted an interim supervision order, with T remaining in the care of his mother at the home of the maternal grandmother. That order remains in place.
8. In July 2023, a parenting assessment was undertaken of the mother and father, with an addendum completed in respect of the mother in October 2023. In addition, an expert psychological assessment was undertaken with respect to the father. The outcome of these assessments was negative and in October 2023 the mother was informed that the local authority was engaged in parallel planning with a view to seeking a final care order and an order authorising T's placement for adoption. On 17 November 2023, the local authority issued a C2 application seeking further directions in the context of the parents having refused to consent to an adoption medical for T.
9. On 5 December 2023, and during the currency of proceedings, the local authority learnt that the mother had left the jurisdiction with T, and the maternal grandmother, on 26 November 2023 and travelled to Poland. The mother did not inform the father, the local authority or the Children's Guardian that she was intending to leave the jurisdiction. The mother has remained in Poland with T since that date. No party disputes that T was habitually resident in the jurisdiction of England and Wales for the purposes of Art 5 of the 1996 Hague Convention at the time he was removed from this jurisdiction by the mother.
10. Following the mother removing T from the jurisdiction, the local authority sought information from children's services in Poland via the English Central Authority, ICACU. On 26 February 2024, the mother contacted her solicitors in this jurisdiction and informed them that she would like to return to England with T but that she would

only do so if the local authority assured her that T would remain in her care in both the short and long term. The local authority declined to give such an assurance.

11. The Polish authorities undertook a welfare visit to T with his mother in early March 2024. The welfare visit was commissioned by the District Court in Łomża and was completed by the Specialist Curator from the District Court. The report consequent upon that visit, dated 4 March 2024, notes that T is cared for by his mother in Poland with the assistance of the maternal grandmother. The report further records the mother as stating that she had left England as the authorities wished to remove T from her care. She informed the Polish assessor that she wished to remain in Poland and renounce her British citizenship. The maternal grandmother said she intended to return to England. The report noted that T presented as well cared for in terms of clothing and hygiene and was well behaved. The report concluded that, on the basis of a one-off visit, the Specialist Curator did not form any negative impressions of T's care. During the course of April 2024, the social worker has seen T in video calls with the mother. T has presented as happy, well and appropriately dressed. No immediate safeguarding concerns have been noted.
12. Having regard to the issues that fall for determination at this hearing, the background does not need to be rehearsed in further detail. However, in circumstances where one of the issues in this case is whether the court has to date acquiesced to the removal of T from the jurisdiction for the purposes of Art 7(1)(a) of the 1996 Hague Convention, it is necessary to consider briefly the orders that have been made by the court since the mother removed T from the jurisdiction on 26 November 2023.
13. On 6 December 2023, HHJ McKinnell timetabled the care proceedings through to an Issues Resolution Hearing on 29 February 2024. The directions given by the learned judge included the provision of a final statement from the mother, together with a response to the final threshold document relied on by the local authority. HHJ McKinnell also gave directions with respect to any application issued by the local authority for a placement order in respect of T. At the IRH on 29 February 2024, HHJ Jones gave directions to facilitate the provision by the local authority of a plan for a further parenting assessment of the mother in Poland and the disclosure of key documents to the Polish authorities via ICACU. HHJ Jones listed the care proceedings for a further hearing on 12 March 2024 for consideration of the local authority's plan for a further parenting assessment and the question of whether a request should be made for Poland to assume jurisdiction. At the hearing on 12 March 2024, HHJ Jones refused an application by the Children's Guardian for an independent social work assessment of the mother in Poland and directed the local authority to liaise with the Polish authorities with a view to seeking a further assessment of the mother by those authorities. That assessment is now being undertaken and is awaited. HHJ Jones thereafter reallocated the matter to this court. On 14 March 2024, the mother applied to transfer jurisdiction to Poland pursuant to Art 8 of the 1996 Hague Convention.

## SUBMISSIONS

### *The Local Authority*

14. The local authority's primary case is that this court retains jurisdiction in respect of T by operation of Art 7 of the 1996 Hague Convention and that the court should now

surrender that jurisdiction by declaring its acquiesce to T's wrongful removal from this jurisdiction for the purposes of Art 7(1)(a). In the alternative, the local authority submits that the court should grant the mother's application under Art 8.

15. On behalf of the local authority, Mr Hames and Ms Wigoder submit that, at the time of T's removal, rights of custody vested in the English court for the purposes of Art 7 of the 1996 Hague Convention by virtue of the court then being seised of care proceedings under Part IV of the Children Act 1989. In submitting that the proceedings were sufficient to vest rights of custody in the court, Mr Hames and Ms Wigoder rely on *Re H (Abduction: Rights of custody)* [2000] 1 FLR 374, in which the House of Lords considered the circumstances in which rights of custody may be possessed by a court in the context of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter "the 1980 Hague Convention"), and the decision of Macur J in *X CC v B* [2010] 1 FLR 1197, in which Macur J considered that rights of custody for the purposes of the 1980 Hague Convention vested in the court where a local authority had issued care proceedings prior to the parent abducting the child.
16. Mr Hames and Ms Wigoder further submit that the removal of T from this jurisdiction by the mother was in breach of the rights of custody held by the court and, accordingly, wrongful for the purposes of Art 7(1). They contend that T has now achieved a sufficient degree of integration in a social and family environment in Poland to be habitually resident there, that there has, accordingly, been a change of habitual residence for the purposes of Art 7(1) of the 1996 Hague Convention and that the court has not to date acquiesced to the wrongful removal of T for the purposes of Art 7(1)(a).
17. With respect to acquiescence, Mr Hames and Ms Wigoder submit that the test when deciding whether or not the court *has* acquiesced to date can be derived from the decision of the House of Lords in *H v H (Child Abduction: Acquiescence)* [1998] AC 72. Specifically, they submit that the "clear and unequivocal conduct" test adopted by Lord Browne-Wilkinson at 89 C-H to deal with the "exceptional circumstances" of conduct leading to a belief that the left behind parent is not going to insist on summary return of the child should be applied to determine the question of acquiescence where it is the court that holds rights of custody. They submit that the question for the court in deciding whether it has acquiesced to date is whether the court has clearly and unequivocally conducted itself in a manner that led the mother reasonably to believe that the court was not going to insist on return of T. In this regard, Mr Hames and Ms Wigoder rely on the nature and extent of the orders made, and not made, by the court following the removal to demonstrate that the answer to that question is no.
18. In the foregoing circumstances, Mr Hames and Ms Wigoder submit that this court at present retains jurisdiction in respect of T by operation of Art 7(1) of the 1996 Hague Convention.
19. As to the way forward, Mr Hames and Ms Wigoder submit that the court should now declare that it acquiesces to the wrongful removal of T, which will have the effect of divesting the court of jurisdiction in respect of him and, in circumstances where Ts' habitual residence has changed, conferring jurisdiction on Poland. During the course of their oral submissions, Mr Hames and Ms Wigoder pressed strongly for this option

in preference to the court granting the mother's application under Art 8. Their submissions in that respect appeared, in the final analysis, to rest on the contention that the court now declaring its acquiescence to the removal for the purposes of Art 7(1)(a) would avoid the delay inherent in, and the problems that they submit can arise from, the "bureaucratic process" of seeking a transfer of jurisdiction via the "mechanistic use" of Art 8.

20. In circumstances where, on the local authority's case, acquiescence to T's wrongful removal from the jurisdiction would be an active step on the part of the court, and where there is no authority on the point, I pressed Mr Hames during his oral submissions on what test the local authority contends should be applied by a court seised of proceedings under Part IV of the Children Act 1989 when determining whether it *should* acquiesce to a wrongful removal for the purposes of Art 7(1)(a) of the Convention. In their Skeleton Argument, Mr Hames and Ms Wigoder submit that "the principles to be applied when a local authority seeks permission to withdraw proceedings are potentially applicable", citing the summary of those principles set out by this court in *Manchester City Council v D (Application for Permission to Withdraw Proceedings after Abduction)* [2021] EWHC 1191 (Fam). During his oral submissions, Mr Hames appeared to accept that, in deciding whether to surrender jurisdiction by way of acquiescence, the court would also need to consider similar factors to those set out in Art 8, including whether the Polish court is now better placed to assess T's best interests. As such, the local authority appeared to contend that the test for whether the court *has* acquiesced to date, which it submits is the test set out in *H v H (Child Abduction: Acquiescence)*, will be different to the question of whether the court *should* now acquiesce.
21. The also court posed the question during Mr Hames' oral submissions whether it would be consistent with public policy, namely the public policy of discouraging child abduction, for a court seised of proceedings under Part IV of the Children Act 1989 to actively acquiesce to a wrongful removal designed to frustrate those proceedings in preference to considering an application to transfer jurisdiction under Art 8. Citing the decision of this court in *B v N (No2)(1996 Hague Convention Art 22)* [2023] EWHC 2524 (Fam), Mr Hames submitted that there are cases in which the court determines that it should transfer jurisdiction as being in the child's best interests, notwithstanding it results in the party who has abducted the child succeeding in their aim.
22. Were the court to conclude, contrary to the primary submission of the local authority, that T remains habitually resident in the jurisdiction of England and Wales and the court therefore retains jurisdiction pursuant to Art 5 or, again contrary to the submission of the local authority, that the court retains jurisdiction pursuant to Art 7 but it would not be appropriate for the court now to acquiesce to T's wrongful removal, Mr Hames and Ms Wigoder invite the court to grant the mother's application pursuant to Art 8 of the 1996 Hague Convention for a request to be made to Poland to assume jurisdiction in respect of T.
23. Finally, were the court to conclude that T is now habitually resident in the jurisdiction of Poland pursuant to Art 5 of the 1996 Hague Convention and that Art 7 is *not* engaged in this case, meaning that the English court has lost jurisdiction in respect of T during the currency of these care proceedings, the local authority submits that this

court should give permission for the disclosure of the evidence from these proceedings to the appropriate Polish authorities.

*The Mother*

24. On behalf of the mother, Mr Setright and Ms Moore adopted a more sceptical approach to the questions of whether, in the circumstances of this case, rights of custody are capable of vesting in the court for the purposes of Art 7 of the 1996 Hague Convention, whether, if so, the mother's removal of T to Poland constituted a breach of those rights of custody and whether, if it did, on what basis the question of acquiescence to any wrongful removal for the purposes of Art 7(1)(a) would fall to be assessed in the context of the court holding rights of custody.
25. Mr Setright and Ms Moore submit that in considering the jurisdictional position in this case, the court must have regard to the fact that the 1996 Hague Convention does not contain the principle of *perpetuatio fori* and that, accordingly, jurisdiction is not retained upon a change of habitual residence. Mr Setright and Ms Moore contend that this means (in circumstances where they contend that the Court of Appeal in London Borough of *Hackney v P & Ors (Jurisdiction: 1996 Hague Child Protection Convention)* [2024] 2 WLR 1163 did not disturb the conclusion of this court in *Hackney LBC v P and Ors* [2023] 1 FLR 502 as to the effect of the absence of the principle of *perpetuatio fori*) that, as a matter of logic, the court should first determine the question of habitual residence. In this case, Mr Setright and Ms Moore submit that T is now habitually resident in the jurisdiction of Poland. As such, they further submit that proximity, in the sense of a practical connection to T, lies with Poland. In these circumstances, Mr Setright and Ms Moore contend that, consistent with the philosophy of the 1996 Hague Convention, this court should not apply Art 7 in a way that would artificially sustain the English court's jurisdiction.
26. The mother concedes that when she removed T to Poland the father was exercising rights of custody and that, *prima facie*, the removal was in breach of those rights of custody and therefore wrongful for the purposes of Art 7 of the 1996 Hague Convention. No party however, disputes that the father has subsequently acquiesced to the removal for the purposes of Art 7(1)(a). With respect to the question of whether rights of custody were also vested in the court at the time of the removal, Mr Setright and Ms Moore submit that the court is entitled to question whether the fact of being seised of proceedings under Part IV of the Children Act 1989 vests such rights in the court. In particular, Mr Setright and Ms Moore point to a dearth of clear authority on whether public law proceedings can act to vest rights of custody in the court for the purposes of the 1996 Hague Convention. Such cases that do touch on the issue in the context of the 1980 Hague Convention (in particular *Re W and Re B* [1999] Fam, *Re H (Abduction: Rights of Custody)* [2000] 1 FLR 374, *X CC v B* [2010] 1 FLR 1197, *NM v SM* [2017] EWHC 1294 (Fam), *K v N* [2022] EWHC 1827 and *B v L (Removal to Poland: Unmarried Father: Rights of Custody: Declarations)* [2022] EWHC 2215 (Fam)) can, they submit, be readily distinguished from this case. Mr Setright and Ms Moore further submit that, even were the court to conclude that rights of custody vested in the court, it does not automatically follow that the removal by the mother breached those rights of custody or, if it did, that the court should now assert or exercise its rights in circumstances where the court had made no orders in the proceedings that rendered it unlawful for the mother to remove T from the jurisdiction and has not engaged wardship.



27. Were the court to conclude that the removal of T was wrongful for the purposes of Art 7(1), Mr Setright and Ms Moore submit that the question of whether the court has acquiesced to any wrongful removal for the purposes of Art 7(1)(a) of the 1996 Hague Convention falls to be assessed in the context of the court being the holder of rights of custody. Contrary to the position advanced on behalf of the local authority, Mr Setright and Ms Moore submit that the approach to the question of acquiescence must be different to that articulated by the House of Lords in *H v H (Child Abduction: Acquiescence)*. In particular, they submit that looking solely at the “exceptional circumstances” test in *H v H (Child Abduction: Acquiescence)* is the wrong approach, and that the court will need to examine whether, objectively and subjectively, there has been acquiescence on the part of the court. In considering whether it has acquiesced, Mr Setright and Ms Moore submit that the court must have regard to the fact that habitual residence has changed and that no party with parental responsibility seeks the return of T.
28. As to the way forward, Mr Setright and Ms Moore also part company with the local authority when submitting that it is not clear what advantages there would be in the court now expressly acquiescing to the removal of T for the purposes of Art 7(1)(a) of the 1996 Hague Convention (the test for which, they submit, might reflect the principles applicable on an application for permission to withdraw or the criteria set out in Art 8) rather than addressing and determining the mother’s application under Art 8.
29. Whilst recognising that a similar outcome might be achieved by a declaration of acquiescence under Art 7(1)(a), accompanied by provision of information to Poland, Mr Setright and Ms Moore pursue the mother’s application under Art 8 as the more “logical course” and one consistent with both T’s best welfare interest and the effective and timely conduct of any proceedings in Poland for his protection. Mr Setright and Ms Moore submit that in circumstances where habitual residence has changed, that Art 8 application must be considered as having a “flying start”. They contend that the possibility that the requested jurisdiction may take no measures is not a reason not to attempt a transfer of jurisdiction, in circumstances where it provides the requested jurisdiction with an opportunity to consider the case, and provides material for it to do so. Finally, they submit that the use of Art 8 in preference to a declaration of acquiescence prevents a peremptory conclusion to the proceedings.
30. Were the court to conclude that T is now habitually resident in the jurisdiction of Poland and that Art 7 of the 1996 Hague Convention is *not* engaged in this case, or that it should acquiesce in the face of the removal resulting in the English court losing jurisdiction, on behalf of the mother Mr Setright and Ms Moore invite the court to adopt the approach described by Gwynneth Knowles J in *Re D (Care Proceedings: 1996 Hague Convention: Article 9 Request)* [2021] EWHC 1970 (Fam) to ensure the Polish authorities are fully assisted with information, coupled with the giving of assurances of assistance and co-operation with the Polish authorities and the disclosure of information to those authorities. Mr Setright and Ms Moore submit that adopting such a course would be consistent with, and certainly not an abnegation of, the court’s duties in respect of T.

*The Father*

31. The father adopts the submissions made by the local authority with respect to the operation of Art 7 of the 1996 Hague Convention in this case. Namely, that rights of custody for T were vested in this court at the time of his removal to Poland for the purposes of Art 7, that the removal of T from this jurisdiction was wrongful for the purposes of Art 7(1) and that T is now habitually resident in the jurisdiction of Poland. As to the way forward in those circumstances, Mr Woodward-Carlton and Mr Little likewise submit that the court should declare that it has already acquiesced to the wrongful removal or make such a declaration at this hearing acquiescing to the wrongful removal of T for the purposes of Art 7(1)(a).
32. With respect to the question of acquiescence, Mr Woodward-Carlton submitted that in determining whether the court has acquiesced to date to the wrongful removal for the purposes of Art 7(1)(a), it makes no sense to speak of a subjective view when considering the position of an institution and, as such, the general test in *H v H (Child Abduction: Acquiescence)* is not apt. In this latter regard, the father relies on the decision of Holman J in *NM v SM* [2017] EWHC 1294 (Fam) at [55] to [58]. Mr Woodward-Carlton and Mr Little submit that the test for acquiescence where it is an institution or other body that holds rights of custody must be grounded in a factual analysis of the actions that the institution or other body has or has not taken. Applying this approach, Mr Woodward-Carlton and Mr Little submit that it is not easy to identify an act or omission by this court to date that would amount to acquiescence to the removal by the mother.
33. As to the way forward, it was not entirely clear whether Mr Woodward Carlton and Mr Little were contending for a different test to that advanced above when the court is considering whether it *should* acquiesce to the removal. However, during his oral submissions, Mr Woodward-Carlton posited that, in keeping with a purposive interpretation of the 1996 Hague Convention, an approach that considered all the circumstances of the case, including the best interests of the child, would be appropriate. He further submitted that for the court to acquiesce to a removal should be considered an unusual or exceptional course. In this case, Mr Woodward-Carlton and Mr Little submit that the court now acquiescing to the removal would be preferable to the court dealing with the mother's application under Art 8, as the latter would utilise the scarce resources of busy institutions and may introduce unnecessary administrative delay.
34. Were the court to conclude that T is now habitually resident in the jurisdiction of Poland and that Art 7 of the 1996 Hague Convention is not engaged in this case, or to decide to acquiesce in the face of the removal, on behalf of the father Mr Woodward-Carlton and Mr Little submit that the court would need to direct the disclosure of the papers in the proceedings to the relevant authorities in Poland together with a copy of the court's judgment.

#### *The Guardian*

35. Mr Jarman and Ms Georges submit that rights of custody vest in this court for the purposes of Art 7 by reason of the court being seised of proceedings under Part IV of the Children Act 1989. They further submit that the removal of T by the mother was wrongful as being in breach of the rights of custody vested in the court. Whilst conceding that there was no order in force preventing the mother from removing T from the jurisdiction, Mr Jarman and Ms Georges submit there is no distinction

between an express prohibition on removal and an implicit prohibition on removal, relying on the decision of Bracewell J in *C v C (Minors) (Child Abduction)* [1992] 1 FLR 163 at 170.

36. On behalf of the Children's Guardian, Mr Jarman and Ms Georges submit that in considering whether the foregoing circumstances result in this court retaining jurisdiction, it is not necessary to first consider the question of habitual residence. Whilst accepting during his oral submissions that, as a matter of structure, Art 7(1) posits the question of habitual residence before Art 7(1)(a) posits the question of acquiescence, Mr Jarman submitted that where it is plain that the court has not acquiesced to the removal of T for the purposes of Art 7(1)(a) and accordingly, in circumstances where the court had jurisdiction for the purposes of Art 5 of the 1996 Hague Convention at the date of removal, the court must retain that jurisdiction by operation of Art 7, it is not necessary in a case of alleged abduction to revisit the question of habitual residence as the basis for the court's jurisdiction before concluding that the court retains jurisdiction in respect of T. If the court is not with Mr Jarman and Ms George's submission that habitual residence does not fall for consideration first, they submit that on the evidence before the court T remains habitually resident in the jurisdiction of England and Wales and therefore there has been no change of habitual residence for the purposes of Art 7(1).
37. As to the way forward, the Children's Guardian strongly opposes any suggestion that the court should now declare its acquiescence to the removal of T by the mother, the test for which, Mr Jarman submitted would have to centre on the child's best interests. Mr Jarman and Ms George submit that, on the evidence before the court, a declaration of acquiescence would be entirely antithetic to T's best interests. During his oral submissions, Mr Jarman also contended that such a declaration would be contrary to public policy in that it would endorse the mother's wrongful removal, would send entirely the wrong signal to other parents involved in public law proceedings and, in the circumstances, would fail to discourage respondents to public law proceedings from taking the same wrongful action. Mr Jarman contended that, by acquiescing to the removal the court would, in effect, be endorsing a blatant child abduction designed to avoid child protection proceedings.
38. Finally, Mr Jarman and Ms Georges further submit that the mother's application under Art 8 that a request be made for Poland to assume jurisdiction in this matter should be refused in circumstances where the Art 8 criteria plainly point to that being the correct outcome having regard to the evidence before the court. Rather, Mr Jarman and Ms Georges submit that the court should now make an interim care order pursuant to s.38 of the Children Act 1989 and order the mother to return the child to the jurisdiction of England and Wales in order that he can be placed in foster care. During his oral submissions, Mr Jarman acknowledged that this course of action would require the court to impose on the local authority an order that it no longer seeks and would rely on the mother now co-operating with the orders of the English court.

## RELEVANT LAW

39. Subject to the threshold criteria set out in s.31(2), s. 31(1) of the Children Act 1989 provides that, on the application of any local authority or authorised person, the court may make an order placing the child with respect to whom the application is made in

the care of a designated local authority or putting him or her under the supervision of a designated local authority. Section 33 of the Children Act 1989 provides that, where a care order is made with respect to a child, it shall be the duty of the local authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force. Section 33 further provides that, while a care order is in force with respect to a child, the local authority designated by the order shall have parental responsibility for the child and shall have the power to determine the extent to which a parent, guardian or special guardian of the child may meet his parental responsibility for him or her.

40. The 1996 Hague Convention is now directly implemented in domestic law by amendments made to the Civil Jurisdiction and Judgments Act 1982 by s.1 of the Private International Law (Implementation Agreements) Act 2020. Section 3C of the Civil Jurisdiction and Judgments Act 1982 now provides that the 1996 Hague Convention shall have force of law in the United Kingdom. With respect to the jurisdiction of the court to make a care order, in *Hackney v P & Ors (Jurisdiction: 1996 Hague Child Protection Convention)* at [92] the Court of Appeal confirmed that the 1996 Hague Convention applies to public law proceedings under Part IV of the Children Act 1989.
41. Chapter I of the 1996 Convention sets out its scope. Art 1 of the Convention provides as follows with respect to the objects of the 1996 Hague Convention:

**"Article 1**

(1) The objects of the present Convention are –

- a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c) to determine the law applicable to parental responsibility;
- d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child."

42. Chapter II of the 1996 Hague Convention deals with the question of jurisdiction. Art 5 sets out the primary rule of jurisdiction stipulated by the Convention based on the

connecting factor of habitual residence, described by Lord Wilson in *Re B (A Child) (Reunite International Child Abduction Centre Intervening)* [2016] AC 606 as “the internationally recognised threshold to the vesting in the courts of that state of jurisdiction to determine issues in relation to him (or her)”. The terms of Art 5 are as follows:

**“Article 5**

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.”

43. There is no definition of habitual residence in the 1996 Hague Convention. It is, however, a well-established principle that the connecting factor establishing jurisdiction should be determined by the law of the court in which the proceedings are brought, i.e. the *lex fori* (see *Chevron International Oil Co Ltd v A/S Sea Team (The TS Havprins)* [1983] 2 Lloyd’s Rep 356 approving Dicey at [1–081]). The concept of habitual residence has in this jurisdiction been considered in an abundance of domestic appellate authorities, cited by the parties in their respective Skeleton Arguments, including most recently *Re A (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA Civ 659. Having considered that line of authority recently in *J v E (Habitual Residence)* [2024] EWHC 196 (Fam), this court summarised the required approach as follows:

“[87] Where then does this plethora of authority on the concept of habitual residence leave the busy judge who is required to determine the preliminary issue of jurisdiction, without that determination “becoming an unworkable obstacle course, through which the judge must pick his or her way by a prescribed route or risk being said to have made an unsustainable finding?” Reading the foregoing authorities together, it is tolerably clear that the task of determining habitual residence falls to be discharged by the court asking itself whether, having regard to all the relevant circumstances and as a matter of fact, the subject child has achieved a degree of integration in a social and family environment in the country in question sufficient for the child to be habitually resident there. That is the test I have adopted in this case.

[88] The authorities further make clear that in deciding in a given case whether the degree of integration is sufficient to establish habitual residence, i.e. whether the “some” is enough, certain matters may inform the court’s global analysis of the child’s situation in, and connections with, the state in which he or she is said to be habitually resident for the purpose of determining whether a sufficient degree of integration exists. These non-exhaustive considerations, to paraphrase Lord Wilson in *Re B (A Child) (Reunite International Child Abduction Centre Intervening)*, may include the following:

- (i) The factual inquiry is centred throughout on the circumstances of the child's life that are most likely to illuminate his or her habitual residence. It is the child's habitual residence which is in question and the child's integration which is under consideration.
- (ii) The meaning of habitual residence is shaped in the light of the best interests of the child, in particular on the criterion of proximity. Proximity in this context means the practical connection between the child and the country concerned.
- (iii) It is not necessary for a child to be fully integrated in a social and family environment before becoming habitually resident.
- (iv) The requisite degree of integration can, in certain circumstances, develop quite quickly. It is possible to acquire a new habitual residence in a single day. There is no requirement that the child should have been resident in the country in question for a particular period of time.
- (v) It is the stability of a child's residence as opposed to its permanence which is relevant. This is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there.
- (vi) Relevant matters can include the duration, regularity and conditions for the stay in the country in question; the reasons for the parents move to and the stay in the jurisdiction in question; the child's nationality; the place and conditions of attendance at school; the child's linguistic knowledge; the family and social relationships the child has; whether possessions were brought; whether there is a right of abode; and whether there are durable ties with the country of residence or intended residence.
- (vii) Where there are competing jurisdictions advanced as the child's habitual residence, the comparative nature of the exercise requires the court to consider the factors which connect the child to each State where they are alleged to be habitually resident.
- (viii) Where there are competing jurisdictions advanced as the child's habitual residence, the circumstances of the child's life in the country he or she has left as well as the circumstances of his or her life in the new country will be relevant. What is important is that the court demonstrates sufficiently that it has in mind the factors in the old and new lives of the child, and the family, which might have a bearing on the subject child's habitual residence.
- (ix) The deeper the child's integration in the old state, probably the less fast his or her achievement of the requisite degree of integration in the new state. Likewise, the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day

life in the new state, probably the faster his or her achievement of that requisite degree.

- (x) In circumstances where all of the central members of the child's life in the old state to have moved with him or her, probably the faster his or her achievement of habitual residence. Conversely, where any of the central family members have remained behind and thus represent for the child a continuing link with the old state, probably the less fast his or her achievement of habitual residence.
- (xi) In circumstances where the social and family environment of an infant or young child is shared with those on whom he or she is dependent, it is necessary to assess the integration of that person or persons (usually the parent or parents) in the social and family environment of the country concerned. In respect of a pre-school child, the circumstances to be considered will include the geographic and family origins of the parents who effected the move.
- (xii) A child will usually, but not necessarily, have the same habitual residence as the parent(s) who care for her. The younger the child the more likely that proposition but this is not to eclipse the fact that the investigation is child focused.
- (xiii) Parental intention is relevant to the assessment, but not determinative. There is no requirement that there be an intention on the part of one or both parents to reside in the country in question permanently or indefinitely. Parental intent is only one factor, along with all other relevant factors, that must be taken into account when determining the issue of habitual residence. It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent."

44. The date on which habitual residence falls to be assessed for the purposes of Art 5 of the 1996 Hague Convention was considered by the Court of Appeal in *Hackney v P & Ors* (*Jurisdiction: 1996 Hague Child Protection Convention* on appeal from this court. The Court of Appeal held that habitual residence should be determined at the outset of the proceedings. However, the Court of Appeal acknowledged that, in circumstances where the 1996 Hague Convention contains no principle of *perpetuatio fori*, jurisdiction under Art 5 can be lost during the course of proceedings if the subject child's habitual residence changes during the currency of the proceedings. In the circumstances, the Court of Appeal further held that if a child moves to another Contracting State during the course of proceedings, this may constitute the substantial grounds required to justify a review the question of habitual residence.
45. Art 5(2), which provides that in the case of a change of the child's habitual residence to another Contracting State the authorities of the State of the new habitual residence will have jurisdiction, is expressly subject to the operation of Art 7 of the 1996 Hague Convention. Art 7 provides as follows:

**“Article 7**

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

(2) The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.”

46. Chapter II of the 1996 Hague Convention provides a mechanism for the transfer of jurisdiction from one Contracting State to another. Art 8 deals with cases in which the Contracting State having jurisdiction requests that another Contracting State assume jurisdiction. Art 8 provides as follows:

**“Article 8**

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or



- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a) a State of which the child is a national,
- b) a State in which property of the child is located,
- c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
- d) a State with which the child has a substantial connection.

(3) The authorities concerned may proceed to an exchange of views.

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.”

47. In *AM and GM v KL and VL* [2023] 2 FLR 1131, this court summarised the principles governing the application of Art 8(1) of the 1996 Convention as follows:

"[24] The test for transfer under Art 8(1) is whether the other Contracting State is better placed to assess the best interests of the child. Where the Contracting State with jurisdiction is better placed to assess the best interests of the child, or where the Contracting States are equally well placed to assess the best interests, the Art 8(1) test will not be made out and jurisdiction will remain with Contracting State having jurisdiction.

[25] The Practical Handbook on the Operation of the 1996 Hague Child Protection Convention at paragraph 5.9 makes clear that a transfer under Art 8 may only be effected when three conditions are satisfied. First, that there is a connection between the child and the Contracting State to whose authorities it is permissible to transfer jurisdiction. Art 8(2) provides an exhaustive list of the factors capable of demonstrating such a connection. Second, the transfer must be in the child's best interests. Third, both Contracting States must agree to the transfer of jurisdiction. With respect to the best interests criteria, the Practical Handbook further observes as follows:

'The authority making the request that jurisdiction be transferred must consider that this will allow for a better assessment of the child's best interests. The authority asked to assume or cede jurisdiction can only do so if it believes this is in the child's best interests.'

[26] Art 8(1) of the 1996 Hague Convention states expressly that the power to transfer jurisdiction under Art 8 is to be applied by way of an exception and, accordingly, represents an exception to the general rule of jurisdiction set out in Art 5. Further, the wording of Art 8(1) makes clear that even

where the court concludes that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, the court with jurisdiction retains a discretion as to whether to effect that transfer and is not obliged to do so."

48. In *B v N (No.2)(Art 7 and Transfer of Jurisdiction)* [2024] EWHC 17 (Fam), this court held (contrary to the conclusion reached by Arbutnot J in *A (A Child) (Abduction: Jurisdiction: 1996 Hague Convention)* [2021] EWHC 581 (Fam)) that Art 8 continues to apply in cases where substantive jurisdiction has been retained pursuant to Art 7 of the 1996 Hague Convention in circumstances where Art 7 of the Convention is not a basis of jurisdiction in its own right but, rather, acts simply to retain the existing jurisdiction based on habitual residence, i.e. jurisdiction under Art 5(1), in the event of a wrongful removal or retention.

## DISCUSSION

49. Having considered carefully the comprehensive and helpful submissions of leading and junior counsel, I am satisfied that T is now habitually resident in the jurisdiction of Poland. I am further satisfied that, by operation of Art 7 of the 1996 Hague Convention this court retains jurisdiction in respect of T notwithstanding his removal from the jurisdiction. Finally, in circumstances where I am satisfied that the jurisdiction of Poland is now better placed to assess T's best interests, this court should stay these proceedings and request that the jurisdiction of Poland assume jurisdiction to take such protective measures in respect of T as it considers necessary. My reasons for so deciding are as follows.

### *Habitual Residence*

50. I cannot accept Mr Jarman's submission that it is not necessary in this case for the court first to consider the question of habitual residence. The import of Mr Jarman's submission is that, in a case where Art 7 is potentially engaged, the court should first consider the question of acquiescence and, if satisfied that the relevant person, institution or any other body holding rights of custody has acquiesced to the relevant removal, the question of habitual residence is thereby rendered irrelevant. However, the structure of Art 7 makes clear that the *first* question to be answered in determining whether jurisdiction has been retained by operation of Art 7 in a case of wrongful removal is whether "the child has acquired habitual residence in another State" for the purposes of Art 7(1). If not, then the question of acquiescence under Art 7(1)(a) is never reached. In *Hackney v P & Ors (Jurisdiction: 1996 Hague Child Protection Convention)* at [94], Moylan LJ confirmed that in every case with a potentially rival foreign jurisdiction, the starting point is an enquiry into or consideration of where the child is habitually resident, as the connecting factor establishing jurisdiction. In these circumstances, when determining whether Art 7 is engaged I am satisfied that the court should adhere to the analytical structure provided by that Article. To leave out consideration of habitual residence in this case would be to fail to examine the condition precedent to the operation of Art 7.
51. In deciding whether, as a matter of fact, T can be said to have achieved at the date of this hearing a sufficient degree of integration into a social and family environment in Poland to now be habitually resident there, the inquiry of this court must be centred throughout on the elements of T's life that are most likely to illuminate his habitual

residence. In circumstances where the court is faced with competing jurisdictions on the question of habitual residence, I am satisfied that the following matters lead to the conclusion that T is now habitually resident in the jurisdiction of Poland.

52. T has resided in Poland for a period of seven months since November 2023. Given his age, this constitutes a significant proportion of his life. Since his removal from this jurisdiction, T has been living in Poland within a household comprised of the same carers he had when living in England, i.e. his mother and the maternal grandmother. In the circumstances, the family environment in which he was integrated when in England has been replicated without interruption in Poland with respect to his primary and secondary carers. The mother and the maternal grandmother are both Polish citizens born in that jurisdiction and who speak Polish. In the circumstances, those caring for T since birth are themselves well integrated into a family and social environment in Poland. In terms of accommodation, T resides in a property in Łomża under indefinite tenancy. The evidence demonstrates that the accommodation is well-equipped with toys and books for T. The welfare visit conducted by the Polish Curator noted, within the limitations inherent in a single visit, that T was happy and well in that environment. T has started nursery school in Łomża and has been enrolled since 4 March 2024 from Mondays to Fridays from 8am to 2pm. He is reported to have made friends at nursery. Two close family members live a short distance from the home. The mother has made an application for child benefit for T in Poland and T has been registered with a doctor in that jurisdiction.
53. I acknowledge that, at the time T was born, the mother had resided in this jurisdiction since 1994 and that T's move to Poland was clandestine and unplanned. I further acknowledge that T was born in England in February 2022 and resided in this jurisdiction until the point of his removal. Whilst the mother contends that she intended to return to Poland with T permanently, there is some evidence that she sought a return to the jurisdiction of England and Wales subject to guarantees from the local authority that they would not seek to remove T from her care. However, each of these matters must be set against the matters summarised in the foregoing paragraph which would, I am satisfied, have resulted in T becoming integrated in a social and family environment in Poland relatively quickly following his removal to that jurisdiction, notwithstanding he had resided in this jurisdiction prior to that point. It is not necessary for T to be fully integrated in a social and family environment in Poland before becoming habitually resident in that jurisdiction and there is no requirement that he should have been resident in the country in question for a particular period of time before such a position is reached. The evidence points to his situation in Poland over the period in which he has been there as having been stable and all of the central members in T's life in England have moved with him to Poland.
54. Considering the factors which connect T to each state in question, and his position in England prior to removal and now in Poland since that date, having regard to the matters set out above I am satisfied on balance that, as at the date of this hearing, T is habitually resident in the jurisdiction of Poland.
55. In the circumstances, pursuant to Art 5(2) of the 1996 Hague Convention, this court has lost jurisdiction in respect of T unless Art 7 of that Convention operates in this case to retain jurisdiction in England and Wales.

56. For Art 7 to operate to retain jurisdiction on the facts of this case, the removal of T by the mother must have been wrongful, his habitual residence must have changed to another State and a person, an institution or any other body holding rights of custody must have acquiesced to his removal.
57. For the reasons set out above, T has acquired habitual residence in another state for the purposes of Art 7(1). Pursuant to Art 7(2), for the removal of T by his mother to have been wrongful for the purposes of Art 7(1) it must have been in breach of rights of custody attributed to a person, an institution or any other body under English law and those rights must have been being actually exercised or would have been so exercised but for the wrongful removal. In circumstances where the removal of T was in breach of the father's rights of custody but he has acquiesced to that removal, the first question is whether rights of custody for T are attributed to the court for the purposes of Art 7(2) of the 1996 Hague Convention by virtue of the court being seised of proceedings under Part IV of the Children Act 1989? I am satisfied that they are.
58. It is clear that rights of custody can vest in the court for the purposes of the 1980 Hague Convention. The Explanatory Report to the 1980 Convention notes that the fact that wording of Art 3 of the 1980 Convention, which is reflected in the wording of Art 7(2) of the 1996 Convention, provides a non-exhaustive description of the sources from which rights of custody can be derived:
- “...must be understood as favouring a flexible interpretation of the terms used, which allows the greatest possible number of cases to be brought into consideration.”
59. In considering the extent to which custody rights can arise by reason of a judicial or administrative decision for the purposes of Art 3 of the 1980 Convention, which again uses the same terms as Art 7(2) of the 1996 Hague Convention, the Explanatory Report to the 1980 Hague Convention goes on to state at paragraph [69] that:
- “[69] The second source of custody rights contained in article 3 is a judicial or administrative decision. Since the Convention does not expand upon this, it must be deemed, on the one hand, that the word 'decision' is used in its widest sense, and embraces any decision or part of a decision (judicial or administrative) on a child's custody and, on the other hand, that these decisions may have been issued by the courts of the State of the child's habitual residence as well as by the courts of a third country.”
60. In *In Re P* [2004] 2 FLR 1057 Ward LJ dealt with the question of how the domestic courts should approach the task of establishing whether rights of custody arise for the purposes of the 1980 Hague Convention and stated as follows:
- “[60] Accordingly on this aspect of the case, we conclude that (1) the Hague Convention requires the Court to give the expression "rights of custody" an autonomous interpretation; (2) the reference in article 3 to "rights of custody attributed to a person ... under the law" of the child's habitual residence is not a choice of law of that state in the sense that if the domestic law, still less the conflict of laws rule, does not characterise the right as a right of custody, then it will not be such a right for Hague Convention purposes; (3) the task of the Court is to establish the rights of

the parents under the law of that state and then to consider whether those rights are rights of custody for Hague Convention purposes; (4) in considering whether those rights are rights of custody, the Court is entitled and bound to give a purposive and effective interpretation to the Hague Convention; (5) the rights given by the New York order to the father are rights of custody D for Hague Convention purposes, whether or not New York state or federal law so regards them either for domestic purposes or Hague Convention purposes.”

61. In *B v B (Abduction: Custody Rights)* [1993] Fam 32, the Court of Appeal was concerned with a case in which the Ontario court had, during proceedings, prohibited the removal of the child from the jurisdiction in the interim and made an interim custody order in favour of the mother, following which the mother had removed the child from the jurisdiction. In considering the question of whether the position under Canadian law vested rights of custody in the Ontario court at the time of the removal for the purposes of the 1980 Hague Convention, Sir Stephen Brown P held that the court itself had a right of custody in the sense that it had the right to determine the child's place of residence. In a concurring judgment, Leggat LJ concluded as follows:

“Having made what is no more than an interim custody order, the Ontario court, in my judgment, retained what article 5(a) of the Convention calls “the right to determine the child’s place of residence.”

62. In *Re B (Abduction: Rights of Custody)* [1997] 2 FLR 594, the Court of Appeal held, in a case in which the father had applied for an order for parental responsibility prior to the mother removing the child from the jurisdiction of England and Wales, that court did *not* have rights of custody vested in it simply by virtue of the fact that there were pending applications at the time of the removal. In considering the words of Leggat LJ in *B v B* set out in the foregoing paragraph, observed as follows at 600:

“That sentence seems to me to encapsulate the ratio decidendi in *B v B*, namely, that as an interim custody order had been made, so rights of custody remain in the court. That case must be the high water mark of any submission of this nature and the basis of the decision was that the court had made an interim custody order. No such order has been made in the present case. For my part, I do not think that that case or the other cases relied upon by Mr Levy can be stretched to the extent of the court making a finding that the issue of proceedings in the Willesden County Court or the High Court vested rights of custody either in the father or in either of those courts.”

63. However, in *Re W (Minors)(Abduction: Father’s Rights)* [1999] Fam 1, a case concerning the 1980 Hague Convention, Hale J (as she then was) concluded that rights of custody vested in the court where there was a pending application by the father for orders with respect to parental responsibility and contact but no interim orders, in respect of custody or otherwise, had been made. In *Re W (Minors)(Abduction: Father’s Rights)* Hale J noted that whilst the concept of rights of custody vesting in the court by virtue of pending proceedings “obviously applies” in wardship, where pursuant to the Senior Courts Act 1981 s.41(2) the issue of the application results in the children being made wards of court, this was not the position in respect of proceedings under the Children Act 1989. Hale J further recalled the view of

Swinton-Thomas LJ in *Re B (Abduction: Rights of Custody)* that the decision of the Court of Appeal in *B v B (Abduction: Custody Rights)* had to be the high water mark of any submission that proceedings act to vest rights of custody in the court. Nonetheless, and having expressed herself to be “greatly attracted to the proposition that, where the court is actively seised of proceedings to determine rights of custody, removal of the child from the jurisdiction without leave of the court while those proceedings remain pending is a breach of the rights of custody attributable to the court”, Hale J concluded that rights of custody vested in the court for the purposes of the 1980 Hague Convention based on the pendency of the proceedings alone. In explaining her conclusion, and acknowledging that hard cases make bad law and that Parliament could have introduced an automatic ban on removal on the issue of proceedings under the 1989 Act but had not done so, Hale J stated as follows:

“In this case, however, there is no doubt that the W. children were habitually resident in England and Wales before their removal to Australia. As already seen, the purpose of the Hague Convention of 1980 is to secure that children are returned so that the merits of decisions concerning their custody can be determined in the courts of the country where they are habitually resident. There is something particularly repugnant about a litigant seeking to frustrate the processes of the law in this way. This emboldens me to conclude that the removal of the W. children was wrongful within the meaning of the Convention because it was in breach of rights of custody attributable to the court.”

64. In *Re H (Abduction: Rights of Custody)* [2000] 2 AC 291, the House of Lords likewise concluded that rights of custody for the purposes of the 1980 Hague Convention could vest in the court of the court being seised of proceedings, even though no order had been made.
65. The case concerned the removal of a child from Ireland during the pendency of proceedings under the Irish Guardianship of Infants Act 1964, in which a father sought guardianship and access but in which no orders had been made prior to the removal of the child from the jurisdiction by the mother. The House of Lords held that, giving the 1980 Hague Convention a purposive construction and construing the term “rights” widely, a court could be an “other body” for the purposes of Art 8 of the 1980 Hague Convention. As I have noted, the term “other body” is also used in Art 7 of the 1996 Hague Convention. Having conducted an extensive review of the domestic and international case law, including *B v B*, their Lordships further held that the court acquires rights of custody for the purposes of Art 5 of the 1980 Hague Convention if its jurisdiction has been invoked in respect of matters of custody within the meaning of that Convention. In this regard, Lord MacKay of Clashfern stated as follows at 380:

“There are two aspects to this matter. First of all the application to the court must raise matters of custody within the meaning of the Convention and that will require in every case a consideration of the terms of the application. Secondly, a question arises as to the time at which the court acquires such right. It is clear that the interpretation which has been accepted of the Convention which allows the possibility of a court having rights of custody does not contemplate that happening unless there is an application to the court in a particular case raising the issue of the custody

of one or more children. The date at which such application confers these rights is a matter which has not been the subject of detailed consideration in relation to the Convention. For the purposes of the Civil Jurisdiction and Judgments Act 1982, Schedule 1, article 21 and the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters which is scheduled to that Act (Schedule 1) it has been held that an English court becomes definitively seized of proceedings for the purposes of that Convention on the date of service of the writ at which point it has jurisdiction over the merits of the dispute: *Neste Chemicals S.A. v. D.K. Line S.A.* [1994] 3 All E.R. 180 and *Dresser U.K. Ltd. v. Falcongate Freight Management Ltd* [1992] Q.B. 502.

In relation to the present Convention while in the wardship jurisdiction the issue of an application makes the child who was the subject of the application a ward of court I consider that generally speaking there is much force in using the service of the application as the time at which the court's jurisdiction is first invoked. It is true that interim orders may be made before service and special cases may arise but generally speaking I would think it a reasonable rule that at the latest when the proceedings have been served the jurisdiction has been invoked and unless the proceedings are stayed or some equivalent action has been taken I would treat the court's jurisdiction as being continuously invoked thereafter until the application is disposed of.”

66. In *X County Council v B (Abduction: Rights of Custody in the Court)* [2010] 1 FLR 1197, Macur J (as she then was) held that rights of custody for the purposes of the 1980 Hague Convention vested in the court by virtue of the court being seised of care proceedings under Part IV of the Children Act 1989. In that case, the parents removed the children from the jurisdiction of England and Wales to the jurisdiction of Ireland the day after having been served with care proceedings. The Irish Court requested, pursuant to Art 15 of the 1980 Hague Convention, a reasoned judgment from the English court as to whether the removal of the children to Ireland had been wrongful. Holding, following the decision of the House of Lords in *Re H (Abduction: Rights of Custody)*, that upon the court being seized of an application that involves the court's discretion and jurisdiction to determine the child's place of residence it is seized of rights of custody in respect of the child or children to which the application related, Macur J further held that the application under Part IV of the Children Act 1989 “raised matters of custody” and that service of the proceedings on parents granted the court rights of custody which would endure until the proceedings were stayed or some equivalent action taken. In the circumstances Macur J (as she then was) was satisfied that rights of custody were vested in the courts of England and Wales for the purposes of Art 3 of the 1980 Hague Convention, which rights of custody would have been exercised by the court but for the children’s removal.
67. Each of the foregoing cases concerned rights of custody for the purposes of Art 3 of the 1980 Hague Convention. Does the same conclusion follow in this case with respect to Art 7 of the 1996 Hague Convention? In my judgment, it does.
68. As Hale J was in *Re W (Minors)(Abduction: Father’s Rights)* in respect of private law proceedings and in the context of the 1980 Hague Convention, I am greatly attracted to the proposition that, where the court is seised of care proceedings with respect to a

child in respect of which it has jurisdiction under Art 5 of the 1996 Hague Convention, removal of that child from the jurisdiction without leave of the court while those proceedings remain pending is a breach of the rights of custody attributable to the court. I am further satisfied that there is a principled basis for concluding that this is the position in this case. Like Macur J (as she then was) in respect of the 1980 Convention, adopting a purposive and effective interpretation of the 1996 Hague Convention, I consider that proceedings under Part IV of the Children Act 1989 raise matters of custody within the meaning of Art 7 of the 1996 Hague Convention.

69. Upon becoming seised of proceedings under Part IV of the Children Act 1989 with respect to a child who is habitually resident in England and Wales, pursuant to s.31(1) of the Children Act 1989 and provided it is satisfied that the child is suffering or is likely to suffer significant harm or is beyond parental control pursuant to s.31(2), the court has jurisdiction to make a care order placing the child in the care of a designated local authority or a supervision order putting the child under the supervision of the designated local authority. Pursuant to s.33(1) of the 1989 Act, the effect of the former is to place a duty on the local authority to receive the child into their care and keep the child in their care while the care order remains in force. Pursuant to s.33(3) the care order operates to give parental responsibility to the local authority and the power to determine the extent to which a parent or guardian may meet their parental responsibility for the child. In this case the proceedings under Part IV of the 1989 Act with which the court is seised were served on the parents, the court made an interim supervision order in respect of T and made case management directions in relation to the proceedings, including the direction of a parenting assessment of the mother and of the father were given by the court.
70. Art 3(b) of the 1996 Hague Convention provides a non-exhaustive description of the concept of rights of custody as “including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence”. The Practical Handbook for the 1996 Hague Convention describes Art 3(b) as incorporating “all measures relating to the care and upbringing of, and access to or contact with, the child” irrespective of the titles given to those measures in a State’s domestic law. The non-exhaustive description given by Art 3 of the 1996 Hague Convention is, as noted in the Explanatory Report for the 1996 Hague Convention by Paul Lagarde at paragraph [20], the same as that given by Art 5(a) of the 1980 Hague Convention. Paragraph 3.22 of the Practical Handbook on the 1996 Hague Convention makes clear that this is intentional and that the term “rights of custody” should be interpreted consistently to ensure the complementarity of the 1996 Hague Convention and the 1980 Hague Convention.
71. As Lieven J noted in *AA v BB & Ors* [2022] EWHC 2322 (Fam), the policy justification of, or the mischief addressed by, the decision of the House of Lords in *Re H (Abduction: Rights of Custody)* with respect to the 1980 Hague Convention is the need to avoid, where the domestic court of the child’s habitual residence has the issue of custody before it, one parent pre-empting the final decision of that court by removing the child from the jurisdiction unilaterally, meaning that the 1980 Hague Convention must be interpreted in a way that ensures such unilateral action is not determinative. The same can be said, in my judgment, of the 1996 Hague Convention, and of Art 7 of that Convention. As noted by Lady Hale in *Re K (A*



*Child)(Northern Ireland)* [2014] AC 1401 at [2] in the context of the 1980 Hague Convention, one function of the concept of rights of custody is to identify those removals or retentions which are presumptively so harmful to the welfare of a child that swift action must be taken. The Explanatory Report to the 1996 Hague Convention explains the object of Art 7 as follows:

“The underlying idea is that the person who makes a wrongful removal should not be able to take advantage of this act in order to modify for his or her benefit the jurisdiction of the authorities called upon to take measures of protection for the person, or even the property, of the child. But, on the other hand, the wrongful removal, if it persists, is a fact that cannot be ignored to such a point as to deprive the authorities of the new State, which has become that of the new habitual residence of the child, of this jurisdiction over protection. The difficulty consists therefore in determining the temporal threshold from which jurisdiction would pass from the authorities of the State from which the child has been wrongfully removed, to those of the country to which he or she has been taken or in which he or she has been retained.”

72. In circumstances where, interpreted purposively, the object of Art 7 is to ensure that a person cannot, by unilateral action, avoid the jurisdiction of the judicial or administrative authorities of the Contracting State of habitual residence having jurisdiction to take measures of protection in respect of the child, I am satisfied that the term rights of custody in Art 7 must be interpreted as including “rights” arising from a court being seised of proceedings under Part IV of the Children Act 1989 giving jurisdiction to the court, if it is satisfied that the child is suffering or likely to suffer significant harm, to make an order a care order placing the child in the care of a designated local authority and conferring parental responsibility on that local authority. In the circumstances, I am satisfied in this case that the care proceedings issued by the local authority on 24 November 2022, which have been served on the parents and in which the court has made orders and case management directions, operate to attribute rights of custody to the English court for the purposes of Art 7 of the 1996 Hague Convention.
73. This is not the end of the analysis with respect to Art 7. In order for the removal to be wrongful for the purposes of Art 7 of the 1996 Hague Convention, the removal must have been in breach of the rights of custody that I am satisfied were vested in the court, and the court must have been exercising those rights of custody at the time the removal took place, or would have exercised the rights of custody but for the removal. I am satisfied that each of these requirements are met in this case. The removal of T from the jurisdiction was a unilateral action by the mother without reference to, and was not sanctioned by, the court in which rights of custody in respect of T were vested. This, I am satisfied, amounted to a breach of the court’s rights of custody. I am also satisfied that the court was exercising rights of custody at the time the removal took place. On 26 November 2023, the proceedings were continuing and the court was continuing to pro-actively case manage those proceedings, the local authority having issued on 17 November 2023 a C2 application seeking further directions in the context of the parents having refused to consent to an adoption medical for T. That this ongoing court process amounts to the court exercising its

rights of custody is, in my judgment, the logical extension of the analysis set out above regarding the manner by which those rights of custody vested in the court.

74. Finally with respect to Art 7, whilst I am satisfied that the care proceedings in respect of T vested rights of custody in the English court for the purposes of Art 7 of the 1996 Hague Convention, that the removal of T from the jurisdiction amounted to a breach of those rights of custody and that the court was actually exercising those rights at the time of the removal on 26 November 2024, on the facts of this case jurisdiction is only retained by this court in those circumstances if the court has not, to date, acquiesced to the removal of T. As the Explanatory Report on the 1996 Hague Convention makes clear at [48]:

“it is acquiescence in the wrongful removal which triggers, if it is added to the other conditions required, the disappearance of the jurisdiction of the authorities of the child’s former habitual residence...”

75. I am satisfied that the court has not to date acquiesced to the mother’s wrongful removal of T from the jurisdiction of England and Wales.
76. Art 7(1)(a) of the 1996 Hague Convention expressly proceeds on the basis that “an institution or other body” is able to acquiesce to the removal or retention of a child for the purposes of Art 7 of the Convention. This gives rise, however, to the question of what test should be applied when determining whether a court having rights of custody, as opposed to a parent having rights of custody, has acquiesced to the removal of the child.
77. Once again, the majority of the decisions considering the test for acquiescence concern the operation of the 1980 Hague Convention and, specifically, Art 13 of that Convention. The seminal authority is the decision of the House of Lords in *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72. In *Re H (Minors) (Abduction: Acquiescence)* the House of Lords was concerned with the question of whether a father had acquiesced in the unlawful removal of the children for the purposes of Art 13 of the 1980 Hague Convention. In considering whether acquiescence for the purposes of Art 13 is subjective or objective, the House of Lords held that whether there has been acquiescence is a matter of the actual subjective intention of the parent, acquiescence being a question of fact and the burden of proof being on the abducting parent. Lord Browne-Wilkinson held as follows at 88 (emphasis added):

“In my judgment, therefore, *in the ordinary case* the court has to determine whether in all the circumstances of the case the wronged parent has, in fact, gone along with the wrongful abduction. Acquiescence is a question of the actual subjective intention of the wronged parent, not of the outside world's perception of his intentions.”

78. Notwithstanding the foregoing conclusion, in *Re H (Minors) (Abduction: Acquiescence)*, Lord Browne-Wilkinson further identified what he described as “strictly exceptional cases” in which the actions of the parent demonstrate, objectively, that the parent has acquiesced, whatever his or her stated intentions, His Lordship holding at 89 to 90 that:

“My Lords, in my judgment these exceptional circumstances can only arise where the words or actions of the wronged party show clearly and unequivocally that the wronged parent is not insisting on the summary return of the child: they must be wholly inconsistent with a request for the summary return of the child.”

79. *Re H (Minors)(Abduction: Acquiescence)* can, of course, be readily distinguished from the facts of this case in circumstances where this court is not concerned with the question of whether a parent has acquiesced for the purposes of Art 13 of the 1980 Hague Convention, but rather with the question of whether the court has acquiesced for the purposes of Art 7 the 1996 Hague Convention. In *NM v SM* [2017] EWHC 1294 Holman J foresaw, in circumstances where the position of a court vested with rights of custody is very different to the position of the left behind parent, the difficulty in applying the test in *Re H (Minors) (Abduction: Acquiescence)* where the question is whether the court has acquiesced to the removal, noting at [56] that:

“...that authority, and authorities generally on the topic of acquiescence, are concerned with acquiescence by the left behind parent. It seems to me that a rather different approach has to be taken to acquiescence in the case of a court of competent jurisdiction in the state of habitual residence.”

80. In *NM v SM*, in considering whether it could be said that the Irish court in which rights of custody were vested had acquiesced to the removal of the subject child for the purposes of the 1980 Hague Convention, Holman J concentrated on the actions taken, or rather not taken, by the Irish court. In particular, Holman J considered that the fact that the Irish court had made no order addressing the removal of the child from the jurisdiction allowed him to conclude that the Irish court had acquiesced to that removal.
81. In cases such as this, where the question of acquiescence concerns the position of the court rather than the position of a parent, I consider that an objective test based on actions taken or not taken by the court is more attractive than a requirement to search, in the alternative or in addition, for the subjective intention of the court. This is particularly so where it is unlikely that a court would take an action suggesting one outcome whilst intending a different outcome, where the action taken by the court, and often the reasons for taking that action, are formally recorded in a contemporaneous order and where a case may have come before more than one judge, meaning that a number of judicial minds have been brought to bear on the case. This is not to exclude the possibility of cases in which it is more difficult to divine the position from actions taken or not taken by the court, for example where there have been no further hearings at the point at which the question of acquiescence falls for determination or where the aim of decisions taken by the court is ambiguous. In such cases, it might be necessary to seek to divine what was in the mind of the court. However, ordinarily, it should be possible to decide whether or not a court in which rights of custody vest has acquiesced for the purposes of Art 7(1)(a) by examining, on their face, the actions taken or not taken by that court subsequent to, and in some cases prior to, the removal. This is one such case. Applying the foregoing principles, I am satisfied that the court has not to date acquiesced to the removal of T.
82. Whilst the court has not made to date an order of its own motion requiring the return of T to this jurisdiction, the court has continued to case manage the proceedings

towards a final hearing by case management orders dated 6 December 2024, 29 February 2024, 12 March 2024 and 19 April 2024. The content of those orders indicates that the court continued to make decisions towards the determination of the application before it, including directing on 6 December 2023 further questions to the ISW, the provision of final evidence, care plans, final threshold document and report from the Children’s Guardian and listing an IRH. The court also on that date gave anticipatory directions in respect of any application for a placement order under the Adoption and Children Act 2002. The order of 29 February 2024 recorded that the mother would like to return to England, albeit that she would only do so if the local authority would assure her that T would not be removed from her care. At paragraph 4 of that order, and of particular significance, the court directed a hearing at which one of the issues listed for consideration was *whether* jurisdiction should be transferred to Poland. At that hearing on 29 March 2024 the matter was re-allocated to me and on 19 April 2024 I gave directions for the consideration of the issues set out at the opening of this judgment, including whether jurisdiction should be transferred to Poland. I am satisfied that each of the foregoing matters supports a finding that the court has not to date acquiesced to the removal of T from this jurisdiction for the purposes of Art 7(1)(a).

83. In the circumstances set out above I am satisfied that, by operation of Art 7 of the 1996 Hague Convention, this court retains the jurisdiction conferred on it by Art 5 of that Convention when T was habitually resident in this jurisdiction. The final question is what the court now does with respect to that retained jurisdiction.

*Art 8 Request or Declaration of Acquiescence?*

84. Where, as in this case, the court has jurisdiction in respect of the subject child and has before it an application under Art 8 of the 1996 Hague Convention that a request be made to another Contracting State to assume jurisdiction, the ordinary course is either to grant the application, as a result of which a request will be made either by the court or the parties, or to refuse the application, as a result of which the court will retain jurisdiction. The mother and the Children’s Guardian invite the court to determine the application under Art 8, although they seek different outcomes. In the circumstances of this case however, the local authority and the father advocate a third course, namely that the court should simply declare that it now acquiesces to the mother’s wrongful removal of T during the course of these care proceedings and communicate that decision to the jurisdiction of Poland via the Central Authority. I am satisfied that the appropriate course in this case is to determine the mother’s application under Art 8 of the 1996 Hague Convention.
85. The 1996 Hague Convention expressly provides, in the form of Arts 8 and 9 of the Convention, a mechanism by which jurisdiction can be transferred from one Contracting State to another where one Contracting State has or retains substantive jurisdiction but it may be appropriate for another Contracting State to exercise that substantive jurisdiction. Both Art 8 and Art 9 set out a clear test by reference to which the authority of the Contracting State having jurisdiction can decide whether or not to make a request for transfer. With respect to Art 8, this test centres on the extent to which the Contracting State to whom the request is to be made is better placed to assess the child’s best interests and the nature and extent of the links between the child and that State. Importantly, a requirement of Art 8 is that both Contracting States must agree to the transfer of jurisdiction before a transfer can take place. Art 8

is not only provides a mechanism by which a request is to be made, but also an opportunity for the requested State to make a considered decision as to whether to accept jurisdiction. In this jurisdiction, Chapter 6, Section 2 of the Family Procedure Rules 2010 provides a clear procedural regime governing requests under Art 8 and Art 9. In this jurisdiction, there is also a body of case law which provides guidance on the manner in which the domestic court should deal with the question of transfer of jurisdiction under Arts 8 and 9 of the 1996 Hague Convention (see for example *JA v TH (1996 Hague Convention: Request to Exercise Jurisdiction)* [2017] 2 FLR 250 and *AM and GM v KL and VL* [2023] 2 FLR 1131).

86. By contrast, whilst Art 7 provides a means of determining whether the court retains jurisdiction under Art 5 notwithstanding a wrongful removal of the child, Art 7 is not itself a transfer provision. Art 7 concerns the question of whether jurisdiction *has* moved, not whether it *should* move. Accordingly, the question asked by Art 7(1)(a) is whether the body or other institution holding rights of custody *has* acquiesced to a wrongful removal, not whether it *should* acquiesce to a wrongful removal.
87. It follows from this that Art 7 contains no test for whether a body of other institution holding rights of custody *should* acquiesce to a wrongful removal. Accordingly, were the court to follow the route advocated by the local authority and the father, it would have to formulate such a test. That test would have to maintain fidelity to the principle that the Convention must have the same meaning and effect under the laws of all Contracting States (see *Re H (Minors)(Abduction: Acquiescence)* at 88). There is, however, no material which assists in construing such an autonomous test. In circumstances where the question asked by Art 7(1)(a) is whether the body or other institution holding rights of custody *has* acquiesced to a wrongful removal, not whether it *should* acquiesce to a wrongful removal, neither the Explanatory Report nor the Practical Handbook deals with the latter question. Leading and junior counsel were not able to identify any domestic or international authority on the point. It is perhaps significant that in attempting their own formulation of a test from first principles, both Mr Hames and Mr Woodward-Carlton were driven, ultimately, to rely on criteria that very closely mirrored that contained in Art 8.
88. In addition to the absence of test in Art 7 for whether a body of other institution holding rights of custody *should* acquiesce to a wrongful removal, in circumstances where Art 7 is not a transfer provision there is also no procedural framework underpinning that provision.
89. Invoking Art 8 or Art 9 of the 1996 Hague Convention results in a formal request being made to another Contracting State, pursuant to Art 8(1) or Art 9(1), to assume the jurisdiction that the Contracting State making the request has, or has retained. This provides an opportunity for the requested Contracting State to consider whether or not to accept the transfer of the jurisdiction held or retained by the requesting Contracting State. As I have noted, in this jurisdiction Chapter 6, Section 2 of the FPR 2010 provides the domestic procedure for the determination of applications or requests under Art 8 and Art 9. FPR 2010 rr. 12.61 to 12.68 provides the procedure for the determination of applications under Art 8 and Art 9 and FPR 2010 r.12.66 provides the procedure for dealing with requests made by other jurisdictions to assume jurisdiction. The procedural provisions include provisions for dealing with the continuation of directions made in this jurisdiction pending acceptance of transfer (FPR 2010 r. 12.61(3)), the maintenance of a register of all applications and requests

for transfer (FPR 2010 r. 12.61(5)) and the service of any order or request relating to transfer of jurisdiction on the parties, the Central Authority of the other Contracting State and the domestic Central Authority (FPR 2010 r. 12.67).

90. By contrast, the course contended for by the local authority and the father, namely that the court should confer jurisdiction on Poland by simply declaring as a fact that it acquiesces to the wrongful removal of T for the purposes of Art 7(1)(a), would take place in a procedural vacuum. In particular, Poland would not formally be on notice that the jurisdiction of England and Wales sought to transfer its retained jurisdiction to Poland, would not be on notice of the reasons why the jurisdiction of England and Wales considered this the proper course and would have no say on whether that course of action was acceptable to it. A transfer of jurisdiction would be effected, but it would be effected peremptorily, rather than in the considered and co-operative manner envisaged by the transfer provisions expressly included in the 1996 Hague Convention. This would not in my judgement be consistent with the objectives of the Convention.
91. In addition to the foregoing matters, I am satisfied that there is a further objection to adopting the course contended for by the local authority and the father. As set out above, the aim of Art 7 is to ensure that a person who wrongfully removes a child from the Contracting State having jurisdiction should not be able to take advantage of that act in order to modify, for his or her own benefit, the jurisdiction of the authorities called upon to take measures of protection for the child. It would in my judgement be undesirable for a court to choose to acquiesce to the wrongful removal of a child from the jurisdiction during the course of care proceedings with which it is seised without any principled consideration, by reference to the terms of the Convention, of whether the jurisdiction the court retains should be transferred. Such a course would be tantamount to stating that a parent can, without more, successfully effect the transfer of jurisdiction from one Contracting State to another by wrongfully removing the child during proceedings. In cases where the court has retained jurisdiction by operation of Art 7 this is a further, and to my mind powerful, reason for considering the question of transfer of jurisdiction under the process and criteria expressly laid out by Art 8, rather than by way of the court choosing to acquiesce to the wrongful removal of the child pursuant to Art 7(1)(a).
92. For all these reasons, I am satisfied that Art 7(1)(a) was not intended to be used in the way now contended for by the local authority and the father, i.e. to determine the question of whether a Contracting State retaining jurisdiction to take protective measures in respect of the child by operation of Art 7 should now cede that retained substantive jurisdiction to another Contracting State. Rather, as submitted by the mother and the Children's Guardian, I am satisfied that that question is properly asked and answered under the provisions of the 1996 Hague Convention specifically designed for that purpose, namely Art 8 and Art 9 of the Convention. In this case, the operative provision is Art 8.

#### *Art 8*

93. All parties save the Children's Guardian contend that the court should grant the mother's application under Art 8 if satisfied, as I am, that it is the correct procedure. Whilst cognisant of the submissions made by Mr Jarman on behalf of T, I am satisfied that test for requesting pursuant to Art 8 that the jurisdiction of Poland assume

jurisdiction in respect of T is made out in this case and that the mother's application should be granted.

94. T plainly has a substantial connection with the jurisdiction of Poland. His mother and his maternal grandmother are each Polish citizens. He has extended family in Poland. In the circumstances, he plainly satisfies the requirement for a connection between the subject child and the requested State for the purposes of Art 8(2)(d). Where such a connection is established, as it is in this case, Art 8(1) of the 1996 Hague Convention requires that it thereafter be demonstrated that, by way of exception to the general jurisdictional rule under Art 5 of the 1996 Hague Convention that the Contracting State of the child's habitual residence has jurisdiction to determine questions in respect of the child's welfare, another Contracting State is better placed to assess the best interests of the child and that a transfer is in the child's best interests.
95. As this court observed in *AM and GM v KL and VL*, central to the general rule of jurisdiction referred to in the foregoing paragraph is the idea that, ordinarily, it is in a child's best interests for questions concerning their welfare to be decided in the place where he or she is integrated into a family and social environment, the aim being that the court of the Contracting State with which the children have the closest connection will be the one to determine their best interests. As this court further noted in *AM and GM v KL and VL*, the reason for this is self-evident in circumstances where the authorities in the country of the children's habitual residence are closer to, and will ordinarily have a greater understanding of, the children and their social and family environment and are therefore, ordinarily, better able to assess fully the children's situation and welfare needs when reaching decisions about the children's best interests. In these circumstances, whilst the fact that T's habitual residence has moved to the jurisdiction of Poland will not be determinative of the mother's application under Art 8, I accept Mr Setright and Ms Moore's submission that T's changed habitual residence is a factor strongly supportive of a conclusion that the jurisdiction of Poland is now better placed to assess the best interests of T.
96. This conclusion is further reinforced in my judgment by the fact that the Polish authorities have already engaged with the mother and T. As noted above, the Polish authorities undertook a welfare visit to T with his mother in early March 2024. That welfare visit was commissioned by the District Court in Łomża and was completed by the Specialist Curator from the District Court. At the present time the Polish authorities are undertaking a further assessment of the mother and T. Whilst I accept that a significant amount of assessment has taken place in this jurisdiction with respect to the mother and T, that information can readily be made available by this court to the District Court in Łomża or other appropriate authority to inform any further steps the authorities in Poland may wish to undertake. The assessment of the Specialist Curator from the District Court concluded, albeit on the basis of one visit, that T appears to be settling in Poland and is happy and content in his current environment.
97. The mother has co-operated with the welfare visit by Polish authorities and with the further welfare assessment being undertaken in Poland. By contrast, the mother refuses to return to the jurisdiction of England and Wales in circumstances where the local authority is not prepared, for understandable reasons, to assure the mother that T will remain in her care. Whilst the Children's Guardian strongly opposes the transfer of jurisdiction to Poland and instead argues that the court should make an interim care

order and seek the return of T to this jurisdiction, as I have noted, Mr Jarman conceded that that this course of action would require the court to impose on the local authority an order that it no longer seeks and would rely on the mother now co-operating with the orders of the English court. In the circumstances, whilst the court does not endorse and indeed strongly deprecates the actions of the mother in wrongfully removing T from the jurisdiction of England and Wales, the fact of the mother's co-operation in Poland, as against her refusal to return to the jurisdiction of England and Wales, is another factor that supports a conclusion that the jurisdiction of Poland, in which T is now habitually resident and in which the authorities have engaged with the mother, is better placed to assess the best interests of T.

98. Whilst Mr Jarman submits that there are no proceedings currently in train in Poland, once the court has determined that the other jurisdiction is better placed to assess best interests, it is a matter for that jurisdiction what measures of protection are taken, if any. This position is implicit in the terms of Art 8(1)(a), which makes clear that a request under Art 8 is for the requested State to assume jurisdiction to take such measures of protection as *that* State considers to be necessary. As the Supreme Court made clear in *In Re N (Children) (Adoption: Jurisdiction) (AIRE Centre and Others Intervening)* [2016] 2 WLR 1103, sub nom *Re N (Adoption: Jurisdiction)* [2016] 1 FLR 1082 at [4] in the context of Art 15 of BIIA, it is not for the courts of this country to question the competence, diligence, resources, or efficacy of either the child protection services or the courts of another State.
99. Having regard to these matters, I am satisfied that the jurisdiction of Poland is now better placed to assess the best interests of T and that it is in T's best interests for the jurisdiction of Poland to assume jurisdiction in respect of him. In the circumstances, I am satisfied that it is appropriate to stay the proceedings in this jurisdiction and, with the assistance of the English Central Authority, request pursuant to Art 8(1)(a) that the jurisdiction of Poland assume jurisdiction to take such measures of protection as it considers necessary in respect of T.

## CONCLUSION

100. In conclusion, for the reasons set out above I am satisfied that as at the date of this hearing, T is habitually resident in Poland. I am further satisfied that this court retains jurisdiction by operation of Art 7 of the 1996 Hague Convention. Finally, I am satisfied that the jurisdiction of Poland is better placed to assess the best interests of T and that, accordingly, these proceedings should be stayed to permit a request to be made pursuant to Art 8 of the 1996 Hague Convention that the jurisdiction of Poland assume jurisdiction to take such measures of protection as it considers necessary in respect of T. I will ask counsel to draw an order accordingly.
101. It follows from these conclusions that the final question before the court, namely what steps the English court should take, if any, where the court simply loses jurisdiction during the course of extant public law proceedings under Part IV of the Children Act 1989 by reason of a change of residence, does not fall for consideration. During the course of the hearing, all parties prayed in aid the decision of Gwynneth Knowles J in *Re D (Care Proceedings: 1996 Hague Convention: Article 9 Request)* [2021] EWHC 1970 (Fam). In that case Gwynneth Knowles J considered the proper approach where the English court had determined that it did not have jurisdiction in respect of a child in respect of whom care proceedings had been issued in this jurisdiction and that it



would not be appropriate to seek transfer of jurisdiction from the Contracting State that held jurisdiction. In permitting the local authority to withdraw its application Gwynneth Knowles J emphasised the positive obligations on the public authorities in this jurisdiction and in the other Contracting State to extend cooperation set out in Chapter V of the 1996 Hague Convention.