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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY JR328
FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF THE MAGISTRATES' COURTS (CHILDREN
(NORTHERN IRELAND) ORDER 1995) RULES (NORTHERN IRELAND) 1996**

**Suzanne Simpson KC and Sarah Walkingshaw (instructed by Stephen Tumelty
Solicitors) for the applicant
Paul McLaughlin KC and Nessa Fee (instructed by the Departmental Solicitor's Office)
for the respondents**

SCOFFIELD J

Introduction

[1] The applicant is the father of a child, K, who was born in 2013. He was never married to K's mother and, owing to difficulties in the relationship, his name was not included on K's birth certificate. Accordingly, he did not automatically obtain parental responsibility (PR) for his son. On his case, his efforts to seek contact, whether by agreement or through the court process, were frustrated by K's mother. In any event, the relevant health and social care trust ("the Trust") issued an application for a care order in respect of K due to parenting concerns. The applicant was neither served with, nor put on notice of, these proceedings. It is that omission which is the focus of this application for judicial review. As it happens, the applicant discovered that the care proceedings were ongoing and successfully applied to be joined as a party to them. Accordingly, no irreparable damage arose as a result of his initial ignorance of the proceedings. However, he nonetheless contends that the procedural regime which means that a father in his position is not automatically a respondent to such proceedings is unlawful.

[2] The ‘target’ of this application for judicial review is rule 8(1) of, and the corresponding column of Schedule 2 to, the Magistrates’ Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 (SR 323/1996) (“the 1996 Rules”). These provisions govern care proceedings in the family proceedings court. Similar provision is made for other court tiers in rule 4.8 of, and the corresponding column of Appendix 3 to, the Family Proceedings Rules (Northern Ireland) 1996 (SR 322/1996) (“the Family Proceedings Rules”). Collectively, these may be referred to as “the impugned provisions.”

[3] The respondents are the Department of Health and the Department of Justice. They are participating in the proceedings, which is a challenge to the court rules mentioned above, on foot of notification that the compatibility of these rules with the European Convention on Human Rights (ECHR) is at issue in the proceedings. They are the Northern Ireland Departments with policy responsibility for the issue of parental responsibility and for the rules of court respectively.

[4] Ms Simpson KC appeared for the applicant with Ms Walkingshaw; and Mr McLaughlin KC appeared for the respondents with Ms Fee. I am grateful to all counsel for their written and oral submissions.

Factual background

[5] The relevant factual background to this case can be relatively briefly stated, although it is important to set out a little detail in order to understand both how the applicant’s complaint came about and some of the points made by the respondents. The key facts are as follows.

[6] The applicant is the father of K, who was born in October 2013. The applicant has never been married to the child’s mother (N) and he is not named on K’s birth certificate as his father, although he was in a relationship with K’s mother at the time of his birth. The applicant’s and N’s relationship had been deteriorating over time and it ended approximately one year after K was born. The applicant’s evidence is that, at the time of K’s birth, “things were really bad” and his relationship with N was difficult, to the extent that he was not named on K’s birth certificate. There was an investigation into concerns surrounding possible physical injury to K and his welfare, pursuant to an anonymous report, in February 2014, when K was still just a few months old. For several years, the applicant had had serious personal problems, including issues with drugs and alcohol, leading to him being in trouble with the police and being arrested on numerous occasions. After splitting up with N, the applicant did not have regular contact with his son.

[7] Later, in July and August 2016, when K was around 2½ years old, two separate referrals were made to Social Services regarding aggressive behaviour by N’s boyfriend at that time (who was not the applicant). These referrals led to an initial assessment by the Trust in compliance with its Understanding the Needs of Children in Northern Ireland (UNOCINI) procedures. During these exchanges and referrals

with the police and the Social Services, the applicant's details were not recorded. In particular, in the UNOCINI assessment it was recorded that K did not have any contact with his father. In December 2016, N informed the Trust that she had obtained a non-molestation order (NMO) against the applicant, which extended to contact between the applicant and K as well.

[8] In July 2017, an initial case conference was convened pursuant to concerns about N's well-being. A social worker's report relating to the meeting identified the applicant as K's father. The report confirmed that the applicant did not have PR at that time and discussed the NMO which was in place. Further, the report also stated that the applicant did not have contact with K. Later that month, the applicant contacted Social Services by phone and left a message in which he provided information regarding N and raised the issue of contact with K. Although he left a contact phone number, efforts to contact him by the Trust failed, due to the calls not being connected and the number not being recognised.

[9] As a result of a breakdown of K's placement with N's parents, a report was prepared by the Trust at a review in September 2017. The report recorded that the applicant was K's father and that he did not have PR. At this point, N had notified the Trust that she was neither aware of the applicant's address, nor his date of birth or phone number. In October 2017, however, N informed the Trust that the applicant had made several attempts to contact her and that she was unable to stop him from contacting her. In a further report prepared by the Trust in November 2017 as a part of a case conference on K, it was recorded that the applicant's mother would prefer if K did not have contact with his paternal family.

[10] During 2018, the Trust continued to engage with the family and to formulate a care plan. In February 2018, it was noted by the Trust, following a meeting with N, that it had not received any correspondence from the applicant in relation to contact with K. A further NMO was granted in February 2018 which expired in February 2020.

[11] An application for an interim care order (ICO) was made on 28 September 2018 pursuant to Article 50 of the Children (Northern Ireland) Order 1995 ("the Children Order"). In the Form C1 grounding this application, the applicant's name is included as K's father. However, the applicant is not named as a respondent or as a party to whom notice is to be given. The proceedings were listed for first review in the relevant family proceedings court in November 2018. The case was then further reviewed on a number of occasions during 2019, and the Trust provided updated reports to the court.

[12] In April 2019, the applicant lodged an application for legal aid in order to apply for contact with K but, in the event, it is said that he could not pursue this further due to personal circumstances. It is also noted that the applicant's efforts to issue proceedings to seek contact with K were unsuccessful because he was unaware of N's address and N's solicitors would not accept service. As it happens, however, the

applicant's solicitor became aware of the care proceedings regarding K having noticed these in the court list at the family proceedings court in November 2019. The solicitor then informed the applicant of these. Thereafter, the applicant met with a representative of the Trust and took steps to try to secure contact with K with a view to also securing PR. Upon his own application, he was joined as a party to the care proceedings in December 2019.

[13] A care order was made in respect of K in February 2020 by the Family Proceedings Court. The order was later affirmed on appeal to the Family Care Centre later that year.

[14] In the meantime, the applicant's solicitor sent a pre-action letter to the Departmental Solicitor's Office. No response was received to this letter. Subsequently, a parental responsibility order was made, conferring PR on the applicant in relation to K, in late December 2021 by the Family Proceedings Court pursuant to Article 7(1)(c) of the Children Order.

[15] It is also worth noting that there is an affidavit from another individual, S, who was in a similar position to the applicant, which has been filed in support of the application. This individual was involved in pre-proceedings meetings in relation to his child but was only put on notice of care proceedings, rather than being made a respondent. There was an issue with the email sent to his solicitor putting him on notice of the proceedings, such that S's solicitor only saw the email the day after the first hearing at which an ICO had been made. The child's mother, a respondent to the care proceedings, had neither consented nor objected to the order; but S indicated that he would have wished to have objected. He promptly applied to be added as a respondent to the proceedings and was joined.

Relevant statutory provisions

Parental responsibility

[16] There is a range of statutory provisions relevant to the present dispute. A central concept in these proceedings is obviously that of parental responsibility, which is provided for in the Children Order. In particular, Article 5 of that Order provides as follows, under the heading 'Provisions surrounding parental responsibility':

“(1) Where a child's father and mother were married to, or civil partners of, each other at the time of his birth, they shall each have parental responsibility for the child.

...

- (2) Where a child's father and mother were not married to, or civil partners of, each other at the time of his birth—
- (a) the mother shall have parental responsibility for the child;
 - (b) the father shall have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the provisions of this Order.

...

- (3) The rule of law that a father is the natural guardian of his legitimate child is abolished.
- (4) More than one person may have parental responsibility for the same child at the same time.
- (5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.
- (6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any statutory provision which requires the consent of more than one person in a matter affecting the child.
- (7) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Order.
- (8) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

- (9) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.
- (10) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned."

[17] Article 5(2)(b) above is obviously of importance in the context of the present case. Further provision is made in relation to the meaning of PR in Article 6 of the Children Order, as follows:

- "(1) In this Order "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- ...
- (4) The fact that a person has, or does not have, parental responsibility for a child shall not affect –
 - (a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or
 - (b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.
- (5) A person who –
 - (a) does not have parental responsibility for a particular child; but
 - (b) has care of the child,

may (subject to the provisions of this Order) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare."

[18] There is a range of ways in which a person who does not have PR for a child, including a father in the position of the applicant in this case, may obtain it. Acquisition of PR for an unmarried father is dealt with by Article 7(1) of the Children Order in the following terms:

“Where a child’s father and mother were not married to, or civil partners of, each other at the time of his birth, the father shall acquire parental responsibility for the child if –

- (a) he becomes registered as the child’s father;
- (b) he and the child’s mother make an agreement providing for him to have parental responsibility for the child; or
- (c) the court, on his application, orders that he shall have parental responsibility for the child.”

[19] There are other ways in which PR can be obtained, in addition to those mentioned above, if the father is granted a residence order in relation to the child or if he marries the child’s mother.

[20] For present purposes I need not set out in great detail the provisions of the Children Order which deal with care orders. However, under Article 50, on the application of an authority or authorised person, the court may make an order placing a child in the care of a designated authority or putting them under the supervision of a designated authority. A court dealing with such an application may only make a care or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm; 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 him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child’s being beyond parental control. Where a care order is made, the authority designated by the order shall have PR for the child (see Article 52(3)(a)). The authority also has the power – subject to limitations spelt out in Article 52(4)-(9), the most important of which is that the authority must be satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare – to determine the extent to which a parent or guardian of the child may meet his or her parental responsibility for the child.

[21] In determining whether to make a care order, a court will be required to treat the child’s welfare as a paramount consideration: see Article 3(1) of the 1995 Order. This involves having regard to what is known as the welfare checklist: see Article 3(3) and (4). In turn, that requires consideration of “how capable of meeting his needs is each of his parents” (see Article 3(3)(f)).

Procedural rules

[22] The Children Order does not itself make detailed provision for the procedure to be followed in relation to the making, and consideration of, an application for a care order. Article 51 provides that a court hearing an application for a care order should

draw up a timetable with a view to disposing of the application without delay. Article 51(1) provides that:

“Rules of court may –

- (a) specify periods within which specified steps must be taken in relation to such proceedings; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.”

[23] Article 165 of the Children Order is a general empowering provision in relation to the making of rules of court. An authority having power to make rules of court may make such provision for giving effect to the Children Order as appears to that authority to be necessary or expedient. Such rules may, in particular, make provision with respect of the procedure to be followed in any relevant proceedings; and as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court; and with respect to the notices to be given in connection with any relevant proceedings (see Article 165(2)(a)-(c)).

[24] The 1996 Rules were duly made under Article 165 of the Children Order (and other empowering provisions). This makes provision for the practice and procedure to be followed in relevant proceedings under the Children Order – which includes applications for care orders – in Family Proceedings Courts. For present purposes, the relevant rule is rule 8(1) dealing with parties. It provides as follows:

“The respondents to relevant proceedings shall be those persons set out in the relevant entry in column (iii) of Schedule 2 to these rules.”

[25] When one turns to Schedule 2 to the 1996 Rules, it provides that the persons who are to be respondents in the case of an application under Article 50 of the Children Order for the making of a care order include “every person whom the applicant believes to have parental responsibility for the child.” As to those persons to whom notice is to be given of such an application, they are specified as including “persons who are caring for the child at the time when the proceedings are commenced” and, in addition:

- “(i) Every person whom the applicant believes to be a party to pending relevant proceedings in respect of the same child, and

- (ii) every person whom the applicant believes to be a parent without parental responsibility for the child.”

[26] As to the effect of these provisions in the present case, the net result is that, when the Trust made an application for a care order in respect of K, his mother N was required to be a respondent to the proceedings; but the applicant was not required to be a respondent. However, the applicant was required to be given notice of the proceedings as a parent without PR.

[27] Rule 8(2) of the 1996 Rules permits a person to seek to be joined as a party to relevant proceedings. It provides as follows:

“In any relevant proceedings a person may file a request in Form C2 that he or another person –

- (a) be joined as a party, or
- (b) cease to be a party.”

[28] The court also has powers, of its own motion, to direct that a person who would not otherwise be a respondent under the 1996 Rules be joined as a party to the proceedings (see rule 8(5)(a)). Where an application for a care order is being dealt with in the Family Care Centre or the High Court, equivalent provision is made in the Family Proceedings Rules. Rule 4.8 of those rules is in materially identical terms to rule 8 of the 1996 Rules; and Appendix 3 of the Family Proceedings Rules are for present purposes in materially identical terms to Schedule 2 to the 1996 Rules.

Summary of the parties' submissions

[29] The applicant complains that the failure to ensure he is a respondent to care proceedings in respect of his child is a breach of his rights under the ECHR. He submits that he is being treated differently to a mother, a married father and/or an unmarried father with PR in care proceedings relating to his child. He further contends that this difference in treatment is obvious when his situation is contrasted (for example) with that of a father with PR, who has the status of a respondent in such care proceedings, whereas fathers such as him without PR are deemed only to be persons to whom notice of the proceedings should be given. Indeed, Ms Simpson indicated that the central issue in the case was this particular difference in treatment. On the applicant's case this is a serious impediment to his ability to participate in the proceedings and access court documents regarding the case. He submits that his rights under articles 6, 8 and 14 ECHR have been violated due to the provision made in the relevant rules. He seeks a declaration that these are incompatible with his Convention rights.

[30] The respondents accept that there is differential treatment between different categories of individual, including fathers who have and do not have PR.

Nonetheless, they defend the Convention compatibility of the relevant rules, for which they have policy responsibility. They challenge the applicant's contentions that his rights under articles 6 and 8 are infringed or violated; or that any differential treatment falls within the ambit of those rights. As to article 14, they submit that any differential treatment is legitimate and lawful, either because the applicant compares himself with others who are not in an analogous or relevantly similar position; or because the difference in treatment is justified and within the ambit of the State's margin of appreciation in relation to such matters.

The practical difference between being a respondent and notice party

[31] Before going on to address the legal arguments raised in this application, it is worth considering for a moment the extent of the practical disadvantage to which the applicant (or others in a similar position) are put by reason of the impugned rules. This is particularly relevant to the question of whether there has been any breach of his rights under the Convention, whichever of his rights is relied upon. The applicant emphasises potential disadvantages which might arise, and the respondents downplay both the incidence and effect of such disadvantages.

[32] In the particular circumstances of this case, the applicant relies upon the fact that he was unaware of the existence of the care proceedings (until, by chance, his solicitor became aware of them and informed him). However, that is not a result of the rules but, rather, a practical difficulty with the applicant being given notice of the proceedings. It is not possible for me in the course of these judicial review proceedings to determine exactly how or why the situation came about by which the Trust was unaware of the applicant's contact details (assuming it was), nor do I need to do so. But practical difficulties of that sort are the reason why the applicant was not put on notice of the care proceedings as the rules required.

[33] The 1996 Rules are clear that as a natural parent (a person whom the Trust "believes to be a parent without parental responsibility for the child") the applicant was a person "to whom notice is to be given." The rules required him to be put on notice. As to the giving of notice of the proceedings, he would have been in no better position as a matter of law or as a matter of fact if he had been a respondent to the proceedings. In short, if it was the case that he was simply unable to be contacted, party status would not have given him any additional benefit. He would still not have been able to be put on notice of the proceedings in that capacity either.

[34] Assuming – as the rules require – that a father in the position of the applicant is put on notice of the proceedings, they have an unfettered right to apply to participate in the proceedings, including by being joined as a party. Since the court will have to take into account the views of the child's parents, and their respective parenting capacities, save in exceptional circumstances (which do not apply in the present case) a judge dealing with such proceedings will virtually inevitably permit a parent to contribute to the proceedings. In a case such as the applicant's, this is likely to be by joining the parent as a respondent, as indeed occurred once the applicant

made such an application. At the court's request, the parties undertook some research on the question of whether there may be difficulties in respect of matters such as funding or representation for an individual in the applicant's position. A skeleton argument provided recently by the respondents, approved by the Director of Legal Aid Casework, satisfies me that a parent without PR is entitled to receive non-means-tested legal aid in order to participate in care order proceedings under Article 50 of the Children Order and, indeed, to apply to be joined as a party to such proceedings: see, in particular, regulation 4(1)(d)(ii) of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (SR 2015/196); and the definition of "representation" in Article 2 of the Access to Justice (Northern Ireland) Order 2003.

[35] What then, in practical terms, is the real disadvantage suffered by the applicant in having to make an application to participate in the proceedings (having been put on notice of them) rather than being a respondent from the outset (upon whom, of course, there is no obligation to participate in the proceedings, unless the court exercises its power to require attendance under Article 167)? Ms Simpson was driven to rely essentially upon three (related) factors. First, if an unmarried father was a respondent, there may be more of an effort made to contact him and put him on notice of the proceedings. Second, it is more likely that a respondent will be engaged in the case from the very outset, including in particular if important decisions (such as the grant of an ICO) are made at a very early stage in the proceedings. Third, a respondent will receive all of the papers from the outset, including the Trust report justifying the application, whereas a notice party will frequently have to apply for access to these, giving rise to further potential delay.

[36] As to the second and third of these issues, Ms Simpson emphasised that a person in the applicant's position would not receive the papers in the case as a matter of course. A Form C1 will be filed, making the application, and, along with this, a Trust report with a welfare analysis setting out the case why a care order should be granted. Things can change very quickly on the ground and the court may need to take protective measures. The court can be asked to make difficult decisions at the first review; and the 'no delay' principle means that the proceedings should be dealt with expeditiously. In those circumstances, it was submitted, there is (or can be) a significant disadvantage in not being given access to the full papers in the case from the earliest moment. In contrast, a notice party will generally receive a Form C3 simply notifying them of the proceedings (although I was told that some Trusts, not all, are in the habit of enclosing a copy of the relevant Form C1).

[37] As to the first of the issues mentioned at para [35] above, Ms Simpson also submitted that more steps would be taken *to find* a father without PR if he was named as a respondent. I do not accept that this follows or, at least, that it should follow. As Mr McLaughlin noted, under the rules there is a clear entitlement on the part of a father in the position of the applicant to notice of the proceedings (and an unrestricted right to apply to become a party). Although the court has an overriding power to dispense with the requirement of service under rule 9(8) of the 1996 Rules, which power can be exercised even in relation to a respondent to the proceedings, the

starting point is that service of notice of the proceedings should be effected. In Mr McLaughlin's submission, in this case the applicant simply "slipped through the net." Although it is unclear whether this was purely by accident or, to any degree, by design on the part of K's mother, it should not have happened. The Trust ought to have taken all reasonable steps to try to contact the applicant and put him on notice of the proceedings. I have some doubt as to whether, on the facts of this case, this obligation was sufficiently discharged; but that is not the issue when it comes to the legal questions which arise in these proceedings. A judge hearing an application for a care order should also take steps to ensure that all reasonable steps *have* been taken in order to put on notice those who have a legal right under the rules to be given notice of the proceedings.

[38] As to the other practical difficulties upon which the applicant relied, Mr McLaughlin submitted that, in practice, these should be minimal *provided* that the parent without PR is contactable. In this respect, the respondents placed considerable reliance upon guidance which trusts follow, allowing for consultation with parents, in the care planning process and in advance of applications to the courts.

[39] In particular, the court was also referred to the Best Practice Guidance in relation to the Children Order ("the Best Practice Guidance"). This was published by the Children Order Advisory Committee (COAC), a non-statutory body established in 1997 by the then Secretary of State for Northern Ireland. In its second edition of the Best Practice Guidance, published in 2010, it includes guidance for judiciary and practitioners across a range of areas, including applications for a care order. In particular:

- (a) At section 3.2, dealing with the pre-proceedings stage, it is noted that parents should, as far as possible, be involved in the pre-proceedings assessment processes and should be consulted on the Trust's plans for the child. This will include the Trust making the parents aware of their concerns about the child.
- (b) At section 3.4, dealing with pre-proceedings correspondence, it is indicated that parents should be sent a letter before proceedings.
- (c) Section 3.5 makes provision for pre-proceedings meetings. The letter before proceedings is to act as an invitation to a pre-proceedings meeting with the parent (and their legal representative, if they wish).
- (d) Once proceedings have been commenced, there is guidance given in section 5.2 in relation to the first direction hearing or first review. At this, the court is advised to consider whether any additional persons ought to be served with, or given notice of, the proceedings. Standard directions will usually be given which allow for the filing of a response by each parent to the allegations made in Form C1.

[40] In addition, I was referred to Guidance to the Children's Order ("the Children Order Guidance") published by the Department of Health in seven volumes. This guidance builds upon "An Introduction to the Children (NI) Order 1995" which was originally published by the then Department of Health and Personal Social Services and the then Office of Law Reform. Volume 1 of the Children Order Guidance, dealing with court orders and other legal issues, also contains guidance which is of some relevance in the present context:

- (a) Para 3.7 of this guidance explains that "an unmarried father who does not have parental responsibility is nevertheless a "parent" for the purposes of the Children Order" with a variety of rights, including the right of any parent to apply to the courts for any type of order (see Article 10(4)).
- (b) Para 2.43 draws attention to provisions of the Children Order (Articles 26(2), 76(2) and 92(2)) which state that, before making any decision with respect to a child whom it is looking after or propose to look after or accommodate, the responsible authority should obtain and take account of the wishes and feelings of the child and his parents.
- (c) Similarly, para 2.46 indicates that responsible authorities should ensure that a child's family, parents, grandparents and other relatives involved with the child are invited to participate actively in the planning process and make their views known. "The Children Order requires that parents (including the unmarried father who may not have parental responsibility) should generally be involved in all planning for the child and should be kept informed of significant changes and developments in the plan for the child..."
- (d) Para 9.34 indicates that where parents are not actually caring for the child at the time of the application "the court must consider whether they would be likely to offer a reasonable standard of care if the child were returned to them", with their past and present behaviour being relevant, together with any change in their circumstances since they last cared for the child.

[41] The points made in relation to this guidance are double-edged. On the one hand, the applicant points to the absence of any distinction, for a variety of purposes, between parents with PR and those without. On the other hand, the respondents point to the fact that an unmarried father in the applicant's position will be consulted and have their views and parenting capacity taken into account both before and during any care proceedings. Provided they are contactable, this will permit any interested parent without PR to engage in the process; to be aware of the impending proceedings from an early stage; and to participate (including by applying to be joined as a party in the proceedings) to the extent that they wish. In this way, Mr McLaughlin submitted that there were safeguards for a parent in the position of the applicant – provided they are contactable – both before and during the proceedings. This resonates with the respondents' evidence to the effect that the objective of the Department of Health and its predecessor has always been that an unmarried father

should be given every opportunity to be part of his child's life and integral to decision-making about his child's future in the best interests of the child.

[42] Turning back to the applicable rules, a notice party must be given notice of the proceedings "at the same time" as the applicant in those proceedings serves papers on the respondent (see rule 4(1) of the 1996 Rules; and rule 4.5(4) of the Family Proceedings Rules). There should not, therefore, be a delay between the respondents being served with the application and a parent without PR being served with notice of the proceedings. That should happen simultaneously. A notice party will be served with Form C2A under the 1996 Rules or Form C3A under the Family Proceedings Rules. In each case, the relevant form will identify the child or children concerned, the provision of the Children Order under which the application is made; and the time, date and location of the directions appointment. It advises the recipient that they have been named in the application but also states, in Note 1, that "You do not have the right to take part in the proceedings, at present. If you want to take part (become a party to the proceedings) you must apply to the court on Form C2." The notice also prompts the recipient to seek legal advice. Thus, the notice provides a clear indication to someone in the applicant's position as to what they should do. (I might quibble with the terms of this form in one respect, insofar as it might be taken to suggest that a parent without PR may only "take part" in the proceedings by successfully applying to become a party. It seems to me that, subject to the judge case managing and hearing the proceedings, there are a number of ways in which a parent without PR may participate in, or contribute to, the proceedings which might fall short of obtaining full party status, for example simply by submitting their views in writing.)

[43] It is correct that the minimum time prescribed by the rules between service and the first hearing or directions appointment (three days) is not long. However, as noted above, a recipient of notice of the proceedings may file a request in Form C2 – which is a relatively uncomplicated form – that he be joined as a party. The court has the power to grant such a request without a hearing or representations (see rule 8(3)(a) of the 1996 Rules and rule 4.8(3)(a) of the Family Proceedings Rules). In cases where the application is made by a parent, whose views and parenting capacity the court is required to take into account in any event, it is likely that such an application will be granted. In the modern age, the provision of additional documents to a person joined as a party can of course be undertaken highly expeditiously.

[44] In view of the above, I consider the disadvantages which accrue to a parent in the position of the applicant – by virtue of enjoying only notice party status rather than respondent status – to be modest. The issue in this case was that the applicant was out of the picture from the Trust's perspective and not contactable. Once lines of communication were established, the process operated as it should, with ample scope for input and contribution from the applicant. Had his contact details been known to the Trust in advance he would, in the usual way, have been consulted *in advance* of the care proceedings, meaning that he would have been well aware of the Trust's concerns in advance and in a position to immediately express his views to the court

on any intended course of action and/or to immediately apply to be joined as a respondent.

[45] The particular factual circumstances of this case are such as to artificially exaggerate the consequences of lacking respondent status. In truth, however, if the applicant was a designated respondent to the care proceedings under the rules when they commenced, it is difficult to see how the proceedings would have been conducted differently. If there is a temptation on the part of judges dealing with such cases to ignore the position of parents without PR or the question of whether they have properly been put on notice of the proceedings – which, I should say, I doubt, given the terms of the Children Order, the relevant rules and the guidance referred to above – that should be put right. Hopefully, the content of this judgment might go some way to rectify any such issue if and insofar as it has any purchase. As observed by Judge Bellamy at para [46] of the *In re X (A Child)* case, the requirement that a parent without PR be put on notice of care proceedings is as much about the child's interests as that parent's interests:

“For the children involved it is important that attempts are made to engage with their birth father and perhaps also his wider family. The starting point must be two-fold. First, that it will normally be in the interests of the child that her birth father should receive a copy of Form C6A thereby enabling him to apply for party status so that he can participate in the proceedings...”

Articles 6 and 8 ECHR

[46] I turn then to consider the applicant's case that his rights under article 6 and/or 8 ECHR have been violated. In *In re M (Notification of Stepparent Adoption)* [2014] EWHC 1128 (Fam); [2014] Fam Law 1085, at para [48], Theis J held that if a father does not have article 8 rights in relation to a relevant child, then article 6 is not engaged. This position has been reinforced in *In re X (A Child) (Care Proceedings: Notice to Father without Parental Responsibility)* [2017] EWFC 34, at para [35]. It is appropriate, therefore, to consider whether the applicant's article 8 rights were engaged in this case.

[47] The existence or non-existence of ties which give rise to protection of an individual's family life under article 8 ECHR is a question of fact. A child having been conceived out of wedlock is clearly not determinative of this issue. The court will consider the existence of close personal ties (see *Paradiso and Campanelli v Italy* [2017] 65 EHRR 96, at para 140). Cohabitation is also not required, although is usually an important indicator. The question is the quality of the relationship and whether there is sufficient constancy to warrant article 8 protection. A helpful summary is contained in paras [22]-[29] of the *In re X (A Child)* case, referred to above.

[48] In the applicant's submission the difficult relationship he had with K's mother resulted in the ending of their relationship, which in turn led to the applicant leaving

their home one year after K's birth. However, he relies upon the fact that he cohabited with N and K for a period of time and, at that, for an important and formative time in K's life.

[49] I also take into account that article 8 extends to the potential for the future establishment of a family life between an unmarried father and his child (see, for example, *Nylund v Finland* (App No 27110/95); and *Katsikeros v Greece* [2022] ECHR 2303/19, at para 44). In this context again, however, the engagement of article 8 will require consideration of the nature of the relationship between the child's natural parents and father's demonstrable interest in, and commitment to, the child both before and after birth.

[50] The applicant contends that, due to some personal issues, he was unable to be in contact (or had very limited contact) with K for a prolonged period from approximately from 2014 to 2019. It is also the case that the NMOs which were issued against the applicant, and which applied from February 2016 through to February 2020 will have contributed to the lack of contact between the applicant and K in this period. It is difficult to know how to assess the significance of that. On the one hand, it is not a factor in the applicant's favour, since the district judge will only have granted that order on the basis that it was warranted; and no application to vary or discharge it appears to have been made by the applicant. On the other hand, once the order was made, the applicant can hardly be criticised for failing to breach the order by contacting K or his mother. The evidence does, however, suggest that the applicant made efforts to contact the Trust in July 2017 with a view to remaining involved with K. Perhaps more importantly, he made efforts to contact K's mother in April 2019, after he had improved his circumstances somewhat, at which point he wished to pursue contact with K. At that stage, he seems to have been frustrated by the facts that he was unaware of N's address and that her solicitor was not in a position to accept service on her behalf. Subsequently, the applicant has had contact with K and also acquired PR (although this post-dates the making of the care order and the commencement of the care proceedings).

[51] This is a case where it is plain that, in the years after K's birth, the applicant was unable to regulate his own behaviour in K's interests and play much, if any, constructive role by way of a loving and supportive influence in K's life. However, it is also a case where, viewed with the benefit of hindsight, there appears to be some force in the applicant's claim that he later 'became a better version of himself' and made more concerted efforts to be a part of K's life. Correspondence which the court has seen from 2019 from both a social worker and police officer who had some involvement in this case suggest that the applicant had taken significant steps to change his ways, with the goal of caring for K. The evidence also suggests that (perhaps for good reason, from her perspective) K's mother did what she could to exclude the applicant from involvement in K's life.

[52] I was not persuaded that the applicant's reliance on the 'private life' limb of article 8 materially advanced his case. Nonetheless, in the circumstances described

above, I consider on balance that the applicant can rely upon his article 8 ‘family life’ rights in terms of the challenge he makes to the procedural arrangements set out in the impugned rules. He is K’s biological father, which is a matter of some significance, although not determinative of itself; he was in a relationship with K’s mother at the time of the birth; and he lived together with them for around one year after K was born. After that, despite regrettable periods of lack of any contact, I am satisfied that the applicant retained the hope and desire to play a meaningful role in K’s life and that, having tried to deal with several of the issues which held him back (partly through a desire to re-establish contact with his son), he made more concerted efforts to re-establish contact with K, at a time when the care proceedings were ongoing. His later determination to acquire PR, re-establish contact and take an active part in the care proceedings must give some indication of his intentions at the relevant time, which are consistent with the matters I have mentioned above. Taking that together with his earlier involvement in K’s life, I consider that sufficient family ties are established to permit the applicant to rely upon article 8 ECHR in this case. I turn on then to consider the article 6 aspects of this case.

[53] The applicant alleges that his rights under article 6 ECHR have been breached, although he has not clearly or specifically articulated which aspect of article 6 he relies upon in this regard. The question is really whether the failure to automatically render the applicant a respondent to care proceedings is in breach of the civil limb of the fair hearing guarantee contained within article 6(1). The right to a fair hearing under article 6 includes the right of access to a court, of which the right to institute civil proceedings before courts in civil matters is one aspect (see, for instance, *Nait-Liman v Switzerland* (2018) 45 BHRC 639, at paras 112-113). This right is not absolute and may be subject to limitations, since the right of access by its very nature calls for regulation by the state, which enjoys a certain margin of appreciation in this regard; but those limitations must not restrict or reduce a person’s access in such a way or to such an extent that the very essence of the right is impaired and must be proportionate in pursuit of a legitimate aim (*Nait-Liman*, paras 114-115).

[54] A significant impediment to the applicant’s case is the authority of *McMichael v UK* (1995) 20 EHRR 205 in which the European Court of Human Rights (ECtHR) held that where an unmarried father had not taken any measures to acquire parental responsibility, subsequent care proceedings regarding his child did not fall within article 6(1), as they could not have the effect of changing his legal relationship with the child and thus were determinative of his civil rights. The court stated as follows (at para 77):

“In these circumstances, the Court agrees with the Commission’s reasoning. Even to the extent that the first applicant could claim “civil rights” under Scots law in respect of the child A, the care proceedings in question did not involve the determination of any of those rights, since he had not taken the requisite prior step of seeking to obtain recognition of his status as a father. In this respect the

present case is to be distinguished from the case of *Keegan v Ireland*.”

[55] On the basis of this authority, the applicant’s article 6 rights are not engaged. However, in light of the authorities mentioned at para [46] above, I assume for present purposes that, in domestic law, provided the court is satisfied that article 8 family life rights are in play, article 6 should be treated as engaged (i.e. that the existence of family life is not only necessary, but sufficient, to engage article 6 in its civil limb in this context). But what would that require in the present circumstances? The heart of the applicant’s complaint is that he was not served with notice to attend the care proceedings and was not designated as a respondent, that is to say, he was not automatically accorded party status. I have examined above some of the potential practical consequences of this. But how do the rules of which the applicant complains affect his right of access to the court? The core of this right is that an intending litigant must have a right to institute proceedings. Strasbourg authority makes clear that the right must be “practical and effective.” The right can be breached by the existence of procedural bars which prevent or limit the possibility of applying to a court. In the present case, however, if the applicant had been provided with the notice of the care proceedings required by the rules, he would have been perfectly at liberty (as he later did) to participate in the proceedings, including by applying to be joined as a respondent.

[56] The key issue is whether the applicant’s right of access to the court is rendered impractical or ineffective by virtue of his not being able to participate in the relevant proceedings. For the reasons given above, I cannot see how the applicant is in any way precluded from accessing the court (provided the notification requirement is complied with, as it should be). The important point is that the applicant should have been notified of the proceedings, which then permits him to take any steps he considers appropriate to become involved in the court process. Several of the authorities to which the court was referred (including the *In re X (A Child)* case) concern a situation where the court is being asked, exceptionally, to dispense with notification requirements, so that the proceedings would occur without a parent even being aware of them. That does truly engage the article 6 right of access to the court, since participation is impossible without notification. For the reasons explained above, however, that is not the present case.

[57] I accept – as the ECtHR held in the *McMichael* case (see para 80) – that the effectiveness of a person’s participation in proceedings is open to question if they have no sight of reports or documents which are relevant to the proceedings and their outcome. In the *McMichael* case, however, the parents had *no* access to relevant documents, the substance of which was supposed to be summarised for them during the oral hearing procedures. In the present case, once a notice party has been joined as a respondent, they will be entitled to the full suite of documentation relevant to the case (unless, for some good reason, the court permits some part of the documentation to be withheld). The non-provision of the full suite of documentation at the

notification stage does not, in my view, undermine the essence of the right of access to the court in such a way as to give rise to a breach of article 6.

[58] Whilst article 8 contains no explicit procedural guarantees, it is now well-established that it may have procedural aspects. In particular, in certain circumstances (where an interference with an article 8 right is particularly significant) the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by the article. The ECtHR will ask whether, having regard to the circumstances and the nature of the decision, the individual has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. In the *McMichael* case the ECtHR considered that there was a violation of the first applicant's (the father's) article 8 rights, even though his article 6 rights were not engaged (see paras 91-93). The procedural rights afforded under article 8 will, however, rarely if ever go beyond those afforded by article 6 where it is engaged. For the same reasons as I consider there is no breach of article 6 ECHR in this case, I also consider that the process is sufficiently fair and accessible as to give rise to no breach of the applicant's rights under article 8 ECHR.

Article 14 ECHR

[59] If there is any force in the applicant's claim it is in relation to his complaint under article 14, upon which Ms Simpson focused in her submissions. As I have held above, in light of the applicant's position, all that articles 6 and 8 ECHR require is that he be put on notice of the relevant proceedings and given a fair opportunity to participate upon his own application. However, a number of others are given the status of a party (respondent) to the proceedings without having to take any steps themselves to secure such benefits as that status affords. As the rules have the effect of treating some persons in that fashion and others (in the position of the applicant) differently, there is a question of whether this differential treatment is justified. For the reasons discussed above, I am satisfied that the differential treatment complained of in this case falls within the ambit of article 8 ECHR and/or article 6 ECHR.

[60] In his pleaded case, the applicant has identified a range of different potential comparators, namely a mother, a married father and/or an unmarried father who had acquired PR. In oral submissions, the focus was on the last of these comparators. In each case, that person would enjoy PR (unless it had been removed by an order of court). Viewed in this way, the challenge may be said to be a challenge to the additional benefit which the conferral of PR provides in this context. The applicant expressly disavowed any challenge to the reasoning behind the distinction made between mothers and unmarried fathers in the automatic conferral of parental responsibility, in light of previous case-law which concluded that this did not give rise to any breach of article 14. In the applicant's submission, this was simply about the use of PR as a tool to differentiate between fathers in the present context. In the context of care order proceedings, where one of the matters the court must consider is how capable of meeting the child's needs "each of his parents" is, Ms Simpson submitted

that there was no proper distinction to be drawn between those parents with PR and those without. The welfare checklist does not draw this distinction; why, therefore, should it make a difference in terms of party status in such an application?

[61] I accept the respondents' submission that it is "difficult to divorce the aims of the impugned provisions from the aims which underpin the distinction between mothers and unmarried fathers in the automatic acquisition of parental responsibility." The right to party status in care proceedings is one of the consequences of the conferral of PR. That is one of the rights contained within the bundle of "rights, duties, powers, responsibilities and authority" which comprise PR. It is impossible to assess the justification for the differential treatment in this case without having regard to the justification for the differential conferral of PR in the first place.

[62] The respondents placed significant reliance upon the cases of *McMichael v UK* (*supra*) and *B v UK* [2000] 1 FLR 1; [2000] 1 FCR 289 which discuss article 14 claims by unmarried fathers who did not have PR. In *McMichael*, the ECtHR, like the Commission, found that the distinction drawn between married and unmarried fathers in terms of the acquisition of parental rights was not contrary to article 14. It acknowledged the wide variety of relationships of natural fathers with their children ranging "from ignorance and indifference at one end of the spectrum to a close stable relationship indistinguishable from the conventional matrimonial-based family unit at the other." It accepted that the aim of the relevant legislation was to provide a mechanism for identifying meritorious fathers who might be accorded parental rights, thereby protecting the interests of the child and the mother. The court concluded that this aim was legitimate, and the conditions imposed on natural fathers for obtaining recognition of their parental role respected the principle of proportionality.

[63] In the case of *B v UK*, shortly after the unmarried father of the child applied for a PR order and a contact order, the mother removed the child from the UK to Italy. The English courts dismissed the father's application under the Hague Convention on the basis that he did not have any formal rights of custody under English law (see *Re B (Abduction) (Rights of Custody)* [1997] 2 FLR 594). The father took the case to the ECtHR, complaining that unmarried fathers were discriminated against in the protection given to their relationships with their children by comparison with the protection given to married fathers. The complaint was declared to be inadmissible because there was an objective and reasonable justification for the difference in treatment between married and unmarried fathers with regard to the automatic acquisition of parental rights, which related to the range of possible relationships between unmarried fathers and their children. There was an objective and reasonable justification for treating differently fathers who had different responsibilities by reason of having the child in their care and those who did not.

[64] I was also referred to *Re W; Re B (Child Abduction: Unmarried Father)* [1998] 2 FLR 146, another case involving unmarried fathers without PR who were placed in a significantly disadvantageous position in relation to the removal of their children

from the jurisdiction. Hale J (as she then was) considered that there was no breach of article 14. She discussed the policy considerations behind the distinction and ongoing consultation and debate in relation to it (at 163-164); she posed the question of whether the law was required automatically to afford completely equal parental responsibility and authority to the parents or whether the opportunities given to fathers were a sufficient safeguard of their family life given the wide margin of appreciation which is recognised in this context (at para 166-167); and she ultimately concluded that the differences were not contrary to the Convention (at para 168). These were all matters for Parliament.

[65] In the more recent decision of the Court of Appeal in this jurisdiction in *SV (Minor) v PV and PV v A HSCT* [2023] NICA 41, the court held that one of the aims behind the legislation is to guard children and women against unmeritorious fathers. That case centred upon whether a child should be able to apply to revoke PR on the part of his married father, in the same way in which such a child could apply to revoke PR enjoyed by his unmarried father (see para [3] of the judgment). In the Court of Appeal's view, the ongoing distinction in the Children Order (as between those upon whom PR was automatically conferred and those upon whom it was not) was justified and struck a fair balance between the competing rights (see paras [104]-[107]).

[66] In light of the above authorities, I am inclined to the view that the applicant and an unmarried father who has *acquired* PR are not in an analogous position for the purpose of article 14 ECHR. The unmarried father who has taken the initiative and gone to the trouble to acquire PR (whether by registration, agreement with the mother or an application to the court) has placed himself in a different position from the unmarried father who has not. In my judgment, the State is perfectly entitled to maintain the concept of PR as representing a bundle of rights (as well as duties) which confer a particular status upon those who have it. One such advantage is that they are thereby to be made respondents in significant applications affecting the child.

[67] Nonetheless, I also proceed to consider the matter on the basis that the applicant is in an analogous position to a father with PR, since I recognise that it is arguable that this is so. Ms Simpson took me to a number of provisions of the Children Order where no distinction is drawn between parents with, and parents without, PR. These included Article 16(2) (*re* the making of family assistance orders); Article 26(2) (*re* consultation by an authority under its general duty); Article 29(1) (*re* promotion of contact); Article 50(2) (*re* the care threshold); Article 53(1)(a) (*re* an authority allowing reasonable contact with parents); and Article 167 (*re* ordering attendance of child or parents).

[68] The rationale behind the difference in treatment between married and unmarried fathers in the automatic acquisition of parental responsibility is summarised in the affidavit of Mr Andrew Dawson (Head of Civil Justice and Judicial Policy Division in the Department of Justice) on behalf of the respondents. Although the applicant states that it is irrelevant to discuss the reasons for the difference in treatment between married and unmarried fathers in the automatic acquisition of

parental responsibility, I do not consider this is either realistic or appropriate. Ultimately, the respondents' evidence presents a need to be flexible to cater for the spectrum of many different circumstances by which unmarried fathers may participate in their child's life, together with the need for courts to be able to conduct Article 50 proceedings fairly and effectively, without delay and consistently with the need to give priority to the best interests of the child. Put shortly, there will be cases where some fathers without PR will have no interest in care proceedings and no desire to participate. Requiring those persons to be accorded full party status from the outset and to have all of the relevant papers served on them will be unnecessary in some circumstances and perhaps disproportionate, in terms of the disclosure of sensitive information about the child and/or their (former) partner. In these circumstances, the state has determined to adopt a system where parents without PR are notified of proceedings and can then opt in; rather than a system where such parents are automatically joined as full respondents and may then opt out (or simply fail to participate). The latter course might well give rise to additional costs and/or delay.

[69] It is right that precisely the same justification for the differential treatment does not exist in the present context as exists for the difference in treatment in automatic conferral of PR. For instance, an unmarried father without PR has an unrestricted right to initiate proceedings for a private law order under article 8 of the Children Order (see Article 10(4)(a)); and must also have their parenting capacity taken into account under the welfare checklist when an application for a care order is made. Nonetheless, the justifications overlap significantly. However, just as importantly, the detriment which arises as a result of the difference in treatment is also much more limited (see paras [31]-[44] above). In the case-law discussed above (see paras [62]-[64]), much more significant detriment to parents without PR was considered not to give rise to a breach of article 14 in view of the purpose served by the distinction and the fact that this was within the legitimate margin of appreciation available to the State.

[70] When the limited detriment in practical terms is taken into account, I conclude that the difference in treatment does strike a fair balance between the interests of the community and the rights of the applicant; or, put another way, that there is a reasonable relationship of proportionality between the means used and the aim sought to be achieved. At any rate, this is within the legitimate area of discretionary judgment available to the state in this context. This is an area where, in my judgment, a low intensity review is appropriate (see Lord Reed at para [158] of *SC v Secretary of State for Work and Pensions* [2021] UKSC 26). The differential treatment under the 1996 Rules (and the Family Proceedings Rules) is simply another means of regulating the plethora of relationships which an unmarried biological father may have with his child. A person in the applicant's position will be served with notice of the proceedings and should, in any event, be aware of them from pre-proceedings involvement even before they have been commenced. Such a parent also has the means of securing their position, if they so wish, by seeking to acquire PR in one of the range of ways available to them, including by applying to the court, which is a significant practical safeguard available to them.

[71] I also note that the issue of PR for unmarried fathers has been kept under review. This has been explained in the respondents' affidavit evidence. A public consultation was held in 1999 to address this issue. It considered proposals as to (a) whether a father of a child, whether married or not to the mother, should automatically acquire parental responsibility, (b) whether a father who jointly registered the birth of the child should obtain parental responsibility, and (c) whether no change to the law was required at the time. From these options, option (b) was adopted, which was given effect by the Family Law Act (Northern Ireland) 2001. In 2014 the same issue was revisited, and a consultation was carried out by the then Department of Finance and Personnel in October 2014. The issue did not progress further.

[72] Similar consultations have been conducted in England and Wales. That jurisdiction also rejected the option of automatic conferral of PR on a biological father. The position in relation to the parties to, and service of, care proceedings is materially identical in England and Wales as in this jurisdiction: see rules 7 and 8 of, and Schedule 2 to, the Family Proceedings Courts (Children Act 1989) Rules 1991 (SI 1991/1385); and rule 12.3 of the Family Procedure Rules 2010 (SI 2010/2955). In Scotland, consultations in this regard were conducted in 1999, 2004, 2018, which gave rise to legislative amendment, none of which included the automatic conferral of parental responsibility on biological fathers. The procedural position is different in Scotland where a parent without parental responsibilities or parental rights is a "relevant person", pursuant to an order made by the Scottish Ministers, and so a party for the purposes of an application for a care order: see sections 74(2) and 200(1)(a) and (g) of the Children's Hearings (Scotland) Act 2011, in conjunction with paragraph 3(2)(a) of the Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 (SSI 2013/193). However, the mere fact that the jurisdiction of Scotland adopts a different approach does not indicate that the different choice made in Northern Ireland and England and Wales is impermissible and unlawful. This is another illustration of how the issue falls within the discretionary area of judgment of the legislatures involved; but also shows that changing societal needs are actively being considered and the matter is being kept under review, which is another factor which may support the justification of the differential treatment under challenge.

[73] Finally, in order to achieve the relief which is sought in this case, namely a declaration that the legislation was incompatible generally with Convention rights (rather than merely a declaration that his own rights had been violated in the particular circumstances of his case), the applicant would have to satisfy the requirement that the rules would give rise to a Convention violation in all or almost all cases, either as a whole or considering a particular category: see *Re JR123's Application* [2023] NICA 30, paras [78]-[82]. As I recently commented in the case of *Re Nolan's Application* [2024] NIKB 83, "this area of law is not without its difficulties, as illustrated by Humphreys J's discussion in *Re NI Human Rights Commission's Application* [2024] NIKB 35, at paras [185]-[194]. However, I am bound by the Court

of Appeal decision in *Re JR123*; and, in any event, even applying the more modest test of whether the legislation is bound to result in a violation of rights in a legally significant number of cases", I have not been satisfied that this is so. There will be many cases where unmarried fathers do not have sufficient family ties to establish that their article 8 rights are engaged. Even where they are engaged, however, I do not consider that the present regime breaches article 8 procedural rights; and, even if that was wrong in some cases, the likelihood of breach established because there was some significant and irreversible detriment which arose at a very early stage of care proceedings is unlikely to arise in a significant number of cases.

Conclusion

[74] For the reasons given above, the application for judicial review is dismissed.

[75] Nonetheless, three words of advice or guidance may appropriately be given as a result of the circumstances highlighted by this case. First, it is clear that at least some of the difficulties which arose in this case came about because of a lack of communication between the Trust and the applicant for a period of time. Unmarried fathers who wish to be involved in their child's life should ideally take the step of seeking and securing PR for their child. In the absence of this, however, where there is Social Services' involvement with the child, such a parent should do all they can to ensure that they engage with the relevant social work team and, at the very least, have provided them with up-to-date contact details. Had that occurred in this case, the applicant's central complaint – that he was unaware of the care proceedings at their commencement – is unlikely to have arisen. It should also go without saying that the other parent, or their legal representatives, should be willing to share with the Trust any contact details of which they are aware in respect of those entitled to notification of the proceedings under the relevant rules. Where that may be unlikely to occur for whatever reason, the simple step of keeping in touch with the Trust may avoid difficulties such as arose in the present case.

[76] Second, where care proceedings are commenced, Trusts should take seriously their obligation to notify those who, under the rules, are entitled to be notified of the proceedings. They should make every effort to identify and name parties who are entitled to notice of the proceedings for the benefit of the court. (It is unclear why the applicant was not named in the relevant section of the Form C1 in this regard in the present case: see para [11] above). Trusts should also make every effort to serve notice of the proceedings on those persons and to do so as early as they can. A court hearing an application for a care order should also satisfy itself, at the earliest opportunity, that the requisite notice has been provided and, if it has not, that the Trust has taken all reasonable steps to fulfil this obligation. Where that has not occurred, the court should consider carefully whether and how it should proceed in the absence of a person entitled to notification having been given the opportunity to contribute and/or apply to be joined as a party. The court should also consider at that stage whether it is appropriate to exercise any of its own powers in order to assist in locating or making

contact with the party who has not received the requisite notification of the proceedings.

[77] Third, as noted above (see para [36]), I was told that some Trusts, when serving a parent without PR with notice of care proceedings, will provide that person with a copy of the Form C1 which grounds the application; but that other Trusts do not. Strictly speaking, the rules appear only to require the service of the relevant form (whether Form C2A or Form C3A) giving notice to non-parties “of proceedings.” Those forms contain relatively basic details. Under the rules, the “application” is defined as including, but is not limited to, the Form C1 (see rule 4.5(1)-(2) of the Family Proceedings Rules; and, in less prescriptive terms, rule 4(1) of the 1996 Rules). It is the Form C1 in which the notice party will have been named (at section 5 and also, in the case of a parent, section 9). That form sets out some additional details and, importantly, the nature of the order which is being applied for (although the reasons for the order and any plans for the children are unlikely to be set out at section 12 where a prescribed supplement is provided, namely Form C10). For my part, I think it would be helpful, unless there is some good reason why this is inappropriate, for there to be a consistent practice across the jurisdiction whereby Trusts provide a copy of the Form C1 to those who are entitled to notice of the proceedings. Trusts may also wish to consider whether, in appropriate cases, it would be proper to provide additional details at that stage. However, if the advice at para [75] above is heeded, a parent in the applicant’s position is likely to be well appraised of the situation in any event though pre-proceedings engagement and correspondence.