Neutral Citation Number: [2021] EWHC 783 (Fam)

Case No: CV20P01997 and NN20C00122

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/03/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Case No. CV20P01997

Between :

Warwickshire County Council **- and –**	**Applicant**
ML **-and-**	**First Respondent**
TW **-and-**	**Second Respondent**
PW and NW **(By their Children's Guardian)**	**Third and Fourth Respondents**

Case No. NN20C00122

Between:

Northamptonshire County Council **- and -**	**Applicant**
GZ **-and-**	**First Respondent**
RZ **-and-**	**Second Respondent**
DZ and MZ **(By their Children's Guardian)** **-and-**	**Third and Fourth Respondents**
The Secretary of State for the Home Department **-and-**	**First Intervenor**

The Secretary of State for Education **Second Intervenor**

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Mr Simon Miller (instructed by **Warwickshire County Council**) for the **Applicant**
The First Respondent appeared in person
The Second Respondent appeared in person
Mr Jason Green (instructed by **Johnson & Gaunt**) for the **Third and Fourth Respondents**

Case No. NN20C00122

Mr Edward Devereux QC and Mr Simon Miller (instructed by **Northamptonshire County Council**) for the **Applicant**
The First Respondent did not appear and was not represented
The Second Respondent did not appear and was not represented
Mr Henry Setright QC and Mr Greg Davies (instructed by **Bourne Martell Turner Coulston**) for the **Third and Fourth Respondents**
Mr Alan Payne QC (instructed by the **Government Legal Department**) for the **First and Second Intervenor**

Hearing dates: 25 March 2021 (CV20P01997) and 26 March 2021 (NN20C00122)

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 31 March 2021.

Mr Justice MacDonald:

INTRODUCTION

1. The applications made under the inherent jurisdiction of the High Court in the two cases with which this judgment is concerned each raise the following questions in the context of the operation of the United Kingdom's European Union Settlement Scheme (hereafter "the EUSS") with respect to children who are the subject of care orders made under Part IV of the Children Act 1989:

   i) Where the parent or parents of an EU national child who has been made the subject of a care order under Part IV of the Children Act 1989 (a) oppose an application being made on behalf of the child for immigration status under the EUSS or (b) cannot be located in order to ascertain whether they agree, does the local authority need the authorisation of the court to proceed with an application for immigration status under the EUSS with respect to the child, or may it proceed pursuant to the power conferred upon it by s.33(3) of the Children Act 1989.

   ii) Where the parent or parents of an EU national child who has been made the subject of a care order under Part IV of the Children Act 1989 (a) oppose an application being made on behalf of the child for passports or national identity documents to support an application for immigration status under the EUSS or (b) cannot be located in order to ascertain whether they agree, does the local authority need the authorisation of the court to proceed with an application for a passport or national identity card with respect to the child, or may it proceed pursuant to the power conferred upon it by s.33 of the Children Act 1989.

   iii) Where an EU national child who has been made the subject of a care order under Part IV of the Children Act 1989 requires a passport or national identity card to be issued by the EU Member State of the child's nationality in order to progress an application under the EUSS and (a) the parent or parents of the child oppose a passport or national identity card being issued or cannot be located in order to ascertain whether they agree and (b) in such circumstances the EU Member State requires a court order before it will issue a passport or national identity card, does the court have the power make such an order and, if so, what order?

2. In addition to the determination of these questions, the court has been assisted by the applicant local authority in each case filing evidence regarding their respective procedures for securing immigration status under the EUSS for looked after children and care leavers who are *not* the subject of care orders under Part IV of the Children Act 1989. Further, both the Secretary of State for the Home Department and the Secretary of State for Education accepted the invitation of the court to intervene in case number NN20C00122 in order to assist the court with requirements of, and the operation of the EUSS as it relates to looked after children. The court is grateful to the Secretaries of State for the assistance they have rendered to the court in this regard by way of comprehensive written submissions from Mr Payne of Queen's Counsel. Within this context, and at the invitation of the parties, this judgment also deals more generally with the position with regard to the EUSS of children looked after by the local authority who are not the subject of care orders.

3. Given that both cases before the court raise the same or similar questions, I heard them sequentially in the week commencing 22 March 2021 (a third case raising the same issues, and originally listed in the series, having settled). With the agreement of the parties in each case, I now hand down a single reserved judgment dealing with the relevant law and guidance and its application to the facts in each case. The judgment will be anonymised as appropriate when distributed to the parties in each of the cases and then anonymised *in toto* for publication on BAILII.

4. Finally, by way of introduction, it is important at the outset to note that between 10 July to 26 November 2020 the Home Office undertook a survey of local authorities in England, Wales and Scotland and of health and social care trusts in Northern Ireland to provide an estimate of the numbers of looked-after children and care leavers eligible to apply to the EUSS. The results of that survey indicated that the total number of looked after children and care leavers eligible to apply under the Scheme was 3,300, of which 2,080 were the subject of an interim care order, a care order or a placement order. As at 26 November 2020 the survey indicated that of those 3,300 eligible children and young people, 1,520 applications had been received. Of the 2,080 eligible children and young people in respect of whom there was in force an interim care order, a care order or a placement order, 890 had had an application to the Scheme made on their behalf by a local authority. The court was told that the Home Office is now repeating this survey in order to ascertain what further progress has been made in respect of applications to the EUSS for looked after children and other children with whom local authorities are concerned who are eligible to apply under the scheme.

5. Within this context, and where applications under the EUSS must be made before the deadline of 30 June 2021, it is *essential* that all local authorities understand and discharge the obligations towards eligible children in this regard in accordance with the law and guidance detailed in this judgment, so as to ensure that the entitlement of those children to remain in this jurisdiction, forming as it does a cardinal element of their stability, security and safety, is not jeopardised. As Holman J noted in *SM and TM and JD v Secretary of State for the Home Department* [2013] EWHC 1144 (Admin) at [51], it is unacceptable to leave children in a position of 'limbo' with respect to their immigration position as they develop and acquire a growing awareness of their circumstances. Rather, the necessary application must be dealt with in a timely manner that ensures the relevant deadline is met and minimises uncertainty for the subject child. Within this context, the guidance issued to local authorities by the Home Office in April 2020 and entitled *EU Settlement Scheme: Looked after children and care leaves: local authority and health a social care trust guidance* (hereafter "the local authority guidance") highlights the following:

> "In accordance with existing statutory duties the local authority or health and social care trust must, in all circumstances, seek to secure the best possible outcomes for the looked after child, safeguarding and promoting their best interests and acting as a good corporate parent to enable each looked after child to achieve their full potential in life. Addressing immigration issues early as part of any assessment and care plan, offering support and if necessary, seeking legal advice about the appropriate action based on the circumstances of the individual looked after child is an important part of these responsibilities."

BACKGROUND

6. The background to the two cases with which the court is concerned can be stated shortly for the purposes of determining the applications currently before this court in each case.

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7. In this first matter, the court is concerned with the welfare of PW, born in 2009 and now aged 11 and NW, born in 2011 and now aged 9. PW and NW are Polish nationals. Warwickshire County Council applies for orders under the inherent jurisdiction consenting to the issue by the Polish Embassy of new passports for PW and NW and permitting the local authority to apply for EU settled status under the Scheme for each of the children. Warwickshire is represented by Mr Simon Miller of counsel. The mother of the children is ML. The mother appears before the court in person. The father of the children is TW. The father also appears before the court in person. The children are represented by Mr Jason Green of counsel through their Children's Guardian, Fiona Dean.

8. The family settled in Warwickshire at the end of 2016, having previously been known to children's services in Poland. In July 2017, the children were made the subject of Child Protection Plans by reason of injuries suffered by the children, poor school attendance and poor home conditions. Care proceedings were commenced in early 2018 and the children were made the subject of interim care orders and placed in local authority foster care on 11 May 2018. On 14 February 2019, the court made final care orders in resect of the children and a placement order under the Adoption and Children Act 2002 in respect of NW. It was not possible to identify adopters for NW and on 12 March 2020 her care plan was amended to one of long term foster care in this jurisdiction, this also being the plan in respect of PW. On 19 November 2020, Warwickshire applied to revoke the placement order in respect of NW. That application is listed for determination in the Family Court sitting in Coventry in April.

9. Within this context, both children will require an application to be made for EU settled status under the EUSS. That application requires that the children be able to produce a passport or national identity card or, as will become apparent below, some alternative form or evidence of their identity or nationality. This court understands that there has been ongoing dispute between the parents as to who holds the passports for the children, with each having blamed the other for having lost them. In any event, it is clear on the evidence before the court that no valid Polish passports or national identity cards for the children have been identified or are available to support an application under the EUSS.

10. By an email dated 5 August 2020 to Warwickshire, the Polish Embassy confirmed its requirements with respect to any application made in respect of the children for Polish passports or national identity cards, as set out in documents entitled "Polish Passport Issuance Guidance" and "Polish Citizenship" provided by the Consular Section of the Polish Embassy, as follows:

> "According to the Polish Passport Documentation Act a written consent of all those with parental responsibility is required in order for a Polish Passport to be issued for a minor. This must be given in person by signing section 14 of passport application form during an appointment at the Consular Section. Both parents must have their valid passport or ID Cards if they are EU citizens. A Notary Public certified consent of a parent is also accepted. An original of the consent must be provided.
>
> When it is impossible to obtain consent of the parents, it is necessary to provide a Court's decision replacing such consent. It is recommended that a Court Order stipulating "for the purposes of passport issuance the consent of the father/mother is dispensed with' is obtained (Private Law cases - Specific Issue Order (C100 form); concluded Public Law cases – Order under High Court inherent jurisdiction (C66 from), open Public Law cases - Case Management Order). In addition to an original copy of the Order, approved and signed by the Court, the Certificate referred to in Article 39 of Council Regulation (EC) No. 2201/2003 of 27 November 2003(1) concerning judgments on parental responsibility must be acquired. The original documents, approved and signed by the Court must be provided at the passport appointment. This will allow a remaining responsibility holder to apply for a passport for a child without consent of other parent.
>
> When a child is Looked After, upon a presentation of respectively, an Interim Care Order, Care Order and the Order dealing with the consent along with an Article 39, Polish birth certificate and a photo, a passport application for a minor can be submitted by an authorized official from the Local Authority."

11. Within the foregoing context, the parents have each been requested to sign the relevant consent forms provided by the Polish Embassy to enable passport applications to be made for each of the children. The mother has agreed to do this, although her formal consent (which is required to be witnessed by a Notary Public) has not been received and, as I deal with below, her consent appears now to have become conditional in nature. The mother had also agreed to an application being made in respect of each of the children for immigration status under the EUSS but, again, her position has now altered somewhat. The father opposes both the issue by the Polish Embassy of new passports for the children and immigration status for the children under the EUSS. The father has set out his position, which is plainly bound up with his objection generally to the intervention by Warwickshire in his family, in copious correspondence sent by email to the local authority, which correspondence has been placed before the court. In addition, and pursuant to a direction made by this court on 24 February 2021 the father sent an email to the court on 12 March 2021 setting out his position, which email states as follows:

> "I refuse to give permission for settlement status and passports I do not want My children bonding with strangers any further I want them to be with their family ideally their Mother even though I am not a part of Her life anymore outside of being the father of My children and I would also love nothing more than to be a part of their lives even if insignificant family is very important to Me a Muslim Our values rely heavily on what parents teach their children about life and I feel like them being with non-Muslims

is taking away my right as their parent to teach them right and wrong based on the teachings of our creator and also I refute all evidence that social services and community has provided that has made Me seem unfit as a parent I have tried my best and made a few mistakes but I definitely know that My mistakes don't warrant Me being stripped of parenthood entirely."

12. In light of the position adopted by the father, on 8 October 2020 Warwickshire applied for permission to invoke the inherent jurisdiction of the High Court and for an order authorising Warwickshire to apply for a passport for each of the children. When the matter came before Mrs Justice Knowles on 1 February 2021 the court directed Warwickshire to amend its application to include an application for permission to apply for immigration status under the EUSS in respect of both children. Both applications are supported by the Children's Guardian. At the hearing on 1 February 2021 the court was informed by Ms Agata Górecka of the Care Proceedings Unit at the Polish Embassy in London that the granting to the children of immigration status in the UK under the EUSS will not have any negative impact upon the children's Polish citizenship. Both children would remain Polish citizens and would retain all of their rights in that jurisdiction.

13. At this hearing the local authority submits that, whilst it is desirous of making the necessary applications in respect of the children under the power conferred on it under s.33 of the Children Act 1989, it questions whether the applications fall within the small group of cases identified in the authorities I deal with below that require the courts' approval. The local authority submits that, in any event, in circumstances where, absent the parents' consent to passports or national identity cards being issued to the children, the Polish Embassy requires a court order dispensing with that consent, the court is able to and should make such an order under its inherent jurisdiction in this case. As I have alluded to above, whilst the mother has in the past indicated that she agrees to both applications being made, her position at this hearing was more equivocal, she making her agreement conditional on the children being returned to her care. The father reiterated his objection to the applications as set out in the correspondence to which I have referred. The Children's Guardian submitted that she did not seek to depart significantly from the submissions advanced on behalf of the local authority. On behalf of the Children's Guardian however, Mr Green pointed to aspects of the Home Office guidance that suggest that where passports or identity cards are not available by reason of parental opposition or unavailability then alternate forms of identification and proof of nationality acceptable to the Home Office can be sought, potentially negating the need for an application to be made to court for an order under the inherent jurisdiction dispensing with parental consent.

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14. In this second matter, I am concerned with the welfare of DZ, born in 2007 and now aged 13 and MZ, born in 2008 and now aged 12. Both children are Polish nationals. Northamptonshire County Council applies for orders under the inherent jurisdiction consenting to the issue by the Polish Embassy of new passports for DZ and MZ and permitting the local authority to apply for immigration status under the EUSS for each of the children. Northamptonshire is represented by Mr Edward Devereux of Queen's Counsel and Mr Simon Miller of counsel. The mother of the children is GZ. Whilst she has been served with proceedings and notice of this hearing, the mother has not participated in the proceedings to date. The father is RZ. As with the mother,

whilst he has been served with the proceedings and notice of this hearing, he has not participated in the proceedings to date. The children's interests are represented by Mr Henry Setright of Queen's Counsel and Mr Greg Davies of counsel through their Children's Guardian, Lola Nicholas. The children are placed with their maternal great cousin, WH. WH has the benefit of a positive special guardianship assessment dated 27 November 2020 in respect of both children and the care plan for both children is to be placed with her under a special guardianship order. WH has settled status in the United Kingdom under the EUSS.

15. The children first came to the attention of children's services in October 2017. Both children were said to be homeless and were being left alone. In February 2019 the case was closed following the family securing accommodation. In April 2019 DZ made an allegation of physical abuse by her mother and father and was noted not to have been at school for six months. In June 2019 the children were made the subject of Child Protection Plans due to neglect. The case was again closed in January 2020. In March 2020 Northamptonshire again received a referral in respect of the children following the family becoming homeless again, allegations of drug use by the parents and further allegations by DZ of physical violence by the father. The children were placed with WH on 15 March 2020 pursuant to s.20 of the Children Act 1989 and proceedings under Part IV of the 1989 Act were issued on 19 August 2020.

16. It is apparent that, whilst not participating in the proceedings, the parents have indicated, on occasion, that they do not consent to Polish passports or national identity cards being obtained for the children, which cannot be located for either child. On 27 January 2021, having ascertained from the Polish Embassy the legal requirements for obtaining Polish passports for the children as set out above, Northamptonshire sent a letter to each parent informing them that Northamptonshire intended to make an application to the court for orders enabling passport applications to be made to the Polish Embassy. A copy of the application and the statement in support was provided to each parent. On that same date Northamptonshire made an application to the High Court for permission to invoke the inherent jurisdiction and for an order dispensing with the consent of the parents so Polish passports could be applied for in respect of each child.

17. The matter came before Mrs Justice Knowles on 1 February 2021, at which hearing the court raised the question of immigration status for the children and their proposed carer under the EUSS. In response, on 22 February 2021 Northamptonshire issued a further application under the inherent jurisdiction for an order permitting the local authority to apply for immigration status under the EUSS for each of the children.

18. At this hearing the local authority submits that the appropriate route for the applications for immigration status under the EUSS and the passports or national identity cards required to progress that application is that provided by s.33 of the Children Act 1989. As I have noted, neither parent appears before the court and neither parent has engaged in the proceedings. In her written submissions, the Children's Guardian submitted that the court should grant the applications made by the local authority under the inherent jurisdiction of the High Court. However, during their oral submissions, Mr Setright and Mr Davies did not seek to dispute the proposition that, ordinarily, the appropriate route for the applications for immigration status under the EUSS and for the passports or national identity cards required to progress that application is that provided by s.33 of the Children Act 1989.

THE RELEVANT LAW AND GUIDANCE

The EU Settlement Scheme

19. Under the terms of the Immigration Act 1971, save for those with a right of abode, Irish citizens and those persons who are exempt from immigration control, every person requires leave to enter or to remain in the United Kingdom. Prior to 11.00pm GMT on 31 December 2020, EU, other European Economic Area (EEA) citizens and Swiss citizens and their family members did not require leave to enter or remain in the UK by reason of having rights of entry in accordance with the EU Treaties and the Free Movement Directive 2004/38/EU, as given effect in domestic law by the Immigration (European Economic Area) Regulations 2016.

20. With effect from 11pm GMT on 31 December 2020, the Immigration (European Economic Area) Regulations 2016 were repealed by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, bringing to an end freedom of movement between the UK and the EU. Accordingly, as a result of the departure of the United Kingdom from the European Union, citizens of the EU, EEA and Swiss citizens and their family members will no longer be able to rely on the EU right of freedom of movement to remain in the UK.

21. Part 2 of the Withdrawal Agreement between the UK and the EU, reached on 17 October 2019 and given effect in UK law by the European Union (Withdrawal Agreement) Act 2020, sets out the provisions of the Treaty concerning citizens' rights. Those provisions, and similar provisions in agreements with the EEA and with Switzerland, govern the rights of EU, other EEA citizens and Swiss citizens who were residing in the UK prior to 11.00pm GMT on 31 December 2020. Pursuant to this arrangement, EU, other EEA citizens and Swiss citizens who were resident in the UK prior to 11pm GMT on 31 December 2021 can continue to exercise their right to reside in accordance with the Free Movement Directive, provided they continue to meet the conditions of that Directive. However, pursuant to Art 18 of the Withdrawal Agreement, the UK has decided to require EU, other EEA citizens and Swiss citizens who wish to continue to take advantage of their rights under the Withdrawal Agreement *beyond* the end of a grace period terminating on 30 June 2021 to apply for a new immigration status in the UK.

22. Within the foregoing context, the UK set up the EUSS, under which EU, other EEA citizens and Swiss citizens can now seek immigration clearance to enter or remain in the UK. In accordance with the Citizen's Rights (Application Deadline and Temporary Protection)(EU Exit) Regulations 2020, the residence rights of EU, other EEA citizens and Swiss citizens who were resident in the UK in accordance with EU law *prior* to 31 December 2020 are 'saved' until those persons are granted leave under the EUSS, or until 30 June 2021 unless they have an outstanding application under the EUSS, in which case their rights remain "saved" until the application is determined and/or any rights of appeal against refusal have been exhausted.

23. The EUSS is constitutive (conferring the power to grant settled status) rather than declaratory in nature. In the circumstances, those seeking immigration status under the EUSS must make an application. The application must be made using the prescribed applications process. In order to make a valid application the applicant must supply the required proof of identity and nationality. I deal with this in greater detail below. There is no application fee where the application concerns a child looked after by a local authority. The position of the Secretary of State for the Home Department and the Secretary of State for Education is that parental consent is not required for a valid application by a child under the EUSS, as the rights from which eligible children benefit under the Withdrawal Agreement are not dependent on parental agreement.

24. The immigration status granted under the EUSS is either indefinite leave to enter, where the application is made outside the UK, or indefinite leave to remain, where the application is made within the UK (also referred to for the purposes of the scheme as "settled status"), or five years' limited leave to enter, where the application is made outside the UK, or five years' limited leave to remain, where the application is made within the UK (also referred to as "pre-settled status"). Settled status is ordinarily granted where the applicant completed a five year continuous qualifying period in the UK and pre-settled status is ordinarily granted where the continuous qualifying period is less than five years.

25. The EUSS concerns *only* the question of *immigration* status. Whilst a person who has had settled status under the EUSS for a period of 12 months may thereafter apply for British Citizenship, settled status does *not* in itself affect the citizenship of the EU, EEA or Swiss citizen in question for the purposes of UK law. Mr Payne further points out that making an application under the EUSS will not prevent the child from later applying for leave under another immigration route should he or she wish to. In the two cases before the court, the Polish Embassy has confirmed that the granting of settled status to the children under the EUSS will not affect the children's status as Polish citizens nor their rights in that country under the law of Poland. In his written submissions, Mr Payne sets out the position of the Secretary of State for the Home Department and the Secretary of State for Education on this issue more widely as follows:

> "The Government worked with the EU Member States and the European Commission to develop an immigration route which enables eligible EEA citizens who were resident in the UK prior to the end of the transition period, including their family members, and including the most vulnerable citizens, to continue living in the UK following the UK's departure from the EU. It is difficult to foresee (and indeed a case has not arisen) where an EU Member State would not support an application being made to the EUSS on behalf of an eligible child."

26. The EUSS opened on 30 March 2019 and, as I have noted, the deadline for applications to be made is 30 June 2021. *In R (on the application of Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department)* [2021] EWHC 638 (Admin) Lieven J refused an application for permission to judicially review the scheme on the grounds, inter alia, that the scheme, including its deadline for applications of 30 June 2021, discriminated against those with protected characteristics, including children. Lieven J noted in *R (on the application of Joint*

Council for the Welfare of Immigrants) v Secretary of State for the Home Department, the Scheme contains provision for late applications albeit detailed criteria against which such late applications will be measured had not yet been published. However, the relevant Home Office Policy Equality Statement provides, and the guidance to caseworkers entitled *EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members* (hereafter "the Caseworker Guidance) published on 19 January 2021 reiterates, that a late application may be made where there are "reasonable grounds" for the failure to meet the deadline, which reasonable grounds will include "children whose parent, guardian or local authority fails to apply on their behalf." In his written submissions on behalf of the Secretary of State for the Home Department and the Secretary of State for Education Mr Payne posits a situation in which an 8 year old looked after child discovers, on reaching the age of majority, that a local authority has failed to make an application under the EUSS as being an example of a situation that could constitute "reasonable grounds" for a late application. However, it is important to note that a person who has not made an application by the deadline of 30 June 2021 will at that point become undocumented, with the concomitant impact on access to services and benefits and liability to removal.

27. Within the foregoing context, and as I have noted, the Secretary of State for the Home Department has issued guidance to local authorities highlighting the need to secure settled status for looked after children for whom they are responsible who are EU, other EEA or Swiss citizens. The local authority guidance sets out the role that local authorities and health and social care trusts have in ensuring that looked after children and care leavers in applying or assisting the child to apply under the EUSS. Within this context, Mr Payne makes clear in his written submissions that the Secretary of State for Education takes the view that the steps required of a local authority to make or assist in making applications under the EUSS on behalf of a looked after child safeguard and promote the welfare of that child and, accordingly, fall within the ambit of s. 33(3) of the Children Act 1989, or s.25 of the Adoption and Children Act 2002 where the child is the subject of a placement order.

28. The local authority guidance issued by the Home Office highlights the following *mandatory* obligations on local authorities and health and social care trusts with respect to applications under the Scheme for looked after children and care leavers:

i) To identify adequately trained resources to manage and make applications under the EUSS;

ii) To identify children who are eligible to make an application under the EUSS, including looked after children for whom the local authority has parental responsibility, looked after children who are accommodated, care leaves and any other children in receipt of local authority support, including children in need;

iii) To implement plans to ensure that signposting support for each eligible child takes place;

iv) To determine whether in respect of each child for whom the local authority has parental responsibility whether an application will be made.

v) To keep an adequate record of each application made, including the status granted as a result of the application.

vi) To record plans for monitoring the child's status, including future actions required in respect of children who have been granted pre-settled status to convert this to settled status at an appropriate point in the child's care plan or care leaver's pathway plan.

29. Within this context, the local authority guidance stipulates that where an EU, other EEA or Swiss citizen child is looked after under a care order or interim care order made under Part IV of the Children Act 1989, or a placement order is in force pursuant to s. 21 of the Adoption and Children Act 2002, the local authority *must* ensure an application under the EUSS is made, either by applying on behalf of the child or supporting the child to make the application. This statutory guidance also applies to Wales, albeit under the auspices of the Social Services and Wellbeing (Wales) Act 2014. The Office of the Immigration Service Commissioner has confirmed that, where a care order is in force with respect to the child, the local authority can advise and act for the child in relation to an application under the Scheme without the need for such advice and services to be regulated by the OISC or another designated qualifying regulator. It is submitted on behalf of the Secretary of State for the Home Department and the Secretary of State for Education that in the great majority of cases it will be in the best interests of a child who is subject to a care order, or a placement order, to achieve an immigration status under the EUSS or other immigration route in circumstances where acquisition of settled or pre-settled status protects the children's *existing* rights.

30. Whilst the two cases before the court concern children who are looked after by reason of being the subject of care orders made under Part IV of the Children Act 1989 or, in the case of NW in the Warwickshire case, a placement order under the Adoption and Children Act 2002, the need to make an application under the EUSS will also apply to EU, EAA and Swiss national children who are looked after by reason of being accommodated by the local authority under s.20 of the Children Act 1989, in respect of whom the local authority has a duty to provide ongoing support as care leaves under ss. 23A to 24D of the Children Act 1989 and the Care Leavers (England) Regulations 2010 and to those in receipt of local authority support, including children in need for the purposes of s.17 of the Children Act 1989.

31. Within this context, the local authority guidance from the Home Office further stipulates that, in relation to EU, other EEA or Swiss citizen children who are looked after by reason of being accommodated by a local authority pursuant to s.20 of the Children Act 1989, the local authority should ensure that those with parental responsibility for the children are aware of the need to make an application to the EUSS, signpost them to the EUSS, explain its importance, offer practical support and monitor closely the progress of any application. The local authority should also ensure that all eligible looked after children are aware of their eligibility to apply in circumstances where a child may make his or her own application. With respect to EU, other EEA or Swiss citizen children accommodated by the local authority for whom there is no one who holds parental responsibility or the child is lost or abandoned, the local authority guidance enjoins local authorities to consider carefully how best to safeguard and promote the welfare of that child in accordance with the duties of the local authority under s.22(3) of the Children Act 1989.

32. With respect to young people for whom the local authority has a duty to provide ongoing support as care leaves under ss. 23A to 24D of the Children Act 1989 and the Care Leavers (England) Regulations 2010 or Care Leavers (Wales) Regulations 2015, the local authority guidance stipulates that ensuring that care leavers secure status through the EUSS is relevant to the local authorities' statutory responsibilities under the 1989 Act and the 2010 and 2015 regulations. Within the context, the guidance requires local authorities to identify care leavers who may be eligible to apply to the EUSS and offer them support to ensure that they make an application. Where a care leaver is granted pre-settled status a plan for applying to convert this into settled status should be documented in the care leaver's pathway plan.

33. Finally, not every child with whom the local authority is concerned will be looked after for the purposes of the Children Act 1989. Within this context, the local authority guidance makes clear that the obligation on local authorities to identify children who are eligible to make an application under the EUSS and provide support extends to and any other children in receipt of local authority support, including children in need.

34. With regard to the cohorts of children falling within the categories I have summarised in the foregoing paragraphs, the local authority guidance emphasises that their wishes and feelings should always be considered and that such children should be made aware of their entitlement to independent advocacy support and the local authority or health and social care trust should facilitate this access where required.

35. Verifying identity and nationality is a *key* requirement of the EUSS. The applicant must satisfy the requirements of the immigration rules in this regard, which include the requirement to provide proof of identity and nationality. This will ordinarily comprise a valid passport or national identity card. Within this context, with respect to children and young people, I note that the local authority guidance stipulates as follows:

> "If a child or young person does not have a valid passport or national identity card (for EEA citizens) or a valid passport or Home Office-issued biometric residence card or biometric residence permit (for non-EEA nationals) confirming their identity and nationality, it is important that the local authority or health and social care trust endeavours to obtain a passport or national identity card for the child or young person from the authorities of their country of origin before an application to the scheme is made."

36. However, and importantly in the context of the two cases before this court, the immigration rules provide the Secretary of State for the Home Department with a discretion to accept *alternative* evidence of identity and nationality where the applicant is unable to obtain or produce the required documentation due to circumstances beyond their control or to compelling practical or compassionate reasons. Within this context, and where the Home Office survey of local authorities in England, Wales and Scotland and of health and social care trusts in Northern Ireland undertaken from 10 July to 26 November 2020 revealed lack of sufficient identity documents as the biggest barrier to making an application under the EUSS with respect to a looked after child, the local authority guidance *expressly* recognises that there may be cases in which it is not possible to obtain a passport or national

identity card for the child and that the EUSS application can be supported by alternative evidence of identity and nationality. In particular, and consistent with Art 18(1)(o) of the Withdrawal Agreement, in this context I note the following passage from the Caseworker Guidance that deals with looked after children who do not have the required proof of identity and nationality (emphasis added):

> "The applicant is to be asked to produce alternative evidence of their identity and nationality (see Other supporting information or evidence below), where the applicant is a child under the age of 18 in local authority care and both:
>
> - the required document has been lost or destroyed, or was never obtained or provided;
>
> - either:
>
>   - there is satisfactory evidence that it is not in the best interests of the child for the local authority to obtain the required document on their behalf, such as where doing so may risk the child, contrary to their own best interests, leaving local authority care;
>
>   - there are significant practical barriers to obtaining the required document, *such as the national authority requiring the consent of both parents, but the parents are absent or un-cooperative*."

37. Within this context, Mr Payne on behalf of the Secretaries of State highlights in his written submissions the existence and work of the Home Office Settlement Resolution Centre. The Settlement Resolution Centre is open 7 days a week to provide support for applicants over the telephone, or by e-mail. This centre is staffed by caseworkers in the EUSS who deal with queries that can be raised by phone or by email. Mr Payne informs the court that local authorities have a dedicated phone line with which to contact case workers to discuss EUSS applications involving looked after children, including cases where the child does not have the required proof of identity or nationality. Mr Payne informs the court that the Home Office is providing support to local authorities in a range of formats, including one to one support, in order to assist in ensuring that necessary applications under the EUSS are made on behalf of looked after children, care leaves and children and young people supported by the local authority.

38. Within the foregoing legal and procedural structure, with respect to applications under the EUUS, I note that paragraph 1.15 of the Statement of Intent on the EU Settlement Scheme, published on 21 June 2018 states as follows:

> "The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative

> burdens. User-friendly guidance will be available online to guide applicants through each stage of the application process."

39. Further the relevant Home Office Policy Equality Statement, published in November 2020, states as follows with regards to the position of children with respect to the scheme:

> "[370] Age is a protected characteristic under the public sector equality duty in section 149 of the Equality Act 2010, and we have carefully considered the impact of the EUSS on children. The provision made has regard to Article 3 of the UN Convention on the Rights of the Child and reflects the duty on the Secretary of State to take account of the need to safeguard and promote the welfare of children in the UK in carrying out her immigration, asylum and nationality functions, as reflected in section 55 of the Borders, Citizenship and Immigration Act 2009.
>
> [371] Children who are within the scope of the agreements will be able to secure their rights of residence in the UK through the EUSS. The Government is committed to ensuring that the application system under the EUSS is user-friendly and streamlined for all applicants, including children. Caseworkers will be looking for reasons to grant applications under the EUSS, not reasons to refuse – exercising discretion in favour of applicants where appropriate, to minimise administrative burdens. Where there are reasonable grounds for an application to the EUSS not having been made by 30 June 2021 by a person resident here by the end of the transition period, they will be given a further opportunity to apply. This will include where a parent, guardian or local authority has not made the application on their behalf."

40. Finally, and within the foregoing context, the Caseworker Guidance imposes the following requirements on caseworkers with respect to the best interests of the child:

> "The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child under the age of 18 in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means that consideration of the child's best interests must be a primary consideration in immigration decisions affecting them. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that we give practical effect to these obligations. Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child. Although the duty in section 55 only applies to children in the UK, the statutory guidance – Every Child Matters – Change for Children – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the

> authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children and reduce the risk of trafficking and exploitation."

Children Act 1989 and Adoption and Children Act 2002

41. Section 3(1) of the Children Act 1989 defines the parental responsibility as follows:

> **"3 Meaning of "parental responsibility"**
>
> (1) In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

42. Section 33 of the Children Act 1989 provides as follows with respect to the exercise by the local authority of parental responsibility whilst a care order is in force with respect to a child:

> "**33 Effect of care order.**
>
> (1) Where a care order is made with respect to a child it shall be the duty of the local authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force.
>
> (2) Where—
>
> (a) a care order has been made with respect to a child on the application of an authorised person; but
>
> (b) the local authority designated by the order was not informed that that person proposed to make the application,
>
> the child may be kept in the care of that person until received into the care of the authority.
>
> (3) While a care order is in force with respect to a child, the local authority designated by the order shall—
>
> (a) have parental responsibility for the child; and
>
> (b) have the power (subject to the following provisions of this section) to determine the extent to which —
>
> (i) a parent, guardian or special guardian of the child; or
>
> (ii) a person who by virtue of section 4A has parental responsibility for the child,
>
> may meet his parental responsibility for him.
>
> (4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.
>
> (5) Nothing in subsection (3)(b) shall prevent a person mentioned in that provision who has care of the child from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(6) While a care order is in force with respect to a child, the local authority designated by the order shall not—

(a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or

(b) have the right—

(i) [Repealed]

(ii) to agree or refuse to agree to the making of an adoption order, or an order under section 84 of the Adoption and Children Act 2002, with respect to the child; or

(iii) to appoint a guardian for the child.

(7) While a care order is in force with respect to a child, no person may—

(a) cause the child to be known by a new surname; or

(b) remove him from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(8) Subsection (7)(b) does not—

(a) prevent the removal of such a child, for a period of less than one month, by the authority in whose care he is; or

(b) apply to arrangements for such a child to live outside England and Wales (which are governed by paragraph 19 of Schedule 2 in England, and section 124 of the Social Services and Well-being (Wales) Act 2014 in Wales).

(9) The power in subsection (3)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a person mentioned in that provision has in relation to the child and his property by virtue of any other enactment."

43. The provisions of s. 33 of the Children Act 1989 are replicated in s. 25 of the Adoption and Children Act 2002 in respect of children who have been placed for adoption, or in respect of whom the adoption agency is authorised to place them for adoption, pursuant to s. 19 of the 2002 Act or children in respect of whom a placement order made pursuant to s. 21 of the 2002 Act is in force. Section 25 of the Adoption and Children Act 2002 provides as follows:

"**25 Parental responsibility**

(1) This section applies while—

(a) a child is placed for adoption under section 19 or an adoption agency is authorised to place a child for adoption under that section, or

(b) a placement order is in force in respect of a child.

(2) Parental responsibility for the child is given to the agency concerned.

> (3) While the child is placed with prospective adopters, parental responsibility is given to them.
>
> (4) The agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination."

44. Pursuant to s.33(4) of the Children Act 1989, when exercising its power to determine, pursuant to s.33(3)(b) of the Act, the extent to which a parent may meet his or her parental responsibility for the child, the local authority must consider whether it is satisfied that it is necessary to take that course in order to safeguard or promote the child's welfare. Although directory in nature rather than mandatory (see *Re P (Children Act 1989 ss 22 and 26: Local Authority Compliance)* [2000] 2 FLR 910), in making any decision in respect of a child who is looked after by reason of being in the local authority's care, pursuant to s.22(1)(a) of the 1989 Act, the local authority is under a duty pursuant to s.22(4) of the Act, so far as is reasonably practicable, to ascertain the wishes and feelings of the child, his or her parents and any other person whose wishes and feelings the local authority considers to be relevant to the issue to be decided and, pursuant to s. 22(5), to give due consideration to the same. By virtue of the Adoption Agencies Regulations 2005 r. 45(2)(a) this duty does not apply with respect to a child who is the subject of a placement order.

45. Within the foregoing context, it has long been recognised that there are some decisions with respect to a child's welfare that are of such import or gravity that it would not be appropriate for the local authority to proceed to take a decision pursuant to the power conferred on it by s.33(3)(b) of the 1989 Act. In such cases, the courts have held that the decision in issue may be referred to the court for determination. As to the boundary between those decisions that are appropriately dealt with by a local authority pursuant to the power conferred by s.33(3)(b) of the Children Act 1989, and those decisions that are appropriately referred to the court for determination, three decisions of the Court of Appeal require consideration.

46. In *Re C (Children)* [2016] EWCA Civ 374, the Court of Appeal was required to consider whether the High Court had jurisdiction to prevent a parent with parental responsibility from registering a child with the forename of their choice and, if so, by what procedural route the court should exercise that power. In describing the effect of s.33(3) of the Children Act 1989, giving the lead judgment Lady Justice King noted as follows at [59]:

> "[59] A local authority can, by virtue of the power conferred upon it by section 33(3) of the Children Act1989, therefore limit the power of a parent to make major decisions regarding a child's life. The local authority effectively holds a 'trump' card, which it can choose to play, in the decision making process in relation to a child in care subject to section 33(4) of the Children Act 1989. An example of the use to which this power is routinely (and appropriately) put is in deciding where a child in care is to live."

47. However, King LJ went on to hold that whilst a local authority may have a statutory power under s.33(3)(b) to take major decisions regarding the life of a child who is the subject of a care order, there is a small category of cases where, notwithstanding the local authority's power under section 33(3)(b) of the 1989 Act, the consequences of

the exercise of a particular act of parental responsibility are so profound and have such an impact on either the child him or herself, and/or on the Art 8 rights of those other parties who share parental responsibility with a local authority, that the matter should come before the court for its consideration and determination. In that small category of cases, King LJ considered that the residual inherent jurisdiction of the High Court in relation to children provided the correct procedural vehicle for that course of action to be taken, subject to the requirements of ss.100(4) and 100(5) of the Children Act 1989 being satisfied, there being no procedural route within s. 33(3) of the Act, or by way of a general "catch all" within the Act, whereby a local authority can bring before the court a case in which the court's guidance is needed as to the use by a local authority of its powers under s. 33(3)(b) of the 1989 Act.

48. In *Re H (A Child)(Parental Responsibility: Vaccination)* [2020] EWCA Civ 664 the Court of Appeal was required to decide whether routine vaccination was an exercise of parental responsibility that fell within the ambit of s.33(3)(b) (as Hayden J had decided in *London Borough of Tower Hamlets v M, F and T* [2020] EWFC 4) or one which required the consideration and approval of the court under the inherent jurisdiction (as this court had decided in *Re SL (Permission to Vaccinate)* [2017] EWHC 125). In reiterating that there is a small category of cases where, notwithstanding the local authority's power under section 33(3)(b) of the Children Act 1989, the consequences of the exercise of a particular act of parental responsibility are so profound that the matter should come before the court for its consideration and determination, giving the lead judgment Lady Justice King observed at [27] that the category of such cases is not closed, but that they will chiefly concern decisions with profound or enduring consequences for the child.

49. In *Re H (A Child)(Parental Responsibility: Vaccination)* the Court of Appeal held that routine vaccination under the United Kingdom public health programme, in circumstances where there was no contra-indication in relation to the child in question and the link between the MMR vaccine and autism had been definitively disproved, could *not* be regarded as decision of such magnitude that it would be wrong for a local authority to use its power under s. 33(3)(b) to override the wishes or views of a parent, was not a decision that belonged to that small group of cases justifying recourse to the inherent jurisdiction. Within this context, the Court of Appeal considered that the decision to have the child vaccinated was an exercise of parental responsibility that fell within the ambit of s.33(3)(b) and could be taken by the local authority in the face of parental objection. King LJ further made clear that whilst the parents views must be taken into account, the matter is not to be determined by the strength of the parental view unless the view has a real bearing on the child's welfare.

50. Within the foregoing context, King LJ also reiterated the importance of the criteria for granting leave to invoke the inherent jurisdiction under s. 100(4) of the Children Act 1989 and, in particular, the requirement under s.100(4)(b) that there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he or she is likely to suffer significant harm:

> "If MacDonald J was of the view that a healthy child is likely to suffer significant harm simply because he is not being vaccinated, I cannot agree. In my judgment, here lies the ultimate difficulty in the use of the inherent jurisdiction by a local authority in a routine immunisation case via the portal of s.100 CA 1989. If a parent in respect of whom there are no care

> proceedings cannot be considered to be causing a child to be likely to suffer significant harm when they decide not to vaccinate their child, I cannot see how can it be said now, for the purposes of s.100(4)(b), that that very same refusal on their part provides reasonable cause to believe that the child is likely to suffer significant harm if the inherent jurisdiction is not exercised."

51. Most recently, the Court of Appeal considered the operation of s.33(3) of the Children Act 1989 in *Re Y (Children in Care: Change of Nationality)* [2020] EWCA Civ 1038. In that case, the Court of Appeal was required to decide whether the statutory power conferred upon a local authority by s. 33(3) of the 1989 Act permitted the local authority to take steps to apply for British citizenship for the subject children in the face of parental opposition and where that course may lead to a loss of their existing citizenship, or whether the local authority needed first to seek the approval of the court.

52. Giving the lead judgment in *Re Y (Children in Care: Change of Nationality)*, Lord Justice Peter Jackson concluded that, in circumstances where changing a child's citizenship is a momentous step with profound and enduring consequences that requires the most careful consideration, it would not appropriate for the local authority to proceed under s.33(3) of the Children Act 1989 in the face of parental opposition and where that course may lead to a loss of their existing citizenship, with an application being required under the inherent jurisdiction if the local authority sought to pursue that course. However, Peter Jackson LJ considered that in cases where it is possible for a child to have dual citizenship, where "the child is gaining a benefit and losing nothing", the local authority may rely on its general statutory powers within this context. Peter Jackson LJ further drew a distinction between the question of citizenship and steps required to regularise the *immigration* status of the subject children in this jurisdiction short of citizenship. In this respect, Peter Jackson LJ observed at [20] that (emphasis added):

> "[20] The children's *immigration status*, as opposed to the question of nationality, could and should have been addressed within the existing proceedings. The judge is not to be criticised for not doing so: she was dealing with more immediate issues in difficult circumstances, but it is clear that this important question did not receive the attention it required. Even so, the court would surely have approved steps being taken to regularise the children's *immigration position*, short of an application for citizenship, and such steps can now be taken by the local authority under its s.33 powers. The integrity of the care orders is unaffected by this appeal."

53. The foregoing exposition of the applicable legal principles leaves the question of what action can be taken by a parent with parental responsibility where that parent objects to the course of action the local authority intends, properly, to take under the power conferred upon it by s. 33(3) of the Children Act 1989 without recourse to the court. In *Re H (A Child)(Parental Responsibility: Vaccination)* King LJ held at [99] that:

> "[99] It is axiomatic that any local authority must involve parents in decision-making and take their views into account. Section 33 of the Children Act 1989 is not an invitation to local authorities to ride roughshod over the wishes of parents whose children are in care. As was recognised by the judge at paragraph [17], in the event that a local authority proposes to

> have a child vaccinated against the wishes of the parents, those parents can make an application to invoke the inherent jurisdiction and may, if necessary, apply for an injunction under section 8 Human Rights Act 1998 to prevent the child being vaccinated before the matter comes before a court for adjudication."

54. In *Re Y (Children in Care: Change of Nationality)* Peter Jackson LJ was more circumspect about the efficacy of such an approach, observing at [23] that:

> "It is no answer to say that the remedy for dissenting parents is to take legal action against the local authority. The difficulties with this course were touched upon in *Re C* at [76]. Further, for many parents, and particularly those whose immigration status is insecure, that will not be an effective remedy. They will only have legal representation within care proceedings, and they may have neither the knowledge nor the means to seek an injunction under the Human Rights Act or to bring judicial review proceedings. It is conceded that an application to discharge the care order would be disproportionate. Similarly, the children themselves have a central interest in the matter and in the absence of proceedings they will not have a Children's Guardian and will not be legally represented."

The Inherent Jurisdiction

55. As I have noted, the foregoing decisions of the Court of Appeal recognise the existence of a small group of cases where the decision in issue is of such magnitude that it would be wrong for a local authority to use its power under s.33(3)(b) to override the wishes or views of a parent and, accordingly, the matter should be brought before the court by way of an application under the inherent jurisdiction.

56. In cases concerning the exercise by the High Court of the inherent jurisdiction with respect to children, the starting point is s. 100 of the Children Act 1989, which provides as follows:

> "**100 Restrictions on use of wardship jurisdiction**
>
> (1) Section 7 of the Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.
>
> (2) No court shall exercise the High Court's inherent jurisdiction with respect to children—
>
> > (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
> >
> > (b) so as to require a child to be accommodated by or on behalf of a local authority;
> >
> > (c) so as to make a child who is the subject of a care order a ward of court; or
> >
> > (d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.

(4) The court may only grant leave if it is satisfied that—

(a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(5) This subsection applies to any order—

(a) made otherwise than in the exercise of the court's inherent jurisdiction; and

(b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted)."

57. In commenting on the effect of s. 100 of the 1989 Act in *Re H (A Child)(Parental Responsibility: Vaccination)* at [28] and [29], King LJ observed with respect to the section that:

> "At first blush, the rather difficult terms of s.100 of the Children Act 1989, would seem to preclude a local authority from using the inherent jurisdiction of the High Court as an alternative route to its powers under s.33(3)(b) of the Children Act 1989…The use of the inherent jurisdiction by a local authority, with permission granted under s.100, is nevertheless the route which is now approved and adopted in certain difficult cases, although in most serious medical treatment cases the local authority with care of a child will encourage/request the relevant NHS Trust to initiate proceedings."

58. Within this context, the Family Procedure Rules 2010 provide as follows in PD12D at para 1.1. with respect to the use of the inherent jurisdiction:

> "It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989."

59. The court has previously held in a different context, albeit a statutory one provided by s. 37 of the Senior Courts Act 1981, that the High Court can make orders in support of the rights conferred on a local authority by s.33 of the Children Act 1989 (see *Re P (Care Orders: Injunctive Relief)* [2000] 2 FLR 385).

DISCUSSION

60. With respect to the first two questions posed at the outset of this judgment, I am satisfied that:

    i) Where the parent or parents of an EU, EEA or Swiss national child who has been made the subject of a care order under Part IV of the Children Act 1989 (a) oppose an application being made on behalf of the child for immigration status under the EUSS, or (b) cannot be located in order to ascertain whether they agree, in making the application to the EUSS on behalf of the child the local authority will ordinarily be entitled to proceed under the power conferred upon it by s.33(3) of the Children Act 1989 and will *not* first require the approval of the court.

    ii) Where the parent or parents of an EU, EEA or Swiss national child who has been made the subject of a care order under Part IV of the Children Act 1989 (a) oppose an application being made on behalf of the child for passports or national identity documents to support an application for EU settled status, or (b) cannot be located in order to ascertain whether they agree, in making the application for the passport or identity document the local authority will ordinarily be entitled to proceed under the power conferred upon it by s.33 of the Children Act 1989 and will *not* first require the approval of the court.

61. My reasons for so deciding on the basis of the evidence and submissions before the court are as follows.

62. With respect to the instances of the exercise of parental responsibility that are in issue before this court, the starting point must be s.33(3) of the Children Act 1989 in circumstances where there are care orders in force and, in relation to NW, s.25 of the Adoption and Children Act 2002 where a placement order is in force. By these statutory provisions Parliament intended a local authority which has been granted parental responsibility in respect of a child by operation of law to be able, following a rigorous procedural and legal process undertaken before a court prior to the granting of such orders and if necessary to safeguard and promote the child's welfare, to limit the power of a parent to make major decisions regarding a child's life and instead to take those decisions in place of the parent by exercising its parental responsibility for the child.

63. On the face of s.33 of the 1989 Act the only limits placed on the exercise of the power conferred by it on a local authority relate to fundamental changes with respect to the child. By s.33(6) the local authority is not permitted to cause the child to be brought up in a different religion. Nor does it have the right to consent to the child's adoption or to appoint a guardian for the child. The only limitations by way of a requirement to seek the sanction of the court those pursuant to s. 33(7) of the Act, namely with respect to a change to the child's surname or the removal of the child from the jurisdiction. Beyond these limitations, and subject to the decision in question being necessary to safeguard and promote the welfare of the child, the power conferred by s.33(3) on a local authority is not otherwise circumscribed. The same position pertains with respect to s. 25 of the 2002 Act. Further, there is no provision in s.33 itself, or in s.25 of the 2002 Act, for a parent to dispute the decision of the local authority, although it is open to the parent to apply to discharge the care order, or revoke the placement order, and, with respect to care orders, pursuant to s. 22(4) of the 1989 Act the local authority must ascertain and have regard to the wishes and

feelings of the parent with respect to the decision in question. Once again, this position is consistent with the fact that the powers under s.33(3) of the 1989 Act and s.25 of the 2002 Act arise only once an order has been granted following a rigorous procedural and legal process undertaken before a court, in which both the parents and the child are represented and are heard and at the conclusion of which, the court has decided it is in the child's best interests to circumscribe the operation of the parents' parental responsibility by making an order.

64. Within the foregoing context, it is clear why the line of Court of Appeal authority that I have set out above has repeatedly made plain that, whilst there exists a small, open category of cases in which it will remain appropriate for issues regarding the exercise of parental responsibility by a local authority to be placed before the court, that procedure is *only* justified where the consequences of the exercise of a particular act of parental responsibility are *so* profound or enduring and have such an impact on either the child him or herself, and/or on the Art 8 rights of those other parties who share parental responsibility with a local authority, that it would be wrong for a local authority to use its power under s33(3)(b) (or, by parity of argument, under s.25 of the 2002 Act where there is a placement order in force) to override the wishes or views of a parent and the matter should come before the court for its consideration and determination.

65. Having regard to the consequences for the child of a successful application for immigration status under the EUSS and, where necessary, for a passport or national identity card from their home State, I am satisfied that, ordinarily, it will *not* be the case that the consequences of the exercise of parental responsibility by a local authority in this manner under the power conferred by s.33 of the 1989 Act or s.25 of the 2002 Act where a placement order is in force are *so* profound or enduring that it would be wrong for a local authority to use the statutory power conferred upon it to override the wishes or views of a parent and the matter should come before the court. In reaching this conclusion I have in particular borne in mind the following matters:

i) An application for, and the issuing to a child of a passport or national identity card by the State of which he or she is a citizen does no more than provide the child with an official means of evidencing his or her identity and nationality. The issuing of a passport evidences the child's legal status; it does nothing to *change* the child's legal status.

ii) Title II, Chapter 1 of the Withdrawal Agreement makes clear that it is concerned only with the question of residence rights. Pursuant to Art 18(1)(a) of the Withdrawal Agreement, the purpose of the application procedures agreed is to verify whether the applicant is entitled to the residence rights set out in the Withdrawal agreement, namely the right to be granted residence status and a document evidencing that status. Within this context, an application under the EUSS concerns the *immigration status* of the child in the UK only. Whilst a child who has had settled status for a period of 12 months may thereafter apply for British Citizenship, the grant of immigration status under the EUSS does not of itself act to change the nationality or citizenship of the child in question. Within this context, I also bear in mind that the EUSS was developed in consultation with EU Member States and the European Commission, that no case has yet arisen in which an EU Member State has not supported an application being made to the EUSS on behalf of an eligible child

and the view of the Secretary of State for the Home Department and the Secretary of State for Education that is difficult to foresee such a case.

iii) Within the foregoing context, a grant of immigration status under the EUSS will not prevent the child from returning to their country of origin or, if he or she wishes to, from relinquishing their immigration status in the UK on reaching their majority.

iv) Being granted immigration status under the EUSS will not prevent the child from later applying for leave under another immigration route for a different form of entry clearance in the UK should he or she wish to do so in the future.

v) Within this context, successful application under the EUSS does no more than confirm the *status quo* with respect to the child's immigration status in the UK. Prior to 11pm on 31 December 2020, the right of an EU, EEA or Swiss child to enter or remain in the UK derived from the EU Treaties and the Free Movement Directive 2004/38/EU, as given effect in domestic law by the Immigration (European Economic Area) Regulations 2016. Within this context, the grant of immigration status under the EUSS subsequent to 31 December 2020 re-confirms in a different legal format the child's pre-existing right to enter or remain in the UK, by way of a grant of immigration status under the EUSS, ensuring that the right previously enjoyed by the child continues to be so enjoyed.

vi) With respect to other aspects of the child's legal status and rights in their home State, whilst the possibility that an argument could be made on the basis of the individual laws of an EU Member State that immigration status under the EUSS will have an adverse impact on the child in his or her home State cannot be ruled out entirely, I agree with the submission of the Secretaries of State, and of Mr Setright on behalf of the children in the Northampton case that this is not likely having regard to the purpose of the EUSS within the context of the Withdrawal Agreement and the information before the court. Further it is difficult to see how it could be said to be proportionate to require confirmation to be obtained by a local authority in each case as to all potential legal consequence for each child in their home State over the course of their lifetime by reference to the domestic law in each of the remaining EU Member States before an application under the EUSS were made (and, for reasons I set out below, such a course would in any event, arguably, be inconsistent with the UK's obligations under Art 18 of the Withdrawal Agreement).

vii) Were an EU, EEA or Swiss National child in this jurisdiction who is the subject of a care order *not* to be the subject of an application for immigration status under the EUSS, that child would become undocumented and would be at risk of immigration control, with the attendant disruption to the child's placement, education, peer group and emotional welfare.

viii) It is difficult to see how the granting of immigration status under the EUSS to a looked after child would of itself constitute an interference in the Art 8 rights of the parents, particularly where the rights that status under the EUSS safeguards are those of the child and not of the parents. In so far as it could be said that the *making* of the application for immigration status under the EUSS

by the local authority pursuant to its parental responsibility without the agreement of the parents constitutes an interference in the Art 8 rights of the parents, that interference is plainly lawful under the care or placement order in force and, where it falls properly within the ambit of the order, is axiomatically proportionate.

ix) With respect to the child's Art 8 rights, whilst it might be possible to identify some factors that may constitute an interference in those rights, for example the fact that settled status will mean the child will remain in the United Kingdom rather than the country of their birth, with the concomitant effect on their understanding of their identity and on relationships with extended family, with respect to children who are the subject of a care order, the question of whether that interference is proportionate will have been determined in the care proceedings as part of the evaluation of the care plan mandated by statute.

x) With respect to the rights of the parents under Art 6 (assuming for the present purposes that the same are engaged), by virtue of the obligations placed on the local authority with respect to looked after children by s.22(4) of the Children Act 1989, the process undertaken pursuant to s.33 of the Children Act 1989 affords the parents an opportunity to be heard, along with the child and any other person the local authority considers should be consulted on the decision in issue.

66. I am further reinforced in my conclusion that it cannot be said that the consequences of the exercise of parental responsibility by a local authority in the manner contemplated in this case are so profound or enduring that it would be wrong for a local authority to use its power under s33(3)(b) of the 1989 or s.25 of the 2002 Act to override the wishes or views of a parent by the decision of the Court of Appeal in *Re Y (Children in Care: Change of Nationality)*. As I have noted, in that case Peter Jackson LJ observed, albeit obiter, that with respect to regularising a child's *immigration status* in the UK, as distinct from the far more fundamental question of the child's nationality or citizenship, the local authority is entitled to proceed under the power conferred upon it by s.33(3) of the Children Act 1989.

67. Finally, in this context, I also note the submission of Mr Payne on behalf of the Secretaries of State with respect to the terms of Art 18(1)(e) of the Withdrawal Agreement, which provides that the UK and the remaining EU Member States will ensure that any administrative procedures by which a person can achieve immigration status for the purposes of the Withdrawal Agreement are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided. Art 18(1)(f) further requires that application forms shall be short, simple, user friendly and adapted to the context of the Withdrawal Agreement. Within this context, Mr Payne submits that an obligation on local authorities to seek an order from the court authorising an application to the EUSS on behalf of each looked after child who is the subject of a care order would, arguably, be inconsistent with the mandatory obligation under Art 18(1)(e) of the Withdrawal Agreement as it would not be consistent with the requirement on the UK to ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided.

68. In all the circumstances, I am satisfied that, in making the application to the EUSS on behalf of the child the local authority will ordinarily be entitled to proceed under the power conferred upon it by s.33(3) of the Children Act 1989, or s.25 of the Adoption and Children Act 2002 where a placement order is in force, and will *not* require the approval of the court. I am likewise satisfied that, where it is necessary to make an application for a passport or identity document to support an application under the EUSS, the local authority will again ordinarily be entitled to proceed under the power conferred upon it by s.33 of the Children Act 1989 or s.25 of the Adoption and Children Act 2002 and will *not* require the approval of the court. Within this context, it is interesting to note that the Home Office Guidance entitled *Notes for Local Authorities Children's Services Departments When Applying for Passports on Behalf of Children* May 2020 contemplates this being the position.

69. The position I have described above is likely to be the position in the vast majority of cases concerning EU, EEA or Swiss children eligible under the EUSS. Further, as I have stated above, it would not be proportionate or, arguably, consistent with the UK's obligations under Art 18(1)(e) of the Withdrawal Agreement to require confirmation to be obtained by a local authority in each case as to all potential legal consequences for each child over the course of their lifetime by reference to the domestic law in each of the remaining EU Member States prior to an application under the EUSS being made. However, I wish to make *abundantly* clear that this does *not* remove the duty on the local authority in *each* case where an order is in force to satisfy itself that an application for immigration status under the EUSS will safeguard and promote the welfare of the subject child for the purposes of s.33(4) of the 1989 Act or, where a placement order is in force, that such an application is in the child's best interests for the purposes of s.1(2) of the 2002 Act.

70. This is not to create an additional obligation upon the local authority but, rather, simply to recognise the duty to which the local authority is already subject pursuant to s.33(4) of the Children Act 1989 where a care order is in force and pursuant to s.1(1) of the Adoption and Children Act 2002 where a placement order is in force. As to the manner in which this is to be achieved, as I have noted above, in making any decision in respect of a child who is looked after by reason of being in the local authority's care, the local authority is under a duty pursuant to s.22(4) of the Act, so far as is reasonably practicable, to ascertain the wishes and feelings of the child, his or her parents and any other person whose wishes and feelings the local authority considers to be relevant to the issue to be decided and, pursuant to s. 22(5) of the Act, to give due consideration to the same. Where a placement order is in force, pursuant to the Adoption Agencies Regulations 2005 r. 45(2)(b), the consultees will include a prospective adopter with whom the child is placed. Within this context, if as a result of this consultative decision making process during the course of the discharge of its obligation under s.22(4) of the 1989 Act the local authority identifies a factor or factors that it considers may result in profound or enduring consequences for the child or profound impact on the Art 8 rights the parents, the local authority will need to decide whether these factors justify an application to the court under the inherent jurisdiction having regard to the *strict* principles I have set out above. Whilst, as I have observed, local authorities will be able to proceed under the power conferred by s.33 of the 1989 Act or s.25 of the 2002 Act in the *vast* majority of cases, they must nonetheless remain alive to the possibility of cases that do, exceptionally, require the intervention of the court.

71. Further, as highlighted by Mr Setright and Mr Davies during the hearing with respect to case NN20C00122, not every child who is looked after by the local authority or with whom the local authority is concerned is a child for whom the local authority has parental responsibility by virtue of a care order or a placement order. For example, children who are looked after by reason of being accommodated pursuant to s.20 of the Children Act 1989 and children who are lost or abandoned and in respect of whom no one holds parental responsibility. The local authority guidance issued by the Home Office makes clear the obligation on local authorities to work with those who have parental responsibility for the former cohort of children in order to ensure that applications are made for immigration status under the EUSS. With respect to the latter cohort, children who are lost or abandoned, the guidance enjoins a local authority to look to its duty under s.22(3) of the Children Act 1989. However, Mr Setright and Mr Davies properly raise a number of questions in this context.

72. First, what action should a local authority take where, despite advice and support in accordance with the local authority guidance, those with parental responsibility for the child fail, whether by way of malice, neglect or incapacity, to make the necessary application under the EUSS? Second, what, in fact, are the *practical* steps the local authority should take under s.22(3) of the Children Act 1989 to ensure an application is made on behalf of a lost or abandoned child for whom there is no-one with parental responsibility? Whilst the Secretaries of State assert that parental consent is not required for an application to be made by or on behalf of the child under the EUSS, the rights thereby conferred being the rights of the child independent of parental consent, it would almost certainly not be appropriate for a local authority to make an application for immigration status on behalf of a child for whom it does *not* hold parental responsibility.

73. Within this context, Mr Setright and Mr Davies submit that there is, in any event, a cohort of children for whom an application to court may represent the only effective means of securing the necessary application under the EUSS. Within this context, they go as far to suggest that children in this situation may meet the threshold for proceedings under Part IV of the Children Act 1989. It would not be appropriate for this court to speculate in that regard, each case falling to be determined on its own facts as and when they arise. However, the submissions made in this context by Mr Setright and Mr Davies serve once again to highlight the need for local authorities to remain alive, when discharging their obligations to looked after children for whom they do *not* share parental responsibility, care leavers and children in need, to the possibility of cases that may, *exceptionally*, require the intervention of the court.

74. Finally, whilst satisfied that a local authority is entitled to proceed to apply for passports under s.33 of the Children Act 1989 or s.25 of the Adoption and Children Act 2002 for the reasons I have set out, the two cases before the court also raise the third question posed at the beginning of this judgment. That question arises in circumstances where, even if the local authority is entitled to make an application for settled status and for the passports required to prove the identity and nationality of the children for the purposes of that application under the power granted to it by s 33(3) of the Children Act 1989 or s.25 of the Adoption Act 2002 in the face of parental opposition or absence, the procedural requirements of the State issuing the passports applied for are such that the application for passports requires in this case to be supported by a court order. In this case, given the position of the parents in the

Warwickshire case and the absence of the parents in Northamptonshire case, the order required by the Polish Embassy is an order dispensing with the parents' consent to the issuing of passports to the children. Whilst, for the reasons I set out below, I am satisfied the court does have jurisdiction make such an order under its inherent jurisdiction in an appropriate case, of which these are two such cases, an application under the inherent jurisdiction should *not* ordinarily be the first port of call in such situations.

75. As Mr Payne points out in his submissions on behalf of the Secretary of State for the Home Department and the Secretary of State for Education, the Case Worker Guidance makes clear, consistent with Art 18(1)(o) of the Withdrawal Agreement, that where the passport or identity document has been lost or destroyed or was never obtained or provided and there are significant practical barriers to obtaining the required document, such as the national authority requiring the consent of both parents but the parents are absent or un-cooperative, the child may produce *alternative* documents to prove their identity and nationality. Within this context, in cases where the procedural requirements of the State issuing the passports or national identity cards required include the need for a court order dealing with the position of absent or recalcitrant parents, *before* issuing such an application the local authority should first confirm with the Settlement Resolution Centre whether such documents as the child *already* has available are sufficient for the purposes of the EUSS application. Only if they are not, and no other acceptable documents exist and can be procured, should an application to court for an order under the inherent jurisdiction be contemplated by the local authority.

76. If, enquiries having been made of the Home Office Settlement Resolution Centre, it is necessary for an application to be made to court for orders facilitating the application for passports or national identity cards, for example because there is simply no other acceptable alternative evidence available with respect to the subject child, I am satisfied that the High Court does have power under its inherent jurisdiction, upon the application by a local authority, to make an order dispensing with the consent of the parents to the issue of a passport or national identity card for the child.

77. As King LJ reiterated in *Re H (A Child)(Parental Responsibility: Vaccination)* at [28] and [29], whilst on its face s.100 does not appear immediately to accommodate orders conferring on a local authority power to determine a question which has arisen with respect to an aspect of parental responsibility for a child, the courts have repeatedly held that use of the inherent jurisdiction by a local authority with permission granted under s.100 of the 1989 Act is a viable route in certain difficult cases. Further, in principle, the court may make orders to support the exercise of the power conferred on a local authority by s.33(3) of the Children Act 1989, provided always that where such orders are sought under the inherent jurisdiction the criteria set out in s.100 are met in the given case. Within respect to the criteria under s.100(4)(b), namely that there is reasonable cause to believe that the child would be likely to suffer significant harm if the inherent jurisdiction was not exercised, as recognised by Peter Jackson LJ in *Re Y (Children in Care: Change of Nationality)*, the consequences of not securing immigration status in the jurisdiction in which they have become settled may, in an appropriate case, satisfy the demands of s.100(4)(b):

> "The very existence of s.100 (3) and (4) demonstrates that there will be residual cases where the local authority's statutory powers under s.33 are

inadequate. In the present case the local authority would require leave to apply for the court to exercise its inherent jurisdiction (ss. (3)) and the court could only grant leave if the result sought could not be achieved by other means (ss. (4) (a)) and where there is reasonable cause to believe that the children would be likely to suffer significant harm if the inherent jurisdiction was not exercised (ss. 4 (b)). The court would in my view be likely to find that these conditions were met in this case. Condition (a) is met as a matter of law. Condition (b) would be met by the court finding that, if it was in the children's interests for them to become British citizens, there is reasonable cause to believe that they would be likely to be significantly harmed by that course not being pursued; the nature of the harm being their liability to removal from their lifelong home country on reaching adulthood."

78. Within this context, where the *only* means of proving identity and nationality for the purpose of an application under the EUSS of a child who is placed, settled and thriving in this jurisdiction under a care order is by way of a new passport or national identity card, and the national issuing authority for such documents of the EU Member State in question required an order under the inherent jurisdiction dispensing with the consent of parents who objected to such documents being issued to the children, it is not difficult to see how the criteria under s.100(4)(b) might be met in such a case; the risk of harm being the disruption to the child's settled placement, relationships and routine and the risk of being removed from the jurisdiction in which his or her safety has been secured and placed with parents or family who are unable to meet his or her specific needs. However, and to repeat, *before* such an application is contemplated, the local authority should first seek to confirm with the Settlement Resolution Centre whether any documents that the child *already* has available are sufficient for the purposes of the EUSS application.

79. Within the foregoing context, and in summary, I am satisfied that the following points must be borne in mind by local authorities with respect to the question of immigration status under the EUSS for children who are looked after by the local authority, care leavers and children in need:

i) The deadline for applications to the EUSS is 30 June 2021. The necessary application must be made in a timely manner so as to ensure the relevant deadline is met and to minimise uncertainty for the subject child. It is not acceptable to leave children in a position of 'limbo' with respect to their immigration position.

ii) Reliance should not be placed on the discretion afforded to the Secretary of State for the Home Department to admit late applications after the expiration of the deadline on 30 June 2021 as a reason for failing to act in a timely manner. A late application will result in the child becoming undocumented for a period, with the concomitant impact on access to services and benefits and liability to immigration enforcement. Even a short period undocumented can have an adverse impact on a child or young person.

iii) Issues of immigration status with respect to looked after children must in each case be addressed early as part of any assessment and care plan, including establishing the child's current immigration status and, where necessary,

seeking legal advice about appropriate action concerning immigration status having regard to the care plan in respect of the child.

iv) The obligation on local authorities to identify children who are eligible to make an application under the EUSS and provide support to those children is a *mandatory* one.

v) The obligation on local authorities to identify children who are eligible to make an application under the EUSS and provide support to those children extends beyond those children who are looked after by reason of being the subject of a care order to children who are looked after by reason of being accommodated by a local authority pursuant to s.20 of the Children Act 1989, to children who are the subject of placement orders, care leaves under ss. 23A to 24D of the Children Act 1989 and the Care Leavers (England) Regulations 2010 or Care Leavers (Wales) Regulations 2015 and to any other children in receipt of local authority support, including children in need and children who are lost or abandoned.

vi) With respect to children who are looked after by reason of being accommodated by a local authority pursuant to s.20 of the Children Act 1989, care leaves under ss. 23A to 24D of the Children Act 1989 and the Care Leavers (England) Regulations 2010 or Care Leavers (Wales) Regulations 2015 and any other children in receipt of local authority support, including children in need, the local authority *must* follow the guidance issued by the Home Office and in particular remain cognisant of the obligation upon it to ensure that those with parental responsibility for the children are aware of the need to make an application to the Scheme, signpost them to the Scheme, explain its importance, offer practical support and monitor closely the progress of any application.

vii) With respect to children who are lost or abandoned for whom there is no one with parental responsibility, the local authority must discharge fully its duties under s.22(3) of the Children Act 1989 in assisting eligible children who are lost or abandoned to secure immigration status under the EUSS.

viii) In respect of each child looked after by reason of being the subject of a care order or who is the subject of a placement order who is also an EU, EEA or Swiss national, a local authority is required to consider whether or not to apply immigration status under the EUSS on behalf of that child or to assist the child to do so and, if necessary, to seek the documentation necessary to make such an application, namely a passport from the child's country of nationality or other acceptable form of national identification. In making applications under the EUSS, the local authority should apply the guidance issued by the Home Office.

ix) The question of whether an application should be made for immigration status under the EUSS for a looked after child who is the subject of a care order is a matter that is properly within the remit of the IRO having regard to the functions of an IRO as set out in s.25B of the Children Act 1989 and Part 8 of the Care Planning, Placement and Case Review (England) Regulations 2010

which includes monitoring the performance by the local authority of its obligations with respect to a looked after child.

x) Ordinarily, in respect of a child for whom it holds parental responsibility under a care order or a placement order, the local authority will be able to proceed to make the application under the EUSS pursuant to the power conferred upon it by s. 33(3) of the Children Act 1989 or s.25 of the Adoption and Children Act 2002. It is ordinarily neither necessary nor appropriate for a local authority to refer the matter to the High Court where a parent opposes the grant of settled status to a child for whom the local authority holds parental responsibility.

xi) Ordinarily, in respect of a child for whom it holds parental responsibility under a care order or placement order, the local authority will likewise be able to proceed to make an application to renew a child's passport or national identity card pursuant to the powers conferred on it by s.33 of the Children Act 1989 or s.25 of the Adoption and Children Act 2002, subject to being able to fulfil the legal requirements for such an application laid down by the State authority responsible for issuing the passport. It is ordinarily neither necessary nor appropriate for a local authority to refer the matter to the High Court where a parent opposes the issue of a passport or national identity card to a child for whom the local authority holds parental responsibility.

xii) The process under s.33(3) of the Act or s.25 of the Adoption and Children Act 2002 is not however, merely an administrative one. In exercising its statutory power in each case the local authority *must* satisfy itself that, where the child is looked after by reason of being the subject of a care order, an application for immigration status under the EUSS and, where necessary, an application for a passport or national identity card will safeguard and promote the welfare of the subject child pursuant to s.33(4) of the 1989 Act and, where the child is the subject of a placement order, that an application for immigration status under the EUSS and, where necessary, an application for a passport or national identity card, is in the best interests of the child pursuant to s.1(2) of the Adoption and Children Act 2002.

xiii) The child's wishes and feelings should always be considered. Where of sufficient age and understanding, children should be made aware their entitlement to independent advocacy support and the local authority should facilitate this access where required.

xiv) Whilst parents' views should be obtained and appropriately considered with respect to both applications for immigration status under the EUSS and for the provision or renewal of passports or other national identity documents, those views should not be viewed as determinative unless they have a real bearing on the child's welfare.

xv) In cases where parental opposition or absence mean that the procedural requirements of the State authority responsible for issuing the passport or national identity card include a requirement that the application be supported by a court order then, *before* issuing an application for such an order, the local authority must first seek to confirm with the Home Office Settlement Resolution Centre whether the any documents that the child *already* has

available are sufficient for the purposes of the EUSS application. Only if they are not, and no other acceptable documents exist, should an application to court under the inherent jurisdiction be contemplated by the local authority.

xvi) There *may* be a very small number of cases in which proceeding under s.33 of the Children Act 1989 or s.25 of the Adoption and Children Act 2002 with respect to an application for immigration status under the EUSS will not be appropriate. In this context, whilst the *vast* majority of cases will be suitable to be dealt with under the power conferred by s.33(3) of the 1989 Act or s.25 of the 2002 Act, local authorities must remain alive to the possibility of cases that do, *exceptionally*, require the intervention of the court.

xvii) Where a parent opposes the course chosen by the local authority pursuant to the power conferred upon it by s.33(3) of the Children Act 1989, and whilst recognising the inherent difficulties for often unrepresented parents for whom English is a second language, it remains open to the parents to make an application to invoke the inherent jurisdiction and may, if necessary, apply for an injunction under s. 8 Human Rights Act 1998 to prevent the applications being made or determined before the matter comes before a court for adjudication.

CONCLUSION

80. In conclusion, I turn to the application of the principles I have set out above to the facts of the two cases before the court. In summary, I am satisfied in each case that it is appropriate for the respective local authorities to proceed in accordance with the power conferred upon them by s.33(3) of the Children Act 1989 or, in respect of NW, s.25 of the Adoption and Children Act 2002 with respect to the applications each intends to make for immigration status for the children under the EUSS. In each case I am further satisfied that, it not being apparent that there are any documents capable of replacing the passports and identity cards that the parents have either failed to, or are unwilling to produce, it is appropriate to give permission to the local authorities in each case to invoke the inherent jurisdiction and make order dispensing with the consent of the parents to the issuing of passports as required by the law of the Republic of Poland.

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81. For the reasons I have given in the body of this judgment, with respect to the application it intends to make for immigration status under the EUSS, I am satisfied that Warwickshire is entitled to proceed under s.33 of the Children Act 1989 with respect to PW and s.25 of the Adoption and Children Act 2002 with respect to NW, and I would so declare.

82. There is no evidence before the court to suggest that the consequences of the exercise of parental responsibility proposed by the local authority with respect to the EUSS brings the case within the very small category of cases in which the consequences of the exercise of parental responsibility are so profound or enduring and have such an impact on either the child him or herself, and/or on the Art 8 rights of those other parties who share parental responsibility with a local authority, that it would be wrong for a local authority to use the statutory power conferred on it by s.33 of the Children

Act 1989 and s.25 of the Adoption and Children Act 2002 to override the wishes or views of a parent. Nor now does the local authority or the Children's Guardian seek to suggest otherwise. In addition to the manifest benefits identified in the report of the Children's Guardian to which I shall come to below, in this case the court has the benefit of an email authored by Ms Górecka from the Polish Embassy, the contents of which were reiterated by Ms Gawel who attending on behalf of the Polish Embassy during the course of this hearing, that goes somewhat further than is necessary for current purposes and confirms as follows:

> "A successful application under the EU Settlement Scheme would have no effect on the children's Polish nationality and rights. Polish citizens are allowed to hold both their Polish citizenship and citizenship in another country, and are subject to the same rights and obligations of Poles who hold only one citizenship. Therefore, having citizenship/settled status in another country would have no effect on the children's rights"

83. I am equally satisfied, again for the reasons I have given in the body of this judgment, that Warwickshire is entitled to proceed under s.33 of the Children Act 1989 and s.25 of the Adoption and Children Act 2002 with respect to the application it intends to make for passports for the children, and I would also so declare.

84. Again, there is no evidence before the court to suggest that the exercise of parental responsibility proposed by the local authority with respect to the passports and national identity card falls within the very small category of cases in which the consequences of the exercise of parental responsibility are so profound or enduring such that it would be wrong for a local authority to use its statutory powers in this regard. Again, nor does the local authority or the Children's Guardian seek to suggest otherwise. As I have noted, the issuing of passports to the children evidences their legal status, it does nothing to change their legal status.

85. Insofar as the father's long voiced objection, repeated again at this hearing, to the course proposed by the local authority may be taken as a request that the court injunct the local authority from pursuing an application for EU settled status for the children, such an application is in my judgment bound to fail. In this matter I have the benefit of a welfare analysis from the Children's Guardian setting out an analysis of the potential benefits and detriments to the children of the proposed applications for passports and for settled status under the EUSS. In her report the Children's Guardian makes clear that settled status will permit the children to continue with life as they now know it, to remain in their current foster family, with their peers and at their schools as they wish to do, to remain the subject of care orders and to receive support as looked after children, to live and remain in the United Kingdom and to retain their Polish nationality and to return to Poland in due course should they wish to do so. Within this context, the balance of convenience comes down firmly against restraining the local authority from the action it intends to take to ensure this outcome.

86. Finally, as I have already alluded to, in circumstances where in this case it is not apparent that there are any documents capable of replacing the passports and identity cards that the parents have either failed to, or are unwilling to produce, it is appropriate to give permission to the local authorities to invoke the inherent jurisdiction and make order dispensing with the consent of the parents to the issuing of passports as required by the law of the Republic of Poland. Unless the court

invokes the inherent jurisdiction and dispenses with the parents' consent the local authority will find it very difficult to progress the application for immigration status under the EUSS, placing the children's welfare in jeopardy for all the reasons I set out earlier in this judgment and as eloquently set out by the Children's Guardian in her report. Within this context, I am satisfied that the imperatives of s.100 of the Children Act 1989 are met, including the terms of s.100(4)(b) of the Act, and that it is in the children's best interests to make the order sought.

NN20C00122

87. The analysis in respect of this case is necessarily similar to that in the first matter before the court. Both the local authority and the Children's Guardian submit that the power conferred on Northamptonshire by s.33(3) of the Children Act 1989 constitutes the appropriate basis for Northamptonshire to proceed to apply for immigration status for the children under the EUSS. Within this context, again, there is in this case no evidence before the court to suggest that the exercise of parental responsibility proposed by the local authority with respect to the EUSS falls within the very small category of cases in which it would be wrong for a local authority to use its power under s33(3)(b) to override the wishes or views of a parent and that, instead, the matter should come before the court for its consideration and determination. The Polish Embassy has confirmed in this case that the granting to the children of immigration status under the EUSS would have no effect on the children's Polish nationality and rights, in addition to the advantages articulated in the report of the Children's Guardian to which I will come to. The parents do not appear before the court to seek to gainsay any of these assertions.

88. In the circumstances, I am satisfied that Northamptonshire is entitled to proceed under s.33 of the Children Act 1989 with respect to the application it intends to make for immigration status under the EUSS for and I would so declare. I am likewise satisfied, again for the reasons I have given in the body of this judgment, that Warwickshire is entitled to proceed under s.33 of the Children Act 1989 with respect to the application it intends to make for immigration status under the EUSS and I would so declare.

89. In this case it is also not apparent to Northamptonshire that there are any documents capable of replacing the passports and identity cards that the parents have failed to produce. Within this context, I am satisfied that it is appropriate to give permission to the local authorities to invoke the inherent jurisdiction and make order dispensing with the consent of the parents to the issuing of passports as required by the law of the Republic of Poland. In her report to the court, the Children's Guardian makes clear that the consequences for the children of not being able to secure immigration status under the EUSS would be unequivocally likely to harm the children, being exposed to an actual or potential threat to the security and stability of their lives. Within this context, I am again satisfied that unless the court invokes the inherent jurisdiction and dispenses with the parents' consent the local authority will find it difficult to progress the application for immigration status under the EUSS, placing the children's welfare in jeopardy for the reasons set out in the report of the Children's Guardian. Within this context, I am satisfied that the imperatives of s.100 of the Children Act 1989 are met, including the terms of s.100(4)(b) of the Act, and that it is in the children's best interests to make the order sought.

90. In the foregoing circumstances, and applying the principles articulated in this judgment to the two cases before the court, in each case I declare that each local authority is entitled to proceed under the power conferred on it by s.33(3) of the Children Act 1989 or s.25 of the Adoption and Children Act 2002 as appropriate when applying for immigration status for the children under the EUSS and when applying for passports or national identity cards in support thereof. Further, in particular circumstances of each case, and for the reasons I have given, I grant permission to each local authority to invoke inherent jurisdiction and make an order dispensing with the consent of parents to issuing of passports by the Polish Embassy in each case.

91. That is my judgment.