Neutral Citation Number: [2010] EWHC 2503 (Fam)

Case No: B09P00340

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
BLACKBURN DISTRICT REGISTRY
IN THE MATTER OF A and D (MINORS)
AND IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF THE HUMAN RIGHTS ACT 1998

30/07/2010

Before:

THE HONOURABLE MR JUSTICE BAKER
(SITTING AT THE MANCHESTER CIVIL JUSTICE CENTRE)

A FATHER	**Applicant**
-and-	
LANCASHIRE COUNTY COUNCIL	**1st Respondent**
-and-	
D's MOTHER	**2nd Respondent**
-and-	
D's GRANDMOTHER	**3rd Respondent**
-and-	
D	**4th Respondent**
-and-	
A	**5th Respondent**
-and-	
A's MOTHER	**6th Respondent**

**(Transcribed from the official tape recording by the Cater Walsh Reporting Ltd.,
First Floor, Paddington House, New Road, Kidderminster DY10 1AL
Official Court Reporters and Tape Transcribers.)**

MR KARL ROWLEY represented the father applicant
MISS LISA PARTINGTON appeared on behalf of the local authority
D's mother and grandmother were not present nor represented
MISS CLARE GRUNDY appeared on behalf D (instructed by his children's guardian)
MISS SARAH MANN appeared on behalf of A
A's mother appeared in person

HTML VERSION OF JUDGMENT

MR. JUSTICE BAKER:

1. In this hearing I am concerned with a number of applications concerning two children, A, born 13th December 1994 (not 13th September, 1994 as has been mistakenly recorded on some of the court papers) and D, born 29th April 2005. The boys share a common father ("the father") but have different mothers. A lives with his mother under a residence order. D lives with his maternal grandmother under a care order made in favour of Lancashire County Council.

2. In summary, the applications before me are as follows: (1) a series of applications by the father under the Children Act in respect of D; (2) a free-standing application by the father for relief for breach of D's and his human rights under section 7 and 8 of the Human Rights Act 1998; (3) an application by the father for leave to make an application for a contact order in respect of A, there being in place an order under section 91(14) of the Children Act precluding any such application before 13th September 2010 without the court's leave; (4) an application by Lancashire County Council for an order under section 91 (14) preventing any further application by the father in respect of D without the court's leave (Lancashire ask that this application be granted for as long as possible but at least until D's eleventh birthday) and, in addition, (5) A through his counsel applies orally for an extension of the current section 91 (14) order against the father due to expire on 13th September 2010 because of what I am told was an error in the drawing up of that order. A seeks the extension of that order to 13th December, 2010 which is his sixteenth birthday, it being contended on his behalf that that was the original intention of the court.

Background

3. There is a lengthy history to this matter which I summarise as follows. The father was born in 1967. He is a Muslim. In earlier proceedings there was evidence that he has two other children, but before me he asserted, in a passage in his oral evidence which I found somewhat curious, that the mothers of those children had each now denied his paternity and he has accepted those denials. In 1992 he began cohabiting with a woman. In 1994 she converted to Islam and on 13th December of that year gave birth to A. The relationship between the father and A's mother broke down in early 1995. At the end of that year the father applied for parental responsibility and contact in respect of A. At a hearing on 21st November 1996, Miss Recorder Kushner QC (as she then was) granted the father parental responsibility for A and made an order for defined visiting contact at a contact centre. Contact was extended in May 1997 by an order of the same Recorder. Thereafter there were prolonged further proceedings concerning A leading to a hearing before Singer J. in May 1999 at which a residence order was made in favour of A's mother and a contact order made in favour of the father. That order did not conclude the proceedings in respect of A which continued, as far as I can see, more or less uninterrupted for the next eight years.

4. Amongst the events that occurred during that period I note in particular the following. First, in 2002 the father was convicted of unlawful sexual intercourse with a fifteen and a half year old girl and sentenced to twelve months imprisonment with an order that his name be put on the Sex Offender's Register. As a result of that conviction the father is a Schedule One offender.

5. Second, amongst a number of expert's reports prepared during the lengthy proceedings was a report from a Professor N, an expert in the Muslim faith, who gave expert evidence on aspects of Islam which were said to be relevant to A's care and upbringing.

6. Thirdly a psychological report was prepared by a Dr M in February 2003 in which the father was described in these terms as someone who "sought to appear as socially attractive, morally virtuous and as emotionally well composed as he was able" but was found by the

psychiatrist to have "an anti-social personality and ... presents as a man with significant tendencies to acting in ways that are anti-social, reckless, impulsive, egocentric and dangerous to himself". Dr M added: "there is a significantly high risk that [the father] will act in ways that are deceitful, contemptuous of authority, impulsive, self serving and egocentric, and that these actions may prove harmful to those people with whom he comes into contact. This would include his son A. There is considerable evidence to suggest that [the father] presents as someone with a high risk of acting in ways that are likely to be psychologically and emotionally harmful towards other people". Dr M concluded "in conclusion I consider [the father] is a deeply troubled and conflicted man with an array of complex but inter-related emotional, psychological, spiritual and inter-personal needs".

7. Fourthly, in a subsequent expert psychological report by Dr B, the father was described as having "deep seated beliefs in respect of his relationships that are not normal within his cultural context. He continues to display the personality problems that are likely to impress upon A and may even sadly turn him against his cultural heritage". It was stated that the father still retained the personality pattern described by Dr M and that his parenting skills were lacking and that this may pose a risk to A's welfare if he is left in his unsupervised care.

8. Direct contact finally broke down in 2005 and, so far as I am aware, did not resume thereafter despite a further application and order. Eventually on 26th February 2007 His Honour Judge Gee, who had principal conduct of the case for a number of years, made an order that there should be no direct or indirect contact between A and his father, save that the father could respond to any indirect contact initiated by the father. The judge further ordered under section 91 (14) that neither the father nor A's mother could make any further application regarding A under the Children Act without the court's leave before 13th September 2010. It is clear from the note of the judgment that this order was intended to run to 13th December 2010, A's sixteenth birthday, but, as I find by mistake, it was wrongly drawn so as to have effect only until 13th September. There was no application to correct that error under the slip rule.

9. Meanwhile the father had some years earlier formed a relationship with another woman, who has a troubled history, including Class A drug addiction and a history of violent relationships. She and the father were never legally married although in 2005 they went through a Muslim ceremony of marriage, she having previously converted to Islam like A's mother before her. On 29th April of that year she gave birth to D. As a result of the parents' respective personal difficulties and the instability of their relationship, the local authority started care proceedings in respect of D shortly after his birth. Judge Gee, who was again the principal judge allocated to the case, found at a hearing in January 2006 that the threshold criteria under section 31 (2) of the Children Act 1999 were satisfied on the grounds that D was likely to suffer significant harm as a result of the care being given by his parents not being what it would be reasonable to expect a parent to give. The case was adjourned to facilitate assessments of potential carers within the family – specifically two members of the father's family, and the maternal grandparents. In the event, the members of the father's family withdrew from the case and by the time of the final hearing in October 2006, by which point D's parents had finally separated, the only option for a family placement lay with the maternal grandparents. The father has claimed in this hearing that an offer was made by other members of his extended family to care for D but that his then legal representatives failed to advance that proposal before the judge. In the event the judge proceeded to make a care order in respect of D on the basis that he would be under a long term foster placement with the maternal grandparents who at that point lived in Kent.

10. The final care plan contained, *inter alia,* the following provisions.

    (1) At paragraph 2.1: "D's parents are of the Muslim faith and it is their desire that their son continues to be brought up in that same faith … Both [of D's parents] have indicated that should D not be returned to their care they would wish for him to be raised in a family of the Muslim faith that would be able to ensure that D was aware of his religious heritage. …. [T]he maternal grandparents have indicated a willingness to bring D up in the Muslim faith and to that end have sourced local Mosques and spoken to local leaders who have indicated that they would be prepared to assist the family in their endeavours".

(2) At paragraph 2.4: "It is felt by the local authority that a placement within the extended family would best meet the needs of D and allow him to achieve his full potential. It is recognised that neither [of his parents] are able either together or separately to do this. [The maternal grandparents] will need to be able to promote a positive image of D's parents and paternal extended family. Whilst it is recognised that neither [of the maternal grandparents] are of the Muslim faith they acknowledge they will need to continue to communicate with the local Muslim leaders in order that D have an opportunity to be brought up in the Muslim faith identifying with the ideals and standards therein".

(3) At paragraph 2.5: "should the court adopt the care plan it is the view of the local authority there should be direct contact between D and his parents. It is proposed that they should take place four times a year". The plan proceeded to identify the dates on which the parents' separate contact would take place.

(4) At paragraph 3.1: "It is the view of [D's mother] that she is unable to care for D and ensure his safety and security. To that end she has withdrawn her application to care for D. Her view is that D should be cared for by his father. Of her parents [D's mother] has indicated that she would be less than happy at the prospects of them caring for her son, believing that they would be unable to ensure that he is brought up in the faith of his parents, that being Muslim. [The father] has stated on numerous occasions that he believes that he is a good father and that he is able to place the needs of D above all else .... [The father] has indicated that he would not wish to have D cared for by [the maternal grandparents]. It is his belief that D would not be afforded the religious input that would be necessary for him. Neither does he accept that [the maternal grandparents] will strive to ensure that D's cultural needs are met and, rather, as soon as is practical D's religious needs will no longer be met".

(5) At paragraph 3.2: "the maternal grandparents have been assessed by the local authority .... [who] have concluded that [they] are able to care appropriately and meet all of D's needs including his religious and cultural needs".

(6) The plan continues to provide under paragraph 4.3 that "having been placed with permanent carers it is envisaged this placement will continue until D reaches independence". Under paragraph 4.6, it is stated that "it is not the plan of the local authority for a reunification between D and either of the parents to take place" and at 4.7 "D will continue to be reviewed under the 'looked after children system'".

(7) At paragraph 5.4 under the heading "contingency plan if placement breaks down or if preferred placement is not available", the plan provides: "an urgent planning meeting will be held between the parties and should the placement break down an alternative local authority placement will be sought". The plan also provides in paragraph 5.5 that "following a placement being secured for D neither of his parents will have any input in the decision making process for D".

11. In his judgment Judge Gee made this observation in respect of the father's argument:

> "[His] position was that he opposed the placement with the [maternal grandparents] and if there was to be no placement with him would have preferred placement with alternative foster parents. I think Miss Begum [counsel then appearing on behalf of the father] was driven to accept when I put to her that this was not realistic. A child of this age needs permanence and if not with the [maternal grandparents] it would have to be with adopters. [The father]'s position was that he would prefer adoption by a Muslim family to D going to the [maternal grandparents]. This means that he would be prepared to forego all meaningful contact and put his wife in that same position and deprive D of the opportunity of being brought up within his family all for the sake of religious principle. I find this astounding. It is typically egocentric and of course not in the least child centred".

12. Having heard evidence and submissions on the issue of D's religious upbringing Judge Gee reached the following conclusions:

> "I agree with the guardian who said in evidence that it was a question of balancing D's right to be brought up within his family against doing one's best to ensure his religious needs as a child with Muslim parents. I also agree with him that the former is more important and the religion issue whilst important does not take priority. My view on the matter is as follows. (1) [The maternal grandparents] will do their best to bring D up as a Muslim. (2) They could not have been expected to do more so far. (3) If they do not keep their promise there is to be a care order and the local authority could remove D if they thought it right. Miss P [the social worker] told me that the local authority (who can control the exercise of parental responsibility) will direct them to bring D up as a Muslim. (4) Even if things do not go as well as hoped in this direction I am entirely satisfied that [the maternal grandparents] will maintain contact with [the father]'s family and keep him in touch with his religious roots. (5) I am as confident as I can be so far ahead that when he gets to an age where he is able to make choices for himself D will know sufficient of his Muslim heritage and of religions to decide for himself if that is the path he wishes to follow".

13. The other point of relevance arising in that judgment is that Judge Gee was faced with an application on behalf of the father to adjourn the case to allow him to undergo a further psychological assessment. The judge concluded that there was no real evidence of sustained change to justify taking that course. In reaching that decision he relied on a variety of matters as described in his judgment, including the father's own behaviour in court. Thus the care order was made and D moved to live with the maternal grandparents in Kent, but subsequently they and he returned to Preston in Lancashire. The father filed a notice of appeal against Judge Gee's order, supported by D's mother. On 6th September 2007, Wilson LJ refused permission to appeal. On 14th February 2008, the father filed an application for discharge of care order in respect of D and an application for permission to apply for contact with A. Those applications were listed before His Honour Judge Smith but, for reasons that are not clear from the papers before me, the application concerning A was never considered by the judge. He did, however, consider the application for discharge of the care order and, although that application had been listed for directions only at that hearing, he summarily dismissed it.

14. The father again attempted to appeal that decision. Once again, his application for permission was supported by the mother, considered by Wilson LJ, and refused. From the transcript of the judgment delivered by Wilson LJ when refusing the latter application for permission, I quote the following extracts which are of relevance to the hearing before me. At paragraph 16 the learned Lord Justice said as follows:

> "The statement of the father in support of his application was grossly excessive in length. It was also entirely inappropriate in that, clutching at the proposition that a court in family proceedings is occasionally entitled to revisit earlier findings of fact, it traversed in inordinate detail the terrain which had been covered in the earlier proceedings relating to D. In it, father alleged for example that the placement of D with the maternal grandparents, which I had denied him the right to challenge in this court, was an infringement of no less than eleven of his human rights under the European Convention. The statement was punctuated by frequent and elaborate protests that as a devout Muslim the father was vastly affronted by the placement of D with the grandparents".

At paragraph 20, Wilson LJ continued:

> "In the light of my refusal in September 2007 to refuse permission to appeal against the care order in relation to D, it was in my judgment abusive of the process of the Blackburn County Court for the father to seek to persuade it to consider old ground. On 5th June the judge was not only entitled but was in my view correct to decide to focus on the slender amount of material in relation to events which had occurred

since October 2006 when the care order had been made. No doubt it came as a surprise to the father and to his McKenzie friend but, in the interests of early closure of renewed litigation, it was well within the judge's discretion to decide on 5th June to hear evidence about the apparently few matters which had allegedly arisen since then and to ask himself whether there was any material which provided a foundation for the applications of the parents".

At paragraph 21 the learned Lord Justice continued:

> "The judge however noted that D enjoyed very little contact with his father and his message to the father was that, insofar as he was capable of doing so, he should lessen his hostility to the grandparents, show an elementary degree of respect for them and move into a mode of co-operation with them and with the local authority rather than to maintain the antagonism likely to be so uncomfortable for the small boy caught up in the middle of it. Interestingly, while dismissing the application for discharge, the judge refused the local authority's application for an order against the father in relation to D under section 91 (14) of the Act of 1989".

15. Wilson LJ concluded his reasons for dismissing the application in these words:

> "In my view the judge was entitled to take the robust line at the directions hearing of inviting evidence on matters occurring only since the care order in relation to D was made .... In particular there was, in my view, no credible material which might have emboldened the court to conclude that, in the event of further enquiry, the father's grave psychological problems, which in 2006 had helped to de-rail his candidacy as a carer of D, had been overcome"

16. The learned Lord Justice then moved to another matter:

> "I turn finally to the two skeleton arguments and to a third document, namely Particulars of Claim issued or proposed to be issued by the father, and purportedly also by D and A, against Lancashire County Council, CAFCASS and the Blackburn County Court under section 7 of the Human Rights Act 1998. These three documents were sent by e-mail to this court at 9.12 a.m. this morning. They caused me great concern in various respects".

He proceeded to analyse his concerns about those documents and continued (at paragraph 25):

> "These documents indicate to me that unfortunately the father has entirely lost his sense of proportion in relation to the proceedings and remains quite unable to present arguments to a court in a digestible way .... [T]he claim or proposed claim under the Act of 1998 seems to me to be absurd: the structure of the Children Act 1989 is accepted to be compatible with the human rights of children and of parents and, if proceedings under the Act malfunction in such a way so as to infringe human rights, then this court is here, bound so to declare. There is no need - indeed it is an abuse of process of the court - to seek to circumvent the procedures laid down in the Act of 1989, for example for the discharge of a care order and thus the return of the child to the applicant, by seeking some freestanding injunction under the Act of 1998".

17. That claim under the Human Rights Act considered by Wilson LJ is either the same application or very similar to the (undated) application now before me. I shall return to consider the merits of that claim below. In addition, before the hearing of that second application for permission to appeal, the father had issued further applications under the Children Act which are now before me.

18. Meanwhile, there had been further sad events in D's life. His maternal grandfather, to whom he was clearly very close, had died. Since then, D has remained in the care of his maternal

grandmother. Manifestly, the death of his grandfather was a tragic blow to both of them and it has not surprisingly affected their lives profoundly. D, in particular, has displayed some troubling behaviour, notably at school, where it has been agreed that he would benefit from one-to-one teaching assistant support. His grandmother is said to be coping reasonably well but is still coming to terms with her bereavement. She is not in particularly good health herself and is feeling the strain of the continuing court proceedings.

19. Both parents continue to have contact four times a year. The father's contact is recognised as generally going well. By way of an example I quote from the contact record of the latest contact visit:

> "There were no issues regarding contact to highlight and contact appeared to be a positive experience for both D and [the father] .... D was clearly happy to see his father and was comfortable playing with his father who brought him some colouring books and felt tips age appropriate for contact. D enjoyed playing with his father throughout the contact and appeared settled and comfortable.... [The father] played with D throughout the contact session and was very caring paying attention to all of D's needs... [The father] was polite to myself throughout the contact and appeared focused to specifically ensuring his son enjoyed himself".

There have, however, been some concerns about the father's contact. On one occasion, apparently without any prior discussion with the social workers, the father brought into a conversation with D the fact that he had a brother, A. To date, there has been no contact between the siblings and the contact record suggests that D was uncomfortable about this conversation.

20. So far as D's mother is concerned, it is relevant to note that she has now renounced her Islamic faith, which she had adopted during her relationship with the father, and reverted to her previous Catholicism. Furthermore, she has requested that D be christened as a Catholic and placed in a Catholic primary school. Although the grandmother is herself a practising Catholic, she has not herself actively requested these steps. Rather, it is the mother who has promoted them. The local authority has rejected these proposals. However, the issue of D's religious upbringing gives rise to considerable difficulty and, as will become apparent later, became the most prominent feature of the hearing before me.

21. On 9th February 2009, His Honour Judge Booth at the Blackburn County Court gave directions in the father's various applications, including those outstanding concerning A, and including a direction that the father should file a statement. That direction had not been complied with by the time of the next direction hearing on 27th October and Judge Booth granted an extension of time for the filing of that statement until 20th November. He refused an application made that day by the father for the removal of the guardian and of the children's solicitor. The father again failed to file a statement pursuant to the direction. On 17th December Judge Booth transferred the application to the High Court. On 18th March the applications came before Ryder J. That judge had, on a previous occasion, represented the father but nonetheless, by consent, made directions in the case for an Issues Resolution Hearing and Pre-hearing Review before Parker J on 22nd June and a final hearing before me in July 2010 with a time estimate of two days. It was also directed that A be joined as a party to the application concerning him and a separate guardian appointed to represent him.

22. On 22nd June, Parker J made further detailed case management directions for the hearing before me. Her order recited that, in order to conclude the hearing within the time allotted, she envisaged that the applications would be dealt with on paper and by way of oral submissions with no oral evidence save for such as I might require. She made an order giving permission for the father to file and serve a statement outlining his case under the Human Rights Act and a statement concerning his application for permission to apply for contact with A by 2nd July. The local authority having indicated that it wished to make a further application under section 91 (14), she directed that any such application be filed by 29th June. She further directed that the Chief Constable of Lancashire should disclose relevant "Sleuth" reports concerning the father. She joined A's mother as a party to the application concerning A. She indicated with

commendable particularity the documents to be included in a core bundle, and directed that other documents concerning D's proceedings be filed in a library bundle. I am very grateful to Parker J for her careful and meticulous planning of this potentially difficult hearing which has greatly assisted my task.

Some preliminary comments about the hearing

23. Before turning to consider the applications before me, there are a number of preliminary comments I propose to make about the hearing and the evidence. The following parties took part at the hearing: the father, represented by Mr Rowley of counsel; the local authority, represented by Miss Partington; A's mother, acting in person; A, without a guardian, (pressures on CAFCASS having prevented any appointment), but represented by Miss Mann, and D, through a guardian, represented by Miss Grundy. D's mother and maternal grandmother, although nominally parties, were neither present nor represented. The advocacy at the hearing was of a high quality and I am grateful to counsel for the clarity of their submissions and the professionalism that they have displayed in this difficult case.

24. With regard to the proceedings concerning A, the written evidence filed consisted merely of a statement from his mother. With regard to the other proceedings, the core bundle contained a limited amount of fresh evidence, consisting of two statements from the social worker CP, D's guardian's reports, and various contact records. There was an unsigned, undated statement from the father in the bundle, but I was told by Mr Rowley on behalf of the father at the hearing that this document had been filed by the father's solicitor in error, was not relied on and should therefore be disregarded. Accordingly, I put it entirely out of my mind. In addition to the recent material and the various applications, including the recent application by the local authority under section 91 (14), the core bundle contained those historical documents identified by Parker J and listed in the index. Thus, by the date of the hearing, no statement had been filed by the father in support of his various claims and applications.

25. At the outset of the hearing, Mr Rowley informed me that the father, who had arrived late, as he had done before Wilson LJ, had produced that morning a lengthy statement drafted by himself, which Mr Rowley had at that point only partly read. I allowed Mr Rowley time to read it and subsequently permitted the father to file and serve it, notwithstanding the fact that it was grossly out of time. It runs to some fourteen pages of single spaced typing and is, as Mr Rowley acknowledged, in effect largely a written submission rather than evidence in support of his Human Rights Act claim. The document displays the same characteristics described by Wilson LJ as featuring in the statement filed in the hearing before His Honour Judge Smith and in the documents presented to the Court of Appeal on the morning of the father's second application for permission to appeal. It is inordinately long and repetitive. It demonstrates that the father is an intelligent and articulate man, well versed in family law and human rights law, but inclined to prolixity and grandiloquence. Some of the points are extreme and manifestly untenable. As on previous occasions, the father seeks, wholly inappropriately, to resurrect historical matters upon which previous courts have already ruled. In short, the document demonstrates that he is a difficult and egocentric man, and one can only sympathise with the professionals who have had to deal with him.

26. As is not infrequently the case with such documents, however, one does find several pertinent points buried in the father's statement. In particular I note the following.

    (1) "A and D are brothers and remain in the dark about each other" (page 2).

    (2) "Any interference [in family life by public authorities] must be proportionate" (page 3), and "the state has a duty not to split families up unless and until all the options have been exhausted" (*ibid*).

    (3) "D is a Muslim born of Muslim parents. This fact is not fluid and is as unchallengeable as his birth gender .... Lack of recognition of this basic yet crucial fact is incompatible with my sons' and my convention rights" (page 7).

(4) "The sharing of parental responsibility between the … father and the local authority … is not just arbitrary, it is actually illegal fiction .... The local authority in effect has controlled unilaterally throughout and it is as though it has a stranglehold over parental responsibility which the father has hitherto been unable to render despite valid efforts to redress" (page 9).

(5) "The operation of family law might well appear even-handed at first blush, but is in fact dominated by a secular, humanist world view lacking a pluralist approach of proportionate empathy with the different belief systems and valid life-approaches of members of different faiths" (page 12).

27. Of his application for discharge of the care order, the father says as follows.

> "Today as I stand before you I am a fit and a proper person to resume my responsibilities as a parent and as a natural father which I have been disproportionately prevented and fettered from doing until now. I am a genuinely reformed character and I have continued making strides in personal growth and empathy skills towards others and have no issues whatsoever with drink or drugs. I distinctly lack any dysfunctionality typically triggering care proceedings and have wrongly been made out as the culprit. My son and I deserve a viable opportunity for resumption of our family life under Article 8 which has been so cruelly disrupted and disrespected, under false pretences, to date. My application at the European Court of Human Rights is approaching admissibility stage but I would prefer justice now".

So far as I am aware that last sentence is the only evidence that father is pursuing a claim in the European Court.

28. Continuing with my initial general comments about the hearing and evidence, I record that, at the outset of the hearing, at the same time as he applied for time to complete his reading of his client's statement, Mr Rowley also informed me that, following difficulties that had arisen in the professional relationship between the father and his solicitors, those solicitors now wished to be removed from the record. In view of the very great difficulties that would result from the father becoming a litigant in person, I asked Mr Rowley to discuss this further with those instructing him. I was relieved to be told when the hearing resumed that the father's solicitors proposed adjourning their application to come off the record. That is the course I would myself have proposed and I duly agreed. As a result Mr Rowley has continued to participate in the hearing, to the great advantage of his client and the court.

29. Next, I should mention developments that arose over the Sleuth reports obtained from the police. A large number of reports were obtained from the Lancashire Constabulary and are included in the library bundle. They are, of course, hearsay, and without going into them in any detail I am sure much of what is alleged therein is not accepted by the father. Local authority attention has focused on a recent allegation against the father that has led to fresh criminal charges against him. Those allegations are made by another woman with whom the father was, until recently, in a relationship. The charges are assault under section 47 of the Offences against the Person Act 1861, and threats to kill. The father is due to stand trial in respect of those matters and intends to plead not guilty. It was in respect of those matters that the local authority had sought the order for production of the Sleuth reports from Parker J but in the event that order was mistakenly directed at the Lancashire Police when the incident which led to the charges took place in North Yorkshire. The enquiry of the Lancashire Police has, however, exposed the fact that the father is apparently in breach of his obligations under the sexual offences registration rules, and further proceedings have been taken in respect of that breach. The Sleuth report concerning the latest alleged incident was obtained eventually from North Yorkshire Police on the second day of the hearing. The allegations in that information are hotly disputed by the father and, in the circumstances, I do not think it right to attach any weight to those matters at this hearing. I do not think however that my decision in that regard will have any bearing on my ultimate decisions in this case.

30. Next, I record that Mr Rowley, on behalf of the father, produced some further documents which I have read, namely a letter dated 19th September 2006 from relatives of the father, Mr

and Mrs K; exchange of e-mails between the guardian and the father; and a copy of a complaint the father has made to the local authority.

31. The final point I should record before turning to the applications is that, having initially been inclined, in the light of Parker J's direction, to decide the matters before me on submissions without oral evidence, I decided on reflection that it would be helpful to hear limited oral evidence from the social worker CP, from the guardian and from the father, partly to enable Mr Rowley to cross examine the social worker and the guardian, but also to enable me to hear from the father directly to gauge at first hand whether there was any evidence of any change as asserted by him.

32. I therefore now turn to consider the applications and issues under the following headings in the following order: (1) issues concerning A; (2) the father's application for discharge of the care order; (3) the father's application for contact and other applications under the Children Act; (4) the father's claim under the Human Rights Act; (5) issues concerning D's religious upbringing, and (6) the local authority application for an order under Section 91(14).

Issues concerning A

33. Happily, on this aspect of the case, a measure of agreement emerged in the course of the hearing. As a result, and in order not to lengthen still further what is, I regret to say, an unduly long judgment, I propose to deal with it briefly.

34. As already explained, an earlier court order imposed a section 91(14) restriction preventing, *inter alia*, any further application by the father for contact with A without the court's leave. That order expires on 13th September this year – not, as was clearly intended from the relevant judgment, on A's birthday on 13th December. At the outset of the hearing before me, the father sought leave to apply for contact and A's mother cross-applied for an extension of the section 91(14) order to run until A's sixteenth birthday in December. Evidence was produced demonstrating that A does not want contact with his father at this stage, but knows that he can contact him if he wishes to do so. In the light of this, the father sensibly withdrew his application for permission, but curiously applied in the alternative for discharge of the section 91(14) order and opposed any extension.

35. After further discussion, it seemed that the objection that the father raised was to the section 91(14) mechanism in principle. He indicated that he was willing to give me a formal undertaking that he would not apply for any contact order with A before A's sixteenth birthday. I make it clear that, having given that undertaking, he cannot apply for contact before that date without being released from the undertaking and, if he were to breach the undertaking, he would be in contempt of court and could be punished. A's mother indicated in the light of that undertaking she would not pursue her application for an extension of the section 91 (14) order. Accordingly that undertaking, once given, will dispose of the issues relating to A at this hearing.

Application for discharge of the care order in respect of D

36. As Mr Rowley points out, the application for a residence order and discharge of the care order are effectively the same and I am going to approach this issue as an application for discharge of care order. In considering such an application the court applies the following legal principles.

(1) The jurisdiction is discretionary from the outset. There is no obligation on a parent to satisfy the court that the threshold requirements no longer apply: see *Re S (Discharge of Care Order)* [1995] 2 FLR 639 per Waite LJ.

(2) Insofar as any party asserts a fact on which they wish to rely in support of a submission as to the exercise of that discretion, the burden of proof is on the party making the assertion, and the standard of proof is the balance of probabilities. Generally speaking, however, it is

unhelpful and artificial to focus too much on such legal niceties because here the court is exercising an essentially inquisitorial jurisdiction.

(3) When determining the application, the court applies the principles in section 1 of the Children Act. The child's welfare is paramount and the relevant factors in the welfare checklist in section 1(3) must be considered and given appropriate weight.

(4) In exercising its discretion, the court must have regard to the important principle, acknowledged both in English law and the European jurisprudence, that children should wherever possible be brought up within their natural family and, in particular, by their birth parents, and that, where families are separated by court orders, public authorities, including local authorities and the courts, are under an obligation to take measures to facilitate family reunification as soon as reasonably feasible: see e.g. *K and T v Finland* [2001] 2 FLR 707 and *Re C and B (Care Order: Further Harm)* [2001] 1 FLR 611.

37. In support of his application for discharge, the father in evidence and through counsel makes a number of points, of which the following are the most important. First, he relies on the legal principle set out above that the court should facilitate family reunification as soon as reasonably feasible. The father asserts the local authority is treating this case as tantamount to an adoption rather than the extended family foster placement it really is. Secondly, it is pointed out that there has been no recent professional assessment of the father's capacity to care for D for four years, during which time there has been minimal professional contact between the father and the social workers. Mr Rowley therefore submits that, at the very least, a further assessment from an independent social worker or another professional should be commissioned before the discharge application is determined against the father. The father submits the local authority has been only interested in looking for evidence to support its negative view of him. Thirdly, it is argued that there is evidence that the father has changed so that the court cannot assume that the assessments on which the care order was based remain valid. The father points in particular to the fact that he has undergone a parenting course and that he is free from intoxicants. Fourthly, the father relies on the fact the local authority and the grandmother have failed to abide by the terms of the care plan and the assurances given to Judge Gee to the effect that D would retain his links with his paternal cultural heritage and be brought up with a knowledge of Islam. Fifth, the father submits that, as the grandmother with her own health concerns faces problems in caring for D as a single carer, looking after a boy with challenging behaviour, it would be better for D to be returned to his father's care. Sixth, the father relies on evidence of his relationship with D which has been sustained through positive experiences at contact.

38. In reply, the local authority, supported by the guardian, asserts that the crucial factor in considering the application for discharge of the care order is the need to ensure D's stability and security, and that all his needs, and particularly his emotional needs, are met. They submit that his placement with the grandmother provides him with that stability and security, and meets his needs. Notwithstanding the difficulty the grandmother has faced with bereavement, ill health and the challenging behaviour at times demonstrated by D, the local authority contends that this placement has been a success and is meeting all of D's needs. The guardian observed that, for D, placement issues are not more important but are more imperative, by which he meant, as I understand it, that, whilst acknowledging the importance of some of the factors identified by the father, for example, the principle of facilitating reunification wherever possible and the importance of his cultural and religious upbringing, the decisive factor, in particular at this stage in D's life, is the need to preserve his stability in his current placement.

39. Further, it is submitted on behalf of the local authority and the guardian that there is no evidence that the father has really changed. On the contrary, they say, the evidence strongly indicates that he has not. They point to his excessive and extreme approach to litigation, the fact that much of his evidence and the other material filed on his behalf are concerned with historical matters, and his wish to right perceived injustices. In her pertinent and persuasive submissions, Miss Grundy on behalf of the guardian points out that the father's conduct in these proceedings, and his own evidence adduced in them, show that he has not changed

significantly, if at all, and that he still demonstrates an egocentric manner and a conviction that he is the victim of fraud and conspiracy. He still puts forward what Miss Grundy characterises as garrulous explanations. He was, submits Miss Grundy, evasive in his oral evidence (for example, in his evidence about whether or not he was employed, and whether or not he was the father of the two other children, as had been previously asserted in earlier proceedings). He is, she adds, still showing a crucial lack of insight focusing on the religious issues and not on the wider and more imperative issues of D's overall welfare. The guardian through Miss Grundy submits that the court therefore can and should conclude that the father has not changed, and that his personality flaws will continue to prevent his meeting D's needs.

40. In considering the father's application for the discharge of the care order, I have carefully looked at how the welfare checklist in section 1 (3) of the Children Act applies to this case. In my judgment, the balance clearly and unequivocally comes down in favour of D remaining with his grandmother under the care order. The factors which lead me to this conclusion are: D's needs, in particular his emotional needs; the undoubted capacity of his grandmother to meet those needs; and my judgment that the flaws of the father's character, which precluded him from caring for D in the past, remain, notwithstanding the father's contention that he has changed. If I could see any evidence that the father had changed, or might have changed, I would give serious consideration to commissioning a further report and assessment, but I can see no such evidence, and in my view it would be disproportionate and unjustifiable to prolong these proceedings by ordering such an assessment.

41. In attaching particular importance to those factors I do not ignore the importance of D's background, and in particular the need to sustain his culture and religious heritage and his family contact. This application by the father has exposed flaws in the way the local authority has implemented its care plan in particular: (1) D has had no contact with his half sibling A; (2) there has been no contact between D and his paternal family; (3) in my view, inadequate consideration has been given as to the need for a contingency plan in the event that the maternal grandmother is no longer able to care for D, and (4) there has been perhaps insufficient focus given to the complexities of his cultural and religious heritage. This latter point presents particular difficulties in this case, which I shall consider below. In my judgment, however, none of these difficulties gives rise to any justification for discharging the care order. I accept the assurance by CP, D's social worker, that all of the matters to which I have alluded above will be given attention.

42. I acknowledge the principle that children should be reunited with their birth families as soon as reasonably feasible. In my judgment, it is manifestly not feasible to reunify D with his father. I therefore dismiss the application to discharge the care order.

43. It follows that the father's application for a residence order must also be dismissed. So far as his application for the three other section 8 orders (filed when he was acting in person) is concerned, the court has no power to make a prohibited steps order or a specific issues order or a section 8 contact order in respect of a child in care: see section 9(1)1 of the 1989 Act. Accordingly, those applications will be dismissed, but of course the court does have power to make an order for contact with a child in care under section 34 and I propose to treat the father's application for contact, to which I now turn, as made under that section.

Application for contact

44. In the event that I refuse to discharge the care order, the father seeks an increase in his contact with D, which currently takes place four times a year on a supervised basis. (D has the same level of contact with his mother on different occasions.)

45. The legal principles governing the arrangements for contact in care and applications to the court in respect of such contact are as follows. The local authority is under a duty to allow reasonable contact between a child in care and his parents: section 34(1). This obligation is consistent with, and part of, the local authority's general obligation to safeguard and promote the welfare of children within their area who are in need and, so far as consistent with that

duty, to promote the upbringing of such children by their families, section 17(1). It is consistent with, and linked to, the important principle already cited that, when a child is removed from his family, he should be returned to their care as soon as is reasonably practical, and also to the principle that, where children cannot for whatever reason be returned to their parents, their identity as a member of that family and the community in which they originate must be sustained and nurtured. The rationale behind contact in these circumstances was articulated by Lord Justice Simon Brown, as he then was, in the case of *Re E (A Minor)(Care Order: Contact)* [1994] 1FLR 146 at page 154H

> "In short, even when the section 31 criteria are satisfied, contact may well be of singular importance to the long term welfare of a child, first, in giving the child security of knowing that his parents love him and are interested in his welfare, secondly, by avoiding any damaging sense of loss to the child in seeing himself abandoned by his parents, thirdly, by enabling the child to commit himself to the substitute family with the seal of approval of the natural parents and, fourthly, by giving the child the necessary sense of family and personal identity. Contact if maintained is capable of reinforcing and increasing the chances of success of a permanent placement whether on a long term basis or by adoption".

46. Section 34(3) entitles a parent to apply without leave to the court for an order for contact and upon such application the court may make such order as it deems it appropriate with respect to contact between the child and that parent. The court, of course, also has the power under section 34(4), on application by the local authority or the child, to make an order authorising the local authority to refuse to allow contact between the child and the parent. No such application is made here. These powers give to the court an important exception to the general principle underpinning the Children Act, namely that the court may not interfere with, or give directions to, a local authority in the exercise of its powers to exercise parental responsibility in respect of the child and to determine the extent to which others with parental responsibility may exercise that responsibility.

47. In determining an application for conduct under section 34(3), the court must apply the provisions of section 1. The child's welfare is the paramount consideration. The factors in section 1(3) must be given their due weight and the court under section 1(5) must not make the order unless it considers that doing so would be better for the child than making no order at all. Guidance as to the exercise of its discretionary powers was given by Butler-Sloss LJ, as she then was, in *Re B (Minors)(Contact: Local Authority's Plans)* [1993] 1FLR 543. Although that authority is now nearly twenty years old, the guidelines remain important:

> "Contact applications generally fall into two main categories - those which ask for contact as such and those which are attempts to set aside the care order itself. In the first category there is no suggestion that the applicant wishes to take over the care of the child and the issue of contact often depends on whether the contact would frustrate the long term plans for the child in a substitute home such as adoption where continuing contact may not be for the long term welfare of the child. The presumption of contact which has to be for the benefit of the child has always to be balanced against the long term welfare of the child particularly where he will live in the future. Contact must not be allowed to de-stabilise or endanger the arrangements for the child and in many cases the plans for the child will be decisive on the contact application. There may also be cases where the parent is having satisfactory contact with the child and there are no long term plans or those plans do not appear to the court to preclude some future contact. The proposals of the local authority based on their appreciation of the best interests of the child must command the greatest respect and consideration from the court but Parliament has given to the court, and not the local authority, the duty to decide on contact between the child and those named in section 34(1)".

48. In support of the application under section 34(3) which I deem to be made in this case, Mr. Rowley submits that the stasis in the father's contact with D is not in his son's best interests and an increase in the frequency of contact, and a degree of flexibility and relaxation of

supervision, is desirable in order to enhance the experience for D and to "normalise" the relationship. Mr Rowley argues that this is made more imperative following the death of D's grandfather and the absence of any male figure in the placement. Furthermore, it is submitted that the local authority's failure to promote contact with the extended paternal family and nurture D's Islamic identity make it imperative that this relationship is allowed to grow and flourish. In support of the application, the father relies on evidence as demonstrated in the contact sheets that his contact has by and large gone well and that D enjoys seeing him.

49. The local authority acknowledges this to be the case, but in her evidence CP identified a number of issues about contact which caused concern. She asserted that contact had on occasions been obstructed by the father seeking re-scheduling of contact to times that suit his convenience, not turning up for contact and not responding to letters informing him about the contact arrangements. The local authority is also concerned that the father has, without prior discussion with the social workers, spoken to D about A during contact, leaving D confused.

50. The principal concern for the local authority is that the father remains adamantly opposed to D's placement and is manifestly determined to do whatever he can to recover care of his son. Given what they see as his hostility to the plan, and to the professionals implementing it, the authority is concerned that an increase in contact would be seen as a step towards rehabilitation when such a change would not be in D's best interest, and that a relaxation of supervision may expose D to the risk of inappropriate and damaging thing being said to him. This position is supported by the guardian who emphasises in section 5 of his report the risks posed by the father and concludes that the local authority's current approach is justifiable.

51. In the light of the evidence, and having regard to the legal principles identified above with section 1 firmly in mind, I see no reasons for making a section 34 (3) order in this case. I am satisfied that the current level of contact meets D's needs for a relationship with the father that sustains his knowledge of the father and his own sense of identity whilst not undermining the current placement. As will become clear, I acknowledge there have been difficulties with sustaining D's cultural and religious heritage, but I do not think that these issues are best addressed by an order for contact and, having read the father's written evidence and heard his oral evidence, I accept the local authority's submission that there is a strong likelihood he would use unsupervised contact as a way of achieving his aim of recovering care of D. That would be profoundly unsettling for the boy.

52. The local authority remains under a duty to arrange reasonable contact and must keep this issue firmly in mind during regular reviews and indeed at all times. I conclude that the arrangements for contact are best left in this case to the local authority in accordance with the care plan, and I do not consider it necessary or appropriate in D's interests to make any order under section 34 (3).

Claim under Human Rights Act

53. At around the time of his last unsuccessful application for permission to appeal to the Court of Appeal, which was dismissed as set out above by Wilson LJ, the father launched proceedings under the Human Rights Act. Those proceedings have also been listed for determination by me at this hearing.

54. The father's claim (which he drafted himself) begins in the following terms.

> "Claimants: (1) Applicant father [name]; (2) child one D, aged four; (3) child two A, aged fourteen. Respondents: Public authorities: (1) Lancashire County Council by its officers, employees, whoever or otherwise; (2) CAFCASS by its previous guardian to D, [name]; (3) Blackburn County Court by its previous judges. Brief details of claim: the father applies under section 7 of the Human Rights Act 1988 for orders requiring Lancashire County Council, "the local authority", to return the child D … to his care by phased rehabilitation via increased contact subject to the court's strict directive and injunctive control, and for removal of restrictions of inter-sibling and wider paternal

family contact - all being matters which fall to be duly considered before the reaching of any final decisions, by the requirements of natural justice, the CA 1989 and the HRA 1998, yet which consideration was not applied or was given insufficient weight due the undue influence of the various non-parent third parties in these cases. Value: nominal and punitive damages are claimed in just satisfaction to name and shame these public authorities and publicly expose their deviancy and impunity in pursuing social engineering over these children and also to repay the public purse defrauded by their antics, in the amount squandered from the misconduct of the previous legal representatives".

The father then proceeds to give particulars of his grievances which he contends give rise to a claim under the Human Rights Act. Foremost but not alone amongst the matters about which he complains are (1) the circumstances in which D was removed from his care and (2) the alleged failure by the local authority to ensure that D is bought up in the Muslim faith or rather, in the father's words, "causing D to be indoctrinated in a different religion from that of each birth parent by social workers turning a blind eye".

55. After lengthy complaints from these and other alleged breaches the father's claim concludes as follows.

> "The father hereby seeks an order in the following terms:
>
> (a) that the local authority by its officers, employees or whoever otherwise being required by injunction (i) to return the child D to the father forthwith, alternatively to review its care plan and (ii) to devise and implement, in consultation with an unbiased guardian or other suitable expert as necessary, and subject to further injunctive direction of the court, a plan for the rehabilitation of D to the father, and
>
> (b) that the local authority be restrained by injunction until further order from pursuing any plan to frustrate this or to thwart to define contact or identify any adoptive placement for the child D, as it has previously attempted;
>
> (c) that this court duly determines, by the section 8 of HRA 1998 (in lieu of article 13, ECHR) the applicant father's arguable claim against the Respondents for securing the family's right to effective remedy, and just satisfaction, specifically concerning (i) breach of duty of care and negligence, (ii) breach of statutory duty, (iii) perverting the course of justice, in criminal law, (iv) conspiracy, (v) misfeasance in public office, and (vi) ongoing courses of misconduct fettering the father and severing his family ties by contemptuous treatment.
>
> Father seeks access to justice principally on the basis of huge strides in his personal circumstances and the unmistakable benefits outweighing any surmised harm in terms of his positive input in the lives of both his sons.
>
> Father also relies on the provisions of the United Nations Convention of the Rights of the Child 1959 as ratified by the United Kingdom in 1991, specifically articles 2, 3, 7, 9, 12, 13, 15, 18, 19, 20, 21, 30, 31, 33 – 36 and 37.
>
> Father also relies on the United Nation's Convention on Genocide, specifically the Convention on the Prevention and Punishment of the Crime of Genocide as adopted by resolution 260(III)A of the United Nations General Assembly on 9th December 1948 where his children are inappropriately and against parental wishes placed in conflict with their own national/ethic/racial/religious groups against the UN's Convention on Genocide article 2(b) (c) and especially (e), forcibly transferring children from one group to another, with intent to destroy the group is within the categorically accepted and ratified definition of genocide …"

[Various emphases excluded.]

56. On reading this claim, I found myself endorsing Wilson LJ's characterisation of the documents presented to him as being "made with such a degree of verbosity and of jargon, with such little discipline and discrimination". I add that, in my view, the father displays considerable learning about the law but remarkably little understanding or judgment in the way he deploys that learning.

57. In contrast, his counsel Mr Rowley has commendably re-arranged and re-shaped his client's case in a way that both represents the full sweep of the father's complaints whilst rationalising the argument into a form that renders them justiciable. I quote as follows from his admirable skeleton argument paragraphs 65 to 73:

> "65. It is submitted that there have been clear breaches of the father and D's right in respect of family life under article 8.
>
> 66. First, the separation of D from his parents following his birth was an unwarranted interference. There was, in short, an insufficient basis for removal when considering the nature of the risk of harm identified ....
>
> 67. Second, the fact that the local authority has parental responsibility for a child pursuant to section 33(3)(a) Children Act 1989 does not entitle it to take decisions about that child without reference to, or over the heads of, the child's parent .... Here the local authority has de facto permitted D's religious identity to be compromised without consultation with and input from his father. The Looked After Children Review on 19.11.09 'agreed that D would be encouraged to learn about both religions' without reference to the father or recognition of the local authority's original stance identifying D as a Muslim. It is submitted that where the local authority is contemplating what is an effect a step contrary to section 33(6)(a) of the Children Act 1989, there should be written notification to the parents spelling out the reasons for the proposed change and inviting their answer to the suggestions, together with an opportunity to make representations. The failure of the local authority in this regard constitutes a breach of article 8 in respect of D and his father, and article 9 in D's case.
>
> 68. Third, the failure of the local authority to ensure that its plans were followed in terms of D's upbringing in the Islamic faith constitutes a separate breach of articles 8 and 9 ….
>
> 69. Fourth, there has been a breach of D's article 8 rights due to the failure of the local authority to effect its plan for regular contact with the paternal extended family.
>
> 70. Fifth, there has been a further breach of D's article 8 rights in the failure of the local authority to promote any contact at all with his half-sibling A.
>
> 71. The father would wish to argue that the act of the Blackburn County Court in 2006 in denying D the opportunity to grow up in his father's care was itself a breach of his and D's Article 8 rights. It may be that this Honourable Court takes the view that there are a number of hurdles in this complaint. First, there is no such legal entity as Blackburn County Court. Proceedings have not been issued against, nor served on, the Ministry of Justice. Even if they had been the court may regard Section 9 (1) of the Human Rights Act 1998 as precluding a claim under section 7 (1) (a) of that Act in respect of a judicial act such as that of HHJ Gee in 2006, read in conjunction with the decision of Akenhead J in *Hinds v Liverpool County Court, Liverpool City Council* [2008] EWHC 665 (QB).
>
> 72. He also asserts that the actions of the local authority and CAFCASS constituted a breach of his and his son's right in respect of family life ..... Again, *Hinds* would be authority for the propositions that the decision is that of the court, not the relevant local authority, and that CAFCASS should be able to perform its duties without fear of action.

> 73. The relief sought is nominal and punitive damages, together with injunctive relief compelling the local authority to return D to [the father]'s care. The comments of Wilson LJ are noted, but the father on specific instruction wishes to argue the legitimacy of his approach in relying on section 7 and 8 of Human Rights Act 1998 in the alternative to the discharge application".

58. Re-arranged in this way one can see that the father's complaint under the Human Rights Act indeed fall into the two principal categories identified in paragraph 54 above. Mr Rowley very properly draws the court's attention to the *Hinds* case as an authority against the pleaded claim against Blackburn County Court and CAFCASS.

59. I share Wilson LJ's clear views that the attempt under the Human Rights Act to achieve the return of D, in circumstances where the discharge application has been refused, and deploying arguments which have already been considered and rejected in earlier litigation, is an abuse of process. Judges must be vigilant to guard against the misuse of litigation, and opportunity for mischief-making, which the Human Rights Act sometimes allows. It is, of course, right, as I have already acknowledged, that the courts exercising powers under the Children Act to make public law orders must have regard to ECHR, and the fact that the right to respect for private and family life does not merely oblige public authorities to desist from unnecessary interference in family life but also encompasses a positive obligation to ensure an effective respect for article 8 rights: see the well-known European cases of *Marckx v Belgium* (1979) 2 EHRR 330 and *Hokannen v Finland* (1994) 19 EHRR 139. Any interference must be (a) lawful, (b) serve a legitimate purpose, (c) necessary in a democratic society, (d) not discriminatory and (e) proportionate. It has now been established that Article 8 affords procedural safeguards against interference with substantive rights - see for example *McMichael v UK* (1995) 20 EHRR 205, and the series of domestic cases since the implementation of the Human Rights Act involving care proceedings and care orders e.g. *Re M (Care: Challenging Decision by Local Authority)* [2001] 2 FLR 1300 per Holman J, and *Re G (Care: Challenging Local Authority Decisions)* [2003] 2FLR 62, per Munby J (as he then was), among others.

60. In this case, setting aside for a moment the complaint about religious upbringing, it seems to me that the rest of the father's Human Rights Act claim manifestly fails. The removal of D from his care was clearly an interference with D's and his father's article 8 rights but it was lawful in that it was pursuant to a proper legal process under section 31 of the Children Act, which is well established as being compatible with ECHR. Furthermore, the interference was for the legitimate purpose of protecting D. It was necessary in the sense of meeting a pressing social need, non-discriminatory and, given the extent of D's need, proportionate. Accordingly, the exception to article 8 is clearly established and in the circumstances the removal of D from his parent's care did not amount to a breach of his article 8 or other rights. The issues concerning D's religious upbringing are however more complex and I turn to consider them separately.

D's religious upbringing

61. The father maintains that, by the manner it has addressed, or, as he would say, failed to address D's religious upbringing, the local authority has acted in breach of its statutory duty under section 33(6)(a) of the Children Act 1989, and has also infringed articles 8 and 9 of the European Convention. Section 33(6)(a) provides:

> "While a care order is in force with respect to a child, the local authority ... shall not cause the child to be brought up in any religious persuasion other than that in which he would have been bought up if the order had not been made".

Article 8 of the European Convention headed "Right to respect the private and family life" provides:

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

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".

Article 9 provides:

"(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion and beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and feelings of others."

62. I have already cited those passages in the 2006 care plan, and from Judge Gee's judgment, that demonstrate that it was a fundamental basis on which the care order was made in 2006, that (a) D's parents were of a Muslim faith, (b) they wished him to be bought up in that faith, (c) the maternal grandparents were to do their best to bring him up as a Muslim and (d) if they did not do so, the local authority would direct them to do so, and could remove D from their care if it thought it right. I have also referred to the fact that, after the care order was made, the mother abandoned her Muslim faith, reconverted to Catholicism, and expressed the wish that D be bought up as a Christian. The local authority rejected that proposal.

63. In her statement dated 29th June 2010, the D's social worker CP gave this evidence in respect of the current position concerning D's religious upbringing:

"5.8.1 The maternal grandmother has educated herself about Muslim issues and has ensured that D is educated about the religion by reading him the books that the father has given her to read him. She has also bought halal meat for D to eat, although D prefers to eat vegetables and fruit. She has been proactive in educating herself and D about his cultural and religious heritage, both Catholic and Muslim faiths. She has reportedly spoken to a local Imam in Bradford for advice about meeting his religious educational needs and his dietary needs and has also read up about the Muslim religion. She has also accepted the prayer mat that the father has provided for D at contact sessions. The issue of ensuring that D's religious and cultural needs are met will be reconsidered at Looked After Children Reviews and I have no doubt that she will undertake any tasks that are agreed that will promote his needs in this area. There has been no evidence to support the reference by the father in his application that the grandmother is racist or hostile to the Muslim faith or practises.

5.8.2 The grandmother is a practising Catholic. D's mother was also brought up as a practising Catholic. D is therefore of mixed religious heritage, Muslim and Catholic. The grandmother has educated D in the basics of the Muslim faith and will continue to do so until such time as D is able to make his own decision about which religion he wishes to follow. At the Looked After Children's Review on 9th November 2009 it was therefore agreed that D would be encouraged to learn about both religions to enable him to make up his own mind when he is old enough to do so.

5.8.3 The local authority will regularly review D's religious and cultural needs at each Looked After Review meeting that takes place every six months. It is anticipated that D may benefit from extra educational instruction in the Muslim faith in the near future,

> and this has been discussed with the children's guardian. However, due to D having struggled with the structure of formal education at school, the local authority has the view that any formal religious education, whether Muslim or Catholic, would not be appropriate for D at this stage in his early childhood.
>
> 5.8.4 As D's social worker, I am confident that D is well placed with his maternal grandmother. She is able to meet his emotional and practical needs and it will be detrimental to his well being to move him."

64. This position is endorsed by D's guardian in these proceedings who stated in his report:

> "I acknowledge the father's issue with regard to D's Muslim heritage and the importance of him embracing this is an important aspect of his identity. However, the matter that concerns me more is the lack of acknowledgement by the father and the local authority of D's Catholic heritage. D's father has not provided consent to D attending any form of church visits, nor has he been prepared to discuss the subject. Given D's heritage, this is not an acceptable stance. D should be allowed to explore and develop an understanding of both sides to [his] heritage in order to develop a strong sense of identity and belonging. D has made comment on wanting to visit church and this should be encouraged and not suppressed … . I have discussed the matter with the local authority and the possibility of an assessment by an anthropologist, should that be felt helpful in the future."

The guardian has provided the name of a possible specialist who may be able to assist in this regard and the local authority indicated during counsel's submissions that it was willing to consider this option and also to pay for one to one Islamic tuition for D when it is considered suitable by the school.

65. The father does not accept this approach at all. I have already quoted from his application and statement. On his behalf Mr Rowley puts the father's concerns in the following way in his skeleton argument. He submits that there is a real issue as to the upbringing of a child of one faith in a household which follows another, and the remedy or relief which may be sought in respect thereof. He relies on the fact that both parents were Muslim at the point of the final order being made in respect of D, that they and the local authority saw D as a Muslim child, and this was expressly addressed in the care plan. He points out the local authority's position before Judge Gee was that D was a Muslim child who should be brought up with an exposure to Islam, which his grandparents would facilitate, and, were they not to do so, the local authority would direct them to bring him up as a Muslim. He reminded the court of a quotation from an expert instructed at the previous hearing to the effect that "just because the father is viewed as a hypocrite does not mean that D's religious and cultural needs should not be catered for. They are *his* needs and they must be met". He submitted that D has received no formal instruction in Islam and that there was precious little evidence that he had received any informal education in his faith. In the earlier proceedings, Professor N had set out the components of an Islamic child's observance and education, none of which, submitted Mr. Rowley, had been implemented properly or at all. Mr Rowley drew attention to the evidence that a Muslim child should be brought up in strict accordance with the teachings of Islam and was required to attend a madrasa "as many days a week as possible". In the absence of such attendance, teaching can be undertaken by an adult but only one with the required knowledge and skills" no-one has yet been employed to undertake this task.

66. Mr Rowley criticised the local authority for regarding D's religious identity as being "fluid rather than fixed", contrary to the nature of religious belief itself and contrary to the local authority's own position at the final hearing. He continued:

> "to assert that the local authority will continue to promote his education in both religious identities to enable D to make his own decisions when he is old enough to do so is an abrogation of the authority's prior commitment to a recognition of D's identity as a Muslim child. Such a half way house is fundamentally antithetical to both religious traditions and leaves D with some hybrid religious upbringing which satisfies

the basic tenets of neither Islam nor Catholicism. It is a recipe for confusion and tension for this boy. Enrolling D into a school 'which teaches all faiths' does not promote and protect his religious identity of itself. Indeed in the absence of formal tuition in Islam it serves to erode D's right to manifest his religion".

Mr Rowley further observes that "the nature of the Abrahamic religious traditions is exclusivist: salvation and/or correct observance are contingent upon following a prescribed set of rules and adherence to articles of faith within the relevant tradition".

Mr Rowley dismisses the guardian's proposals that the issues relating to religious upbringing can properly be dealt with at ongoing review meetings. He contends that, in the absence of another vehicle for determination of such critical issues, the father's Human Rights Act application is justified with regard to the question of D's religious identity and upbringing, and he submits that the court has the powers under that Act to direct the local authority to exercise its parental responsibility so as to compel the grandmother not to expose D to Catholic doctrine or worship and to effect his proper Islamic education by attendance at a madrasa.

67. In his oral submissions, Mr Rowley developed his legal argument as follows. He submitted that the proper interpretation of section 33(6)(a) is that the child's religious persuasion should be identified as at the date of the care order. In other words, the fact that one or both parents had subsequently abandoned their faith did not alter the local authority's obligation to ensure that the child was bought up in that faith. Mr Rowley further submitted that the local authority's obligation is not merely negative - i.e. to ensure that the child is not bought up in any other religion - but positive - that is to say, to ensure the child is bought up in that religion. He submitted that the nature of religion is that it is binary - either you follow the faith or you do not. Agnosticism and atheism should be seen as forms of religious persuasion, so that to allow a child to be brought up *without* the religious persuasion he would have had but for the care order is to allow him to be bought up in a *different* religious persuasion and, therefore, to infringe section 33(6)(a). Mr. Rowley further submitted that for the local authority to adopt a plan to allow D to "make up his own mind" would be to infringe their statutory duties. The effect of this, submitted Mr Rowley, was that the local authority was in breach of its statutory obligations under the subsection and was infringing D's and the father's human rights under articles 8 and 9. He therefore invited the court to grant an injunction restraining the local authority from taking any steps that would enable D to be bought up under a religious persuasion other than Islam.

68. This application is of course opposed by the local authority and the guardian. On behalf of the local authority, Miss Partington submitted that section 33(6)(a) was expressed in negative terms and the local authority was therefore not in breach. She underlined the careful steps the local authority has taken and proposes to take to deal with this sensitive and difficult issue. On behalf of the guardian, Miss Grundy submitted that under section 33(6)(a) there was a duty of the local authority to consider which if any religious persuasion a child would have been bought up under had the care order not been made. That required careful consideration of the factual matrix. In this case, if the order had not been made, there were various possible scenarios. D might have been bought up as a Muslim or as a Catholic, or without a specific faith but with exposure to his dual heritage arising from his parents' respective backgrounds. Miss Grundy submitted that, as all of these scenarios were possible, the local authority cannot now be said to be in breach of its duty. She urged the court to reject the submission that the child's religious persuasion was fixed at the date of the care order.

69. Miss Grundy summarised her submissions in these terms: (1) a broader interpretation of section 33(6)(a) should be preferred, having regard to all the circumstances and the need for a practical approach; (2) the local authority has not, on the facts of this case, infringed that subsection; (3) alternatively, if the local authority is in breach, the father has no remedy on behalf of D in view of the fact that section 33(3) gives the local authority overall control as to the exercise of parental responsibility; (4) although the father may have a remedy in his own right, the court in the exercise of its discretion should not grant any injunction, having regard

to all the circumstances; (5) at the very least the court should give the local authority an opportunity to address these issues before granting any injunction.

Discussion

70. So far as counsel and the court have been able to ascertain, section 33(6)(a) has never been considered in detail in any previous reported case. I therefore start by considering the subsection in the context of the whole of section 33. That section is headed "Effect of Care Order" and the last seven subsections, from (3) to (9) inclusive, deal with the attribution and exercise of parental responsibility under a care order. Under section 33(3)(a), while a care order is in force, the designated local authority has parental responsibility for the child, and further has the power to determine the extent to which his or her parents, and others with parental responsibility, can discharge their responsibility for the child. That is, however, subject to the following subsections, (4) to (9) which impose limits and qualifications on that power. Thus in addition to restriction concerning religious upbringing imposed by section 33(6)(a), the section imposes the following limits on the local authority's exercise of parental responsibility.

(1) The local authority may not exercise its power under section 33(3)(b) to determine the extent to which a parent can exercise his or her parental responsibility unless satisfied that it is necessary to do so to safeguard or promote the child's welfare: section 33(4).

(2) A parent who has care of the child subject to the care order remains entitled to do whatever is reasonable in the circumstances to safeguard or promote the child's welfare: section 33(5).

(3) The local authority cannot consent, or refuse to consent, to the adoption of a child: section 33(6)(b)(ii). This power remains exclusively with the parent.

(4) The local authority cannot appoint a guardian for the child: section 33(6)(b)(iii). This power also remains exclusively with the parents.

(5) No person, including the local authority, can cause the child to be known by a new surname without the written consent of every person with parental responsibility or the leave of the court: section 33(7)(a).

(6) Save in the circumstances set out in section 33(8), no person, including the local authority, can cause the child to be removed from the UK without the written consent of every person who has parental responsibility for the child, or the leave of the court: section 33(7)(b).

(7) The parents, and any other person with parental responsibility, also retain any other right, duty, power, responsibility or authority which he or she may have in respect of the child and his property by virtue of any other enactment, and the local authority's power under section 33(3)(b) is subject to that general exception: section 33(9).

71. The scheme of section 33 is therefore to delineate the extent of the power of the local authority's power to exercise parental responsibility. In the words of the editors of Hershman and McFarlane, "Children Law and Practice", at paragraph A-233, the care order "does not give the local authority full parental rights, some of which are retained exclusively by the child's parents". The provisions of section 33 help to ensure that Part IV of the 1989 Act is compatible with ECHR, by limiting the interference with the right to respect for family life as required by Article 8(2). In my judgment, it must follow that any attempt by the local authority to exercise powers that are retained by the parents by virtue of section 33 must *prima facie* be *ultra vires* and subject to judicial review or, in appropriate circumstances, an application for injunctive relief under the Human Rights Act, following the decisions in *Re M (Care: Challenging Decisions by a Local Authority)* [2001] 2 FLR 1300, *Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 Fam., [2003] 2 FLR 42 and *Re S (Minors) (Care Order: Implementation of Care Plan); Re W (Minors) (Care Order: Adequacy of Care*

Plan) [2002] UKHL10, [2002] 1 FLR 815. It should be noted, however, that courts have emphasised that the Human Rights Act remedy should only be sought as a last resort. In *Re M,* Holman J stressed that the remedy under the Human Rights Act should be sought "sparingly". In *Re S; Re W*, Lord Nicholls described the parent's entitlement to bring proceedings under the Human Rights Act as "a long stop", adding: "one would not expect proceedings to be launched under section 7 of the Human Rights Act until any other appropriate remedial routes have first been explored".

72. Section 33(6)(a) is therefore part of the detailed delineation of where parental responsibility lies in respect of children in care.. The editors of Hershman and McFarlane refer to it as providing that the parents retain "the exclusive right to determine the child's religion". It is however important to note the very careful wording of the subsection: "the local authority shall not cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made". The legal argument at this hearing has demonstrated a possible ambiguity in this phraseology. Is the local authority obliged to sustain the child's religious persuasion as it existed at the date of the order, or alternatively is the local authority obliged to take account of subsequent changes of religious persuasion within the family? On one view the local authority is obliged to sustain the child's religious persuasion as it existed at the date of the order. Mr Rowley on behalf of the father submitted that this was the only practical interpretation. But suppose, as I suggested to him in argument, both parents convert to a different religion, or alternatively find a faith having previously been agnostic. Is the local authority obliged to ensure that the child is brought up within his religious persuasion? Alternatively, is it obliged to change his religious upbringing to align it with the newly-found beliefs of his parents who, had the care order not been made, would in all probability have brought him up within the tenets of the religion which they have subsequently espoused? If the editors of Hershman and McFarlane are correct in interpreting section 33(6)(a) as meaning the parents retain the right to determine the child's religion, then they will retain the right to direct the local authority to change the child's religious persuasion to match their own new religion, even if the child was now settled in a foster home and being brought up within the religious persuasion his parents had followed at the time the care order was made. The analysis is even more complicated where, as here, the parents follow the same religion at the date of the care order and subsequently one parent converts or reconverts to a different religion.

73. Having reflected on these matters, I reach the following conclusions. I start with the proposition that the nature of a child's religious persuasion evolves as the child matures. In the case of a very young child, whose concept of faith is undeveloped, his religious persuasion is necessarily that of his parents. If their religion changes, so will his. As he grows older, however, he will inevitably, to use the local authority's phrase in this case, "make his own choice", irrespective of his parents' wishes and feelings. Some children follow their parent's faith throughout their lives, others do not. There is nothing a parent can lawfully do to force a child to believe anything. Once he is developmentally of an age to make a choice, the choice is his. In such circumstances, it would be absurd to impugn a local authority for failing to sustain the religious persuasion of a child who had decided for himself that he did not wish to follow his parent's faith.

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

particularly perhaps if the parent returns to a former religion previously practised within the extended family which constitutes a significant aspect of the child's heritage, but again the local authority is not obliged nor allowed to take any steps that would be contrary to his overall welfare. And as the child develops and makes his own choices, the local authority must respect his personal autonomy and freedom of conscience, provided again that by doing so it is safeguarding his welfare.

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

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

Ward LJ put it succinctly in this way in *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2.FLR 573 at page 599: "in the jurisprudence of human rights the right to practise one's religion is subservient to the need in a democratic society to put welfare first."

76. Returning to the facts of this case, I accept the evidence of the social worker CP as to the steps taken by the local authority with regard to D's religious upbringing. Bearing in mind that evidence, and the efforts the grandmother has made in what I consider to be very difficult circumstances, and having regard to the fact that the mother has reconverted to her former Catholic religion, I conclude that the local authority has not infringed its statutory duty under section 33(6)(a), nor has it infringed article 8 or 9 rights of either D or his father. There is no evidence, in my judgment, on which I could properly and fairly find the local authority is causing D to be brought up under a religious persuasion other than that he would have followed if a care order had not been made. The father has not proved, and cannot prove, that D would have been bought up as a Muslim if a care order had not been made, since the mother's re-conversion to Catholicism creates a real possibility that the child would have been brought up as a Catholic. Even if the father were able to prove that he would have been bought up as a Muslim, he has failed to prove the local authority has caused or is causing D to be bought up in a different religious persuasion. On any sensible view, the local authority is right to adopt the policy of trying to ensure that D is bought up with an understanding of his mixed and varied heritage, and given the opportunity to develop his own thinking. Contrary to the father's claims in his statement, I find the local authority is, (to adopt the father's own words), demonstrating a proportionate empathy with the different belief systems in this family.

77. I am sure there is more the local authority can and should do to address these difficult issues. I do not accept the submission on behalf of the father the local authority should be arranging for D to be attending a madrasa, but I do consider the social worker should identify more resources within the Muslim community that could provide assistance to the grandmother. It should also adopt the guardian's proposal and seek expert advice to help a family with these difficult problems. It would also be in D's interest, for this reason as well as others, to resume contact with the members of his extended paternal family. In addition, the local authority should, in my judgment, renew its attempts to engage the father in the process of reviewing

the arrangements for D's care, so that he can be given an opportunity to contribute appropriately to the ongoing decision-making about the boy's future. In these ways the local authority could do better. But the fact that the local authority could do more to promote D's understanding of his religious heritage does not on the fact of this case give rise to any cause of action at this stage, either in breach of statutory duty, or judicial review, or under the Human Rights Act.

78. The complexity of this issue, however, is relevant in my view to the final question I have to consider, namely whether or not to make an order against the father under section 91(14).

The local authority's application under section 91(14)

79. Under section 91(14) of the Children Act, on disposing of any application for an order under the Act the court may, whether or not it makes any other order in respect to the application, order that no application for an order under the Act of any specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court. The local authority, supported by the children's guardian, asks the court to make an order that the father should be prohibited from making any further application under the Children Act in respect of D until, at the earliest, he attains the age of eleven, i.e. for six years.

80. The power under section 91(14) has been considered by the courts in a number of reported cases in recent years, but the leading authority remains the Court of Appeal decision in *Re P (Section 91(14) Guidelines)(Residence and Religious Heritage)* [1999] 2 FLR 593. The principles set out therein are as follows.

(1) Section 91(14) should be read in conjunction with section 1(1) which makes the welfare of the child of paramount consideration.

(2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

(3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his or her child.

(4) The power is therefore to be used with great care and sparingly, the exception and not the rule.

(5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.

(6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of a child requires it, although there is no past history of making unreasonable applications.

(7) In cases under paragraph (6) above, the court will need to be satisfied, first, that the facts go beyond the commonly-encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute, or between the local authority and the family, and, secondly, that there is a serious risk that without the imposition of a restriction the child or the family carers will be subject to unacceptable strain.

(8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

(9) A restriction may be imposed with or without limitation of time.

(10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.

(11) It would be undesirable in other than the most exceptional cases to make the order ex parte.

81. In addition to these guide lines in *Re P,* I note the following further points from other reported cases. First, any prohibition under section 91(14) must be compatible with the primary drive and objection of the court to restore the relationship between parent and child: see *Re B (Section 91(14) Order: Duration)* [2003] EWCA Civ 1966, following well established European jurisprudence. Secondly, along the spectrum of acceptable cases justifying an order under section 91(14), orders without limits of time shall be made only in respect of cases at the most egregious end, meriting the strongest degree of forensic protection for the child from further ill-founded conflict: see *Re J (A Child) (Restriction on Applications)* [2007] EWCA Civ 906, [2008] 1 FLR 369. The fact that a judge had formed the view that it would be preferable for the child if further litigation in relation to him were for a time to be controlled by order under section 91(14) would be a wholly illegitimate foundation for the order, per Wilson LJ in *Re A (Contact: Section 91(14))* [2009] EWCA Civ 1548, [2010] 2 FLR151.

82. On behalf of the local authority, Miss Partington submits that this is a paradigm case for a section 91(14) order. The father has made repeated and unreasonable applications with the effect that the last four years has seen almost uninterrupted litigation. The experience of such litigation has caused considerable extra work for the professionals, but also, more importantly, anxiety for the grandmother at a period in her life when she has experienced pressure and problems from other sources. The local authority submits that there has to be an end to this litigation, which Miss Partington described as harmful. Through Miss Grundy, the guardian supported the local authority and endorsed the view that the litigation is having an adverse effect on

the grandmother.

83. On behalf of the father, Mr Rowley submits that, applying the *Re P* guidelines to the facts of this case, the balance clearly lies against imposing such a restriction on the father. He argues that, while there has been "some litigation", there is legitimate foundation for the father's application. He points out that four years have elapsed since the care order was made and much has changed during the interim. In particular, what Mr Rowley describes as the complexities surrounding D's religious identity are ample justification for the father's applications.

84. I acknowledge the anxiety that the ongoing litigation has had on the grandmother. I accept that in many respects the father's applications have been ill-advised and launched without any proper consideration to D's welfare. Insofar as the father has simply sought to re-litigate issues which have already been settled, he is acting without justification. But buried within his applications, albeit at a depth which make it difficult at times to discern, is legitimate concerns about D's upbringing. Some of the criticisms of the local authority made by the father, or on the father's behalf, are warranted – in particular, the failure to arrange sibling contact, the failure to sustain a relationship between D and his paternal family, and the absence of any clear contingency plan in the event that the grandmother is no longer able to care for him. In addition, there is the complex question of D's religious upbringing. Whilst I have rejected the father's arguments that the court should interfere with the local authority's actions with regard to D's religious upbringing, I acknowledge that his concerns are genuine. From his perspective, D is being brought up in a religious persuasion other than that in which he would have been raised had the care order not been made. In these circumstances, I am reluctant to impose the section 91(14) hurdle, recognising as I do that it is a significant intrusion into the father's rights and only to be used as a last resort.

85. I have come close to making the order requested by the local authority, but in the end I have concluded that, on balance, it would not be right to do so at this stage. But I have two further points. First, with the agreement of all parties, I direct that for the time being any future application concerning D should be transferred at the earliest opportunity to be listed before me. I consider that judicial continuity is very important in this sensitive case, and I will of course have a wide discretion to determine the scope of any future proceedings. Secondly, in giving that direction I stress that I am not encouraging further litigation. On the contrary, I am positively and strongly discouraging it. Litigation is a blunt instrument for determining the upbringing of a child and I encourage the local authority to look for renewed ways to engage the father in dialogue about D's upbringing and, in particular, his religious upbringing. So far as the father is concerned, I urge him to think very carefully before he launches any further proceedings. Any further unwarranted litigation would be very likely to leave the court on the next occasion to conclude that the last resort had arrived and, therefore, to take steps to prevent further applications by an order under section 91(14) or otherwise.

90. I therefore make the following orders. (1) Upon the father's undertaking not to apply for contact with A until his sixteenth birthday, no order on the application by the father for permission to apply for contact or on A's mother's application for an extension of the 91(14) order made by Judge Gee. (2) All of the father's applications with regard to D under the Children Act 1989 are dismissed. (3) The father's application under the Human Rights Act is dismissed. (4) The Local Authority's application for a section 91(14) order precluding any further application by the father in respect of D under the Children Act is refused. (5) I direct that any further application concerning D's care under any statute, or under the inherit jurisdiction, be transferred to the High Court (if not started in this Court) and listed before me at the earliest opportunity.