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*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

Delivered: 30/05/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION  
OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-v-

A MOTHER

Respondent

A CHILDREN'S COURT GUARDIAN

Notice Party

IN THE MATTER OF SE (A CHILD AGED 5 YEARS)

Ms J Lindsay KC with Ms C McCloskey (instructed by the Directorate of Legal Services)  
for the Trust

Ms M Connolly KC with Ms J Cunningham (instructed by McQueenie Boyle Solicitors)  
for the Mother

Ms L Murphy KC with Ms V Ross (instructed by David Russell Solicitors) for the  
Children's Court Guardian as Notice Party

McFARLAND J

*Introduction*

[1] By this application the Trust seeks to invoke the court's inherent jurisdiction to resolve an issue arising from conflicting provisions in the Children (NI) Order 1995 ("the Order") relating to religious upbringing.

[2] The child who I will refer to using a randomly selected cypher of SE is the subject of an interim care order being dealt with in a family care centre. The child

has been in a foster placement since August 2023. The family in that placement are active members of a Pentecostal church. The mother is an agnostic. Difficulties have arisen concerning the ability of SE to engage in public acts of worship, private acts of family worship and general engagement with the foster family's social activities which are largely centred around the church. The mother objects to SE receiving any form of religious instruction.

[3] The Trust seeks a declaration that SE be permitted to attend church services and church-based social activities which have a spiritual content whilst in her foster placement and to engage in spiritual activities in the foster home which include:

- Sunday morning church service;
- Sunday evening church service on occasions when children are involved;
- Social church activities such as quizzes and meals;
- Saying grace before meals and joining the foster family in prayer in the home;
- Joining the [family members] in the foster home in singing hymns and being read Bible stories;
- Attendance at children's camps and clubs during the summer holidays.

### ***Background***

[4] The Trust applied for a care order in October 2023. The father has not been identified by the mother, his name is not on SE's birth certificate, and it is reported that he is in England. He has never had contact with SE. The initial social services involvement was in June 2023 when there were concerns about the mother's suicidal ideation and drug misuse. Attempts were made to provide a safety plan utilising the maternal grandmother. In July 2023 there was a drug overdose and hospital admission with concerns continuing into August. At that stage the maternal grandmother felt unable to cope with caring duties.

[5] A further drug overdose occurred in late August again with a hospital admission with hospital staff observing evidence of physical self-harm. At that time SE was placed with her current carers under a voluntary arrangement. This placement allowed SE to start her P1 year at a school where she had been enrolled by the mother. At the time the mother was advised that the foster carers were a Christian family and church attenders. The mother made the Trust aware of her agnosticism and efforts were made to facilitate this. At this stage the issue about religion was not significant.

[6] Contact arrangements were put in place with the maternal grandmother on Sunday which would facilitate both foster carers attending church with their family.

However this arrangement broke down due to the maternal grandmother's conduct at contact [but it has been reinstated on another day from 29 February 2024 and direct contact now takes place every fortnight for one and a half hours]. [ ... ] Although contact was being facilitated with the mother, she has not had any [direct] contact with SE since 1 February 2024. The mother's motivation for this state of affairs is [as a result of her mental health]. She has made the decision not to avail of [direct] contact [but has maintained indirect contact through the provision of letters, cards and gifts on an ad hoc basis every three to four weeks. This has been reciprocated by the child. ...]

[7] Difficulties have arisen when the Trust have attempted to achieve a compromise about SE attending church, attending church based activities and her engaging in private family worship. It is clear that both the mother and the foster family hold very firm views about the topic, and it has been impossible to achieve a solution to this issue.

[8] The foster family are very active and dedicated members of their church and are fully committed to their Christian faith. Their lives appear to revolve around their faith and their social life also revolves around the church and association with others of a similar persuasion. Their religiosity extends far beyond simple observance of outward trappings of religion. Private worship occurs within the home and their social activities appear to be largely church-based. Although the intensity of this religious practice has heightened the argument in this case, the mother does hold equally robust views. Her objection is a principled one and is not based on the high level of intensity.

[9] With the maternal grandmother being unable to care for SE on Sundays, this started to impact on the foster carers' family life in that one parent was required to remain at home and this prevented that parent from joining in the public worship with a family group. Attempts were made to provide some alternative provision but with limited success.

[10] Difficulties arose over attempting to resolve issues over church activities over Christmas and Easter both periods being significant dates in the Christian calendar.

[11] The Trust became so concerned about developments that a 'Placement under Pressure' meeting was convened on 21 March 2024 closely followed by a 'Placement Disruption' meeting a week later. No resolution was found and due to the culmination of circumstances the foster carers felt that they would have to terminate the placement by the end of May 2024 unless a satisfactory arrangement could be found.

[12] There has been no change.

[13] The Trust is seeking the relief to prevent the breakdown of the placement. As part of its contingency planning alternative foster carers have been identified but

none of these placements are close to the present location, and SE will be required to move school. At this stage the religious persuasion of these potential placements has not been explored in detail and it is unclear if the issue will not re-emerge with a change of placement.

[14] As for the case generally, the family care centre has granted leave for the instruction of a consultant psychiatrist to prepare a report on the mother's mental health, and on receipt of that report it is likely that care planning decisions will be made resulting in a final hearing in the autumn.

### *The law*

[15] Article 52(6)(a) of the Order states that

“52(6) While a care order is in force with respect to a child, the authority designated by the order shall not—

- (a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made”

Article 49(1) of the Order defines ‘care order’ as to include an interim care order. It is not a worthwhile exercise getting involved in a theological discussion about whether or not agnosticism is a religious persuasion. Theoretically it could be argued that it is not, as agnostics profess to not knowing if a god exists, however, guidance from the ECtHR in *Kokkinakis v Greece* [1993] ECHR 20 at [31] indicates that:

“ ... freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.”

The rights of believers, non-believers, sceptics and the unconcerned are therefore to be given the same status. The intention of Article 52(6)(a) is therefore clear - the Trust shall not cause SE to be brought up in the Christian faith as SE would not have been brought up in that faith had the interim care order not been made.

[16] Set beside this prohibition, the legislation has imposed a duty of the Trust. Article 18(1)(a) and Article 26(1)–(3) of the Order state that:

“18(1) It shall be the general duty of every authority ... –

- (a) to safeguard and promote the welfare of children within its area who are in need”

“26(1) Every authority looking after a child shall –

- (a) safeguard and promote his welfare; and
- (b) ...

(2) Before making any decision with respect to a child whom it is looking after, or proposing to look after, an authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of –

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental responsibility for him; and
- (d) any other persons whose wishes and feelings the authority considers to be relevant,

regarding the matter to be decided.

(3) In making any such decision an authority shall give due consideration –

- (a) having regard to his age and understanding, to such wishes and feelings of the child as the authority has been able to ascertain;
- (b) to such wishes and feelings of any person mentioned in paragraph (2)(b) to (d) as the authority has been able to ascertain; and
- (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.”

In fulfilling its duty to safeguard and promote the welfare of SE the Trust is obliged to ascertain and have regard to the wishes and feelings of SE, the mother, the foster carers and any other relevant party. The Trust must also have regard to the child’s religious persuasion.

[17] This court is determining a question with regard to SE's upbringing so must treat SE's welfare as the paramount consideration (see Article 3 of the Order).

[18] Article 173 (2) and (3) of the Order requires the Trust to seek the leave of the court before bringing the proceedings, and the court should only grant leave if:

- “(a) the result which the [Trust] wishes to achieve could not be achieved through the making of any [other] order ...; and
- (c) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.”

[19] Gillen J dealt with the implications arising from the various Articles of the Order in *Re T* [2001] NIFam 4. In that case the child was placed with foster carers with a view to adoption. The foster carers were of the protestant faith and the mother of the roman catholic faith, and she objected to the placement. Gillen J at pages 11 and 12 was quite clear that the child's welfare was paramount and although the Trust's decision-making was circumscribed by the legislation, the court could act under its inherent jurisdiction:

“It seems to me however, that the present instance is a classic case where the court does have jurisdiction to make a declaration in the terms sought. Undoubtedly Article 52(6) does define restrictions on parental responsibility by the Trust in the exercise of its powers under a care order, but that does not preclude the court exercising its own jurisdiction, guided as it must be by the paramountcy of the welfare of the child in certain areas. It seems to me on the evidence that it would clearly be against this child's welfare at this time to be taken away from the present foster carers. The impact of such a move would be not only traumatic, but I suspect immutable. Clearly it is incumbent on the Trust to keep this matter under constant review and to determine regularly whether or not steps cannot be taken to meet the obligations under 52(6) consistent with the welfare of the child. I am satisfied that the present situation does not permit the wishes of the mother with reference to the religious upbringing of this child to be accommodated in the interests of the welfare of the child. In doing so needless to say the court makes it absolutely clear that it makes no comparative analysis whatsoever of any religious denomination, persuasion or education. The

court readily recognises that the religious upbringing of a child may be an element of fundamental importance, but it must be seen nonetheless in the overall context of the general welfare of the child.”

[20] It is clear that the mother’s rights under ECHR are engaged. She has the right to respect for her private and family life (Article 8) and in common with every citizen (including the foster carers) the right to freedom of thought, conscience and religion, including the right to change her religion or belief and freedom, either alone or in community with others and in public or private, to manifest their religion or belief, in worship, teaching, practice and observance (Article 9). The right to believe (and not believe) is therefore absolute.

[21] However the right to manifest one’s religion is qualified. Article 9(2) provides as follows:

“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

In this context Ward LJ in *Re P* [2000] Fam 15 at 43 clearly enunciated the principle of the paramountcy of a child’s welfare – “in the jurisprudence of human rights the right to practice one’s religion is subservient to the need in a democratic society to put welfare first.”

[22] The qualification in the case of a child reflects the ‘welfare’ principle. This is best illustrated in the judgement of Munby LJ in *Re G* [2012] EWCA Civ 1233. This was a private law dispute between parents about the upbringing of their children. Both parents had been members of the orthodox Jewish faith but the mother, after separation, had changed her religious persuasion. The general principle concerning the evaluation of a child’s welfare was set out at [27]:

“Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must

adopt a holistic approach.”

before making reference to how the aspect of religion feeds into the evaluation in a section of the judgment between [35] and [51].

[23] It is not necessary to quote from this section of the judgment save for the general principle set out at [36]:

“It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are "legally and socially acceptable" ... and not "immoral or socially obnoxious" ... or "pernicious" ...”

[24] As to how this all fits into the application of Article 52(6)(a) is best illustrated in the judgment of Baker J in *Re A & D* [2010] EWHC 2503 at [74] and [75] when he was considering the identical English provisions -

“74. I therefore conclude that the subtle and careful language used in section 33(6)(a) requires an equally subtle and careful interpretation, rather than the inflexible, and in my view unworkable, interpretation for which the father contends. When a young child is made the subject of a care order, the local authority is under a duty to ensure that he is not brought up in any different religious persuasion from that followed by his parents prior to the care order. If the local authority breaches that duty, it will be exceeding the limitation imposed on its exercise of parental responsibility by section 33(6)(a) and, in appropriate circumstances, the parents may apply for judicial review or seek injunctive relief for breach of statutory duty or under the Human Rights Act. Furthermore, so far as possible, the local authority must ensure that the child is brought up with a full appreciation and understanding of his religious heritage and background. If his parents subsequently change their religion, the local authority must have regard to that fact. In my judgment, however, it is not obliged, nor indeed permitted, to take any steps that would be contrary to his overall welfare. Equally, if one parent, but not the other, converts to a different religion, the local authority must have regard to that fact, particularly perhaps if the parent returns to a former religion previously practised within the extended family which constitutes a significant aspect



of the child's heritage, but again the local authority is not obliged nor allowed to take any steps that would be contrary to his overall welfare. And as the child develops and makes his own choices, the local authority must respect his personal autonomy and freedom of conscience, provided again that by doing so it is safeguarding his welfare.

75. In my judgment, the local authority's duty under section 33(6)(a), like all its statutory duties under the Children Act, is subject to its overriding duty under section 17(1) and section 22(3). Under section 17(1)(a), "it shall be the general duty of any local authority (in addition to the other duties imposed on them by this part) ... to safeguard and promote the welfare of children within their area who are in need". Under section 22(3)(a), "it shall be the duty of the local authority looking after any child ... to safeguard and promote its welfare". In *Haringey LBC v C and E and another intervening* [2006] EWHC 1620 (Fam), [2007] 1.FLR 1035, Ryder J observed (at paragraph 76):

'Religious, racial and cultural factors are integral elements of welfare and may on the facts of a particular case provide both the positive and negative factors and context by and within which decisions have to be made. However, whatever an individual belief system may provide for, and despite the respect that will be given to private and family life, and the right to freedom of thought, conscience and religion, and the freedom to manifest religion or belief in worship, teaching, practise and observation (by articles 8 and 9 of ECHR), the law does not give any religious belief or birthright a pre-eminent place in the balance of factors that compromise welfare .... Furthermore the safeguarding of the welfare of vulnerable children and adults ought not to be subordinated by the court to any particular religious belief.'

[25] It is, however, important to recognise that the engagement of the welfare principle in this case at this time does not relate to whether it is in the child's interests that the child be brought up in the foster carers' home and in the religious environment within that home, but rather it focuses on the situation of a potential

placement breakdown and whether that breakdown and forced movement to another placement is in the child's best interests. To that extent many of the authorities on this issue are not particularly relevant as they deal with the impact of certain religious practices on a child's welfare eg dietary requirements, medical interventions such as circumcision and refusal to vaccinate.

### *Consideration*

[26] The provisions of the 'welfare checklist' in Article 3(3) of the Order are well-known but bear repeating:

- “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.”

[27] The child is five years of age. The child's wishes and feelings as to the placement have, for obvious reasons, not been explored at this stage. I do accept the evidence of the Trust and the guardian that the child is well settled in the placement and is receiving excellent care. The child's emotional needs are clearly catered for in the placement. I rule out any return to the mother's care in the near future. A substitute foster placement could cater for the child's general needs. I would also be confident that a new school could deal with any educational need.

[28] The significant factor would be the change of circumstances. This child has had a turbulent upbringing in recent years. She has now achieved a stability in her current placement that was absent for the recent period in the mother's care. Any change of placement would bring challenges. The child would lose the companionship of the children within the foster placement and her friendship group

within the school setting. A critical factor is the lack of any continuity in [direct] contact with the child's [mother]. There is none and nothing likely on the horizon. The current foster placement is a welcome port in the storm for the child, and casting the child loose is likely to cause significant emotional harm to the child. No doubt foster carers are available who will, in time, provide a secure protective and caring environment. It is speculative to consider whether this problem may not arise again with a new placement or how long the child will take to recover from any move.

[29] I consider that any move at this stage is likely to cause harm. Although the welfare evaluation is based on an holistic approach and the extent of the harm is a matter to be dealt with on that basis, as the Order has restricted the use of the inherent jurisdiction to cases when significant harm is likely on a failure to exercise the power, it is important to make that determination. I do consider that the placement move gives rise to a likelihood of significant harm to the child. To force her to leave this current placement given the background to the child being admitted into care and the failure of the mother to engage in [direct] contact with the child is likely to generate a significant level of harm at least in the short term.

[30] On that basis notwithstanding the Trust's failure to ensure that the child is being brought up on the basis of the mother's religious beliefs, the welfare of the child demands that the court exercise its inherent jurisdiction and I order that the Trust, in exercising its parental responsibility for the child, permit the child to engage in the religious practices of the foster carers.

### *Conclusion*

[31] For the removal of doubt, I have considered the suggested interpretation of the statutory framework by Baker J in *Re A & D*. I do not accept that there has been any breach of human rights in the case. It is easy to look at this in hindsight and say that the placement may not have been appropriate. At the time there was a degree of urgency given the presentation of the mother and the lack of any realistic family network to care for the child, or to support the mother in that task. Emphasis was placed on the location and accessibility to a school which had been the mother's choice. The religious element was discussed with the mother and whilst the mother expressed her own religious beliefs there is no evidence that there was an objection at the time. The objections arose at a later stage.

[32] Baker J referred to the need for the Trust, so far as possible, to ensure that the child is brought up with a full appreciation and understanding of the religious heritage and background when a placement with a family of similar religious views to the parents is not possible. This is particularly difficult in this case as the mother does not profess to a positive belief system. Her belief is that one does not know if there is a God. The Trust managed to cater for this through contact between the child and the mother. Contact records reflect that the mother was able to discuss her agnosticism with the child in an appropriate manner. Unfortunately the mother has closed that channel of communication down as she does not attend [direct] contact

[and the current level and form of indirect contact is not really an adequate or effective substitute when explaining a belief system to a five year old child]. The suggestion by Baker J about the use of a specialist social worker or other party to facilitate instruction is not really a viable option given the nature of the mother's belief system.

[33] For the reasons given I consider that the court should exercise its inherent jurisdiction and grant the relief sought by the Trust.

#### ADDENDUM

Following the delivery of this judgment on 30 May 2024 I was contacted by counsel concerning several factual errors relating to contact between the child, the mother and maternal grandmother. A short hearing was convened on 14 June 2024. I have agreed to amend the judgment to correct the errors. I have made the amendments at paras. [6], [28], [29], and [32] and these are now shown in square brackets and in red. The amended judgment now reflects my final judgment.