[2024 Gib LR 550]

IN THE MATTER OF C (A CHILD) (CARE PROCEEDINGS: 1996 HAGUE CONVENTION)

CARE AGENCY v. A, B and C

SUPREME COURT (Restano, J.): October 28th, 2024

2024/GSC/040

Family Law—children—care order—child abandoned shortly after birth and parents unable to care for her—threshold criteria met and final care order necessary and proportionate—care plan provided two options: child to remain with foster carers or assessment of paternal aunt in Morocco as possible kinship carer—issues arose as to cross-border arrangements for assessment in Morocco—Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children applied

The Care Agency applied for a care order.

C was born in November 2023. The first respondent was C's mother and the second respondent was C's father. C was abandoned by her mother shortly after birth and was currently in foster care. The Care Agency applied for a care order under s.64 of the Children Act 2009. The proposed care order provided for two options, namely for C to remain with her foster carers as her long-term carers or for C to live with her paternal aunt in Morocco, subject to a positive connected carer assessment.

The mother had mental health and addiction issues. She understood that reunification with C was not currently possible. She agreed to a final care order being made. Her preference was for C to remain with the current foster carers in Gibraltar. She was concerned that she would lose contact with C if the child were to move to Morocco.

The father was Moroccan and had recently moved to the Canary Islands. He agreed to a final care order being made because he was currently unable to care for C. He wanted his sister, who lived in Morocco, to be assessed as a potential kinship carer for C. The Care Agency proposed the appointment of an experienced UK-based independent social worker to assess the aunt in Morocco but the father argued that the assessment should be carried out by an independent social worker who was a Muslim and who had an appropriate cultural and linguistic understanding of Morocco.

Held, judgment as follows:

The threshold criteria for making a care order under s.64(2) of the Children Act 2009 were clearly met. Neither parent could care for C, which they accepted. It was necessary and proportionate for a final care order to be made so that parental responsibility could be vested in the Care Agency. This would ensure that C had a safe and stable upbringing. The two options outlined in the care plan were, in principle, acceptable. The foster carers provided a safe and stable home for C in Gibraltar where she was thriving. On the other hand, if the paternal aunt's assessment was positive, this could provide an alternative option for C's care. However there were two features of the proposed assessment in Morocco which required further consideration, namely the applicable cross-border arrangements for the connected carer assessment to be carried out and the appropriateness of the proposed expert. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children applied in Gibraltar and Morocco. It provided a scheme for inter-country placements requiring consultation between the central authorities in the requesting state (in this case Gibraltar) and the requested state (Morocco). Article 33(1) of the Convention made it clear that if a placement of provision of care was contemplated in another state, the requesting state must first consult the competent/Central Authority and transmit a report. The Care Agency confirmed that the Moroccan competent/Central Authority would be notified from the outset. However the appointment of an expert could be approved at this stage. The Care Agency must first work out how the connected carer assessment was going to work in practice. This would inform the Care Agency on how best to proceed, whether the assessment needed to be routed through the Moroccan competent/Central Authority, and whether appointing a UK-based independent social worker was appropriate. The proposed UK-based expert was no doubt a highly experienced and accomplished social worker with international experience but he had no experience in Morocco or similar countries. Further, there was no indication that he spoke Arabic, Spanish or French, which would enable him to communicate with the father's family in Morocco. The court could also not determine whether the social worker suggested by the father would be better placed to carry out the connected carer assessment. Her knowledge of the case, her familiarity with Morocco and the fact that she spoke Spanish and French appeared to be an advantage, and the paternal aunt appeared to prefer that the assessment was carried out by a woman, but the Care Agency did not consider that she had the required expertise for this type of assessment. Further consideration needed to be given to the appointment. It was neither possible nor desirable for the court to lay down any fixed principles as to how the assessment of C's paternal aunt should proceed, if it was appropriate for a UK-based independent social worker to be appointed and, if so, who was best placed to undertake that role. In order to progress matters pragmatically, however, the court would approve, in principle, the appointment by the Care Agency of an independent social worker provided

such an appointment was acceptable to the Moroccan competent/Central Authority and accorded with relevant best practice. Any appointee should have the necessary expertise and skills (including language skills) to carry out a connected carer assessment in Morocco with the paternal aunt and wider family. The Care Agency was to provide an amendment to the care plan in line with this judgment, and the care order would be made on that basis (para. 26; paras. 44–46; paras. 52–57; paras. 79–90).

Cases cited:
(1) *Birmingham City Council* v. *W*, [2019] EWFC 59, referred to.
(2) *G (Children) (Care Order: Threshold Criteria)*, *Re*, [2001] EWCA Civ 968; [2001] 1 W.L.R. 2100; [2001] Fam. Law 727; [2001] 2 FLR 1111; [2001] 2 F.C.R. 757, referred to.
(3) *S (Care Order: Implementation of Care Plan)*, *In re*, [2002] UKHL 10; [2002] 2 A.C. 291; [2002] 2 W.L.R. 720; [2002] 2 All E.R. 192; [2002] Fam. Law 413; [2002] 1 FLR 815; [2002] 1 F.C.R. 577; [2002] U.K.H.R.R. 652; [2002] HRLR 26, considered.
(4) *W (Adoption: Approach to Long-Term Welfare)*, *Re*, [2016] EWCA Civ 793; [2017] 1 W.L.R. 889; [2016] Fam. Law 1213; [2017] 2 FLR 31, referred to.

Legislation construed:
Children Act 2009, s.4(3): The relevant terms of this subsection are set out at para. 28.
s.93M: The relevant terms of this section are set out at para. 56.

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (The Hague, October 19th, 1996), art. 33: The relevant terms of this article are set out at para. 57.

D. Conroy instructed by the Care Agency;
C. Pitto (instructed by Ullger Law) for the first respondent;
The second respondent appeared in person;
C. Pizzarello (instructed by Hassans) for the third respondent (through her guardian *ad litem*).

1 **RESTANO, J.:**

Introduction

This is an application by the Care Agency ("CA") for a care order under s.64 of the Children Act 2009 ("the Act"). The application concerns the third respondent ("C"), who was born on November 6th, 2023, and who is currently in foster care. C's mother and father are the first and second respondents respectively, and I will refer to them as "the mother" and "the father" in this judgment.

The care proceedings chronology

2 This application was filed on November 28th, 2023. The trigger event that led to the application happened when the mother abandoned C, leaving her with a CA carer. The first hearing in this matter took place on November 29th, 2023 when the CA made an urgent application for an interim care order. The application for an interim care order was granted, and since then C has been living with foster carers in Gibraltar. At that first hearing, an order was also made providing for the appointment of a guardian *ad litem* ("the guardian"), and Natalie Tavares was later appointed as C's guardian.

3 The father is Moroccan and until recently he lived in Algeçiras. He was not initially named as a party in these proceedings as the CA was uncertain who C's father was. The father, however, attended the first hearing claiming to be C's father, and he was at that point added as an interested party.

4 The matter next came before the court on January 22nd, 2024 when, following a positive paternity test, the father was added as a party and the court laid down further directions leading up to a final hearing. At that point, the final hearing was scheduled to commence on May 20th, 2024.

5 On May 10th, 2024, the matter came back before the court, when several issues had to be dealt with. First, the father's Spanish residence card had expired in April 2024, which meant that he could not enter Gibraltar at that time. Secondly, as the father does not speak English and does not have a lawyer, funding had to be released to provide him with an interpreter to enable him to follow the court proceedings, and to assist with the translation of documents. Thirdly, given the father's desire to care for C at that time, the guardian instructed Children and Families Across Borders ("CFAB") to provide her with a social worker report regarding the father's (now abandoned) proposals for C's care in Algeçiras. At that point, a connected person's assessment was also going to be carried out in Gibraltar, although those plans have since fallen through. As a result of those developments, however, the final hearing had to be adjourned until October 21st, 2024.

6 At a further hearing on July 16th, 2024, the parties agreed that the threshold criteria under s.64 of the Act had been met, although the mother and the father did not, however, agree on the proposed arrangements for C's care.

7 As can be seen from this short overview of the progress of this case, there has been some delay in the conclusion of these proceedings. Unlike England and Wales, there is no statutory requirement for care proceedings to be concluded within a prescribed time, although s.66(1) of the Act provides that an application for a care order must be disposed of without delay. Further, s.4(2) of the Act enshrines the general principle that any delay in determining a question regarding the upbringing of a child is likely

to prejudice that child's welfare. Considering the justice of the case as a whole, and even when one considers the presumptive prejudice to the child of delay, I am satisfied that there were good reasons for the adjournment of the final hearing especially as this enabled the full participation of the father in the proceedings.

The evidence

8 There was extensive written evidence before me, including witness statements and assessments filed by the CA, position statements filed by the mother and father, a psychological and therapeutic clinical analysis report prepared by Giselle Carreras, two reports filed by the guardian, an independent parenting assessment of the father, and three care plans, with updates provided in relation to the latest care plan. I do not propose to rehearse all aspects of the evidence because much of it was overtaken by events. In particular, a threshold was agreed and in the end the mother and father agreed to the making of a care order because they accepted that they are unable to care for C at present.

9 At the hearing, I heard oral evidence from the father. Further, the lawyers for the CA, the guardian and the mother filed skeleton arguments in advance of the hearing, and they made submissions at the hearing.

The parties' respective positions in outline

10 Irene Moyano Delgado, a social worker at the CA, has provided a fourth witness statement dated October 4th, 2024, providing the CA's updated position. In this statement, she confirms that the father has recently moved to the Canary Islands and that he has recently proposed that his sister cares for C in Morocco where she lives. Ms. Moyano Delgado also states that the mother, who has mental health and addiction issues, has not been engaging with the CA's therapeutic team since May 2024. Further, she points out that the mother continues to make significant decisions about her life within short timescales, often linked to new relationships.

11 The CA's position is that a final care order should be made, based on a care plan dated September 25th, 2024, as recently amended in emails from the CA dated October 14th and 18th, 2024. This provides for two options. The first option is for C to remain with her foster carers as long-term carers for C. The second option is for C to live with her paternal aunt in Morocco, subject to a positive connected carer assessment.

12 The mother's position is set out in her position statement dated May 2nd, 2024, and in submissions dated October 11th, 2024 filed by her lawyer. She agrees to a final care order being made, and states that she understands that reunification with C is not currently possible as she is still undergoing rehabilitation. Her aim, however, is to achieve this in the future by getting better to care for C. The mother's preference is for C to remain

with the current foster carers as she is concerned that if C moves to Morocco, this will result in reduced or no contact with her, and that this court will lose control of the case. The mother's position, however, is that these concerns are premature as the assessment in Morocco has not even commenced and may not be positive, but she reserves the right to make an application to the court under s.25 of the Act if the CA determines that C is to be placed in Morocco in due course.

13 The father filed a statement dated October 6th, 2024, and gave evidence at the hearing. He agrees to a final care order being made as he accepts that he is currently unable to provide C with the financial stability required for her care. His hope is that he will be able to improve his financial circumstances in the Canary Islands so that he can care for C, and that he will then be in a position to apply to discharge any full care order made. Further, he said that although C's foster carers are caring for her well, he wants his sister who lives in Morocco to be assessed as a potential kinship carer for C. The father strongly opposes C's possible adoption by the foster carers who have indicated a willingness to adopt her if she is placed in their care.

14 In the course of the hearing, the father also made it clear that he was unhappy about the appointment of a UK-based expert, as proposed by the CA, to assess his sister in Morocco. He said that and that this assessment should be carried out by an independent social worker who was a Muslim, and who had an appropriate cultural and linguistic understanding of Morocco, which would ensure that the assessment is fair and balanced. Further, he said that his sister would be uncomfortable with the assessment being carried out by a man. He also suggested that Pilar Cubelos-Martin, who carried out an assessment of him on behalf of the guardian when he was living in Algeçiras, should undertake this role. This was a point he reinforced in an email to the court dated October 22nd, 2024 written in Spanish, and copied to the CA and the guardian. In this email, the father says that Ms. Cubelos-Martin is ideally placed to undertake the connected carer assessment in Morocco as she knows the case, spends part of the year in Morocco, and understands Moroccan culture. Further, he points out that she speaks Spanish and French, which would enable her to communicate with his family. Finally, he says that he wants to be named on C's birth certificate so that he can have parental responsibility.

15 The guardian supports the application and considers that a care order is the best option for C. Her view is that once assessments on the father's sister and the foster carers have taken place, a special guardianship placement with continuing contact with the parents would be an avenue that the CA should explore, with the possibility of adoption only as a last resort.

The exercise to be conducted by the court

16 Before the court can make a care order under s.64 of the Act, two principal questions must be addressed as follows:

(1) Are the threshold criteria for making a care order under s.64(2) of the Act satisfied?

(2) If the threshold criteria are met, assessing the welfare of the child to determine what order should be made in the best interests of the child.

Threshold

17 The threshold criteria are set out in s.64(2) of the Act, namely: (a) that the child concerned is suffering, or is likely to suffer, significant harm (the "significant harm" criteria); and (b) that the harm, or likelihood of harm, is attributable to (i) the care given to the child, or likely to be given to her if the order were not made, [not] being what it would be reasonable to expect a parent to given to her; or (ii) the child being beyond parental control (the "attributable" criteria).

18 The parties have agreed that the threshold for the purposes of s.64(2) of the Act is met.

19 The mother approached the CA when she was eight months' pregnant with C stating that she wanted to relinquish the baby upon birth. She changed her mind when C was born but, given the mother's history, C was placed on the child protection register and a package of support was immediately put in place by the CA.

20 On November 23rd, 2023, the mother left to buy a packet of cigarettes, left C with carers, went to Spain, and did not return.

21 The mother, who was known to the CA before C's birth, has a history of drug use and mental health issues. Ms. Carreras' report referred to in the care plan concludes that the mother has a complex diagnosis of mental health and, given her background and history, there is a high risk of harm to C should she be in her care. Further, she confirms that the mother has been receiving therapeutic support, and concludes as follows:

> "For [the mother] to be able to care and parent a child on her own and without a considerable support network she would need to fully commit to a long term engagement with professionals particularly mental health, therapy and social workers and demonstrate a lengthy period of consistent stability (minimal recommendation would be a year) after having successfully completed the necessary therapeutic programmes."

22 In a position statement dated May 2nd, 2024, the mother accepts that she has had problems, and that leaving C in the care of the CA and travelling

to Spain was impulsive and not in C's best interests. Further, she states that the threshold criteria have been explained to her by her lawyer, and that she agrees that the criteria have been met for the making of a care order. Although the mother states that she is keen to turn her life around, it is clear that therapy will not change things quickly enough to enable her to care for C in the near future, even if she is provided with a support package.

23 The father was present in Gibraltar for C's birth but he then left Gibraltar returning only when the mother went missing. At the time, he lived in Algeçiras. As there was no formal confirmation at that time that he was C's father, he is not named on her birth certificate, and does not have parental responsibility.

24 When the father lived in Algeçiras, parenting assessments were carried out by the CA, and Ms. Cubelos-Martin for the guardian. The conclusion reached in these assessments is that the father did not have the necessary stability or resources to provide for C's needs at that time. The father has accepted this, and he has since moved to the Canary Islands where, he accepts, he does not have the wherewithal to look after C.

25 Whilst the threshold criteria are assessed at the time that the CA first intervened to protect C, the court can take into account later information to show what the position was at the relevant time: *Re G (Children) (Care Order: Threshold Criteria)* (2).

26 As the mother and the father have helpfully accepted, and I am satisfied, the threshold criteria for the purposes of s.64(2) of the Act have clearly been met in this case.

What order should be made?

27 The second stage of the court's assessment requires consideration of what order should be made. Under s.64(4) of the Act this requires consideration of the care plan made under s.65 of the Act.

The relevant principles

28 In considering an application for a care order, the child's welfare is the court's paramount consideration. The court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.4(3) of the Act, namely:

"(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 each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and

(g) the range of powers available to the court under this Act in the proceedings in question."

29 Under s.4(5) of the Act, any order made by the court must be better for the child than no order before it can be made. Thus, the court must adopt the least interventionist approach, especially when considering removing a child from their natural parents, which is a measure of last resort.

30 The making of a care order is in breach of the child's and the child's parents' rights to respect for family life under s.7 of the Gibraltar Constitution Order, 2006. Any care order must therefore be reasonably justifiable for the protection of the child.

31 As embodied in s.4(3)(g) of the Act set out above, the court must have regard to the range of powers available to it.

The s.65 care plan

32 The latest care plan provides (duly anonymized) as follows at para. 2.4:

"[C] continues to reside with her foster carers Ms. [X] and Mr. [X], who have expressed their intention to provide long-term care for her and have informed the Agency that they would like to adopt [C]. The Care Agency are aware that the Courts will only grant a placement order, or care order with a plan for adoption, as a last resort, where nothing else will do. [The father] has recently informed the Agency that his sister [. . .] has come forward to be assessed to care for [C]. As a family member, this will require further exploration and would take precedence over any other options at this time . . ."

33 Paragraph 4.1:

"The Care Agency are respectfully requesting that a Full Care Order be granted in respect of [C]. The Care Agency are of the view that [C] will remain in her foster placement and the social work team will continue to monitor the placement closely to ensure that [C] and her foster carers are provided with adequate support to meet her needs.

If a Care Order is granted, the Care Agency will continue to try and engage with [the mother] and therapeutic intervention will remain

> open to her as documented with the Psychological Assessment by Ms. Carreras.
>
> [The father's] sister [. . .] has come forward to be assessed to care for [C] and the Care Agency have undertaken a viability assessment. This only recently commenced due to the late stage within proceedings of [the father] putting forward his sister and difficulties with an Arabic translator being available after working hours. A full assessment of [the father's sister] will now be undertaken by the Care Agency.
>
> If no positive progress is observed in relation to [the mother] within the timeframe as recommended by the Psychological Assessment, and in the event that [the father's sister's] assessment is negative, the Care Agency will consider and assess whether a more permanent order such as a Placement Order is in [C]'s best interests, or whether she should remain in care under a fostering arrangement."

34 Paragraph 4.2:

> "Should the court accept this application and [the father] and [the mother] agree to the care plan, [C] will remain in her placement with her foster carers until further exploration is had in relation to the paternal Aunt."

35 The CA has provided updates to the care plan contained in emails from Jeanette Gilmartin dated October 14th and 18th, 2024, and these set out the CA's proposal for the connected carer assessment in Morocco. She states that an experienced UK-based independent social worker has been identified for this purpose, namely Anthony Nagle, who has experience of carrying out parenting assessments in various countries including India and Thailand. The CA anticipates that the process will be a three-stage process, running in parallel, as follows:

(1) Connected carer assessment by the independent social worker.

(2) Paternal aunt to travel to Gibraltar to build and establish a relationship with C, and for the CA to observe this relationship to demonstrate her motivation and commitment to C. Further, this will allow the paternal aunt to build a relationship with the mother.

(3) Instructing a Moroccan lawyer to "explore not just the complex matter of how a Care Order could be legislated in Morocco but also the immigration status of [C]."

36 Further, Ms. Gilmartin has given a timeframe of nine months for this process to be concluded although she states that the "cut-off date would be reasonably exercised if positive developments had taken place in all three aforementioned stages."

37 The care plan contains no plans for reunification with either the mother or the father as they say that neither has demonstrated their ability to provide C with a stable and secure environment. Neither the mother nor the father are pressing for reunification at this point, nor did they say that they could care for C at present. They both hope to turn their respective lives around to enable them to make an application to discharge the care order in the future. Mr. Conroy said that whilst the CA did not disregard the possibility of reunification in the future, the "ball was in the parents' court" in that regard, and it was up to them to make the necessary changes to their lives and make an application to the court if appropriate in due course.

38 The realistic options outlined in the care plan are therefore as follows:

(1) The existing foster carers continue to care for C.

(2) C's paternal aunt cares for C in Morocco, subject to a positive connected carer assessment.

39 Before turning to the two options, one can see that the care plan at present is somewhat uncertain. As Mr. Conroy submitted, there are bound to be uncertainties surrounding care plans. In *Re S (Care Order: Implementation of Care Plan)* (3), Lord Nicholls stated that ([2002] UKHL 10, at para. 90):

> "Despite all the inevitable uncertainties, when deciding whether to make a care order the court should normally have before it a care plan which is sufficiently firm and particularised for all concerned to have a reasonably clear picture of the likely way ahead for the child for the foreseeable future. The degree of firmness to be expected, as well as the amount of detail in the plan, will vary from case to case depending on how far the local authority can foresee what will be best for the child at that time. This is necessarily so. But making a care order is always a serious interference in the lives of the child and his parents. Although article 8 contains no explicit procedural requirements, the decision making process leading to a care order must be fair and such as to afford due respect to the interests safeguarded by article 8: see *TP and KM v United Kingdom* [2001] 2 FLR 549, 569, paragraph 72. If the parents and the child's guardian are to have a fair and adequate opportunity to make representations to the court on whether a care order should be made, the care plan must be appropriately specific."

40 Further, there is good reason why there is some uncertainty about the permanence provisions in this care plan. The possibility of a connected carer arrangement in Morocco was only raised in September 2024 by the father, and it will take time to complete. Until that assessment is completed, the CA cannot be more certain about the permanence provisions in the care plan.

41 I am therefore satisfied that any uncertainty in the care plan is inevitable, and that there is a sufficiently clear picture of the way ahead. Most importantly, the two options outlined by the CA is sufficiently specific for the mother, the father and the guardian to have had a fair and adequate opportunity to make representations to the court about them.

Analysis of the care plan options

42 As stated above, under s.64(4) of the Act, no care order can be made without consideration of the care plan. It is worth pausing here to contrast the position in Gibraltar under s.64(4) of the Act with the position in England & Wales where s.31(3A) of the Children Act 1989 provides that the court is only required to consider the permanence provisions of a care plan. This narrow statutory focus under English law does not apply in Gibraltar, although the court's focus will usually be on the permanence provisions contained in the care plan.

43 Turning, therefore, to the two options outlined in the care plan:

The foster carers in Gibraltar

44 The current fostering arrangements are working well. C has been in her foster placement since November 29th, 2023, and she appears settled, is responding well to routine, and she is thriving. The care plan states that she is receiving much love and warmth there, and both the mother and the father agree that C is well cared for there.

45 C's foster carers are committed to provide long-term care for C, and have informed the CA that they would like to adopt C, which the mother and father are opposed to. Mr. Conroy confirmed, however, that adoption does not form part of the care plan, and that it has just been referred to as something that might arise in the future, as a last resort. He confirmed that there is no parallel planning in this regard, and that any application for adoption which might be made in the future would be served on the mother and the father, who could have their say about any such application at that point.

46 In my view, this option properly forms part of the care plan. C's foster carers appear to be well equipped to provide C with a stable and loving home, and the CA will continue monitor them.

The paternal aunt in Morocco

47 The other option is for the father's sister to care for C, and the CA proposes to appoint Mr. Nagle to carry out a connected carer assessment in Morocco.

48 As set out above, para. 2.4 of the care plan states that "As a family member, this will require further exploration and would take precedence

over any other options at this time." Mr. Conroy, however, clarified that the reference "precedence" in this context did not refer to any priority being afforded to the paternal aunt if the assessment is positive, but rather that the completion of the connected carer assessment took priority at this stage. Further, he confirmed that in due course the options will be considered by reference to the welfare checklist.

49 The father, on the other hand, said that his sister should be given priority as C's blood relative.

50 The guardian submitted that there is no default position in favour of family members: *Re W (Adoption: Approach to Long-Term Welfare)* (4) ([2016] EWCA Civ 793, at para. 71).

51 I agree with the CA and the guardian that, when considering the available options for C's care, the only principle to be applied is that enshrined in s.4 of the Act, and that the care plan proceeds on that basis. Paramount consideration must be given to the child, and the principle of proportionality, and the pros and cons of each realistic option must be considered by reference to that welfare checklist, without one option being given priority over another.

52 As the assessment in Morocco has not yet commenced, it is not possible to say much about that prospect. I agree that on the limited material before the court, C's best interests and welfare require this option to be pursued.

53 There are, however, two features of the proposed assessment in Morocco that require further consideration, namely (1) the applicable cross-border arrangements for the connected carer assessment to be carried out; and (2) the appropriateness of Mr. Nagle's proposed appointment.

Cross-border arrangements

54 The Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ("the 1996 Hague Convention") applies in Gibraltar and Morocco.

55 Part VIIIA of the Act deals with the 1996 Hague Convention. The relevant rules which have been made under the Act are the Family Proceedings (Children) (1996 Hague Convention) Rules, 2011.

56 The designated Central Authority under s.93K of the Act is the Minister for Justice, or such other person as may be designated by the Chief Minister. Section 93M of the Act provides as follows:

> "(1) This section applies if the Agency is contemplating placing a child in another Contracting State, within the meaning given by Article 33 of the Convention.

(2) Either the Supreme Court or the Agency, whichever has jurisdiction under Articles 5 to 10 of the Convention ('the authority') must provide a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention."

57 Article 33 of the Hague Child Protection Convention 1996 (set out in the schedule to the Act) provides as follows:

"(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

(2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests."

58 The 1996 Hague Convention therefore provides a scheme for inter-country placements, requiring consultation between the central authorities in the requesting state (in this case, Gibraltar) and the requested state (in this case, Morocco). Under this scheme, the two countries involved in the placement share responsibility to protect and assist the child, and it ensures that the overseas authorities are aware of the child's situation, as they must consider whether the placement is in the child's best interests.

59 Both art. 33(1) and (2) of the 1996 Hague Convention are mandatory provisions. In this case, they require the CA to send a report to the Moroccan competent/Central Authority, setting out the reasons for the proposed placement or provision of care. Morocco will then need to consent to the placement taking into account the child's best interests. If this procedure is not complied with, any proposed placement can be refused under art. 23(2)(f) of the 1996 Hague Convention.

60 As stated above, Ms. Gilmartin's three-stage process outlined above provides a detailed roadmap on how the CA anticipates that the connected carer assessment will work. This involves the appointment of an independent social worker, supervision of contact with the paternal aunt and C in Gibraltar, and instructing a Moroccan lawyer to consider mirror orders that may be required, and immigration issues.

61 On the first day of the hearing, which took place on October 21st, 2024, I expressed concern about this aspect of the care plan that did not

provide for the Moroccan competent/Central Authority to be notified of the proposed placement in accordance with art. 33 of the 1996 Hague Convention. At that point, both Mr. Conroy and Ms. Pizzarello, argued that the Moroccan competent/Central Authority did not need to be notified unless and until any connected carer assessment turned out to be positive. Further, they said that to notify the Moroccan authorities would be premature as any proposed placement would not be properly "contemplated" under art. 33(1) of the 1996 Hague Convention.

62 Given the importance of the point, I adjourned the hearing on October 22nd, 2024 to enable the parties to consider the point further, and to enable them to make more detailed submissions on it.

63 When the hearing resumed, Mr. Conroy said that the CA had contacted Mr. Nagle who had said that if he is appointed, it is his practice to ensure that the competent/Central Authority of the requested state is consulted before he travels abroad. Mr. Conroy then confirmed that art. 33 of the 1996 Hague Convention would be complied with from the outset, and added that to the form of order sought. He also said that Mr. Nagle had confirmed that he would collaborate with a local social worker as might be necessary.

64 Although this resolved the issue of notifying the Moroccan competent/Central Authority, it is worth considering this cross-border scheme further, as it is relevant to the proposed appointment of Mr. Nagle.

65 The wording of art. 33(1) of the 1996 Hague Convention makes it clear that if a placement of provision of care is "contemplated" in another contacting state, the requesting state must first consult the competent/ Central Authority and transmit a report. It is clear from the care plan that the CA is contemplating a placement with the paternal aunt, subject to an assessment being carried out. The proposed appointment in this case falls within the scope of the mandatory provisions of art. 33(1) of the 1996 Hague Convention. Further, the responsibility to notify the Moroccan competent/Central Authority falls to the Gibraltar Central Authority, who is the Minister for Justice.

66 This is not just a question of arid legislative interpretation of the word "contemplates." It is vital that the correct procedure is followed under the 1996 Hague Contention, as a failure to do so may result in any final order placing the child in Morocco not being recognized. It is self-evident that such an outcome would be contrary to the welfare of the child. Further, as a matter of common sense and comity, there should be good communication from the outset in these cases between authorities in different jurisdictions.

67 CFAB have a number of factsheets available on their website which contain a number of helpful recommendations when undertaking or commissioning assessments where the proposed kinship carer lives abroad.

In "Placing Children in Contracting States—Article 33 of the 1996 Hague Convention," the CFAB advises that some states may only recognize assessments routed through their competent/Central Authority as sufficient to enable them to arrive at a decision over whether a placement is in a child's best interests. If this is the case in Morocco, this is a further reason why contact with the competent/Central Authority should come first, before any independent social worker is appointed.

Mr. Nagle's proposed appointment

68 Identifying the right professional to undertake the assessment is critical and before turning to Mr. Nagle's qualifications it is worth setting out some of the options for assessments abroad to be carried out. These include an assessment carried out by a Moroccan social worker (or equivalent), a social worker from the CA (which the CA says is not possible in this case), the appointment of an independent social worker, or a hybrid option. As stated above, the position in Morocco is currently unknown by the parties.

69 In principle, though, there will be advantages and disadvantages to each alternative. A CA social worker (or agent) will (or should) have the benefit of being familiar with Gibraltar law, policy and procedures but may not have an understanding of any cultural, religious and locational norms in Morocco. A Moroccan social worker would plainly be able to assess the situation there and will have local knowledge but is unlikely to be familiar with the Gibraltar system.

70 The first question when considering instructing a social worker based in Gibraltar or the UK is whether they have the right to work in the country concerned. In "UK Social Workers Practising Overseas" (2018), the CFAB describes the problems than can arise as follows:

> "A social worker could be working illegally if they do not have the right to work in the country concerned and travels there as part of their employment. It is important to verify if the other country considers entering their country to complete an assessment as working in their country. Thought should be given to the travel documents and visas that the social worker uses to enter the country to ensure that these provide the appropriate permissions to work temporarily in the country concerned, if necessary.
>
> In addition, legal issues may arise if a social worker is seen to be practising social work in a country where social work is a protected title and they are not registered with the regulatory body. For example, in South Africa, under the Social Services Professions Act 1978, it is illegal to practise social work unless registered with the relevant body and it would be a criminal offence for a social worker to travel there to complete an assessment."

71 Even where the relevant permission has been obtained alongside any necessary visa, travel documents and insurance, other problems may still arise. As the CFAB factsheet outlines:

> "A UK social worker practising abroad will not be protected by their professional title and most likely will not understand the domestic laws that dictate the social worker's rights and responsibilities, including data protection and the types of information that they can rightfully access."

72 In "Placing Children with Family Overseas," the CFAB advises as follows:

> ". . . *the overseas competent authority may need to arrive at its own assessment of whether a placement is in a child's best interests*.
>
> For this reason it is sometimes advisable to ensure that an assessment of the prospective carer is sought via the Central Authority so that the overseas competent authority has had an opportunity to consider whether the placement is in the child's best interests. Some local authorities may opt to seek an assessment by another method in addition to seeking an assessment via the Central Authority, so as to ensure that the UK court has sufficient evidence to determine whether the placement is in the child's best interests." [Emphasis in original.]

73 The advice given by the Department for Education (the UK Central Authority) in "Working with Foreign Authorities: Child Protection Cases and Care Orders" (July 2014), is that UK social workers should work with colleagues abroad when exploring potential placements:

> "This may provide a more holistic picture, and help the social worker understand the unique characteristics of a child within their family, cultural, religious, ethnic and community context."

74 In *Birmingham City Council* v. *W* (1), the English Family Court, in providing guidance on the issues that arose when considering a potential kinship placement abroad, approved CFAB advice.

75 Some useful practical advice is also contained in "International Kinship Care Guide (A good practice guide for professionals placing children from local authority care with family members abroad)" (November 2020) (also available on the CFAB website, www.cfab.org.uk). This guide highlights the fact that it can be risky, unethical and sometimes illegal for UK social workers to practise their profession in countries where they are not registered as social workers and where they may be unfamiliar with the culture and the environment. Further, it is important to respect professional jurisdiction and recognize that local professionals are best placed in many ways to complete assessments in their territory, and that

they understand the unique characteristics of a child within their family, cultural, religious, ethnic and community context.

76 This guide also refers to the fact that a number of pieces of UK Government guidance advise against UK social workers travelling abroad, and that it is inadvisable for an English social worker to travel overseas to work on cases unless they have first contacted the relevant foreign authority. In cases where there is no alternative to the social worker travelling abroad (*e.g.* where there is no Central Authority or no International Social Service partner in that country), the UK local authority should risk assess the plans and consult with the other country to ensure that the social worker is covered by all relevant insurance policies and that s/he has the correct permission to travel to complete the assessment overseas.

77 Further, this guide identifies different approaches to the assessment. One option is a split assessment, where a portion of the assessment is completed by the local social worker abroad, and a portion is completed by the UK social worker, who remains in the UK but can observe the prospective carers in the UK with the child. Another option is a joint assessment when a UK social worker completes the assessment alongside a local social worker abroad, who contributes local knowledge and understanding of resources and culture.

78 Let me now draw these threads together.

79 Whilst the CA has now confirmed that they will notify the Moroccan competent/Central Authority from the outset, I do not see how the appointment of Mr. Nagle can be approved at this stage. It seems to me that the CA must first work out how the connected carer assessment is going to work in practice, taking into account the sorts of issues outlined above, and the response from the competent/Central Authority. This will inform the CA on how best to proceed, whether the assessment needs to be routed through the Moroccan competent/Central Authority, and whether appointing a UK independent social worker is appropriate.

80 Turning to Mr. Nagle himself, whilst he is no doubt a highly experienced and accomplished social worker with international experience, he has no experience in Morocco or similar countries. Further, there is no indication that he speaks Arabic, Spanish or French, which would enable him to communicate with the father's family in Morocco, a concern that the father has raised. This may matter less if a Moroccan social worker will be working alongside him who speaks English but if that does not turn out to be the case it may become more relevant.

81 Similarly, the court cannot determine whether Ms. Cubelos-Martin would be better placed to carry out the connected carer assessment, as the father proposes. Her knowledge of the case, her familiarity with Morocco and the fact that she speaks Spanish and French would appear to be an

advantage. The paternal aunt also seems to prefer that the assessment is carried out by a woman. On the other hand, the CA does not consider that she has the required expertise for this type of assessment.

82 In the circumstances, even if a UK-based independent social worker can be appointed, the court is not in a position to approve Mr. Nagle's appointment, as provided for in the care plan. Further consideration needs to be given to this appointment.

The way forward

83 Whilst there are at present a number of unknown factors as set out above, the process of assessing C's paternal aunt in Morocco cannot be delayed. It is neither possible nor desirable for the court to lay down any fixed principles as to how that assessment should proceed, if it is appropriate for a UK-based independent social worker to be appointed and, if so, who is best placed to undertake that role. In order to progress matters pragmatically, however, I will approve, in principle, the appointment by the CA of an independent social worker provided such an appointment is acceptable to the Moroccan competent/Central Authority and it accords with relevant best practice.

84 Further, it seems to me that any appointee should have the necessary expertise and skills (including language skills) to carry out a connected carer assessment in Morocco with the paternal aunt and wider family. The court's approval of the care plan is therefore also subject to the CA's compliance with this requirement.

85 Ms. Gilmartin has proposed a deadline of around nine months for this process to be completed, although she states that this would be extended for reasonable period of time if positive developments had taken place within that timeframe.

86 The cross-border element in this case could mean that delays are to be expected, and it is uncertain whether the likely timescale proposed by the CA is achievable. The CA's general approach in this regard, however, appears entirely sensible to me. On the one hand, this cannot be allowed to drift, but on the other, if good progress is being made within a reasonable period of time, it would not be in C's best interests to impose a guillotine after nine months

87 Finally, in the course of the hearing, Ms. Pizzarello submitted that the court should consider granting permission for disclosure of confidential documents to the independent social worker and to the Moroccan lawyers. In the light of my comments above, I consider that this request is premature. Any disclosure application that might be made in due course should set out the specific documents, or provide the case summary, in respect of which permission is sought.

Outcome

88 Neither parent can care for C, as they accept. It is therefore necessary and proportionate for a final care order to be made so that parental responsibility can be vested in the CA. This will ensure that C has a safe and stable upbringing.

89 The two options outlined in the care plan are, in principle, acceptable. The foster carers provide a safe and stable home for C in Gibraltar where she is thriving. On the other hand, if the paternal aunt's assessment is positive, this could provide an alternative option for C's care.

90 For the reasons set out above, however, I am unable to accept the CA's latest care plan as amended in its entirety, but it is approved subject to my comments above. I hope that the parties can agree a draft order reflecting this judgment.

Parental contact

91 The level of contact has varied over the last few months. The CA is proposing that contact now takes place with the mother and the father (by video call if necessary) twice a week each. At the final hearing, both the mother and the father indicated that they were satisfied with this level of contact.

92 Under s.68(1) of the Act, there is a primary duty on the CA to allow reasonable contact between parents and children in care. Taking into account the history of contact in this case, it is clear to me that twice-weekly contact with the mother and the father each is reasonable, and that the CA's proposals for contact are satisfactory.

93 In the circumstances, there is no need for the court to make an order for contact.

Birth certificate

94 During the hearing, and in the email sent to the court after the hearing, the father asked the court for his name to be registered on C's birth certificate so that he can have parental responsibility.

95 I have very little material before me in relation to this request. As far as I can see, the problem with the father's request to be registered as C's father on her birth certificate is that the mother does not consent to it. Other than this, the guardian states in her report that it would benefit C for the father to be registered as it would ensure that there is a record of the father's paternity. Further, she states that even though C has contact with the father, this would reinforce C's knowledge of her heritage and identity.

96 This issue clearly goes beyond the scope of these proceedings. The father will need to pursue this matter separately himself, whether by seeking

to register himself as C's father on her birth certificate, or by way of an application to the court seeking an order for parental responsibility for C.

Postscript

97 Following the handing down of the judgment, the parties provided a draft order stating that the care order was made following confirmations provided by the CA in recitals along the lines set out above. Whilst in practice this achieves the objective set out in this judgment, it is not an accurate reflection of it. The parties also referred to the court's limited powers under s.64 to either approve or refuse the care plan. In the circumstances, the better course is for the CA to provide an amendment to the care plan in line with this judgment, and for the care order to then be made on that basis. The amendment to the care plan and draft order should be provided to the court by no later than midday on Thursday, October 31st, 2024.

Judgment accordingly.