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

Delivered: 08/11/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 7 AND 8  
OF THE HUMAN RIGHTS ACT 1998

Between:

A FATHER

Applicant

v

A HEALTH AND SOCIAL CARE TRUST

Respondent

and

A MOTHER

Notice Party

In the matter of CT (an eight year old female child)

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Ms G Brady (instructed by McCann & McCann Solicitors) for the Father  
Ms C McGrane (instructed by the Directorate of Legal Services) for the Health and Social  
Care Trust

Ms R McMillan (instructed by Donnelly & Wall Solicitors) for the Mother  
Ms S O'Flaherty (instructed by the Official Solicitor) represented the interests of  
the child

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**McFARLAND J**

*Introduction*

[1] This is an application pursuant to sections 7 and 8 of the Human Rights Act 1998 and concerns a decision of the Trust relating to the move of a looked after child from one primary school to another.

[2] I will call the child CT, which is a randomly chosen cipher used to protect her identity. She was born in December 2014 and is one of nine siblings. The eldest five children and youngest two live with the father, all without any care orders or social services involvement. This child and a younger brother initially lived with the mother, but social services were required to intervene and both children were removed from her care. The Family Proceedings Court made a care order in respect of CT on 28 February 2023, approving a care plan of long-term fostering.

[3] CT at that time was well settled in the primary school which she had attended since starting education, but because of the logistical problems transporting the child to that school from the foster-carer's home, the Trust had included in its care plan a provision that she move school to be nearer the foster-carer's home to reduce travel time and avoid crossing Belfast city centre during rush-hour.

[4] The father and the court children's guardian opposed this proposal, the mother agreed with it and the matter was listed for determination before the Family Proceedings Court. By a ruling made on 28 February 2023, the court held that it was not in the child's best interests that she change schools and the order of the court directed that the matter should be referred back to the court should a move be contemplated in the future and could not be agreed.

[5] Two orders were issued on that date. The first was the care order and the second dealt with the school move and contact with the father. The second order stated:

"In the event that the parties are not in agreement in relation to a school change the Trust will revert the matter back to court should they seek a school move for [the child]."

[6] The Trust then convened a special issue LAC meeting in June 2023 which discussed a school move to a different school but within the same locality as the home of the foster-carer. This proposal resolved several of the issues raised by the guardian during the earlier application as it was not a mid-year move and the foster-carer's child also attended this new school. It did however create another issue relating to religious ethos. The child was then attending a controlled school, the move rejected in February 2023 was to an integrated school and the proposed move discussed in June 2023 was to a maintained school. The father identifies himself as a presbyterian although states that he does not attend church or practise his Christian religion. The mother (with whom the child was brought up) has not stated her religion or denomination and it does not appear to be a significant issue for her. The father's main focus on this issue is not so much the practice of religion but rather his perception of his Protestantism through cultural and traditional events such as attendance at the 11<sup>th</sup> July bonfire and 12<sup>th</sup> July celebrations.

[7] The LAC meeting decided that the school move should proceed to the

maintained school adjacent to the foster-carer. The mother was supportive of the school move. The Trust indicated to the father that it intended to revert back to the court to seek an order. On receiving legal advice that the Trust could not refer the matter back to the court, the Trust then proceeded to exercise its power under Article 52(3) of the Children (NI) Order 1995 (“the CO”) to determine the extent of the father’s parental responsibility which he shared with the mother and the Trust and decided to change the child’s school.

[8] The father issued the human right’s notice on 30 August 2023. The notice sought an interim injunction to prevent the school move, but McCloskey LJ, sitting in the vacation as the duty judge, declined to grant such an order. The notice set out the father’s grounds namely that the school move was not in her best interests as the child had a shared school environment with three siblings in her existing school, the child had extensive special needs which were being catered for in her existing school, and that her current school met her religious and cultural needs. The alleged breach of the applicant’s and the child’s Article 8 rights were stated to be a failure to conduct a proper and balanced analysis of the competing factors and giving disproportionate weight to factors that were either not significant or could be resolved by input of resources.

#### *The orders of the Family Proceedings Court*

[9] On the face of it, the order of the lower court appears to be an attempt to create a ‘starred’ care plan, whereby it was directing the Trust to revert back to it in the event of a decision to reactivate that part of the care plan relating to the school move that had been rejected by the court.

[10] It was thought that starred care plans had been consigned to history. After the Children Act 1989 was enacted there was a period when it was considered that to enable the court to retain a role in care planning that orders could be made indicating that if certain ‘milestones’ were achieved during the currency of the care plan then the matter should be brought back to the court for further consideration. The problem with this approach is that it ran contrary to the principles of the legislation which were that the courts would decide whether the grounds existed for the making of public law orders, and if they did, what that order should be. Once made, it was for the local authority (in England & Wales) and the Trust (in Northern Ireland) to manage the care planning. It was not the court’s function to manage a care plan for a looked after child.

[11] The key judicial decisions relating to starred care-plans were the Court of Appeal decision in *Re W and B* [2001] EWCA Civ 757 and then the House of Lords in *Re S Re W* [2002] UKHL 10. The House of Lords overturned the decision of the Court of Appeal which had attempted to protect what were considered key elements of the court approved care plan and ensure that the matter reverted to the court for approval should it be proposed that they change.

[12] The provisions of the CO, which echoed the Children Act 1989 (which applied

in England & Wales), place significant obstacles in the way of any court intervention as to how a Trust manages a care plan, leaving only a small number of matters in the court's hands (ie contact issues, permission to reside outside Northern Ireland, and usage of a different surname). The type of order envisaged by the order of the Family Proceedings Court would have been an article 8 specific issue order to permit a change of school. Such an application is specifically prohibited by article 9. A school move is unlikely to be considered as the type of "serious or grave matter with profound enduring consequences for the child" as envisaged by King LJ in *Re H* [2020] EWCA Civ 664 at [27]. Such a matter would require court consideration with the court exercising its inherent jurisdiction.

[13] Had the Family Proceedings Court considered that the child's school was of critical importance to the overall care plan, then the appropriate method to deal with the problem would have been to adjourn to allow the Trust to re-consider its care plan and attempt to resolve the outstanding issue in accordance with the guidance suggested in *Re T-S* [2019] EWCA Civ 742.

[14] It was reported to me that the draft order was compiled by the Trust's counsel, approved by the legal representatives of the other parties, and then submitted to the court office which proceeded to issue the order without reference to the district judge. If the recorded order of the court is not in fact correct this should be remedied as quickly as possible. As to how the legal representatives came to the view that the draft they collectively submitted represented their understanding of the intention of the family proceedings court remains a mystery. The Family Proceedings Court had clearly invested time in its consideration of the educational aspects of the care plan, but then by making the care order, the only purpose of that consideration was to inform the Trust of the court's views, and no more.

### *The Human Rights Act remedy*

[15] Section 6(1) of the Act provides that it is unlawful for a public authority to act in a way which is incompatible with an ECHR right. Section 7(1) provides that a person who claims that a public authority has acted in a way which is made unlawful by section 6(1) may bring proceedings against the authority under the Act.

[16] The father relies in his notice on the Trust acting in breach of his, and his child's, Article 8 and Article 9 ECHR rights. Article 8 (1) provides that:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

Article 9 (1) provides that:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to

manifest his religion or belief, in worship, teaching, practice and observance.”

Both rights are qualified by slightly different provisions but essentially interference with both rights is permitted if the interference is in accordance with the law, is 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.

### *The special issue LAC meeting in June 2023*

[17] In April 2023 after a professional network meeting between the Trust and Therapeutic Support Services, facilitated by a consultant forensic psychologist and a clinical psychologist, it was decided that the school move issue should be revisited. On 13 June 2023 the Trust met with the father to discuss his attitude which remained one of opposition. The LAC meeting was convened on 21 June 2023 and was attended by social workers, the father, the foster carer, and two teachers from the child’s current school. A teacher from the intended new school also attended for part of the meeting.

[18] The meeting noted that the child was at the lower end academically and was availing of additional supports within the school and had intervention from Harberton School, a school specifically dealing with children with moderate to severe learning difficulties. She also availed of support from a school counsellor.

[19] The meeting also had before it a social work report that outlined the advantages and disadvantages in relation to the school move.

[20] The decision of the meeting was to approve a school move. The disruption likely to be caused by the move away from the existing school and the relationships between the child and her fellow-pupils and staff was outweighed by the need for the child to put down roots with her new community given the long-term plan for the fostering placement. Whilst it was acknowledged that CT has special needs, the support package available within the new school was similar to that of the old school. The change of the location of her school, would significantly reduce the time and energy spent in travelling and would provide a much better routine for the child.

[21] The father still maintained his objection to the move. The guardian, who at that stage had been discharged, was not present. Her previous opposition was based on two main factors. First, the proposed school was not attended by the foster-carer’s son and second, the plan in February 2023 was in the middle of the school year. Both these objections had been addressed by the changed plan.

[22] The plan was to achieve the move in September 2023 when the child was due to commence her P5 year. At that time, the LAC meeting was still under the impression that the matter had to return to court for approval.

### *The school move*

[23] On 15 August 2023, the Trust having received legal advice, wrote to the father's solicitors advising them that it intended to proceed with the school move on 30 August 2023.

[24] A tentative approach had been made to the existing school with regard to a transition plan at the end of June 2023, but little appears to have been achieved largely due to the intervention of the school holidays. As a result the move to the new school was achieved with the child attending the new school on 30 August 2023. Prior to that, the Trust had eventually made contact with the old school on 29 August 2023, and a 90 minute visit was arranged at the old school on 31 August 2023.

[25] It is reported to the court that the child is now successfully integrated into the new school with it reporting to the Official Solicitor that the child has settled well into her class, has formed friendship groups, with an excellent attendance record and very good punctuality and presentation.

[26] In a letter of 12 October 2023 the foster-carer has written that CT is much less tired and far more energetic than before. She also reports that CT has told her that she is much happier being able to travel straight home from school rather than go to day-care. The child has several new friends in her class, and she is now part of a local gymnastics club. The foster-carer's conclusion is that the school move has gone smoothly, the child has adapted and is settled.

### *Consideration*

[27] The father's and the child's Article 8 ECHR rights are engaged as a result of the school move. The Grand Chamber ECtHR in *Ibrahim v Norway* [2021] ECHR 1060 indicated that the consideration of the placement of a child with a foster-carer resulting in the child's upbringing outside the Muslim faith of the parent should be an integral part of the Article 8 right as opposed to a separate stand-alone right protected by Article 9 (see [140] and [141]). In the case of CT, with the father's objections based more along cultural, rather than pure religious, lines, Article 9, which does not mention 'culture' as a protected right, is of very limited relevance. The whole issue relating to the child's cultural background falls to be dealt with more conveniently within the Article 8 right of respect for family life.

[28] The Article 8 right, as interpreted and applied in the light of Article 9, is not only engaged at a procedural level but also by assessment of the proportionality of the planned move and how it was implemented.

[29] The procedural obligation was recently confirmed by the ECtHR in *Strand Lobben v Norway* [2019] ECHR 615 when it stated at [212] that depending on the nature of the decisions being made, the parents need to be involved in the

decision-making process. In *Re H King LJ* at [99] stated that it was axiomatic that any Trust must involve parents in decision-making and take their views into account. She added that Article 52(3) CO was “not an invitation to a [Trust] to ride roughshod over the wishes of parents.”

[30] I am satisfied that the procedural obligation placed on the Trust has been satisfied. The decision making by the LAC meeting in June 2023 allowed for the full participation of the father and permitted him to articulate his objections to the proposal to change school. There may have been an erroneous expectation in that the father believed that he may have been able to later maintain his opposition in the court environment, but that does not undermine the participation granted to the father in the decision-making process. It must also be noted that this was not simply a dispute between the Trust and the parents, but rather a dispute with the Trust and the mother adopting one position in favour of the move, and the father opposing it.

[31] As for the proportionality of the decision to change school, this was very much a decision based on the welfare of the child. The role of the court is not to re-consider the issue again and to impose its own decision on the Trust. The transporting of the child to and from school involved a significant part of the CT’s waking hours and given her age it was a very important consideration, as was the need to allow her to integrate fully within her new environment which is envisaged to be a permanent foster-placement.

[32] The Trust weighed up these considerations against what was clearly a well settled child within her existing school environment. It also took into account CT’s special needs and whether the new school would be able to cater for them and access external support at the same level as before.

[33] The change of routines and personnel involved would obviously have had a detrimental impact, but I consider that this was taken into account.

[34] I do not consider that the issue of Article 9 rights is particularly engaged. The mother is not concerned about the issue. In *Ibrahim* (at [161]) the ECtHR indicated in cases of removal of a child, that regular contact between a child and its parent can be sufficient to satisfy a parent’s and child’s Article 8 rights, as interpreted by Article 9. The breach of the Article 8 right in *Ibrahim* was much more significant with a Muslim child placed for adoption with Christian adopters with very limited contact – six times a year for one hour by court order and even then this was not achieved. The court had considered that given the need to remove the child from the parent on welfare grounds adequate contact arrangements would have been sufficient to maintain religious and cultural ties. In the case of CT, no issue arises concerning the contact arrangements between the father and the siblings in the care of the father.

[35] The only remaining matter for consideration is the management by the Trust of the transition. The old school were not directly advised of the move, and it is clear that there was little planning made for the move. There appears to have been a last minute rush in late August 2023, but because of the school vacation and a public

holiday on 28 August 2023 all that could be arranged was the short visit back to the old school on 31 August 2023, after the child had spent one day at the new school on 30 August 2023.

[36] One does have to look at this in its overall context. Many children manage a change of school without any need for transitioning. CT does have special needs, and these have to be considered, but there is no evidence that she suffered in any way during this period. The old school's staff refer to her being a little withdrawn during the visit back to the school, but given that she was in her new school uniform and was saying her goodbyes to her school friends and teachers that is understandable.

[37] This was a school move within the same city and given everything that has happened to this child, it is hard to envisage a situation whereby a modest failure in managing a transition from one school to another is to be elevated to the Trust acting in a way that is incompatible to the child's rights. I have specifically referred to the child's rights, and not the father's rights as I do not consider that he can argue on his own behalf. Ultimately, the welfare of the child has not been compromised in any way, and the evidence being provided by the foster-carer and the new school would indicate that the child, even in the absence of a more meaningful transition, is thriving at the new school.

### *Conclusion*

[38] I therefore consider that the planning, decision-making and implementing of, and by, the Trust in relation to CT's change of school was not incompatible with the father's or CT's Article 8 ECHR right, as interpreted by Article 9.

[39] I therefore dismiss the father's application.

[40] I will hear the parties in respect of any issues relating to costs.