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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 JR251
TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS BY THE BELFAST HEALTH AND SOCIAL CARE TRUST AND DEPARTMENT OF HEALTH

Ms Suzanne Simpson KC with Ms Sarah Walkingshaw (instructed by Stephen Tumelty Solicitor) for the Applicant
Mr Eric Cleland (instructed by DLS) for the first proposed Respondent
Mr Aidan Sands (instructed by Departmental Solicitor's Office) for the second proposed Respondent
Ms Kelly Hyndman (instructed by JG McCann & Co) for AP (The father of KR)
Mr Neeson (instructed by Departmental Solicitor's Office) for the Notice Party - The Safeguarding Board

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COLTON J

Introduction

[1] The applicant is the mother of two young children who shall be referred to as "KJ" and "KR" in the course of this judgment. KR is a female child who was born on 7 September 2018. KJ is a male child who was born on 4 July 2020. Because the application directly involves the treatment of young children the court directed that the applicant be granted anonymity. She shall be referred to as JR251 in this judgment. Nothing should be reported in relation to this application which would lead to the identification of KJ and KR.

Factual Background

[2] This application arises from interventions by the Trust in relation to KJ and KR arising from concerns about their welfare. These concerns related to issues

arising from the applicant's limited cognitive ability and her perceived lack of parenting skills. The interventions involved the seeking of an interim care order ("ICO") under Article 50 of the Children (Northern Ireland) Order 1995 and the placement of the children on the Child Protection Register ("CPR").

[3] Applications for an ICO came before the lower court by way of an interim hearing on 2 December 2021. On that date, evidence was heard from the social worker with carriage of the case. The panel did not accede to the Trust's application for an ICO with a plan of removal, but it made observations to the effect that this was a "last chance saloon and the last opportunity to get things sorted." It was noted that there had been some positive evidence of change for the first time. Matters were adjourned to 6 January 2022.

[4] The Trust had further concerns in the interim about the welfare of KR and KJ, which led it to file a "C2" on 5 January 2022 seeking an interim care order, with a care plan of removal of the children from the applicant's care. This was supported by an addendum report. These applications were considered on 6 and 7 January 2022. The applicant agreed to voluntary accommodation of both children and whilst certain issues arose in respect of KR's placement, neither child remained in, or was returned to the applicant's care, which remained the case at the date of this hearing.

[5] In relation to the CPR process, an initial Child Protection Case Conference took place on 25 March 2021. This followed a period of Trust involvement dating back to an initial referral to social services on 17 June 2020.

[6] On 25 March 2021, both children were registered under the category of confirmed neglect.

[7] On 27 May 2021, a review Child Protection Case Conference took place. A new category was added, that of potential emotional abuse.

[8] The matter was considered by a CPR panel for a third time on 1 December 2021. At that stage registration was continued.

[9] Subsequently, the applicant availed of her rights of appeal in respect of CPR Registration. Her stage 1 appeal was refused on 17 January 2022. Her Stage 2 appeal was refused in May 2022.

The proceedings

[10] The Order 53 Statement identified the impugned decisions in the following way:

> "(i) The ongoing unlawful interference with the applicant's article 6 and article 8 rights by the BHSCT in relation to the seeking of an ICO, the

placement and the maintaining of the applicant's child on the CPR and the appeal processes in respect of the CPR.

(ii) The ongoing unlawful interference with the applicant's article 6 and article 8 rights by the Department of Health by reason of the Department of Health failing to ensure via direction, guidance and review that the Safeguarding Board NI Guidance was compliant with the parents' article 6 and article 8 rights."

[11] The applicant sought a range of orders against the proposed respondents based on diffuse and wide-ranging grounds.

The applicant's challenge

[12] At the hearing, in her commendable focused and reasoned submissions, Ms Simpson indicated that the challenge related solely to a consideration of the process that enables a child to be placed on a CPR at a case conference.

[13] Ms Simpson identified five key issues in relation to the process as follows:

(i) There appears to be a difference in the Trust's approach and that of the Department of Health ("the Department") as to whether voting occurs at case conferences.

(ii) The guidance issued by the Department is unclear.

(iii) The process is unfair in that a parent is not permitted to vote at a case conference, which it is argued is in breach of her Convention rights.

(iv) It is unfair that each professional who attends at a case conference is permitted to vote – it is argued that voting should be restricted to one vote per agency.

(v) The guidance is unclear about the role of the chairperson if there is no consensus at the meeting.

[14] Returning to the history of the case conferences the focus of the challenge relates to the conference which took place on 1 December 2021.

Child Protection Case Conferences

[15] Before analysing the complaints made by the applicant it is useful to set out the basic structure for the protection of children as relevant to these proceedings.

[16] The Safeguarding Board Act (Northern Ireland) 2011 ("the Act") established the Safeguarding Board for Northern Ireland ("SBNI") as an unincorporated statutory body with its own statutory functions. It is legally distinct from the Department, which is its sponsor department.

[17] The Board is made up of a chair appointed by the Department and representatives from various statutory bodies and agencies such as the PSNI, the Health Trust, the Probation Service and others as set out in section 1 of the Act.

[18] Section 2 of the Act provides that the objective of the Board is "to coordinate and ensure the effectiveness of what is done by each person or body represented on the Board … for the purposes of safeguarding and promoting the welfare of children."

[19] Further definition on the membership, procedures and functions of the Board and its committees is provided by the Safeguarding Board for Northern Ireland (Membership, Procedure, Functions and Committee) Regulations (Northern Ireland) 2012.

[20] The Department has published a guidance document, "Co-operating to Safeguard Children and Young People 2016" (revised August 2017) which provides the overarching policy framework for safeguarding children and young people.

[21] The Department has also published guidance to the SBNI which includes guidance on the exercise of its statutory duty to develop policies and procedures for safeguarding and promoting the welfare of children. Section 5(2) of the Act provides that the SBNI must give due regard to any guidance issued to it by the Department.

[22] The Safeguarding Board for Northern Ireland Procedures Manual ("the Guidance Manual") was launched on 28 November 2017. The manual sets out how agencies and individuals should work together to safeguard and promote the welfare of children and young people.

[23] This manual is central to the consideration of this application.

[24] The guidance manual provides for child protection case conferences (CPCC) which are described as "central to the child protection process." It is a multi-disciplinary/multi-agency meeting that brings together the family and professionals in relation to child protection concerns regarding the child/young person and family situation. It provides an opportunity to exchange information and plan for the welfare of the children together.

[25] This process can lead to children being placed on the Child Protection Register.

[26] The procedure by which a child is placed on the Child Protection Register is set out in the guidance manual. A CPCC should be convened by the relevant Trust when it is clear either during or following an investigation that a decision has to be made on whether or not to place the child/young person's name on the CPR.

[27] The starting point is the convening of an initial Child Protection Case Conference. Such a conference "brings together the family members and professionals from the agencies that work with children/young people and of child protection responsibilities to …:

- Determine if the child/young person's name is to be placed on the Child Protection Register and the category of registration."

[28] Part of the preparation for a CPCC is the drafting of a risk assessment and analysis. In the guidance it is described as being "… designed to help clarify the issues in relation to the protection of the child/young person, to address the key questions in decision-making, in situations where a risk is present including what is the problem, and how serious is it? Its use should allow the range of attendees at a Child Protection Case Conference and those caring for the child/young person to have a clearer understanding regarding the presenting child protection concerns and whether there are significant concerns that the abuse or neglect will occur, continue or reoccur" (the risk assessment is part of the UNOCINI Child Protection Pathway Assessment) – section 5 of the manual guidance.

[29] Ms Simpson draws the court's attention to the role of "those caring for the child/young person."

[30] The focus in respect of this challenge relates to the role of the parent in the process.

[31] In this regard section 9 of the guidance manual places a responsibility on the chairperson of a CPCC to ensure, inter alia, that "all relevant people, including parent or child/young person are invited and are encouraged/facilitated to contribute in the Child Protection Case Conference and that parents and the child/young person are made aware of the decision to place a child/young person's name on the Child Protection Register and the purpose of the register."

[32] Section 12 of the guidance manual specifically deals with the issue of the "involvement of parents/carers in the Child Protection Case Conference."

[33] It provides:

> "There is an underlying principle that parents/carers should be involved in all of the discussions and decision making about their child/young person. This is in accordance with Article 6 (Right to a fair trial) and Article

> 8 (Right to private and family life) of the European Convention on Human Rights (ECHR).
>
> … The social worker should advise the parent(s) that they will be invited to attend all or part of the Child Protection Case Conference subject to the Chairperson's decision about whether this might prejudice the interests of the child/young person.
>
> Whether or not they attend, the parents/carers should be encouraged and supported by the social worker, to record their contribution in writing, or by other means, with the Child Protection Case Conference. This could be by letter, digital recording or representation on their behalf by a social worker or other professional.
>
> …
>
> The parents/carers should be invited to arrive at the Child Protection Case Conference venue at least 15 minutes before the start to allow the chairperson to advise them of the Child Protection Case Conference process, who will be present and their right to appeal against the decision of the Child Protection Case Conference. The chairperson will take responsibility for introductions between the parents/carers and members of the Child Protection Case Conference ensuring that they are made aware of the professional roles of all participants and of the reason for their attendance.
>
> Parents/carers should have the opportunity to say whether or not they agree with the issue(s) of concern. This can be done in a variety of ways, eg verbally by them or by a support person, a social worker on their behalf or by the Chairperson reading aloud their written contribution or by a combination of these."

[34] There are circumstances in which exceptions to attendance by parents/carers apply. These exceptions are dealt with in sections 14 and 15 of the manual guidance. Total exclusion (section 15.2) is explicitly noted to be "a significant deviation" from established principles and practice. Sections 14 and 15 provide for parents/guardians that have been excluded to be either represented at the conference or make written submissions.

[35] Under section 17 of the manual guidance the investigating social worker must prepare a written report for the Child Protection Case Conference using the UNOCINI assessment framework.

[36] The guidance sets out what the report must include and provides:

> "The social worker should provide a parent and child/young person, where relevant, with a copy of the report at least two working days prior to the Child Protection Case Conference unless to do so may present a risk to the child/young person or another party. The report should be explained and discussed with the family in advance of the Child Protection Case Conference."

[37] Section 18 deals with the CPCC agenda. It provides:

> "The chairperson is responsible for ensuring a systematic and ordered approach to the Child Protection Case Conference. The Child Protection Case Conference should be conducted using the following agenda:
>
> - Introductions and apologies received (including any necessary exclusions);
> - Detail of all written reports available to the Child Protection Case Conference;
> - Explanation of the Child Protection Case Conference process;
> - Sharing of information relevant to the function of the conference;
> - Analysis of the information shared;
> - Conclusion;
> - Decisions;
> - Recommendations and action plan."

[38] Section 19 deals with the decision-making process. It provides:

> "The Child Protection Case Conference should consider if the child/young person is at continuing risk of significant harm (the test to be applied is whether future significant

> harm is likely.) This decision should be based on all available evidence obtained through existing records, the initial assessment and from enquiries and research. It should take into account the views of all agencies attending the Child Protection Case Conference and any written contributions.
>
> Every effort should be made to reach mutually agreed decisions, recommendations and actions. All professionals in attendance must consider and analyse the information presented and contribute to decision making. Where there is a lack of consensus, a decision should be taken with the Chair having the final adjudication, considering all of the issues. The decision of the Child Protection Case Conference and the reasons for it must be recorded in the minutes of the meeting.
>
> It is recognised that each agency must retain the right to act independently within its own agency policies and procedures. Dissenting views on the decisions of the Child Protection Case Conference and the Child Protection Plan should be recorded in the minutes. Once decisions have been made, each agency is expected to support and carry out the Child Protection Plan. Every effort should be made to establish the Child Protection Plan as a formal contract involving professionals, the family and the child/young person."

[39] The final piece of the architecture relates to appeals.

[40] Stage 1 appeals are considered by the Child Protection Case Conference chairperson; the team manager/senior social worker(s) who were in attendance at the Child Protection Case Conference and the case co-ordinator.

[41] Stage 2 appeals consist of three persons. There is a chairperson who is a member of the local Safeguarding Panel with knowledge and experience of the Child Protection Case Conference, and two senior managers from agencies other than that of the chairperson, who have knowledge and experience of the Child Protection Case Conference process. One member must be from social services. No appeal panel member can have been involved in the Child Protection Case Conference that prompted the appeal. The Trust provides a minute taker.

The role of the parent

[42] Before considering the detail of the applicant's challenge in the context of the material set out above, Ms Simpson focuses on the role to be played by the parent in

the CPCC process. She submits that in effect, the parent/carer should be on an equal footing to those who represent the other agencies involved in the decision-making process.

[43] Turning to the specifics of the challenge there is one issue about which there is no dispute. Prior to the conference of 1 December 2021 the UNOCINI report which was to be considered by the conference was not delivered to the applicant until approximately 6pm on the evening before the conference which was due to take place at 10:30am the following day. This is in clear breach of the guidance referred to above which indicates that the parents should be given the report two working days in advance of the conference. This failure was aggravated by an alleged failure of the social worker to meet with the applicant prior to the meeting to go through the report.

[44] Whilst it is recognised that the manual is only "guidance" the Board should, unless there are good reasons to the contrary, comply with the guidance. In any event, as a matter of procedural fairness someone in the applicant's position should be given a proper opportunity to consider the detail of such an important report to prepare herself for the conference. The late provision of the report also denied her the opportunity to seek advice or guidance in relation to either the contents of the report or the conference itself.

[45] There is no dispute that this was procedurally unfair. The Trust accept that this was "regrettable." This aspect of her complaint was subsequently dealt with in the appeal process. It is accepted that there are no consequences arising from this error as the decision of the conference has been superseded by the two appeals.

[46] Notwithstanding the fact that there has been an appeal process at which the applicant was legally represented and the fact that she has voluntarily accepted the ultimate outcome, Ms Simpson urges the court to consider the broader issues raised in the applicant's challenge arising from other issues she identifies in the process.

[47] Both proposed respondents take issue about the utility of the application. The department says it is not an appropriate respondent at all.

The role of the Department

[48] The Department's obligations under the scheme outlined above are overarching and concern setting the policy and legislative framework within which the Safeguarding Board operates and providing guidance as necessary. These include the duty to establish the Board (section 1 of the Act) and the power to issue directions to the Board in specified circumstances (section 4 of the Act). The Child Protection Register and its procedures are a process of some standing, common to this jurisdiction and in England & Wales. Whilst not a creature of statute, the register and the procedures are considered by the courts and statutory agencies "to be good social work practice and necessary elements for, inter alia, protection of

children at risk" – see *R v Harrow London Borough Council, ex parte D* [1990] 1 FLR 79 at page 82.

[49] The guidance under which the Safeguarding Board acts in this case is published by the Board and not the Department, although the Strategic Planning and Performance Group (SPPG) of the Department (until 1 April 2022 was the Health and Social Care Board) is represented on the Safeguarding Board. The SPPG sits apart from those with responsibility for the development, implementation and review of child protection policy in the Department.

The Trust's Position

[50] On behalf of the Trust, Mr Cleland submits that there are serious issues regarding the utility and merit of these proceedings in light of what actually happened in this case. What has been challenged is the unanimous decision of experts in the field. Ultimately, arrangements have been reached whereby the children have left the applicant's care on a voluntary basis. The pervading situation in terms of their care arrangements only serves to underpin the Trust's assessment of risk and decision to continue registration.

[51] The Trust has acknowledged procedural failings for which it has apologised, but they do not undermine the substantive decision making and ultimate decision, which in Mr Cleland's words were fair, evidence based, child centred and welfare focused."

Core Issue

[52] The primary complaint of the applicant is that at the meeting on 1 December 2021 the Trust representative and all other professionals who attended the conference "voted" for the registration of the children on the CPR. However, the applicant herself was not permitted to vote.

[53] Ms Simpson argues that this is contrary to the purported aims of the procedure as set out in the guidance quoted above.

[54] Somewhat surprisingly, the actual minutes of the meeting of 1 December 2021 were not produced prior to the hearing. They were provided to the court during the hearing after production was directed by the court.

[55] The basis upon which the assertion was made in relation to the voting procedure were the minutes of the Stage 2 appeal meeting at which the applicant attended with her solicitor.

[56] At the appeal, understandably, the applicant's solicitor focused on the merits of the decision originally taken by the conference. For the purposes of this argument, however, the minutes provide as follows:

> "Ms Young went on to explain that each attendee has to vote on registration on the current risks or outstanding actions that a parent needs to achieve to lead to de-registration."

[57] Ms Young was the Chair of the appeal meeting and was described as "CSM Family Support and Safeguarding BHSCT."

[58] As part of the Stage 2 appeal process the panel interviewed a Ms Karen Watty, who was a principal social worker, who provided the case conference report. The minutes record that Ms Watty acknowledged the report was given a day before the conference and that policy and procedure was not followed. She did indicate, however, that the applicant confirmed she had an opportunity to read the report when asked by Ms Watty at the case conference. The Chair, Ms Young, advised that it was unfortunate the social worker did not go through the report with the applicant.

[59] The conference had been convened via Skype because of restrictions imposed as a result of the Covid pandemic. Some reservations were expressed about whether this was the best way to proceed.

[60] The minute also notes that the applicant was unhappy that "the health visitor voted for continuing registration at the case conference, despite the failure to raise concerns to the applicant prior to the meeting."

[61] The records of the Stage 2 appeal also include details of a call held on 24 May 2022 when the Head of Local Services NSPCC contacted Ms Alison Allamby, who had attended the case conference on 1 December 2021. Ms Allamby had attended on behalf of the Guardian ad Litem Agency.

[62] The note of the conversation includes the following:

> "We then discussed decision making regarding registration and each attendee's vote. I noted that reasons for same was not recorded in minutes but Ms Allamby recalled that each professional did note why they were voting for ongoing registration."

[63] From this Ms Simpson concludes that it is clear that those professionals who attended the meeting had "voted" to maintain registration.

[64] Ms Simpson submits that in circumstances where the role of the parent is regarded as crucial and in circumstances where it is anticipated the parent will always attend save in exceptional circumstances, it cannot be fair that she is denied a vote when the professional persons present do vote.

[65] Ms Simpson is also critical of the role of the Chair as set out in para [38] above. She submits that it is unclear what this passage means.

[66] Given the make-up of those who attend the conference the process is weighted in favour of the Trust which she argues is contrary to the intention of the guidance.

[67] The fact that each professional is allowed a vote as opposed to one from each agency is relied upon as an ancillary argument which points to the unfairness of the procedure.

[68] If one looks at the circumstances of this case there were three persons at the conference who were employees of the Trust, as was the Chair, all of whom voted to continue registration.

[69] She points out that the guidance in relation to such conferences in Wales only permits one vote per agency.

[70] In short, Ms Simpson says that there is an inherent unfairness in how this process operates. She submits that it is likely to arise again. She argues that the procedure fails to protect the Article 6 and Article 8 ECHR rights of the applicant.

[71] In those circumstances, even though the matter may be academic in terms of the outcome for the children in this case she argues that the court should nonetheless deal with the issues raised by her which arise from the process.

[72] Leaving aside the issue of the Department's responsibility, Mr Sands, on its behalf, argues that the guidance in question provides a secure framework for the involvement of parents and carers in Child Protection Case Conferences with respect to their rights under Articles 6 and 8 ECHR.

[73] At this point I interject to say that it is questionable whether the applicant's Article 6 rights are engaged at all, although the guidance is drafted on the premise that they are. For the purposes of this leave hearing, I am prepared to deal with the case on the basis that the applicant's Article 6 rights are engaged.

[74] In terms of convention rights of course it is important that the procedures in question ensure that the best interests of the child are a primary consideration.

[75] What does procedural fairness require in the context of the applicant's Convention rights in circumstances where her children could be placed on a CPR? What procedural fairness requires is very much a context dependent requirement. Procedural fairness is required both under the common law and also to comply with the minimal procedural guarantees contained in the ECHR. In this context, it seems

to the court that what is required is a procedure in which the parent can participate effectively in the decision-making process.

[76] It was explained in this way in the case of *Venema v The Netherlands* [2003] 1 FLR 552:

> "91. Whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 of the Convention …
>
> 92. It is essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking measures of protective care or in taking decisions relevant to the care and custody of a child. Otherwise, the parent will be unable to participate effectively in the decision-making process or put forward in a fair or adequate manner those matters militating in favour of his or her ability to provide the child with proper care and protection."

[77] Looking firstly at the guidance under which the Safeguarding Board acts, it cannot reasonably be argued that it in any way contravenes the Convention or common law rights of parents. The contrary is the case. The guidance goes to great lengths to ensure effective participation in the decision-making process by the parents, although recognising that there may be situations in which a parent will be excluded from a conference.

[78] Properly analysed the complaint here relates to the way in which the guidance was applied and the way in which the Safeguarding Board came to the decision in this case.

[79] Viewed overall, the applicant has been allowed full participation in the process and was able to do so effectively. It has been acknowledged that there was a procedural unfairness in relation to the provision of the UNOCINI report. This error, however, has been corrected by the conduct of the Stage 1 and Stage 2 appeals which provide further confirmation of the fact that the applicant's views were properly considered. The overall proceedings before the Board did allow for full participation by the applicant. Her views are clearly recorded and were known to the Board members. She was legally represented at the initial case conference and at the appeal.

[80] It is somewhat unfortunate that in this hearing there has been a fixation on the question of "voting" at Safeguarding Board meetings. To a large extent this is the fault of the proposed respondents. As Ms Simpson points out in her submissions the

Trust refers to participants "voting" at the case conference, whereas the Department argues that no such voting procedure is required.

[81] The guidance does not provide or recommend a decision by way of a head count for and against. Rather, the format is that of a conference in which a decision is agreed between the participating agents. Pursuant to section 19:

> "Every effort should be made to reach mutually agreed decisions, recommendations on action. All professionals in attendance must consider and analyse the information presented and contribute to decision making. Where there is a lack of consensus, decisions should be taken with the Chair, having the final adjudication, considering all the issues. The decision of the Child Protection Case Conference and the reasons for it must be recorded in the minutes of the meeting."

[82] In fact, this is what happened in this case.

[83] The minutes, when ultimately produced, demonstrate a very full and detailed discussion between those present as to the best interests of KJ and KR.

[84] It is clear from the meeting that the views of the applicant were fully set out and considered. This included contributions from the applicant herself. It is clear from the summary and conclusion of the conference that all the members of the Board agreed with the recommendation of the Chair. This was a unanimous decision based on a consensus. In fact, there was no voting procedure carried out.

[85] It is somewhat unfortunate, therefore, that subsequent references were made to "votes."

[86] In the event that there is disagreement between those present from the various agencies at the conference then clearly it would be a matter for the Chair to attempt to reach a consensus but, ultimately, to make a decision if none could be reached. It seems to the court that there is nothing inherently unfair or unlawful in this regard. The court considers that the policy is clearly a lawful one and Convention compliant.

[87] Equally, the process and procedure adopted in this case, with the exception of the criticisms which have been accepted and outlined was fair.

[88] I do not consider that either Article 6 or Article 8 ECHR requires that a parent attending a Safeguarding Board should be given a vote. The law requires no such right.

[89] This has to be seen in the context that invariably (but not always) the reason there is a conference at all is because of concerns about the parenting ability of a parent. To suggest that in those circumstances a parent should have a "vote" in a voting procedure would be akin to a person acting as "a judge in his or her own cause."

[90] In any event, whilst obviously there will be occasions when a parent vigorously opposes a proposed placing of a child on a CPR, what a lawful procedure requires is a system whereby he or she can participate in the process, subject always to the primary consideration of the welfare of the child. In the words of the guidance "there is an underlying principle that parents/carers should be involved in all of the discussions and decision making about their child/young person." Such involvement is catered for in the process which is challenged in this application.

[91] Effective participation envisages informing the parent of the basis why a course of action is being considered, an opportunity for a parent to answer any issues that are raised, an opportunity for a parent to express his or her views about the proposed course of action and a right to receive information on the reasons for the decision.

[92] The procedure challenged in this case meets all of these requirements.

[93] Ultimately, the question of whether a child is at risk is patently a matter for the statutory agency to decide and not the parents. In reaching any such decision as indicated, the parents' rights are protected if they are "involved in all of the discussions and decision making about their child/young person."

[94] The fact that the procedure provides rights of appeal is a further protection of the parents' rights.

[95] As to the question of one vote per agency, this is predicated on the basis that the decision is reached at by a process of "voting." The fact that this provision is included in the guidance in Wales does not mean that the procedure adopted in this jurisdiction is unlawful. The procedure whereby an effort is made to reach mutually agreed decisions, with the ultimate responsibility resting with the Chair, is in my view, a lawful and adequate procedure. There is no evidence that there is a general problem in relation to this issue.

[96] The views of each professional attending at the meeting is recorded. Whether this constitutes a "vote" is very much a moot point.

[97] In *R v Harrow London Borough Council, ex parte D* [1990] 3 All ER 12 the Court of Appeal analysed a case conference convened by the local authority to determine what should be done in relation to a child who was suspected of being the victim of abuse by his mother. A decision was taken to name the children on the Child Abuse

Register, with the mother named as the abuser. The mother sought judicial review of the decision. Her application at first instance was refused as was her appeal.

[98] In the Court of Appeal's judgment Butler-Sloss LJ observed that:

> "In balancing adequate protection for the child and fairness to an adult, the interest of an adult may have to be placed second to the needs of the child. All concerned in this difficult and delicate area should be allowed to perform their tasks without looking over their shoulder all the time for the possible intervention of the court. The important power of the court to intervene should be kept very much in reserve, perhaps confined to the exceptional case which involves a point of principle, which needs to be resolved, not only for the individual case but in general, so as to establish that registration has not been conducted in an unsatisfactory manner. In the normal case where criticism is made of some individual aspect of the procedure which does not raise any point of principle, leave should be refused. The decision of Waite J, right though it was in that case, should not be an excuse for over-formalising the procedure, which is not intended to be confined within a rigid legal structure. In this area unbridled resort to judicial review could frustrate the ability of those involved in their effort to protect the victims of child abuse."

[99] Although this is a leave application the court has had the benefit of the minutes relating to the decision under challenge, the opportunity to consider the statutory scheme and the guidance under which the case conference procedure took place. It has all the information available to it to consider the issues raised by Ms Simpson on behalf of the applicant.

[100] The court concludes that the architecture and arrangements for the consideration of placing children on the CPR are compliant with the applicant's rights under Articles 6 and 8 ECHR and at common law.

[101] None of the jurisprudence on procedural or substantive rights supports the applicant's contention that parents should be given a decision-making role in the Child Protection Case Conference process by way of a vote.

[102] There is no broader issue of principle which arises in this case which requires a judicial review. To quote Butler-Sloss LJ this is not:

> "The exceptional case which involves a point of principle which needs to be resolved, not only for the individual

> case but, in general, so as to establish that registration has not been conducted in an unsatisfactory manner."

[103] The court therefore concludes that it is not appropriate to grant leave in this case. The threshold for leave set out in the case of Ni Chuinneagain [2022] NICA 56 of an arguable case having a realistic prospect of success has not been met.