EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF N.S. v. THE UNITED KINGDOM

(Application no. 38134/20)

JUDGMENT

Art 8 • Family life • Decision to grant final adoption order in respect of a child already subject to a placement order, against the wishes of his mother, who has a history of mental health support needs, formally severing the biological ties and creating legal ties with the adoptive family • In case-circumstances prior placement order authorising child to be placed for adoption represented domestic court's determination that child's best interests required his adoption • Applicant's failure to challenge placement order before this Court • Examination of relevance and sufficiency of reasons for adoption order to be carried out with due regard to the reality of the situation at the material time • Child's interest in not having its *de facto* family situation changed weighed heavily in favour of granting the adoption order • Relevant and sufficient reasons given both for the adoption order and the refusal to make a special guardianship order preserving the biological ties • Making of adoption order within the State's margin of appreciation • Applicant involved in decision-making process to a sufficient degree to provide requisite protection of her interests and was fully able to present her case

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 March 2025

Request for referral to the Grand Chamber pending

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of N.S. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Jolien Schukking,
Faris Vehabović,
Tim Eicke,
Lorraine Schembri Orland,
Anne Louise Bormann,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 38134/20) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Ms N.S. ("the applicant"), on 27 August 2020;

the decision to give notice to the United Kingdom Government ("the Government") of the application;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Validity Foundation ("Validity"), which was granted leave to intervene by the President of the Section;

Having deliberated in private on 4 March 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complained about the making of an adoption order in respect of her child, Y, against her wishes. She relied on Article 8 and the Court's judgment in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, 10 September 2019).

THE FACTS

2. The applicant was born in 1969 and lives in Wolverhampton. She was granted legal aid and was represented by Mr G. Thuan Dit Dieudonné, a lawyer practising in Strasbourg.

3. The Government were represented by their Agent, Mr M. Boulton, of the Foreign, Commonwealth and Development Office.

4. The facts of the case may be summarised as follows.

5. The applicant has a history of mental health support needs. Her children, X and Y, were born on 2 October 2002 and 25 May 2011

respectively. Their father was murdered in 2012, which had a significant effect on the applicant and her children.

I. THE MAKING OF CARE ORDERS (2013-2014)

6. On 3 August 2013, the applicant was detained under the Mental Health Act 1983. The children were taken into police protection. On 5 August 2013, the local authority initiated care proceedings (see paragraphs 110-111 below).

7. On 21 August 2013, the Mental Health Tribunal ordered the applicant's discharge from detention.

8. Following her release, the local authority arranged contact sessions between the applicant and her children. On 3 March 2014, the local authority implemented a reunification plan with a view to returning the children to the applicant's care.

9. On 2 May 2014, X and Y were returned to the applicant's care under a care order granting joint parental responsibility to the applicant and the local authority.

II. THE REMOVAL OF THE CHILDREN (2015)

10. On 27 March 2015, the applicant suffered a relapse in her mental health condition. X and Y, then aged twelve and three respectively, were removed from her care and placed together in foster care. According to the local authority, it was hoped that further assessments could take place to examine the possibility of returning the children to the applicant's care.

11. The local authority arranged family time between the applicant and her children three times per week. However, the applicant failed to attend on eleven occasions in April 2015. At that point, the social worker stopped arranging visits because this was having a negative impact on X's emotional well-being. Visits did not resume until September 2015 (see paragraph 18 below).

12. On 2 and 7 April 2015, the local authority arranged family group conferences. However, the applicant and her relatives did not attend. A further care planning meeting was arranged for 15 April 2015 but the applicant did not attend.

13. In May 2015, the applicant was again detained under the Mental Health Act 1983.

14. On 15 May 2015, the local authority concluded that the applicant's illness and inability to care for the children were having a detrimental impact on their welfare. It therefore amended its care plan in respect of Y to one of adoption and in respect of X to one of long-term foster placement.

15. On 13 July 2015, a visit between the applicant and the children took place in the hospital where the applicant was being detained. However, this

had a negative impact on the applicant's well-being and she had to be restrained by hospital staff.

16. On 14 July 2015, in line with its permanency plans for X and Y (see paragraph 14 above), the local authority separated the children, who were from that point onwards in two different placements. X and Y subsequently had family time three times per week, arranged by their respective carers.

17. In August 2015, the applicant was diagnosed with bipolar affective disorder. She was subsequently released from hospital, under treatment.

18. In September 2015, family time resumed between the applicant and her children. Six sessions were offered for the month of September. However, the session scheduled for 1 September was cancelled by the local authority and at the session on 8 September, Y was not present and no explanation was given for his absence. Sessions took place as scheduled on 15, 22 and 28 September, but neither the applicant nor the children attended the session planned for 26 September.

19. According to the Government, between September 2015 and December 2016, the applicant was allowed to see her children together once per week. In their further observations, the Government stated that the local authority had facilitated sixty contact sessions between the applicant and Y between September 2015 and December 2016.

III. THE CARE AND PLACEMENT PROCEEDINGS (2015-2016)

A. The applications by the applicant and by the local authority

20. Meanwhile, in October 2015, the applicant applied to the Family Court to have the care orders in respect of X and Y (see paragraph 9 above) discharged on the basis that she had been previously misdiagnosed, was now receiving the correct treatment, was medication-compliant and had a greater awareness of when she was relapsing.

21. On 3 December 2015, the local authority applied for a placement order in respect of Y under the Adoption and Children Act 2002 ("the 2002 Act" – see paragraph 115 below). It also opposed the discharge of the care order in respect of X.

22. The guardian supported the local authority's position in respect of Y but concluded that X's care order should be discharged and that X should be returned to live with the applicant.

23. On 8 March 2016, at four years old, Y moved to a foster-to-adopt placement with the carer who would later become his adoptive parent.

B. The hearing and order

24. On 8 December 2016, following a hearing lasting two days, the Family Court directed that X be returned to the applicant's care and ordered

that Y be placed for adoption with a prospective adopter. It delivered its ruling orally, with reasons to follow (see paragraphs 26-33 below).

25. On 20 December 2016, the applicant and X had one final contact with Y under the local authority's supervision.

C. The court's judgment

26. In her judgment dated 10 January 2017 (see paragraph 24 above), the district judge acknowledged that the applicant's mental health had been stable since her diagnosis (see paragraph 17 above) and noted that she had been cooperating fully with mental health and social services. She further noted that the applicant believed she could now recognise when she was entering a manic or depressive phase, but observed that she was still learning about her mental health condition and how to identify it. It was "very early days" to say whether the applicant would be able to identify and carry out protective measures in the future. This was particularly critical for Y, who was far too young to recognise signs of mental ill health in his mother.

27. The judge found that X was "desperately unhappy in care" and also "very securely attached to his mother". He was an intelligent, academic and exceptionally mature child who would have no trouble identifying the relevant signs of relapse in his mother and then seeking the necessary help from the mental health services should her mental state deteriorate. The judge accepted that both X and Y had suffered harm and were at risk of future harm as a result of the behaviour that the applicant's illness had caused. However, in X's case, although it had affected him, the applicant had "clearly done something right to have raised such a thoughtful, considerate, academic and capable young man". The judge considered it to be a certainty that he would suffer serious harm if left in the care of the local authority. She concluded, "In the balance of [X's] needs, he needs to go home to his mother".

28. However, Y's needs and position were "entirely different". He had settled well in his foster-to-adopt placement and had bonded with his carers. In the event of a placement order, those carers would apply to adopt him. The judge noted:

> "He would lose contact with his brother and his mother. That loss has to be considered in the balance."

29. Y had had less time living with the applicant but had been damaged by it. It was accepted that he had suffered significant harm. The judgment continued:

> "He needs stability, certainty, safety. He needs carers who can provide him with all the things that any young child has, but also continuity, predictability, and above all, continuous care uninterrupted by mother being in hospital. It may be that mother could provide that, but we would not know that for a considerable period, and the chances of her being able to do that are not good."

30. The judge noted that the applicant had asked her to adjourn the proceedings while she undertook courses and therapy to demonstrate that she could provide and then sustain good enough care. The judge observed that were she to do that, Y would need to stay in his current placement "bonding, settling, being part of the family with the people who, so far as he knows ... are his family". The only way to avoid that would be to move him to another foster placement, which would be "evidently inappropriate and very damaging". It would also be "an experiment, given what I have already said about mother [in] this judgment, and adding to that, there being no certainty of success". The judge considered that this could not be acceptable and declined to do it.

31. She concluded:

> "[Y] cannot go home for the reasons already given and the only other course available, the only thing that will satisfy his welfare needs for life, is to give the local authority permission to convert the current placement for [Y] into a placement for adoption."

32. The judge confirmed that she had considered all the evidence and had applied the welfare checklists in the Children Act 1989 Act and the 2002 Act (see paragraphs 111 and 113 below). She had considered the welfare needs and human rights of each child separately and had done what was in the best interests of each child, even when it went against the interests of the other. She noted that all members of the family had human rights, in particular under Article 8 of the Convention, and that where those rights were at odds with those of the child, then those of the child predominated.

33. The judge accordingly dispensed with the applicant's consent to Y's placement for adoption on the grounds that his welfare needs required her to do so (see paragraph 116 below) and gave the local authority permission to place him for adoption. She ordered X's return the applicant's care under a care order. The care order was eventually discharged in May 2018.

IV. THE APPLICATION FOR AND OPPOSITION TO THE MAKING OF AN ADOPTION ORDER (2017-2018)

34. On 26 May 2017, the prospective adopter with whom Y had been placed applied for an adoption order under the 2002 Act (see paragraph 119 below).

35. On 24 July 2017, the applicant applied for permission to oppose the making of an adoption order arguing a change of circumstances based on her acceptance and recognition of her mental health disorder and the work she had done with mental health care services to recognise her relapse triggers and seek help as required (see paragraph 120 below).

36. On 20 December 2017, the Family Court ordered that an updated psychiatric assessment of the applicant should be prepared by Dr J.A.

37. Dr J.A.'s report is dated 5 March 2018. He noted that since the applicant's discharge from hospital in 2015, her mental health had been

stable. In his opinion, her current treatment was appropriate for her needs. Were she to experience a relapse, the symptoms were likely to be similar to those during previous episodes and, depending on their nature and severity, might affect her decision-making ability and her ability to prioritise her children's needs over her own.

38. Dr J.A. considered that the applicant had insight into her condition and was able to recognise the triggers for and early signs of relapse. She had indicated that she would seek professional assistance in the event of signs of relapse and was willing to accept advice regarding treatment and to take prescribed medication. He added that her recent history suggested that she had fully engaged with mental health professionals and had been consistent in her adherence to prescribed medication. He considered that if she continued to take her medicine and sought assistance in the event of relapse, it was "likely that any deterioration in her mental health could be detected and managed at an early stage, with minimal impact on the care of her child.". As to the risk of relapse, Dr J.A. expressed the opinion that if she remained adherent to medication she was likely to remain well, but that there remained the possibility that she could experience further episodes.

39. He explained that for those suffering from bipolar affective disorder, anti-depressants should not be continued after resolution of depressive symptoms since there was a risk that they could precipitate episodes of hypomania in such patients. He considered that the anti-depressants previously prescribed for the applicant might have been a contributory factor in the development of a hypomanic episode that she had experienced in 2015.

40. On 3 April 2018, in view of Dr J.A.'s report, the Family Court granted the applicant permission to oppose the adoption order on grounds of a change in circumstances. It further stayed the application for an adoption order pending the application for leave to appeal the December 2016 placement order (see paragraphs 24 above and 41-42 below).

V. PROCEEDINGS FOR PERMISSION TO APPEAL THE PLACEMENT ORDER (2018)

41. Meanwhile, on 26 March 2018, after receiving counsel's advice, the applicant applied to the Court of Appeal for permission to appeal out of time against the December 2016 decision to place Y for adoption (see paragraph 24 above). She argued that the placement order had been made on account of the instability in her mental health but that the situation had now changed. She relied on Dr J.A.'s assessment (see paragraphs 37-39 above).

42. On 7 June 2018, the Court of Appeal refused her permission to appeal. It noted that no good reason had been given for the delay but indicated that it would consider whether the merits of the appeal were such that it should give permission to appeal. In this regard, it held that the judgment contained a sufficient analysis of the evidence and of the judge's reasons for her decision.

The judge had had regard to the welfare checklist and it was clear that she had had in mind "the need to address '[Y's] welfare needs for life' ... and that he would 'lose contact with his brother and mother'". The court further noted that it did not appear that the applicant had been seeking Y's immediate return at the time, since the judgment of the Family Court referred to an adjournment while the applicant undertook recommended therapy and courses. The judge had made an order supported by the guardian and by the evidence. The Court of Appeal concluded:

> "The judgment could have addressed some of the matters referred to [in the applicant's grounds of appeal and skeleton argument] in more detail but I do not consider that the matters advanced establish sufficient merits to justify extending time and giving permission to appeal. The judgment contains a sufficient analysis of the available options and was not 'linear' such that the proposed appeal would have any real prospects of success."

VI. THE ADOPTION PROCEEDINGS (2018-2019)

A. Procedural issues

43. On 2 July 2018, the Family Court instructed that an independent social worker, C.A., prepare a parenting assessment of the applicant and ordered that an independent psychologist, Dr H.R., prepare an assessment of Y (see paragraphs 49-68 below).

44. On 19 December 2018, X was given leave to lodge an application for contact with Y.

45. In April 2019, the applicant was diagnosed with cancer. In a statement to the court she explained that the timeframe for treatment was 6-8 months. She further explained that after the "life-changing diagnosis" she had carefully considered her position as regards Y's care. She had reached the "difficult decision" that his placement should be with his current carer until adulthood.

46. In June 2019, Dr H.R. was asked to update her report in light of the applicant's cancer diagnosis. She was also asked for more detail about how potential contact between X and Y might work (see paragraphs 69-72 below).

47. In a statement of 16 July 2019, the applicant informed the court of a change in her position. She was now expected to make a full recovery and therefore again requested that Y be returned to her care.

B. Expert reports

1. Psychiatric report on the applicant by Dr J.A.

48. Dr J.A.'s report of 5 March 2018 on the applicant's mental health is summarised in paragraphs 37-39 above.

2. Parenting assessment of the applicant by C.A., the independent social worker

(a) Main report of 29 October 2018

49. C.A.'s report observed that the applicant's mental health had remained stable since 2015.

50. It examined the relationship between X and Y and commented on X's distress and sadness that he had not seen his brother since December 2016 and would not see him again if the adoption took place. It continued:

> "I have asked [the applicant] whether her real gusto behind wishing [Y] to come home was motivated, in large part, by the evident sorrow [X] faced at the loss of direct relationship with [Y] and by her knowledge ... that [Y] pined for [X] ... [The applicant] assured me of her wish to have [Y] return to her care and did not want to see her two children separated without any direct contact between them."

51. The report considered the applicant's understanding of Y's needs. She had conceded that some of her behaviours when mentally unwell might have been frightening to [Y] but had considered that "75% of any damage caused to [Y] has been caused after he left me". The report commented:

> "She did not identify that ... behaviours may be different in type and timescale to causation – soiling, for instance, perhaps being an indication of earlier damage and not present circumstances."

52. The report noted that the applicant had identified no real difficulties were Y to return to her care but would take advice on how this process should happen. Her experience of rehabilitation with X indicated that she did have capacity to work alongside the local authority. She believed that the renewal of Y's relationship with X would more than compensate for any loss of X's present carer. She was willing to assist Y with any therapeutic needs. The report continued:

> "[The applicant] does not have recent involvement with [Y] and her insights are limited by this lack of direct involvement and by, in my view, a blurring through, at the least the passage of time, of the realities of his care at home and during contact opportunities. There has to be a concern, in my view, of the impact of a lively, needy child – a child who may not, through hurt and damage, show change in the short term even if given sound, consistent care – on the quietness of [the applicant's] household. [X] is placid and able to relate to his mother calmly, the environment is sedate, and [the applicant's] work on maintaining her own health, apart from medication, is on mindfulness behaviours, concentrating on breathing rhythms, meditation and the like."

53. The report concluded that the applicant had maintained stability in her mental health for three years despite testing circumstances, including since the placement order had been made. X had been successfully placed with her and was happy and developing ably in all regards; the care order had been discharged. It continued:

> "[X] wants [Y] home and is evidently distressed at any thought that his relationship with his brother will be severed through adoption. The relationship between siblings is researched to be significant. [X] and [Y] have shared history ... and in all likelihood

> their relationship could be longer than any other family relationship available to them. This relationship will obviously require ongoing careful balancing in decisions made as had happened when the Judgment was made, albeit prior to [X's] placement with his mother.
>
> It is clear that [X] demands very different care opportunities from his mother than would be the case for [Y]. It is clear that [X] has [a] significant relationship with [the applicant], differing to that described by professionals regarding [Y's] attachment to his mother. Importantly, [Y's] behavioural presentation and needs are likely to impact, in my view, on [the applicant's] home environment with potential negative impact, in my view, on [the applicant's] maintenance of her programme of self-care and, in likelihood, of detriment to her mental health."

54. Following this general conclusion, the report responded to specific questions put by the parties. As to whether the applicant understood Y's needs, the report said that the applicant understood that Y had therapeutic needs and had a commitment to affording therapeutic opportunity for Y. However, she had a simplistic appreciation of how and why Y might be exhibiting sad and disturbed behaviours. She minimised the impact of her own parenting and how the lead up to mental health crisis and her "loud and frenzied behaviours" around the time of Y's removal from her care would have been experienced as frightening and neglectful by him.

55. As to whether she understood the local authority's concerns in relation to her ability to parent Y, the report considered that she lacked sufficient insight into the difference in parenting Y compared to X. Significantly, there was potential for the strain on the applicant's mental health to be triggered by Y's more lively, loud behaviours and less opportunity for her to sustain her programme of health maintenance as a result of the additional burden of caring for Y. She did not accept that the trauma for Y of disrupting his present placement was sufficient to warrant that not taking place.

56. Regarding whether, particularly in view of her own mental health needs, the applicant had the ability to care for Y, the report stated that while the applicant's mental health had been stable since 2015, there were significant concerns about the impact on her health of the demands of a "damaged, hurting little boy who may ... hold little emotional connection to her". Prioritising his needs lessened the opportunity for her to maintain her programme of relaxation, which was a necessary pre-requisite, alongside her medication, to maintenance of her mental health. The report continued:

> "I have little doubt that, when well, [the applicant] is capable with basic care and that she has a commitment to [Y] receiving appropriate therapy. I do wonder whether [the applicant] could contain demanding behaviour or tolerate loudness, in anything other than the short term, or regression as may happen during therapy or upon the loss of his present carer. I doubt her capacity in the long term unless [Y's] behaviours are without interference on [the applicant's] own needs.
>
> The applicant is motivated and committed to caring for [Y] both in the immediate and long term. I do wonder how much of her commitment, although I accept not in entirety, is motivated by [X's] sadness about his brother's circumstances and his intense desire to have direct contact opportunity to [Y]."

57. Concerning the applicant's capacity to care for Y long-term alongside X, the report noted that X had settled well into the applicant's care and had flourished since leaving foster care. It was fair to presume that he was easy to care for. Caring for X alongside Y did not, therefore, alter her capability to care for Y. However, the report noted that both X and Y would suffer were the applicant's mental health to decline under the strain of caring for both. Y would then experience further placement disruption and X would experience disruption during an important period in his education.

58. Asked about any limitation of the applicant to care for Y alongside X, the report expressed reservations about her capacity to manage the varying needs of Y and to remain well through the potential testing out and energy of Y as he went through his therapeutic journey. It noted that Y would be faced with the separation from his placement, in likelihood the place where he felt most secure and now viewed as his home. This, added to his already demanding needs, would require skilled and imaginative parenting and beyond what would be viewed as "good enough".

59. As regards a risk assessment of the applicant, the report observed that aspects of instability and lack of safety had featured in Y's life and had had an impact on his development. Children of Y's age and background were completely dependent on their primary carers. Y did not have the internal resilience or ability to care for himself or to protect himself from harm. He remained in need of robust protection and stable, consistent monitoring and meeting of his needs. X afforded something of a protective feature and would seek help for his mother if it were required. However, the applicant's stability of mental health remained a risk factor in planning for Y, as did the fact that the applicant required her own opportunities to modify stressors and anxieties through periods of quietness and through use of relaxation techniques. Y needed stability, availability and predictable, imaginative care; C.A. was not assured that the applicant had the capability at this stage to offer that reliably.

(b) Addendum of 4 December 2018

60. C.A. provided an addendum to her report taking into account the psychological assessment of Y by Dr H.R. (see paragraphs 62-68 below). In the addendum, she expressed the view that given Dr H.R.'s finding that Y showed no attachment towards his mother, the applicant would be ill-equipped to assist him. She did not have the skills or, in likelihood, the inner resilience to manage Y's therapeutic needs and his resentments and lack of attachment towards her. Y's welfare demanded care from a carer with personal resilience and strong external supports. The addendum continued:

> "For the reasons identified above and in my main report, I doubt [the applicant's] capacity to parent [Y] in his timescale, even with further training. His therapeutic needs and attachment distortions are likely to negatively impact close, significant relationship with his mother. His behavioural responses are likely to regress and deteriorate on

> disruption of his present placement, and are unlikely to be managed by [the applicant] and with the potential for significant impact on her health and on the happiness of [X]."

61. On the issue of contact with X, the addendum noted the conclusions of Dr H.R. in her report (see paragraphs 63 and 67 below), referred to the applicant's particular concern at the lack of sibling relationship and expressed the hope that Y's carer would be afforded support and encouragement to further consider the issue. X would have to be given clear guidance as to the expectations and boundaries of behaviour and be aware that the stability of Y's placement took precedence over direct contact.

3. Psychological report on Y by Dr H.R.

(a) Main report of 25 November 2018

62. In her report, Dr H.R. underlined Y's need for a secure and permanent placement and a carer able to provide him with sensitive and emotionally in-tune parenting. The report referred to Y having begun to develop an identity of himself as his carer's child and as being a member of her family. He had spoken of things that they would do together, as a family, in the future. The report explained that when a fostered or adopted child developed a sense of belonging that could be projected into the future, this provided the child with a secure emotional base and a buffer against emotional distress. It noted that Y continued to hold an identity of himself as being part of his birth family. This was healthy, since it showed that he was able to acknowledge his whole life chronology and his place in both his birth and current family.

63. The report noted that Y had accepted that he would not see the applicant again and had expressed no wish or yearning to see her. He had not shown any form of attachment toward her. It was clear that Y did want to see X and missed him. However, he understood why this was not possible. The prospective carer had expressed some concerns about contact with X, because of the risk that X would undermine Y's placement.

64. The report stated that it would be detrimental to Y's emotional and mental health if he were to move to another carer. He had made very significant progress in his time with his prospective adopter due to the combination of love, nurturance, routine and boundaries she had offered. If he were to endure another placement move then this would undermine all the progress he had made. His age and current stage of development meant that he would not be able to fully process and understand the reasons for another move but would end up interpreting this in a self-focused manner, believing that it meant that he was "bad, unlovable and unwanted". The report continued:

> "In short, another move for [Y] would provide him with an experience of rejection and abandonment. It would place him at even greater risk of emotional and mental health difficulties. It would also make it even more likely that he shows an escalation in his difficult behaviour in a future placement, making that placement vulnerable to

> breaking down and disrupting as well. None of these events would be in [Y's] best interests."

65. The report further observed that during the assessment Y had not expressed any feelings of emotional safety or a secure attachment with the applicant. If he were to be returned to her, then this would be a confusing experience and trigger emotional distress.

66. The report also examined the impact of Y being placed in foster care instead of adoption. It noted that the most pressing need was for Y to remain with the prospective adopter because of the attachment he had developed with her. The prospective adopter had spoken about her reluctance to be Y's foster carer: she wanted to be an adoptive parent. The report further considered that an adoptive placement would be preferable for Y because it would provide him with a more typical childhood and would avoid him developing an identity of himself as "being in care", which could be stigmatising. With foster care, there was the risk that placements could change and that support would cease once the child reached adulthood. Dr. H.R. concluded: "Ideally, he needs to stay where he is".

67. On the question of renewed contact with his birth family, the report stated that it would be in Y's best interests to have face-to-face contact with X given the high value that he placed on his brother. It noted that Y did not share any negative or difficult memories of his time with X, and that it was clear that Y missed X and felt angry at not being able to see him. The report did not identify a need for face-to-face contact with the applicant, observing that Y had no positive relationship with or attachment to her. Contact would confuse him and trigger difficult emotions.

68. Asked for guidance on how the applicant might be assisted to support Y were he to be returned to her care, Dr H.R. underlined that she did not support Y returning to the applicant's care. It was likely that his "myriad of challenges" were related to him not having his most basic needs met at a very young age. He did not have a positive relationship with his mother and would be likely to express anger and confusion about why he was returning to live with her, if this happened.

(b) Addendum of 27 June 2019

69. Dr H.R. was asked to provide an updated assessment responding to questions linked to the applicant's cancer diagnosis and issues around potential contact between X and Y (see paragraph 46 above). She provided an update in an addendum report of 27 June 2019.

70. In respect of contact with X, Dr H.R., provided some further proposals for how contact should be arranged. In view of the prospect of contact, she considered it important to address with Y through a "life story book" the reason why Y had not been returned to the applicant's care while X had. It would be helpful for Y to know that his mother had expressed the desire to

have him returned to her care. Dr H.R. recommended that this information be written into his life story book.

71. She considered that Y should not be informed of the applicant's cancer diagnosis since the knowledge would cause him anxiety and he would likely struggle to understand what it meant. The applicant's cancer diagnosis did not change Dr H.R.'s view that there should be no face-to-face contact between Y and the applicant. However, she noted that Y would potentially seek contact with her when he was older and it would be distressing were he to discover then that she had died from her illness. Dr H.R. recommended that the applicant's treatment progress and prognosis be closely followed; if it became clear that she would not survive then Y would need to see her. Both parties would need support were this to take place.

72. In her view, none of these considerations altered the appropriateness of an adoption order which would offer Y the opportunity to legally join another family and be given a secure, life-long home.

C. The hearing

73. The final hearing on the application for an adoption order took place before the district judge in the Family Court in July and August 2019.

74. Prior to the hearing, the prospective adopter had indicated that she would not be prepared to care for Y unless an adoption order were granted. At the hearing, she informed the court that her position had changed and that she wished to continue as Y's carer in whatever capacity the court decided. She further supported contact between X and Y provided that appropriate ground rules for contact were put in place. The applicant maintained her opposition to the adoption order and sought Y's return to her care. In the alternative, she argued for ongoing contact with Y under a special guardianship order (see paragraph 122 below). This would allow Y to stay with the prospective adopter but would not sever biological ties. The local authority and the guardian supported the application for an adoption order. X wished Y to be returned to the applicant's care and sought direct contact between him and Y.

75. The judge had before him the trial bundle of written evidence and heard oral evidence from Dr H.R, C.A., a local authority social worker, the applicant, X, and Y's guardian.

D. The Family Court's judgment

76. The Family Court handed down its judgment on 15 August 2019. No official transcript of the judgment has been made available; however counsel's note of the judgment, prepared by counsel for X, was submitted to the Court by the respondent Government. The summary and quotations below are from that detailed note.

1. Review of the evidence

77. The judge began by reviewing the evidence before him. He noted that Dr H.R.'s oral evidence was that Y showed positive emotions towards the prospective adopter and X. However, Y had given no responses at all that conveyed that he had a relationship with the applicant. Y exhibited some ongoing problems and behaviour which Dr H.R. considered were the result of early life experiences. However, Dr H.R.'s perception of the applicant's position was that she considered that these behaviours had developed since his removal from her care. The judge further referred to Dr H.R.'s evidence that Y had not expressed any feelings of safety or secure attachment towards the applicant and that a return to her care would be confusing for Y and trigger emotional damage and a deterioration in his behaviour. He noted Dr H.R.'s conclusion that Y needed a "very clear message" about where he was going to stay, and that "any doubt about that would have a huge impact on [Y] leading to him needing very significant therapeutic work". According to Dr H.R., Y's most pressing need was to stay with the prospective adopter because of the attachment he had started to form with her. In her view, Y had a pressing need for one person who could claim him "legally and emotionally". The judge also noted that Dr H.R had said that contact with X was important for Y and would lessen his distress at being separated from his brother.

78. The local authority social worker had given evidence that Y had settled in his placement and was developing a warm, positive bond with the prospective adopter. She had acknowledged that he was missing X and that this was having some impact on the placement. The judge noted that the social worker had considered the possibility of a special guardianship order and observed:

> "[S]he didn't feel it appropriate because it wouldn't give [Y] the security he needed. She had also considered that a Special Guardianship Order may give rise to a number of practical difficulties in situations where Mother retains parental responsibility and she was concerned that that might lead to further court proceedings which she felt [Y] wouldn't be able to cope with. She also said there were financial ramifications for [Y] in terms of funding available through the adoption support fund, which would only be available through a Special Guardianship Order by means testing via the resources panel."

79. The judge further observed that the local authority social worker had been confident that the prospective adopter would facilitate contact with X if it was in Y's best interests.

80. The judge recorded C.A.'s evidence that the applicant had the capacity to work with the local authority and had maintained her mental health stability through challenging times. He noted that C.A. had been "at pains to point out in her assessment that Mother should be given enormous credit for what she's achieved, and credit to [X] who she describes as a young man with inner resilience". However, the judge noted C.A.'s evidence that the parenting

demands of Y would be very different from what X required and that the dynamics of the applicant's relationship with Y would be very different from her relationship with X. He observed:

> "[C.A.] was concerned that Mother doesn't have significant insight into the difference between parenting [X] and [Y], or the potential strain to her own health being triggered by [Y's] more lively, loud and troubling behaviours. She said it was plain that [Y] would need more than good enough parenting ..."

81. The judge noted C.A.'s view that contact between X and Y was crucial and her concern that the process of starting contact had not yet been put in place. C.A. had further indicated that she herself had thought about the possibility of a special guardianship order, which she had described as a "realistic option" and as an option "leaping from the pages". She had acknowledged that it would pose difficulties but felt that the applicant could be worked with.

82. The judge then referred to the applicant's evidence as to the stability of her mental health since she had been correctly diagnosed and receiving the right treatment. He continued:

> "Mother was concerned that she had received very little information regarding [Y] since the placement order was made. She was concerned that if [Y] remained with the [prospective adopter] under a Special Guardianship Order, she would want a lot of intervention to ensure [Y's] best interests were being met. She gave evidence in particular of cultural and religious aspects of the placement which concern her ..."

83. The judge further noted that the applicant had questioned the attachment of Y to the prospective adopter and had considered that although there would be an impact on Y if the bond between the two were broken, this would be no greater than the breaking of the bond she had had with Y when he was taken into care.

84. As for the guardian's evidence, the judge noted that her analysis had been completed on 10 April 2019. He summarised her evidence and observed:

> "She concludes, having carried out a full written analysis in her report, that in her view adoption is the only realistic option. She acknowledged in her oral evidence that at the time she completed her report the [prospective adopter] hadn't been prepared to consider other options. She was aware that the [prospective adopter] was now prepared to consider other options. The guardian had thought about that but on balance it didn't alter her recommendations that adoption was the order that reflected [Y's] best interests ...
>
> The guardian was clear in her evidence that if [Y] were moved from his current placement his attachment issues would be likely to deteriorate and he'd suffer significant emotional harm, which was clearly not in his interests. She accepted Dr [H.R.'s] clear opinion that [Y's] problems had stemmed from his early life experiences, and said that to remove [Y] from his current placement would be devastating for him, giving rise to some years of therapy. She was concerned that Mother feels that [Y's] problems have been caused by his placement, and that all he needs is her love ... She acknowledged that so far as [X] is concerned, he had done very well in Mother's care, but described [X] as being a very different child, not challenging in the way that [Y] is."

85. The judge noted that while the guardian had initially been against contact between Y and X, she now believed that contact was important subject to work being done to ensure that X understood the ground rules of contact.

86. Finally, the judge summarised the evidence from X, who had explained the impact that Y's removal had had on him. X had expressed confidence that if Y came home, everything would be fine. At the very least he had considered that it was something that ought to be tested.

2. Decision

87. The judge underlined the need to consider all realistic options and to conduct a welfare analysis of those options to determine that which best promoted and met Y's interests throughout his life. The necessity and proportionality of the options also needed to be considered. He referred to the obligation under the 2002 Act to have as the paramount concern the welfare of the child throughout his life, an obligation met by consideration of the welfare checklist set out in that Act (see paragraph 113 below).

88. The judge acknowledged that non-consensual adoption was a draconian measure and he referred to the parties' rights under Article 8 of the Convention. He observed that the aim of intervention in families ought to be to reunite the family when circumstances allowed and that every effort should be made in this respect. Non-consensual adoption was a matter of last resort, when nothing else would do, motivated by the overriding requirement of the child's welfare. The child's interests included being brought up by his natural family unless the overriding requirement of his interests made that impossible. He then turned to consider the statutory welfare checklist (see paragraph 113 below).

89. First, as to Y's ascertainable wishes and feelings, it was clear from Dr H.R.'s evidence in particular (see paragraphs 62-72 and 77 above) that Y had no attachment to the applicant. He had made no comment about the applicant at all, to the point where from his point of view, it seemed, she was not a significant figure in his life. Second, as to Y's particular needs, the judge noted that he had significant ongoing problems which required more than "good enough" parenting. The judge referred to Dr H.R.'s evidence to the effect that "most pressing for [Y] is the need to have stability and to understand where his home will be, and to paraphrase her evidence 'he has somebody who can legally and emotionally claim him'". Third, considering the likely effect on the child of ceasing to be a member of his birth family, the judge referred again to Dr H.R.'s evidence that being removed from that family had had no significant impact on Y in the sense that he had no attachment to the applicant. However, the judge noted that it had to be accepted that there had been a significant impact in terms of his relationship with X. Fourth, as regards Y's age, sex, background and other relevant characteristics, the judge highlighted the applicant's concerns that cultural

and religious aspects had not been properly or correctly identified by the experts in the case. Fifth, as to any harm Y had suffered or was at risk of suffering, the judge referred to the origin of the proceedings in the applicant's mental health difficulties. He noted that she had now been stable for three years and that there was a difference of opinion between, notably, Dr H.R. on the one hand and the applicant on the other as to the extent to which Y's current problems had been caused by the applicant's condition at the time when he had been removed from her care. Sixth, concerning Y's relationship with relatives, the judge again noted that Dr H.R.'s evidence had confirmed the absence of a bond with the applicant but the existence of a very close bond with X. The judge considered it significant that there was an agreement among the experts as to the value and benefit to Y of that relationship continuing.

90. The judge found Dr H.R.'s evidence to be compelling. He accepted C.A.'s evidence (see paragraphs 49-61 and 80-81 above) as to the different parenting needs of X and Y and the fact that the applicant would be unable to meet Y's particular needs. He moreover found the evidence of X and the applicant to be heartfelt and genuine (see paragraphs 82-83 and 86 above). The evidence of the guardian (see paragraphs 84-85 above) was, in the judge's view, compelling and consistent. He noted that she had considered all the evidence including the possibility of a special guardianship order and had maintained in oral evidence her recommendation that the best interests of Y throughout his life would be met by an adoption order.

91. The judge concluded that Y's best interests throughout life were best met by making an adoption order. He expressed concern that the applicant had refused to acknowledge that Y's problems were the result of his early life experiences. He considered that she had little or no insight into the type of parenting and need for significant therapeutic parenting that Y would need. Her view was that there would be no problems if Y was returned to her care, and it was plain from the expert evidence that that was simply not the case. The judge further noted that Y had no attachment to his mother and if removed from his current placement and returned to her care he would likely regress and his behaviour might deteriorate; this was not in his best interests.

92. The judge added:

> "I've considered carefully the option of a Special Guardianship Order ... but I've discounted it for these reasons:
>
> (1) It is clear from Mother's own evidence that with a Special Guardianship Order she'd like to have significant involvement in [Y's] life to ensure his needs were being met. It is understandable for Mother, but I have to consider how the Special Guardianship Order would work.
>
> (2) Looking at it from [Y's] point of view, a Special Guardianship Order simply won't meet his needs for security, stability, and his need to have somebody (in [Dr H.R.'s] words) who can legally and emotionally claim him. That is what the experts said was in [Y's] best interests."

93. On the issue of contact, the judge was clear that there should be contact between Y and X. He noted that all the evidence had said it was a significant relationship which should be continued.

94. The judge concluded that "the weight of the expert evidence in this case weighs heavily against opposition to an adoption order". It was therefore in Y's best interests "now and throughout his life" that an adoption order should be made.

3. Discussion

95. Following the handing down of the judgment orally, the judge asked counsel whether they had any comments to be addressed. Counsel sought a number of clarifications from the judge. Counsel for X highlighted, first, the absence of any mention of the possibility of a section 91(14) order (see paragraph 123 below) along with a special guardianship order. The judge explained that had he thought a special guardianship order was appropriate, he would have considered a section 91(14) order. However, in his "very clear view" a special guardianship order was not a realistic option for the reasons he had given. He noted that the applicant had made clear her wish for a lot of intervention if there was a special guardianship order. That would override her willingness and ultimately her ability to work appropriately within a special guardianship order.

96. Counsel for X then noted that there had been "[n]o mention of Dr [H.R.] being interested in a Special Guardianship Order, albeit caveated with her limited knowledge about Special Guardianship Orders". The judge replied:

> "I think therein lies the answer. The reality is she has no legal understanding, nor would one necessarily expect her to, so I am not critical of her for it, of what a Special Guardianship Order is. Her clear evidence that she did give regarding what she considered was in [Y]'s best interests, a phrase she used was 'somebody who can legally and emotionally claim him, he needs security and stability of that placement' and that's something he simply wouldn't have under a Special Guardianship Order."

97. Counsel for X next observed that there had been no mention of the fact that the guardian had not mentioned a special guardianship order in her report, pointing out "in fact you said she had mentioned it". The judge answered:

> "That wasn't something she had considered at the time, in fact the opposite was the case, at the time her report was being prepared, the [prospective adopter] was adamant that it was adoption only, she wouldn't consider any other option. So it was reasonable. But it was clear in her oral evidence that since that had been raised as an option, she had considered it. My recollection of her evidence is that on balance she was of the view that an adoption order was still the necessary order in this case and the one that met [Y]'s welfare interests."

98. The applicant's counsel also asked for clarifications regarding the refusal to make a special guardianship order:

"Counsel: regarding a Special Guardianship Order, you said in addition to your concerns that Mother would attempt to interfere, you said 'looking at it from [Y]'s point of view, he needs the security that an adoption order would give, that a Special Guardianship Order wouldn't give' but a Special Guardianship Order was introduced as a direct alternative of adoption?

Judge: Adoption gives parental responsibility clearly placed in one person. Going back to what Dr [H.R.] said in her evidence: '[Y] needs somebody who can claim him legally and emotionally' but with a Special Guardianship Order he wouldn't have that because there would be two people who could claim him, albeit I acknowledge that a Special Guardian has a 'trump card' parental responsibility. It still leaves Mother with parental responsibility of [Y], and [Y] being put in a situation which is not the situation that Dr [H.R.] thought was appropriate and in his best interests, namely there being one person who could legally and emotionally claim him. It was from [Y]'s point of view I had in mind."

99. Counsel for X raised the issue of the severing of the sibling relationship. The following exchange took place:

"Counsel: No mention of the effect on [Y] of severing his relationship with [X], or balancing that against the alternative permanent option of a Special Guardianship Order with a section 91(14) order?

Judge: Their relationship won't be severed because their relationship will continue to take place because of contact. So the relationship is nurtured. As I said in my judgment, and I certainly have that view. My main concern is [Y]'s interests throughout his life. Nurturing and maintenance of that relationship is in [Y]'s interests, but also in [X]'s interests. In my view that relationship will not be severed. They won't live together, but I would anticipate it would be maintained through contact.

Counsel: I meant their legal relationship would be severed?

Judge: The significance of their relationship lies in the emotional attachment which continues to exist, which is more significant than the severing of the legal relationship between the two brothers. I think I have to take a pragmatic view, which is whatever orders this court might make, whatever comments this court might make, these two in their own minds are always going to be brothers. I accept it severs their legal relationship but in my view the impact of that on Y and X is going to be minimal because of the view they'll always have of each other."

4. Order

100. The judge ordered that an adoption order was to be made no earlier than twenty-eight days later. The applicant's consent was to be dispensed with on the basis that the Y's welfare required consent to be dispensed with (see paragraph 120 below). The judge further indicated that the court would make an order at the conclusion of the proceedings that Y would have direct supervised contact with X a minimum of four times per year.

E. Request for permission to appeal

101. On 13 September 2019, the applicant applied for permission to appeal out of time. She argued that the judge had given insufficient

consideration to the making of a special guardianship order in place of an adoption order; such an order would meet Y's welfare interests especially since the prospective adopter had confirmed prior to the hearing that she would wish to continue caring for Y if a special guardianship order were made. The applicant contended that both Dr H.R. and C.A. had been positive about the prospect of a special guardianship order but that the judge had paid insufficient weight to these opinions and had not mentioned them in his judgment. The judge had also given the sibling relationship insufficient weight, and the making of the adoption order would sever their legal relationship.

102. On 18 September 2019, the circuit judge examining the request on the papers allowed an extension of time since the appeal concerned the applicant's rights under Articles 6 and 8 of the Convention. However, she refused permission to appeal as the grounds of appeal disclosed no prospect of success, did not show that the decision was wrong, did not assert any procedural irregularity and did not provide any other compelling reasons why the appeal should be heard. She noted that the district judge had heard evidence from all witnesses. He had been entitled to accept that Y had a pressing need for one person who could claim him "legally and emotionally" and to conclude that the only order which could meet that pressing need was an adoption order. The circuit judge further noted that the order clearly stated that there was to be contact between X and Y (see paragraph 100 above).

103. The applicant renewed her application for permission to appeal. She argued that the district judge had misinterpreted her intentions, explaining that she just wanted to be informed of important medical appointments and similar; she had no intention of disrupting the placement. She further argued that the judge had not reflected on how a special guardianship order could be supported by a section 91(14) order (see paragraph 123 below). She underlined that the adoption order would sever the legal relationship between Y and X and contended that the judge had given insufficient weight to the sibling relationship. She further contended that the judge had misinterpreted Dr H.R.'s evidence that Y needed someone to claim him legally and emotionally: the judge appeared to have wrongly understood this to mean one person to the exclusion of all others.

104. The application was heard on 18 October 2019. In her submissions, the applicant confirmed that she was not challenging the placement of Y with the prospective adopter but maintained that a special guardianship order, supported by an order to prevent her from making any applications in respect of Y without the leave of the court, was the appropriate order.

105. On 1 November 2019, her application was dismissed. The circuit judge reviewed in some detail the approach of the district judge and his views of the evidence. She observed that he had accepted the evidence of Dr H.R., C.A. and the guardian (see paragraphs 77, 80-81, 84-85 and 89-90 above). He had considered a special guardianship order and the evidence heard in relation

to it, especially from the guardian. He had concluded that the only order that would meet Y's pressing needs for stability, security and permanence was an adoption order, and that a special guardianship order would not meet Y's needs.

106. The circuit judge continued:

> "63.1 remind myself that a Special Guardianship Order would not continue after [Y's] 18th birthday. [Counsel] submits that nothing would really change for [Y] on his 18th birthday in that the Prospective Adopter will continue to love [Y] and that this should be weighed against an Adoption Order terminating the legal relationship between [X] and [Y]. The District Judge was aware of the Prospective Adopter's change of position and that she was agreeable to an order being made for contact to take place between [Y] and [X] which will preserve the relationship between [Y] and [X]. The District Judge noted Mother's evidence that she would like to have significant involvement in [Y's] life, [counsel] submits that this evidence was misinterpreted but the District Judge's judgment is clear that Mother's evidence was that she 'would like to have significant involvement in [Y's] life'. The expert evidence was that [Y] needed security. [Counsel] says an intervention by the Appellant Mother could be controlled by a S91(14) Order but makes a submission that a good and valid application should be considered by the court, the District Judge accepted the evidence of the Social Worker that 'she was concerned that that might lead to further court proceedings which she felt [Y] wouldn't be able to cope with'. [Counsel] is correct that the District Judge did not consider the making of a S91(14) Order this was because he was not satisfied that a Special Guardianship Order would provide [Y] with the certainty Dr [H.R.] said that he needed, he states 'I must consider how this would work'. The District Judge heard the evidence and was entitled to conclude that the order that would better serve the welfare of [Y] was an Adoption Order."

107. In such circumstances, the applicant's grounds of appeal disclosed no real prospect of success, did not show that the first instance judgment was wrong, did not show any procedural irregularity and did not provide any other compelling reason why her appeal should be heard.

108. On 27 November 2019, the Family Court made a final adoption order in respect of Y and ordered supervised contact with X a minimum of four times per year.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

109. Care proceedings in England are regulated by the Children Act 1989 Act ("the 1989 Act") and the adoption of children is provided for by the Adoption and Children Act 2002 ("the 2002 Act").

A. Care orders

110. Section 31 of the 1989 Act empowers a court to make an order placing a child in the care of the local authority or putting him under the local authority's supervision. A care order can be made if the court is satisfied that

the child is suffering, or is likely to suffer, significant harm and that the harm is attributable to the care given to the child not being what it would be reasonable to expect a parent to give to him or her.

111. When a court is deciding whether to make a care order, section 1(1) of the 1989 Act provides that the child's welfare shall be the court's paramount consideration. Section 1(2) establishes a general principle that any delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of the child. Section 1(3) sets out the "welfare checklist" to which the court should have regard in particular, namely:

> "(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
>
> (b) his physical, emotional and educational needs;
>
> (c) the likely effect on him of any change in his circumstances;
>
> (d) his age, sex, background and any characteristics of his which the court considers relevant;
>
> (e) any harm which he has suffered or is at risk of suffering;
>
> (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
>
> (g) the range of powers available to the court under this Act in the proceedings in question."

112. Section 34 of the 1989 Act provides for a duty on the local authority to allow a child in its care reasonable contact with his or her parents. A court may make "such order as it considers appropriate with respect to the contact which is to be allowed", either on application or of its own motion when making the care order. Moreover, pursuant to Schedule 2(15) to the 1989 Act, the local authority is under a duty to "endeavour to promote contact" between a child in its care and his or her parents, unless it is not reasonably practicable or consistent with the child's welfare.

B. Placement orders and adoption orders

113. Section 1(2) of the 2002 Act provides that the paramount consideration of the court or adoption agency when taking decisions under that Act must be the child's welfare, throughout his or her life. Section 1(3) requires courts and adoption agencies to bear in mind at all times that, in general, any delay in coming to a decision relating to the adoption of a child is likely to prejudice the child's welfare. Section 1(4) sets out, in the following terms, the "welfare checklist" to which courts and adoption agencies must have regard when exercising their powers:

> "(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
>
> (b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 ...) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including–

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

114. Section 1(6) provides:

"The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so."

1. Placement orders

115. Section 21(1) of the 2002 Act provides for the making of a placement order by the court, authorising a local authority to place a child for adoption with prospective adopters. Pursuant to section 21(2), the court may not make a placement order in respect of a child who has a parent or guardian unless he or she is already subject to a care order or the conditions for making a care order (see paragraph 110 above) are met.

116. Section 21(3) permits the court to dispense with the parents' consent to the making of a placement order. This is subject to section 52, which provides that consent cannot be dispensed with unless the parent cannot be found or is incapable of giving consent, or the welfare of the child requires the consent to be dispensed with.

117. A contact order under section 34 of the 1989 Act (see paragraph 112 above) ceases to have effect if a placement order is made (section 26(1) of the 2002 Act). Pursuant to section 53 of the 2002 Act and regulation 45(2)(d) of The Adoption Agencies Regulations 2005, the Schedule 2(15) duty to promote contact (see paragraph 112 above) also ceases. Section 26(3) of the 2002 Act permits the parent to make an application for contact with a child in respect of whom a placement order has been made.

118. Section 21(4) provides that a placement order continues in force until it is revoked or an adoption order is made in respect of the child. Section 24

provides that a parent may only apply for a placement order to be revoked if the court has given leave to apply and the child has not been placed for adoption by the local authority. The court cannot give leave unless satisfied that there has been a change in circumstances since the order was made.

2. Adoption orders

119. Section 46 of the 2002 Act provides for the making of an adoption order, transferring parental responsibility for the child to the adopter. Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child.

120. Under section 47, an adoption order can only be made in the absence of the parents' consent where the child has been placed for adoption pursuant to a placement order and the court deems it appropriate for consent to be dispensed with (see paragraph 116 above). Parents require leave of the court to oppose adoption orders where a child has been placed for adoption by an adoption agency with a prospective adopter. The court cannot give leave unless satisfied that there has been a change in circumstances since the placement order was made.

121. Section 51A of the 2002 Act provides for the possibility of post-adoption contact. Pursuant to section 51A(4), the court's leave must be obtained before an application for an order under this section may be made by the birth family of the adopted child.

C. Other relevant orders in care proceedings

1. Special guardianship orders

122. Sections 14A-14G of the 1989 Act provide for the making of special guardianship orders. A special guardianship order is an order appointing one or more individuals to be a child's "special guardian" and to exercise parental responsibility in respect of the child to the exclusion of the parents. A court may make a special guardianship order in any family proceedings concerning the welfare of a child if it considers that an order should be made. When considering making such an order, the child's welfare is the court's paramount consideration and the welfare checklist set out in section 1(3) of the 1989 Act applies (see paragraph 111 above). A special guardianship order does not sever the legal bond between the parent and the child, and the parent's consent, or the leave of the court, is required for significant decisions affecting the child.

2. Section 91(14) orders

123. Pursuant to section 91(14) of the 1989 Act, the court may make an order preventing individuals from making an application to the court without the court's permission ("section 91(14) order").

II. RELEVANT INTERNATIONAL LAW MATERIALS

124. The Court set out relevant international law materials in its judgment in *Strand Lobben and Others* (cited above, §§ 134-39). Summaries of, or extracts from, additional reports referred to by the parties in the present case are set out below.

A. UN Convention on the Rights of Persons with Disabilities

125. Article 23(2) of the UN Convention on the Rights of Persons with Disabilities ("CRPD") imposes an obligation on States to render appropriate assistance to people with disabilities in the performance of their child-rearing responsibilities. Article 23(4) obliges States to ensure that children are not separated from their parents against their will except when competent authorities determine that such separation is necessary for the best interests of the child.

126. The United Nations Committee on the Rights of Persons with Disabilities ("CRPD Committee") adopted its Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland on 29 August 2017. Under the heading "Respect for privacy and the family (art. 23)", it expressed concern that parents with disabilities did not receive appropriate services and support, resulting in children being removed from the family environment and placed into foster care. It recommended that the State party ensure appropriate support for parents with disabilities to effectively fulfil their role as parents and ensure that disability was not used as a reason to place their children in care or remove them from the family home.

B. Council of Europe

127. Resolution 2049/2015 of the Parliamentary Assembly of the Council of Europe (see *Strand Lobben and Others*, cited above, § 138) was preceded by a rapporteur's report of 2015 based on a visit to Finland, Romania and the United Kingdom ("the Borzova report") and on replies to a survey on legislation and practice from twenty-nine member States, including the United Kingdom.

128. In a section of her report providing a brief overview of the facts and figures, the rapporteur looked at the information provided by States on adoptions. She explained:

> "33. The percentages of adoptions range from 1.5% in Portugal and 4% in Estonia to 5% in the United Kingdom (this concerned 3 350 children), 9% in Croatia and Hungary and up to 20% in Andorra (this concerned four children) of children taken into care.
>
> 34. Adoptions are not possible following the removal of a child from a family in Austria, and none are reported in Finland (where removal of parental rights is impossible) and Lithuania. Norway mentions few adoptions (by foster parents).

> 35. Adoptions without the consent of the parents are not possible in France, Greece, Luxembourg and Spain. They are rare (practiced only exceptionally) in: Cyprus, Lithuania, the Netherlands, Romania, Serbia, Switzerland and Canada. In some countries which proscribe adoptions without the consent of the parents (for example, in Russia), the child can be given up for adoption if his/her parents are unknown, legally incapable or if their whereabouts have been recognised as unknown by a court. They are possible in Andorra, Croatia, Estonia, Georgia, Germany (in 2010, 250 children were placed for adoption without the parents' consent), Hungary, Italy, Montenegro, Norway, Poland, Portugal, Slovenia, Sweden, Turkey, and the United Kingdom (in 2013, 3 020 children were placed for adoption without the parents' consent)."

129. The rapporteur noted that the analysis of facts and figures was difficult because of the heterogeneity and ambiguity of the statistical data, the lack of terminological comparability and the lack of data available on the reversal of decisions to remove a child from a family.

130. As regards the United Kingdom, the rapporteur made the following comments:

> "72. England and Wales are really unique in Europe in placing so many children for adoption, in particular in the young age group which is 'popular' on the adoption market. Statistics show that under 20% of children forcibly taken from parents who leave care aged under five, return to their parents. The former Prime Minister Tony Blair went so far as to establish 'adoption targets' for local authorities from 2001 to 2008. From statistics made available to me, it appears that local authorities were also financially rewarded (to the tune of 500 000 to 1 million pounds) if they reached such targets as 'additional looked after children adopted'.
>
> 73. While these targets have been officially abolished, the Secretary of Education at the time of our fact-finding visit, Michael Gove, himself adopted, has also put much emphasis on increasing adoption rates with a view to the 7 000 children on waiting lists in England being adopted, and has allowed 30 large private adoption agencies and a plethora of smaller ones to get involved in the process. Identifying alternative carers within the family circle through 'family group conferences' earlier in the process could be a better way of ending the over-reliance on adoption by strangers and making it really the solution of last resort, 'when nothing else will do' – which is meant to be the threshold standard as set by English/Welsh law and enforced in English/Welsh courts."

131. It its Recommendation 2068 (2015), the Parliamentary Assembly recommended that a committee of experts be instructed to develop policy guidelines for member States on how to avoid, except in exceptional circumstances, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent.

C. European Union

132. A study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Petitions (PETI) to examine the law and practice in England in relation to adoption without parental consent. A 2016 update to

that study, named "Adoption without Consent: Update" ("the EP study update"), explained (emphasis in the original):

> "The June 2015 study for the PETI Committee suggested that 96% of children were adopted without consent. This figure is not correct and was based on a misinterpretation of the available data. The data referred to relates to the **type of proceedings by which the child came to be placed for adoption,** rather than consent to the placement or adoption order itself.
>
> Specifically, the government reported that as of March 31 2013, 3,350 children were being cared for under the category 'placed for adoption' ... Of these children, 330 were placed for adoption with the consent of their parents under s19 of the Adoption and Children Act ... On the other hand, 3,020 (96%) were placed for adoption following a placement order sought by the Local Authority, and made by the court (under s21). For a placement order sought by the Local Authority, consent can either be given by the parents, or dispensed with by the court if the child's welfare requires.
>
> As such, the data relied on in the 2015 study relates to the number of cases where the Local Authority brought proceedings before the court to ask for the child to be placed for adoption, **with or without the parents' consent**. It did not relate to whether or not the parents had consented to either the placement or the adoption. The Borzova Report to the Council of Europe, which stated 3,020 children were placed for adoption without parental consent in 2013, appears to have misread the data in the same manner.
>
> The government does publish data concerning the number of children **leaving care** through adoption orders, differentiating between where **parental consent has been dispensed with**, and the adoption application being **'unopposed'. In the year ending March 2015, this figure was 2,490 where consent was dispensed with, versus 2,840 where the application was 'unopposed'**."

133. As to the possibility for children to be adopted without parental consent, the study identified three principal mechanisms used in European jurisdictions: where parental consent was not necessary because of abandonment or lack of interest in the child; where consent was not necessary because of parental misconduct or deprivation of parental rights; and where consent was dispensed with because the parents had refused consent unjustifiably, or because it was in the child's best interests. It noted that some States used a combination of these approaches, allowing consent to be dispensed with in a number of different ways, while others relied simply on one ground. The study provided an overview of the relevant mechanisms. It went on to note (emphasis in the original):

> "Some of the findings reported in this section differ from the information reported in the Council of Europe Report of March 2015 ...
>
> One reason for the difference in conclusions may lie in the use of terminology of 'adoption without parental consent'. In some countries, **parents can lose their parental authority** (or parental rights, responsibility, care) **over a child before the adoption proceedings, meaning that their consent may not be needed, as they are no longer considered 'parents' for the purposes of giving consent**. Further, some jurisdictions may not include within this category situations where the child has been declared abandoned, the parents' whereabouts [are] unknown, or where consent is not needed due to lack of interest in the child.

Another reason may also lie in the fact that while a legal mechanism does exist for a child to be adopted without parental consent, it is **used only in very rare or exceptional circumstances**.

This raises a wider issue. It is not the existence of a legal mechanism for adoption without parental consent that is of most importance, but **the way in which this is exercised, and by whom**."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

134. The applicant complained that the decision to sever family ties between her and Y and to authorise the latter's adoption violated Article 8 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for his private and family life ...

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 freedoms of others."

A. Admissibility

135. The Government did not raise any objection to the application on the basis of Article 35 § 1 of the Convention. In view of the interpretation of that Article in the context of the exceptional circumstances of the COVID-19 pandemic (see, for example, *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 49-59, 1 March 2022, and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 290, 9 April 2024), the Court is satisfied that the application was lodged in time. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

136. The applicant, relying in particular on the Borzova report (see paragraphs 127-130 above), argued that the United Kingdom was an "outlier" in the sheer number of children it placed for adoption, most of which were non-consensual. She contended that the increase in non-consensual adoption following the passage of the 2002 Act (see paragraphs 113-121 above) was the direct result of policies followed by successive governments to move

children away from long-term foster care and to place them in permanent family settings. In this regard, she submitted that children placed into care were unlikely to ever be returned to their biological parent.

137. The applicant further argued that the wide margin of appreciation which applied to the taking of children into care narrowed when measures imposing further limitations were concerned. Such measures warranted a stricter scrutiny by the Court. The lack of European consensus was irrelevant: the margin accorded to States in cases of adoption without parental consent, regardless of consensus, had been explained clearly in *Strand Lobben and Others v. Norway* ([GC], no. 37283/13, § 211, 10 September 2019).

138. The applicant referred to the provisions of the CRPD and the CRPD Committee's 2017 Concluding observations (see paragraphs 125-126 above). She criticised the support measures put in place in 2014 after Y was returned to her care (see paragraphs 8-9 above). She argued that these measures, which could have been of some material help, missed the point of supportive measures for people with disabilities. The measures were not adapted to her need for specific support. She further criticised the contact regime put in place after Y was taken into care in March 2015 (see paragraph 10 above). Since then, he had not spent more than an hour at a time with her. There had, moreover, been no contact at all between 27 March and September 2015 (see paragraphs 10-18 above). She had been unable to attend the contact sessions proposed in April 2015 (see paragraph 12 above) because of her fragile mental health. The local authority had taken no steps to adapt the contact regime to her specific needs to enable her to see her children. In July 2015, before any judicial decision had taken place, the local authority had changed the care plan for Y to one of adoption and had separated Y from X to allow Y to attach to a new family (see paragraphs 14-16 above). It was clear that by this stage the local authority had already given up on family reunification. Once contact had resumed, there had been numerous disruptions (see paragraph 18 above). No efforts had been made to arrange further-reaching contact even though the applicant had by then received a diagnosis and her mental health was stable. The applicant submitted that "[a]fter months without contact, this limited and unpredictable visiting regime cemented the applicant and her children's separation". By the time the decision was taken to dispense with her consent to adoption, the applicant had not seen Y for two years. The Family Court had based its adoption decision on Y's lack of attachment with his biological mother, when the authorities themselves had been responsible for cutting off the attachment of Y to the applicant.

139. As to the carrying out of the balancing exercise, the applicant did not accept that this Court had confirmed in *Y.C. v. the United Kingdom* (no. 4547/10, 13 March 2012) that the legislation governing adoption in England was Convention-compliant. She observed, in any case, that the judgment pre-dated *Strand Lobben and Others* (cited above) by seven years, during which time the standard of protection for parents' Article 8 rights had

evolved. She argued that although the district judge had referred to some factors in her favour when balancing Y's interests with hers, they had not been given appropriate weight. In particular, the special guardianship order option had been rejected because she had stated in court that she would want significant involvement in Y's life to ensure that his needs were being met. She underlined that this comment had been made in the context of her oral evidence (see paragraph 82 above) during proceedings which were evidently emotional for her. There had been no evidence before the Family Court to suggest that she was "particularly unfit" (citing *Strand Lobben and Others*, cited above, § 207). Indeed, it had never been contested that she had been a very competent parent for X and although her mental health issues might have initially justified Y's placement into care, there was nothing to suggest that these issues impeded her ability to parent her children. Even if it were accepted that she could not be an appropriate parent to Y because of his special needs and his lack of attachment to her, this could not justify the complete severance of legal ties.

140. The applicant further contended that the reasoning adduced by the domestic courts for severing ties was insufficient. The Family Court had placed emphasis on Y's need for one person who could claim him legally and emotionally. However, it was unclear why this justified the complete severance of family links between the applicant and Y, which the Court had emphasised had to be based on reasons that were "exceptional" (the applicant quoted, in this regard, *M.L. v. Norway*, no. 64639/16, §§ 85-87, 22 December 2020). The domestic courts had also failed sufficiently to take into account Y's relationship with X. Despite the consensus that the sibling relationship was important, X had been granted only limited contact with Y (see paragraph 108 above). That contact had since been suspended because of Y's negative reaction to the sessions. It could only be assumed that his reaction was due to a breakdown of his relationship with X, an understandable consequence of such limited contact which included the condition that no mention of the applicant or other biological relatives was permitted. The applicant further contended that there had been a failure to consult Y as to his wishes. Given his relationship with X and his memories of the applicant, there was "no doubt he would have expressed preference for continued contact with his biological family". Finally in this respect, she referred to the authorities' failure to put in place the necessary support and contact measures (see paragraph 138 above). Citing *Strand Lobben and Others* (cited above, § 208), she emphasised that "where the authorities are responsible for a situation of family breakdown because they have failed in their obligation to take measures to facilitate family reunification, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child".

141. Finally, the applicant contended that the domestic decision-making process was inadequate. Although the reports relied upon were recent, only

the independent social worker had thoroughly considered the option of a special guardianship order (see paragraph 81 above). In particular, the guardian had not assessed this option in her report and had dismissed it only in oral evidence, without the depth of analysis she had provided in favour of the adoption order (see paragraph 84 above). The local authority social worker had considered it only in final evidence and had dismissed it only because of the possibility of future litigation (see paragraph 78 above), which reasoning lacked relevance. There was therefore a lack of expert evidence regarding the possibility for a less drastic option than adoption. Moreover, the domestic courts had failed to take full account of the applicant's efforts to stabilise her mental health. The adoption decision had been taken two years after her last contact with Y. During this time, she had become a "wholly different person" through her own efforts and successful treatment. In such circumstances, it was unclear how such a decision could have been made on the basis of her incapacity to care Y when she had not been given the opportunity to prove her parenting abilities. The authorities had failed to take account of the positive evolution of her situation, contrary to the Court's indication that the minimum to be expected of the authorities was to examine the situation anew from time to time to see whether there had been any improvement in the family's situation.

(b) The Government

142. The Government noted that the case concerned whether the measure was necessary in a democratic society. The two key issues were therefore whether the reasons given were relevant and sufficient and whether the decision-making process was fair and afforded due respect to the applicant's Article 8 rights. The relevant factors were to be assessed with due regard for the margin of appreciation. The general principles had been set out in *Strand Lobben and Others* (cited above, §§ 204-13).

143. Regarding the margin of appreciation in adoption cases, the domestic authorities had had direct contact with those involved in the decision-making process and a wider margin therefore needed to be accorded. The level of participation of those concerned by the measure also affected the margin of appreciation. Moreover, while Contracting States shared an understanding as to the importance of protecting the interests of children and of balancing the interests of parents where they conflicted, there was no uniformity of approach as to the appropriate powers to be exercised in this sensitive area of child protection, and accordingly the margin of appreciation in this type of case was to be wider (the Government cited, in this respect, *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII). Finally, the seriousness of the intervention affected the width of the margin of appreciation. A decision to authorise adoption of the child without the consent of the birth parents was a very serious interference with the right to a family life requiring exceptional circumstances and heightened scrutiny by the Court

of the justification for the decision. However, closer scrutiny could not entail a fresh assessment of the relevant facts by the Court, particularly if considerable time had elapsed. Rather, it required the Court to review the process undertaken by the domestic authorities in reaching its decision, including the relevance and sufficiency of the reasons given.

144. The adoption decision in the present case had taken into account the importance of reuniting Y with the applicant and X and was based at all times on Y's best interests, which involved him not having contact with the applicant and not disrupting his important attachment with his adoptive parent. The reasons given were careful, considered and based on fresh expert evidence. Further, the decision had been robustly reviewed by the domestic courts. The Government noted that the applicant did not challenge before the Court (and nor could she given the passage of time) the decision to place Y into care or to obtain a placement order. The sole issue was whether in view of the circumstances of the case as a whole it was appropriate to grant the adoption order at the time it was made.

145. The judge making the adoption order had borne in mind the importance of the aim to reunite the natural family (see paragraph 88 above). However, the "compelling" evidence before the court had been that there was a pressing need for one person who could claim Y legally and emotionally (see paragraph 89 above) and that that was Y's prospective adoptive parent. The time spent with a prospective adopter was a significant factor to be taken into account when assessing a child's best interests (the Government referred to *Y.C. v. United Kingdom*, cited above, § 141). It was also significant that the court had taken steps to maintain Y's family relationship with X (see paragraphs 93 and 100 above).

146. The court making the adoption order had undertaken a genuine balancing exercise and the order had been justified by an overriding concern pertaining to Y's best interests. The judicial process had involved a close consideration of expert evidence. The court had concluded that the expert evidence "weighs heavily against opposition to an adoption order" (see paragraph 94 above). It had considered the relevant factors, including factors in favour of the applicant, such as her improved mental state and her ability to parent X, against countervailing factors such as the different nature of Y's needs, Y's particular need for stability and the applicant's lack of appreciation of the cause of Y's difficulties (see paragraphs 77-86 above).

147. The reasoning of the domestic courts had been relevant and sufficient. In particular, the judge had taken into account improvements in the applicant's mental health but had emphasised her refusal to acknowledge that Y's problems had resulted from his early life experiences. He had made clear that he accepted the evidence of Dr H.R. and the guardian that if Y were removed from his placement and returned to the applicant's care, he was likely to regress and that this would not be in his best interests (see paragraph 91 above).

148. The Government agreed with Validity as to the need for practical support for people with psychosocial disabilities (see paragraphs 154-155 below). They emphasised that appropriate support had been provided to the applicant during the entirety of the proceedings which culminated in the adoption order. Attempts had been made to hold family group conferences but the applicant had not attended (see paragraph 12 above). Weekly supervised contact visits had been arranged following the applicant's diagnosis and until the placement order was made (see paragraph 19 above). There had, moreover, been a number of procedural accommodations as a result of the applicant's mental health circumstances (see paragraphs 35-40 and 43 above). There was accordingly no basis for narrowing the margin of appreciation in view of the Government's having failed to provide positive support measures to the applicant in respect of her mental health difficulties.

149. The Government did not accept the applicant's submission (see paragraph 136 above) that the United Kingdom was an "outlier" in permitting total severance of family ties without parental consent. Comparative studies demonstrated that in fact the position was far more nuanced and varied. The EP study update had explained a common misreading of adoption statistics in the United Kingdom (see paragraph 132 above). It had also shown that Contracting States adopted a variety of means to permit State intervention to permit adoption without parental consent (see paragraph 133 above).

150. The Government further refuted the applicant's allegation (see paragraph 138 above) that the local authority had been predisposed towards permanent separation. It was clear from the evidence (see paragraphs 6-19 above) that, on the contrary, it had worked hard to assist the applicant and her children to facilitate family reunification, and only when the circumstances had become sufficiently serious did that change. The Government did not accept that their adoption policy in general amounted to a systemic push for non-consensual adoption. They had made clear in their policies and the framework of legislation that State intervention in family life should be kept to the minimum necessary to protect the child from harm. Ultimately it was Government policy that a child should be brought up by his or her family wherever that was a safe place for him or her to be. For children who could not return to live with their birth parents, there were other options including a special guardianship order, which had been created precisely to provide permanence without causing complete severance of ties to biological family.

151. Finally, the Government argued that the applicant had been adequately involved in the decision-making process. She had been given access to numerous support services. She had been able to participate in all legal proceedings as a witness, as the subject of multiple expert assessments, and by making oral and written submissions (whether through counsel or in person) to the courts at every stage. In particular, the Family Court had ordered fresh expert assessments to be made of her and her ability to care for Y (see paragraph 43 above), which had taken into account her efforts to

cooperate with relevant authorities and counselling services, and her ability to manage her mental health symptoms. These matters and this evidence had been taken into account in the judge's decision. The applicant had, moreover, been given further procedural opportunities, above and beyond those to which she was entitled procedurally (see, for example, paragraphs 40 and 102 above).

152. For the above reasons, the Government invited the Court to conclude that there had been no violation of Article 8 of the Convention.

(c) The third party

153. Validity underlined that States' margin of appreciation was narrower where separation between parents and child was prolonged or contact further restricted. The margin of appreciation was, moreover, "substantially narrower" where vulnerable groups were concerned, such as people with disabilities who had historically been discriminated against. Placing a child for non-consensual adoption was the most intrusive interference with an individual's family life since it represented the permanent severance of biological family ties. The Court's case-law provided that family ties could only be severed in "exceptional circumstances" and that everything was to be done to preserve family relations and "rebuild" the family if possible. The Court further did not accept the authorisation of adoption on the basis of the mere passage of time which might result in the absence of bonds between parents and children.

154. Validity expressed concern that mothers with disabilities were significantly more vulnerable to having their children removed from their care. They referred to research in England and Wales showing that high rates of mothers with mental health problems had children in care proceedings. One of the main causes for the overrepresentation of persons with disabilities in care proceedings was the lack of support for parents. Validity drew attention to the fact that the CRPD Committee had expressed concern in its 2017 Concluding observations that parents with disabilities in the United Kingdom did not receive appropriate services and support (see paragraph 126 above). This was to be contrasted with the "plethora of international instruments" calling for the provision of support (see paragraphs 124-125 and 131 above), which were relevant to the interpretation of States' Convention obligations. Support for parents was considered an element of the best interests of the child. The best interests of the child standard could not be used to justify a non-consensual adoption when the State itself had failed to provide adequate disability-specific support.

155. Disability-focused support had to be community-based, adequate, accessible, available and appropriate to the goal of facilitating child-rearing for people with disabilities. It should be multi-disciplinary, or have strong referral pathways across health, social care and voluntary organisations. The dual function of social workers in England and Wales – supporting families

on the one hand and gathering evidence against them on the other – led to inherent tensions and difficulties. Ideally, support should be provided to parents before the involvement of child protection services. Examples of best practices included family-focused case management, which could include planning for emergency or non-emergency childcare; referral to parent support groups; parent-friendly medication counselling and treatment; and crisis financial aid. Other examples of good practices included personal assistance services, peer support networks and family group conferences whereby family members heard together the safety concerns of practitioners and took the lead in drawing up a care plan.

156. Finally, access to justice was a significant barrier for parents with disabilities. Parents needed specialist legal advice to explain to them the options available and help reduce conflict with professionals. This was increasingly difficult to access because of budgetary cuts and legal aid reforms. The provision of professionally trained intermediaries to provide communication assistance to parents subject to care proceedings would also be of assistance.

2. The Court's assessment

157. The Government did not contest the applicant's submission that the decision to refuse a special guardianship order and to make an adoption order constituted an interference with the applicant's right to respect for her family life within the meaning of Article 8 § 1 of the Convention. The Court agrees that there has been an interference. It must therefore be determined whether the interference was justified under Article 8 § 2, namely whether it was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society.

158. The applicant did not challenge the lawfulness of the measure nor allege that it was devoid of any legitimate aim. The Court accepts that the measure was "in accordance with the law", pursuant to sections 46 and 47 of the 2002 Act (see paragraphs 119 and 120 above), and pursued the legitimate aim of protecting the rights of others, in particular those of Y.

159. The only question for the Court is, therefore, whether the measure was necessary in a democratic society.

(a) Preliminary remarks

160. The present case does not concern the initial taking of a child into care and the making of a care order, temporarily restricting parental rights. What is at issue here is the decision to grant a final adoption order in respect of Y, against the applicant's wishes, formally severing the biological ties and creating legal ties with the adoptive family. Under the legal framework in place in England, the adoption without the parents' consent of a child who is already the subject of a care order is a two-stage process.

161. In the first step of the process, an application is made by the local authority for a placement order in respect of a child already in local authority care (see paragraph 115 above). This order authorises the local authority to place the child with a prospective adopter with a view to adoption. In deciding whether to grant the application for a placement order, the court must have regard to the child's welfare as the paramount consideration and must apply the "welfare checklist" in section 1 of the 2002 Act (see paragraph 113 above). It must also bear in mind the prejudice likely to be caused to the child's welfare by any delay in coming to a decision. Finally, the court must consider the whole range of powers available to it under the 1989 and 2002 Acts and must not make an order unless it considers that doing so would be better for the child than not doing so (see paragraph 114 above). The birth parents are entitled to oppose the making of a placement order, in which case the court will have to decide whether the welfare of the child requires their consent to be dispensed with (see paragraph 116 above). If the placement order is not appealed, or once the appeals process has been exhausted, the placement order becomes final. The birth parents can only apply to revoke a placement order with the leave of the court and provided that the child has not yet been placed for adoption by the local authority (see paragraph 118 above).

162. The second step in the adoption process is the application by the prospective adopters for an adoption order in respect of a child who has been placed for adoption with them under a placement order. The adoption order severs the legal ties with the birth family and creates new legal ties with the adoptive family (see paragraph 119 above). The birth parents are not able to oppose the making of an adoption order without the leave of the court, which leave may only be granted if the court is satisfied that there has been a change in the circumstances of the parents since the placement order was made (see paragraph 120 above).

163. It can be seen that each of these two stages – placement order and adoption order – is distinct. The placement order represents the determination of the court that the child's best interests require his or her adoption and, therefore, that those interests would not be met by rehabilitation to the birth family. Legal and practical consequences therefore flow from the making of a placement order, regardless of whether an adoption order is, in due course, applied for and granted. Notably, once a placement order has been made, any order in relation to contact made in the context of the prior care proceedings ceases to have any effect and the local authority's duty to promote contact ceases to apply (see paragraph 117 above).

164. The Court must therefore examine the applicant's complaint about the making of the adoption order in the context of this two-stage process which leads to a final adoption in England. It is significant that the applicant did not bring an application to this Court to challenge the making of the placement order in December 2016 in respect of Y (see paragraph 24 above)

or the refusal in June 2018 of leave to appeal, out of time, against the making of that order. The Court therefore is not called upon to review the decision to grant that order, or to scrutinise any alleged failings by the local authority which may have led to the making of that order. Its task is to determine whether the making of the adoption order, in the circumstances of the applicant's case, was compatible with Article 8 of the Convention (see paragraphs 172-181 below). This examination is to be carried out in the light of the arguments advanced before this Court by the applicant (see paragraphs 136-141 above).

(b) General principles

165. The general principles relevant to child welfare measures were set out in the Grand Chamber's judgment in *Strand Lobben and Others* (cited above, §§ 202-13; see also *Y.C. v. the United Kingdom*, cited above, §§ 133-39). In assessing whether an interference was "necessary in a democratic society", the Court must examine whether, in the light of the case as a whole, the reasons adduced to justify the measures were "relevant and sufficient" and whether the interference corresponded to a pressing social need and was proportionate to the legitimate aim pursued. It must also examine whether the decision-making process was fair and afforded due respect to the applicant's rights under Article 8 of the Convention (see *Strand Lobben and Others*, cited above, §§ 203 and 212, and *Y.C. v. the United Kingdom*, cited above, § 133).

166. The Court has explained that regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8. For this reason, there is a positive duty on the authorities to take measures to facilitate family reunification as soon as reasonably feasible in the case of imposition of public care restricting family life. This duty will begin to weigh on the competent authorities with progressively increasing force as time passes, subject always to the need to consider the child's best interests. Everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family. The ties between the members of a family and the prospects of their successful reunification will be weakened if impediments are placed in the way of their having easy and regular access to each other (see *Strand Lobben and Others*, cited above, §§ 205 and 207-08). It is also the authorities' role to help parents in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties. The authorities must show particular vigilance and afford increased protection where vulnerable parents are concerned (see *S.S. v. Slovenia*, no. 40938/16, § 84, 30 October 2018).

167. However, the Court has recognised that the duty to facilitate reunification and rebuild the family is not open-ended. When a considerable period of time has passed since the child was originally taken into public care,

the interest of the child not to have his or her *de facto* family situation changed again may override the interest to have the family reunited (see *Strand Lobben and Others*, cited above, § 208, and *S.S. v. Slovenia*, cited above, § 86). It is, moreover, in the very nature of an adoption permanency plan that no real prospects for rehabilitation or family reunification are considered to exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see, *mutatis mutandis*, *Strand Lobben and Others*, cited above, § 209, and *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011).

168. The Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children's family life, their best interests are of paramount importance (see *Strand Lobben and Others*, cited above, § 204). It is in the child's best interests to ensure his development in a safe and secure environment. It is also in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit. Thus, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained. However, for a child to be separated from his family, it is not enough to show that a child could be placed in a more beneficial environment for his upbringing. It follows from these considerations that family ties may only be severed in very exceptional circumstances (see *Strand Lobben and Others*, cited above, § 207, and *Y.C. v. the United Kingdom*, cited above, § 134).

169. The Court recognises that in reaching decisions in so sensitive an area, local authorities and courts are faced with a task that is extremely difficult. Further, the national authorities have had the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. There is therefore a need to allow them a certain margin of appreciation in deciding how best to deal with the cases before them. It is accordingly not the Court's task to substitute itself for the domestic authorities but to review, in the light of the Convention, the decisions taken and assessments made by those authorities in the exercise of their margin of appreciation (see *Strand Lobben and Others*, cited above, § 210; *S.S. v. Slovenia*, cited above, § 83; and *Y.C. v. the United Kingdom*, cited above, § 136).

170. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. The Court has indicated that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. A stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life, as such further limitations

entail the danger that the family relations between the parents and a young child are effectively curtailed (see *Strand Lobben and Others*, cited above, § 211; *S.S. v. Slovenia*, cited above, § 83; and *Y.C. v. the United Kingdom*, cited above, § 137).

171. As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case. The need to involve the parents fully in the decision-making process is all the greater where the proceedings may culminate in a decision to take a child from his biological parents and place him or her for adoption. It is incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child (see *Strand Lobben and Others*, cited above, §§ 212-13, and *Y.C. v. the United Kingdom*, cited above, §§ 138-39).

(c) Application of the principles to the present case

172. The Court notes that the placement order in respect of Y was made in December 2016, when Y was only five years old (see paragraph 24 above). By that stage, Y was already living with his prospective adopter under a foster-to-adopt placement (see paragraph 23 above), and the placement became an adoptive placement. Once the placement order had been made, the local authority no longer had any obligation under domestic law to promote contact or authority to put in place contact arrangements of its own motion (see paragraph 163 above), and the applicant made no application to the court for post-placement contact under section 26(3) of the 2002 Act (see paragraph 117 above). There was accordingly no further contact between Y and the applicant from December 2016. The hearing before the Family Court on the adoption application took place in July and August 2019 (see paragraph 73 above), over two and a half years later. Throughout this period, Y had been living with the prospective adopter and had had no contact whatsoever with the applicant. Although she makes a general observation as to her lack of contact with Y since the making of the placement order (see paragraph 138 above), the applicant does not directly complain about the lack of measures to enable contact with Y during this latter period, has not identified any measures which she says ought to have been taken during this period and has not explained why she made no application for post-placement contact. This is to be contrasted with her detailed complaints about the contact

regime put in place between March 2015 and the making of the placement order in December 2016.

173. In his subsequent judgment, the judge explicitly referred to the child's interest in being brought up by his or her birth family unless the overriding requirement of his interests made that impossible. He examined each of the considerations identified in the 2002 welfare checklist (see paragraphs 88-89 and 113 above). The Court observed in *Y.C. v. the United Kingdom* (cited above, § 135) that the considerations in the 2002 welfare checklist broadly reflected the various elements inherent in assessing the necessity under Article 8 of a measure placing a child for adoption. The applicant has contested this finding (see paragraph 139 above) but has not provided any further details as to what further considerations she considers to be relevant or which of the considerations listed are irrelevant. Her complaint appears to concern rather the way in which the judge balanced the various relevant considerations and, in particular, the weight he gave to Y's lack of attachment to her.

174. The Court underlines that the examination of the relevance and sufficiency of the reasons for the adoption order must be carried out with due regard to the reality of the situation as it was by the time that the Family Court heard the adoption application in July and August 2019 (see paragraphs 73, 160-164 and 172 above). By that time, Y was eight years old and had been living with the prospective adopter for over three years, since the age of four, for the most part in an adoptive placement pursuant to the placement order (see paragraphs 23 and 24 above). The Family Court judge underlined Y's lack of attachment to the applicant and the need for Y to have stability and someone who could "legally and emotionally claim him" (see paragraphs 89-90 above). He relied in particular on the written evidence of Dr H.R. (see paragraphs 63, 65, 67-68 above) and her oral evidence to the Family Court, which he found to be "compelling" (see paragraphs 77 and 90 above). The Court accepts that Y's interest in not having his *de facto* family situation changed again weighed heavily in favour of granting the adoption order.

175. The applicant has argued that the local authority was to blame for the lack of attachment on account of the inadequate support measures put in place prior to the making of the placement order (see paragraphs 138 and 140 above). As the Court has explained, the making of a placement order and the making of an adoption order are two distinct legal steps in England (see paragraph 163 above). The applicant did not lodge an application with the Court following the making of the placement order. The Court cannot now scrutinise whether the reasons for making the placement order were relevant and sufficient and whether the local authority complied with Article 8 obligations in the lead-up to the making of that order (see paragraph 164 above).

176. As noted above, the applicant has not complained about the lack of contact in the years between the making of the placement order and the adoption order. In any event, the placement order endorsed the local authority's position that there were no real prospects for rehabilitation or family reunification and that it was instead in Y's best interests that he be placed permanently in a new family. It follows from the general principles outlined in paragraphs 166-167 above that the local authority's general obligation under Article 8 to take measures to rebuild the family and to seek reunification of Y and the applicant in principle ceased once the placement order became final. While there may be circumstances under Article 8 in which that obligation continues or is revived, the Court does not consider that such circumstances existed here. Y was already living with a prospective adopter, with whom he was forming close bonds of affection (see the findings in the psychological report by Dr H.R. summarised in paragraphs 62 and 64 above). There was nothing to suggest that the placement had broken down or might break down such that rehabilitation to the birth family again became a relevant consideration. The authorities cannot, therefore, be faulted for failing to ensure contact between the applicant and Y once the placement order had been made. The Court further reiterates (see paragraph 172 above) that there was no application for post-placement contact by the applicant to enable the Family Court to consider, in all the circumstances of the case, whether despite the making of the placement order continued contact would be in Y's best interests.

177. The judge further referred, when making the adoption order, to the applicant's ability to cater for Y's needs. He noted that Y had significant ongoing problems that required more than "good enough" parenting (see paragraph 89 above). He highlighted that C.A., the independent social worker, had given the applicant "enormous credit" for what she had achieved in her parenting of X (see paragraph 80 above). However, he was concerned at the applicant's refusal to acknowledge that Y's difficulties were the result of his early life experiences. He considered that she had little or no insight into the type of parenting and need for significant therapeutic parenting that Y would need (see paragraph 91 above). His findings in this respect were supported by C.A.'s detailed report and her subsequent oral evidence (see paragraphs 49-60 and 80 above). The Court is satisfied that these reasons were also relevant to the decision to grant an adoption order.

178. The question arises, as argued by the applicant, whether the Family Court's decision to make an adoption order was unjustified in view of the possibility of a special guardianship order which would have preserved biological ties. It is clear that the Family Court judge carefully considered the possibility of making a special guardianship order. He gave two reasons for discounting this possibility. First, he considered that it would create practical difficulties in view of evidence he had heard from the applicant that she would wish to have "significant involvement" in Y's life to ensure that his needs

were being met. Second, he took the view that a special guardianship order would not meet Y's need for stability and a person who could "legally and emotionally claim him", which was what the experts had said was in his best interests (see paragraph 92 above). The reasons given were supported by the evidence before him (see, notably, paragraphs 78, 82, 84 and 95-99 above). The circuit judge on appeal observed that a special guardianship order would not continue beyond Y's eighteenth birthday and underlined the Family Court judge's conclusion that the only order that would meet Y's pressing needs for stability, security and permanence was an adoption order (see paragraphs 105-106 above). The applicant complains in particular that the guardian did not consider the option of a special guardianship order in her report and that the judge had given insufficient weight to C.A.'s support for a special guardianship order (see paragraph 81 above). She also contends, essentially, that the judge misunderstood the extent of her desire for involvement in Y's life (see paragraph 139 above). However, it is not the role of this Court to take the place of the domestic decision-makers, who have had the benefit of direct contact with all the persons concerned (see the case-law quoted in paragraph 169 above). C.A.'s comment was one of several comments made by the experts about the viability of a special guardianship order. The judge was entitled to conclude that its lack of permanence and the risk of interference by the applicant meant that it was unsuitable to meet the best interests of Y, which he had already identified as stability and permanence (see paragraphs 92 and 95-98 above).

179. It is also noteworthy that before making the adoption order, the court instructed a fresh parenting assessment of the applicant by an independent social worker and a fresh assessment of Y by an independent psychologist (see paragraph 43 above). These reports were each further updated as required (see paragraphs 46, 60 and 69 above). The judge also had before him a report by the guardian and by a local authority social worker. He heard oral evidence from all of these experts, as well as from the applicant and from X (see paragraph 75 above). The judge had very careful regard to these reports and to the oral evidence when reaching his conclusions on the various elements of the welfare checklist and on the adoption application as a whole.

180. The applicant contended that the United Kingdom was an "outlier" in allowing a high number of children to be adopted without parental consent (see paragraph 136 above). The Court does not accept that the evidence before it is sufficient to reach a view on this argument. It is clear from the 2016 EP study update that the position is more nuanced than might first appear (see paragraphs 132-133 above). In any event, regardless of the existence of an European consensus in this area, the Court has made it plain that it will exercise close scrutiny of decisions permanently severing family ties (see the case-law quoted in paragraph 170 above). In the present case, the Court finds for all the reasons set out in the preceding paragraphs that the reasons given by the judge for refusing to make a special guardianship order and for making

an adoption order were relevant and sufficient. The making of the adoption order fell within the margin of appreciation afforded to the respondent State.

181. Finally, the Court considers that the applicant was able to participate fully in the proceedings leading to an adoption order. She was given permission to oppose the making of the adoption order on the basis of her change of circumstances and the adoption proceedings were stayed pending her out-of-time appeal against the placement order (see paragraph 40 above). She was given the opportunity to present her views, which were duly taken into account by the judge. She was granted an extension of time to lodge an appeal on account of the impact of the decision on her Convention rights (see paragraph 102 above). She was further able to renew her request for permission after its refusal on the papers (see paragraphs 103-107 above). The Court is therefore satisfied that the applicant was involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interests and was able fully to present her case (see the case-law quoted in paragraph 171 above).

182. Taking into account all the above considerations, the Court concludes that there has been no violation of Article 8 of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 25 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President