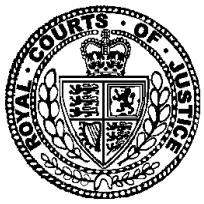

**Neutral Citation Number: [2024] EWHC 2814 (Fam)**

**Case No: SA23C50233**

**IN THE HIGH COURT OF JUSTICE**

**FAMILY DIVISION**

**Royal Courts of Justice**

**Strand, London, WC2A 2LL**

**Date: 25/10/2024**

**Before:**

**Mr Justice Trowell**

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**Between:**

| | |
|---|---|
| **A Local Authority** | **Applicant** |
| **- and -** | |
| **M** | **Respondent** |
| **- and –** | |
| **F** | **2nd Respondent** |
| **- and –** | |
| **S** | **3rd Respondent** |

**(a child acting by her Guardian)**

**Or:**

**Re: S (A Child: Article 9 transfer to Norway)**

- - - - - - - - - - - - - - - - - - - -

- - - - - - - - - - - - - - - - - - - - -

**Iain Alba (instructed by a Local Authority) for the Applicant**

**Laura Briggs KC and Julia Gasparro (instructed by Avery Naylor) for the First Respondent**

**Emma Colebatch (instructed by Creighton and Partners) for the 2nd Respondent**

**Amanda Meusz (instructed by Cameron Jones Hussell & Howe Solicitors) for the 3rd Respondent**

**Hearing dates: 24 and 25 October 2024**

**- - - - - - - - - - - - - - - - - - - - -**

**Judgment Approved by the court**
**for handing down**

**Mr Justice Trowell:**

1. The matter before me is a request by the Norwegian Directorate for Children, Youth and Family Affairs (hereafter Norway), dated the 14 August 2024, for the Welsh Central Authority to transfer jurisdiction relating to the protection of an 11-month-old child, S under Article 9 of the 1996 Hague Convention. That jurisdiction is currently being exercised in this country (as I shall refer to England and Wales) by way of care proceedings in the Family Court.

2. That request is supported by S's mother, M. It is opposed by S's Guardian, and a Local Authority. S's father, F, was opposing the application until the first morning of the two-day hearing and then changed his position to one of support.

3. I have heard from Laura Briggs KC, leading Julia Gasparro for M, Iain Alba for the Local Authority, Emma Colebatch for F, and Amanda Meusz for the Guardian. I have only heard submissions. I treated M as the Applicant for this hearing.

4. The matter is before me by virtue of an order of Henke J of the 10 September 2024, having been transferred to the High Court by HHJ Miller from the Family Court on the 28 August 2024.

5. A social worker from Norway has attended this hearing remotely (save for part of the second morning). They have not been represented and they have not filed a skeleton argument in support of their request, despite being invited to do so. They have not spoken during the hearing. They rely on their letter of the 14 August 2024, the notification of the decision of the local Child Welfare Services in Norway (CWS), their letter of the 9 September 2024 (which is expressly written in response to a request to serve a statement and a skeleton argument), and a further letter from CWS dated the 9 September 2024.

*The Law*

6. The 1996 Hague Convention has the force of law by virtue of section 3C of the Civil Jurisdiction and Judgments Act 1982, as amended.

7. Article 5 provides that the judicial authorities of the state of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property. There is no question before me but that is this country.

8. Article 9 provides:

**ARTICLE 9**

1 If the authorities of a Contracting State referred to in Article 8, paragraph 2, [*that is a state other than one that has jurisdiction under Article 5 and which meets certain conditions*] consider that they are better placed in the particular case to assess the child's best interests, they may either

– request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary,

or

– invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2 The authorities concerned may proceed to an exchange of views.

3 The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

9. Paragraph 1 and 2 have occurred. There is no issue as to whether Norway fulfils the conditions of Article 8, paragraph 2. They do so, at the very least, because, in accordance with the law of Norway, S is a Norwegian citizen, albeit unregistered, because M is a Norwegian citizen. This hearing is about paragraph 3. I have to determine the 'if'; that is, whether the authority of the contracting state of the habitual residence (this country) accepts the request of the other authority (Norway).

10. Guidance can be found as to how I should exercise that choice in Chapter 5 of the 1996 Hague Convention Handbook 6th edition. That considers Articles 8 and 9 together. Materially it sets out as follows:

**5.9** (second bullet point)

**The best interests of the child**

The authority making the request that jurisdiction be transferred must consider that

> this will allow for a better assessment of the child's best interests.[166] The authority asked to assume or cede jurisdiction can only do so if it believes this is in the child's best interests. [167]

11. Footnote 167 reads as follows,

> This is stated explicitly in relation to the assumption of jurisdiction – see Art. 8(4). It is not stated explicitly in relation to ceding jurisdiction (see Art. 9(3), which refers only to the acceptance of the request). However, it is hard to imagine that a Contracting State would accept a request to transfer jurisdiction to another Contracting State where it did not consider it in the best interests of the child to do so.

12. Obviously, there are slight differences between 'a better assessment of the child's best interests' and the shorter 'best interests of the child'. It is clear from the text that the 'better assessment of the child's best interests' strictly relates to the authority making the request and 'best interests of the child' relates to the authority of whom the request is made. Here however, it is sensibly common ground between all the parties that to determine whether or not the court accepts the request of Norway I have to determine whether proceedings in Norway or in this jurisdiction are in S's best interest which involves, among other things considering whether Norway would allow for a better assessment of S's interests. Given that common ground it is not necessary for me to explore the various authorities which have been provided to me on the relevant test.

13. It is also agreed that as Baroness Hale said in *Re N (children) (adoption: jurisdiction)* [2016] UKSC 15, albeit in relation to an application under article 15 of Council Regulation 2201/2003/EC, when this country was still in the EU, that the principles of comity which underlie the Hague Conventions mean that:

> [4] It goes without saying that the provisions of the Regulation are based upon mutual respect and trust between the member states. It is not for the courts of this or any other country to question the 'competence, diligence, resources or efficacy of either the child protection services or the courts' of another state (see *Re M (Brussels II Revised: Art 15*) [2014] EWCA Civ 152, [2014] 2 FLR 1372 (at [54](v)) per Sir James Munby P). As the Practice Guide for the application of the Brussels IIa Regulation puts it, the assessment of whether a transfer would be in the best interests of the child 'should be based on the principle of mutual trust and on the assumption that the courts of all Member States are in principle competent to deal with a case' (p 35, para 3.3.3). This principle goes both ways. Just as we must respect and trust the competence of other member states, so must they respect and trust ours.

14. Taking the issues shortly, Norway says they are better placed to deal with proceedings in relation to S because:

- M lived in Norway from 2008. She has only been in England for a short period of time.
- CWS has extensive knowledge of M, which means that they are better suited to consider S's best interests.
- M has ties to Norway and a support network in Norway.
- Forced adoption may occur in this jurisdiction, which in their view (at least as things stand between M and S and the current state of evidence) is in breach of articles 8 and 9 of the Convention on the Rights of the Child.
- Norwegian child welfare authorities have a well-developed follow up and support system for children and parents.
- S and M are Norwegian and so Norwegian authorities are in the most expedient position to assess S's interests in the long term.

15. In her skeleton argument Miss Briggs KC drew attention to the benefits system, housing and educational opportunities and professional support available in Norway and that M will have a new life available to her there. Her single biggest point in her written submissions is that transfer will 'ensure the child's placement in the country of her citizenship with her mother and extended family nearby'. In her oral submissions she related that M has now entered into an arrangement with the Home Office whereby they will assist her to return to Norway and in return she has given up her asylum claim here, which was the means by which she was staying in this country. (On the second day a photo of a computer screen confirming this was produced.) M has had to do that, I was told, because she is not entitled to any benefits or any accommodation in this country. So, she says, M will necessarily be in Norway soon. That means, I was told, that there needs to be an assessment of M in Norway and M would be unable to continue with direct contact with S unless S was also moved to Norway, and any plan of returning S to M would need to be put into effect in Norway.

16. The Local Authority said in their skeleton argument that to transfer the matter will cause significant delay in providing a permanent outcome for S. Such delay is necessarily harmful and will cause significant disruption. The case is prepared for

court in this jurisdiction and can be put before the court soon. In oral submissions they reacted to the news that M was to move to Norway with some suspicion. The move was not mentioned in a statement that M had made on the 22 October 2024. If she does move, they do not consider an 'environmental' assessment of M in Norway will be required (their case on this being revised during submissions). If the court with conduct of the care proceedings considers it is necessary, then they accept it will have to be carried out by someone in Norway (which they hope will be the Norwegian care authorities if they are prepared to co-operate). Should that indicate, contrary to the Local Authority's expectation, that M can cope with a return of S then they will consider an Article 8 application themselves, asking Norway to assume the jurisdiction. They also accepted that there would need to be an updating assessment as to what has happened since July including fresh drug and alcohol tests, and a review of material provided by the Norwegian authorities in relation to M's own support and needs as a child and young adult.

17. The Guardian had said the same as the Local Authority in Ms Meusz's skeleton argument. It was pointed out that the case was ready for a final hearing in the summer before this request from Norway was received. It was also pointed out that S has no links to Norway save through her mother's citizenship. The oral response to the news that M was moving was to (1) tell me that this was further evidence that M was not open and honest in her dealings with professionals and (2) to say that it was the Guardian's view that there would need to be a limited assessment of M in her environment in Norway (limited as to the supports and protections available and whether they would be effective).

18. F had opposed the transfer in Ms Colebatch's written argument on the basis there seemed to be only a limited willingness to involve him in Norway's decision-making process in relation to S, and practically he will not be able to go to Norway given his immigration status. He changed his position at the hearing and supported the transfer having heard that he could attend any hearing remotely and could have remote contact. Ms Colebatch was clear that a large part of his motivation was that he would prefer M to bring up S and he considered that more likely in Norway.

*Summary Background*

19. There is much common ground as to the background. I will take it summarily.

20. S was born on 19th November 2023 whilst M was imprisoned for an offence of possession of drugs. An ICO was granted on 23rd November 2023, and the Local Authority's interim care plan for S's removal from M to foster care was approved. She has been looked after by foster carers from shortly after birth.

21. S's father, F, was born in a Caribbean country but lives in this country. He has a live asylum claim before the Home Office. He has been sporadic in his involvement in the care proceedings relating to S. He has however played a part in these proceedings. He did not attend the second day (though he continued to be represented) and instructed counsel to proceed in his absence. It may well be that he was ill because he had been unwell on the first day.

22. M is 25. She was born in an East African country. She was subject to female genital mutilation at 5 years old by her maternal or paternal aunts (whether maternal or paternal is not agreed – M says it was paternal). She lived with relatives in the country of her birth until she was 8 years old, before moving to Norway to live with her mother and stepfather. M was placed into the care of the Norwegian Authorities in 2008 and received after care from the age of 18 until January 2020. She became a Norwegian citizen in 2018.

23. M returned to the country of her birth in about 2021 and stayed there until approximately early 2023, when she moved to London briefly, and then Wales. She was arrested in July 2023. It is understood, I am told, that M had been in the UK for approximately six months at that time. There is good reason to believe M was trafficked to Wales by a drug gang with which she was involved. M was refused the right to remain in the UK in July 2023. She remained in the jurisdiction by virtue of an asylum claim that was made while she was in prison.

24. The basis of the asylum claim, I was told, was that M was at risk from her family in Norway (being an unmarried mother) and the Norwegian authorities were unable to protect her. M tells me, through Ms Briggs, that the grounds were spurious. And in reality, this claim was a device to enable M to stay in this country where her child was.

25. M became known to the Local Authority upon her arrest when they were told that she was pregnant.

26. I am told in Mr Alba's position statement that the Local Authority's concerns in respect of M relate to homelessness, criminality, association with unsafe and risky individuals, substance misuse, chaotic and unpredictable lifestyle, an inability to be open and honest, and M's immigration status.

27. During care proceedings, many assessments have been completed, including drug and alcohol testing. The drug assessments were positive, albeit the most recent one was negative. A parenting assessment was negative. M says the drug assessment was in part wrong – she did not take drugs while in prison though she accepts she did before. M says the parenting assessment was before birth and not reliable.

28. M was released from prison on 5 January 2024 and placed in approved premises. However, less than a week later, she was recalled as she had assaulted another resident at the premises. She was subsequently released from prison on 2 April 2024, since when M has returned to different approved premises. M has attended all contact sessions with S, which take place weekly, since her release in April. Her time in approved premises is about to expire (or has just expired) and she has no entitlement to any benefits. She has come to London and hopes family and or friends will put her up. Making this more difficult is a requirement imposed on her that she cannot stay anywhere there are children.

29. The matter was listed for a final hearing on 8 July 2024 and then adjourned to 25 July 2024. That hearing did not take place because on 10 July 2024 the Local Authority received communication from Norway for the exchange of information regarding the case. On 14 August 2024 Norway confirmed that it intended to formally seek transfer of proceedings under Article 9 of The Hague Convention. As already set out the transfer application was then transferred to the High Court.

30. Norway's involvement in these proceedings arose, at least in part, because M contacted the person who had been her Norwegian Guardian, when she was released from gaol for help and assistance. M's Norwegian Guardian contacted the authorities in Norway and M's solicitors in this country.

31. All assessments in respect of M and F originally anticipated were completed. There was to be a further assessment of M's aunt, but I am told that her lack of engagement discharges the need for that assessment.

32. The Local Authority seeks final care and placement orders for S in the care proceedings. The Guardian agrees. M and F want S returned to M's care.

*The Issues*

33. The following issues need to be considered by me to consider what is in S's best interests:

- Do I accept M's case as to her imminent move to Norway? What is the impact of that on which country should exercise jurisdiction in relation to S.
- Delay: how much delay can I anticipate on a transfer, and what will its effect be on S?
- The significance of cultural and national identity of S.
- Which court is in the best position to consider the evidence in relation to her care?
- Other consequences of transfer.

34. I note straight away that it is inappropriate for me to work on the basis that Norway offers better care to children, or that its childcare services and courts are better resourced, or that adoption would be the wrong answer to this case. Comity requires I consider both countries equal.

<u>M's Move to Norway</u>

35. M is silent in her statement on the 22 October that she was intending to enter into the deal to return to Norway. That was the day she entered into the deal. Ms Briggs did not offer any explanation of this. It is clear that this is an example of M not being open and honest.

36. I was told that M had entered into the deal with the Home Office because she had no means to support herself in this jurisdiction. As a citizen of Norway, she is entitled to benefits there. Her claim to asylum appears hopeless and no more than a device to keep her here while she had somewhere to live.

37. Mr Alba told me on the second day that he understands that the providers of M's accommodation would consider continuing that accommodation, and the financial assistance that went along with it, if a request were made. I had on the first day been shown a letter dated the 22 October 2024 from the providers saying that the temporary accommodation was due to end shortly. And Ms Briggs told me in response that M had previously asked for an extension to the time that she had been allowed to stay, which took her to this hearing. Further there was a letter, shown to Mr Alba, setting out that she had to leave on the 20 October 2024, and there had been a small extension on that, but M understood that there was no further extension open to her.

38. I do consider that there may well be something tactical in M signing up to a deal to return to Norway just in advance of this hearing. Nonetheless on the basis of what I am told – a lack of benefits and accommodation here and the likely position of the Home Office to her asylum application – it appears that the return is a rational and proper step for M to have taken.

39. A return to Norway on the face of it is likely to have a significant impact on the areas of concern which the Local Authority had in relation to her. She is a citizen there and so has access to benefits. She will have accommodation (which will be with her Guardian in Norway while she makes an application to the authorities in Norway), and so will not be homeless. She will have financial benefits and so she will be less likely to be engaging in criminal activity to generate money. She may remain incapable of parenting S – whether because of her involvement in criminal activity or drug use - but it does seem to me likely that there will need to be an updated environmental assessment of her in Norway. I do not rule on that because I rightly have not heard argument on the conduct of the care proceedings. I do however take that into account in considering the matter before me.

40. A return to Norway will inevitably impact negatively on M's contact with S. This may only have short term impact on S if she is to be adopted – but even then, it will have an impact. If she is not to be adopted, then it will be a long-term problem if S remains in this country.

41. A return to Norway will render unworkable any plan to return care of S to M.

42. This factor pushes me towards a transfer.

Delay

43. I find that it is inevitable that it will take longer to put before a court proceedings in Norway than in this country. Much of the work has been done here. What is now required is likely to be three things:

- The environmental assessment of M in Norway
- An update, in particular of drug and alcohol tests
- A consideration of historical documents from Norway.

This will not be instant, but it is likely that the case can come on as Mr Alba estimates in the New Year.

44. On the other hand, Norway will want to conduct their own parenting assessment of M and though they will consider what has been done here, I am told by them that their own social services will want to satisfy themselves as to the next step.

45. I bear in mind that S is 11 months old. Any delay in determining what is in her best interest for a long-term placement will be harmful. This is all the more so given her young age. I am unable to quantify how great the delay will be, but consider it will be at least a couple of months longer in Norway to reach a determination than here.

46. This is a factor which pushes me away from a transfer.

Cultural and National Identity

47. M is Norwegian. A letter from the Norwegian authorities indicates she is also a national of an East African country. F is a national of a Caribbean country. Neither are British.

48. M has more and closer relatives in Norway than she does in England. This of itself would be a factor in favour of a transfer, but taken together with the point that her asylum application said her relatives present a risk to her, and the fact that she has not been open and honest within these proceedings I am not going to attach weight to this narrow point. I am reminded of the *Lucas* direction by Ms Briggs and understand her case that the asylum claim was a device, but I would not be surprised if at a final care hearing there were a live issue of fact as to the influence of M's family.

49. I am told that S is not automatically entitled to British citizenship. She is likely to be entitled to it on adoption – if that is the route that the court takes. If not, then I am told that applications can be made to the Home Office by the Local Authority that are highly likely to allow her to remain in this jurisdiction and in due course obtain British citizenship.

50. S is entitled to Norwegian citizenship. She is for the most part not culturally Norwegian in her upbringing, so far. She has been exposed to English by her foster carers, but I am told M during her weekly contact will often talk to her in Norwegian and sing nursery rhymes to her in Norwegian.

51. If S is not adopted, it does appear a factor to be held in mind that moving her to Norway will allow her to take on the culture of the country of which she is currently a national. On the other hand, it is accepted that she will be faced with change on the move in the short term that she might find difficult. It is suggested that will be mitigated by bi-lingual foster carers in Norway – which are, I am told, available.

52. A move to Norway will make contact with S's father more difficult and direct contact impossible.

53. Overall, this is a factor which pushes me towards a transfer.

<u>Which court is in the best position to consider the evidence?</u>

54. The courts of this country will be in the better position to consider the evidence so far obtained including the parenting assessment and the drug and alcohol testing which the mother is disputing. The Norwegian court will be in a better position to consider any assessment of M in the Norwegian environment. The Norwegian courts will be better able to consider the historical material – but this is not likely to be as crucial.

55. On balance this issue weighs in favour of this country.

Other consequences of the transfer

56. If jurisdiction were to be transferred there is a possibility that S will first need to be moved to a temporary foster carer in Norway, before a move to a permanent foster carer, assuming as seems to be likely that there will be no immediate return to M. It is possible, and indeed hoped, that the transfer will be direct to long term fosterers, on the basis that they take S hoping that S will be with them long term. The chances of that can be increased if the Local Authority co-operate on a transfer.

57. Such co-operation I will assume.

58. There must however be a chance that S has to undergo an unnecessary double change of carers if she moves: (1) to a temporary foster care, then (2) long term foster care. In this country she will proceed straight from the current foster carers to her long-term placement.

59. Ms Briggs urges on me that on any view the arrangements in Norway will mean that the long term foster carer will be looking after S earlier than the long term carer in this country, because in Norway that move will occur before a court determination while, in this country the move will be after a court determination.

60. This is a factor which overall I consider to be neutral.

Conclusion

61. A simple addition of pushes and pulls is 2 in each direction, but this is not a simple matter of addition. Different factors have different weights. I consider the importance of assessing M as she will be when in Norway is a matter of particular importance. I

say this bearing in mind the concerns which the Local Authority had in relation to her. She was homeless; she will have a home. She was involved in crime; she will now have benefits on which to live and will have moved away from the criminal gangs with which she was involved. Further, the negative impact on her ability to sustain contact with S both in the run up to a long-term decision and thereafter if the court considers that appropriate attached critical weight to this issue. These two points bring me down in favour of agreeing to the transfer notwithstanding the weight that I attach to the delay point. If I were to work on the basis that adoption will be the outcome of the care proceedings, then the Local Authority's case might prevail given the considerations set out above. It may be that would be the outcome that the courts in this country would reach, however I do not consider it in S's interest to render alternative outcomes effectively unworkable. That would be the consequence of M being in Norway and S in this country.

62. I do not consider that the proposal from the Local Authority that the matter continue here, and a transfer be considered on the receipt of an environmental assessment of M in Norway appropriate. It builds in the possibility of yet further delay and does not deal with many of the matters considered above.

63. I recognise that both the Local Authority and the Guardian are taking the position they are because they think that is in S's best interest. The decision has been a careful balance. I have had the information that they did not have before the hearing that M has entered into a deal to return to Norway.

64. I shall assume that co-operation between the Local Authority and Norway as to the manner to affect the transfer of jurisdiction will not require any direction from me, but should there be an issue on which I can legitimately rule I will deal with it – if it can be done so fairly, on paper. I ask counsel to draft the order.

65. Finally, I want to pay tribute to counsel. This matter was presented to me in a helpful and constructive manner – that was primarily down to Mr Alba and Ms Briggs. Mr Alba further had to react quickly to a changing case from M, consequent fresh

instructions and unanticipated (as well as no doubt ill informed) questions from me. He managed that well.

Mr Justice Trowell