Case No: ZE15C00253

Neutral Citation Number: [2016] EWHC 1375 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2016

Before:

THE HONOURABLE MR JUSTICE MACDONALD

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Between:

	The London Borough of Sutton	**Applicant**
	- and –	
	MH	**First Respondent**
	- and -	
	RH	**Second Respondent**
	- and -	
	NH	**Third Respondent**

(No. 1)

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Mr. Alex Verdan QC and Ms. Anne-Marie Lucey (instructed by **London Borough of Sutton**) for the **Applicant**
Mr. Tertha Gupta QC and Mr. Michael Bailey (instructed by **William Bache & Co**) for the **First Respondent**
The **Second Respondent** did not appear and was not represented
Mr. Andrew Bagchi QC and Mr. Gordon Reed (instructed by **Gordon Reed & Co**) for the **Third Respondent**
Mr. Robin Barda (instructed by **CAFCASS Legal**) for the **Children's Guardian**

Hearing dates: 15, 16 and 17 March 2016

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Judgment Mr Justice MacDonald:

1. In this matter I am concerned with the welfare of NH. NH was born in October 1999 and is now 16 years old. The applications originally brought by the London Borough of Sutton were those for orders under the inherent jurisdiction and/or a public law order under Part IV of the Children Act 1989. Only the latter application is now pursued. This matter is listed before me for a final hearing by a case management order dated 17 December 2015.

2. The mother has not attended this hearing although I am quite satisfied for the purposes of FPR 2010 r 27.4 that she has been on notice of the same since 17 December 2015. The mother instructed lawyers to represent her at this hearing, has corresponded extensively with the court in respect of this hearing and has travelled to this jurisdiction prior to the start of this hearing. The mother was in the jurisdiction on the date the final hearing commenced but did not attend.

3. At the conclusion of the first day of the hearing on 15 March 2016, and following the mother dispensing with the services of her legal team for the reasons set out below, I asked my clerk to email the mother to enquire whether she would be attending the remainder of the final hearing, which email was sent on 16 March 2016 at 11.02. The mother indicated she would not be attending and gave various reasons for this, ranging from a fear of being arrested in circumstances where she is in breach of a reporting restriction order made by Cobb J on 17 December 2015, through an assertion that she has injured her foot, to sundry difficulties with travel arrangements. Within the foregoing context I was satisfied that the circumstances were such as to justify proceeding with the hearing despite the mother's absence pursuant to FPR 2010 r 27.4(3)(b). In the event however, it has not been possible to conclude matters for reasons which I shall come to.

4. At the commencement of this hearing the mother was represented by leading and junior counsel, Mr Tertha Gupta QC and Mr Michael Bailey, instructed by a solicitor acting on her behalf, Mr William Bache. Following my refusal of an application to adjourn this final hearing issued by the mother on 14 March 2015 on the grounds of alleged defects in the bundle, the mother's legal team felt compelled to retire in circumstances where mother had made clear first, that they were not instructed proceed with the hearing without her approval and before the defects she considered existed in the bundle had been remedied (email of 14 March 2016 at 10:43), second that they did not have her interests at heart (email of 14 March 2016 at 16:21) and, finally, that she had instructed them to appeal "*court injunctions*" (apparently a reference to an order I made on 9

March controlling the manner in which the mother sees certain documents filed in these proceedings) instead of appearing at the hearing (email of 14 March 2016 at 17:16).

5. Given the lack of clarity in their instructions, and having been unable to contact the mother to remedy that situation, those representing the mother felt, understandably, compelled to retire. In the circumstances, the mother has continued as a litigant in person albeit, as I have said, absent from the hearing.

6. At the outset of this hearing NH was separately represented. NH is currently sectioned pursuant to the terms of the Mental Health Act 1983 s 3. Notwithstanding this position, I was provided with a Certificate of Capacity by NH's treating psychiatrist dated 8 March 2016 which confirmed that NH had capacity to conduct proceedings. During the course of the hearing, and as a result of events which I shall set out in more detail below, NH's treating psychiatrist confirmed that NH appears now to have lost capacity to conduct proceedings.

7. In addition to his legal team, NH's interests are also represented in these proceedings by his Children's Guardian, who instructs counsel through CAFCASS Legal.

The Applications

8. As set out above, the London Borough of Sutton apply for a care order in respect of NH under Part IV of the Children Act 1989. At the outset of this hearing the local authority's care plan for NH was for him to be supported to return to Canada subject to his mental health stabilising under the care of the Unit in which he is currently detained under the Mental Health Act 1983, this being at the outset of the hearing also NH's clearly expressed wish. The mother fiercely opposes this plan and seeks the return of NH to either South Africa or Zimbabwe. Prior to this hearing, NH has expressed equally fierce opposition to such an outcome and a clear wish to return to Canada.

9. Having read the papers in this matter, and having regard in particular to the expert evidence concerning the laws of Alberta and Ontario, it is right to note that at the outset of the hearing I entertained significant doubts as to whether the court had sufficient clarity concerning the likely position of NH in Canada to consider, let alone approve, the local authority's current care plan. Following developments during the course of this hearing, the local authority now in any event concedes that, at this point in time, the court does not have before it the clarity required to undertake the holistic balancing exercise necessary to determine which of the options for NH's future care is in his best interests. Whilst it had been my intention nonetheless to utilise this hearing to deal with the issue of threshold, this course was rendered inappropriate when it became apparent during the course of the initial stages of the hearing that NH had apparently lost capacity to conduct litigation. In the circumstances, the only matter capable of being dealt with at this hearing has been a review of the position in respect of jurisdiction, as mandated by

the case management order of Cobb J of 27 November 2015.

10. In addition to the application of the local authority, the following applications by the mother are before the court:

i) An application dated 9 February 2016 seeking a specific issue order stipulating various matters (including that the local authority and NH's solicitors are in contempt of court, that NH is not competent to conduct proceedings, that the interim care order should be discharged and he should be reunited with his mother for travel to Zimbabwe) or in the alternative a "contact order". In addition the mother sought directions for the filing of further evidence by the local authority.

ii) An application dated 26 February 2016 lodged by way of a C2 application form by the mother's then solicitors applying for the following orders:

a) That the interim care order in respect of NH be discharged;

b) That an order the mother believes the court to have made on 12 February 2016 regulating the manner in which the mother could receive certain of the documents in these proceedings be set aside (the court in fact made no such order on that date but did make such an order on 9 March 2016 for reasons set out in the *extempore* judgment given on that date, an approved transcript of which judgment was sent to the parties on 17 May 2016);

c) That the order made by Cobb J on 27 November 2015 restricting the mother's access to medical and police records be set aside and that the mother be provided with such documents (it would not appear that Cobb J made such an order on 27 November 2015, rather he made an interim reporting restriction order);

d) That the hospital treating NH disclose to him certain documents from Alberta, Canada;

e) That the local authority be prohibited from giving instructions to the hospital treating NH;

f) That the mother be involved in decision making regarding NH's treatment and the formulation of any treatment plan for NH;

g) That the mother's solicitors receive copies of all letters sent to or received

from the Canadian High Commission and the authorities in Alberta and Ontario;

h) That the local authority and NH's solicitor disclose fully to "external parties" their position, input, advice or legal opinion;

i) That the local authority submit a detailed education, healthcare and placement plan for NH if he were to go and live in Canada alone or remain in the United Kingdom;

j) That the order of 27 November 2015 regarding custody of NH's passport be set aside.

iii) A C2 application to adjourn the final hearing dated 14 March 2016 on the grounds, as mentioned above, that the court bundle is defective (my reasons for refusing that application to adjourn are set out in the *extempore* judgment I gave on 15 March 2016, an approved transcript of which judgment was sent to the parties on 17 May 2016).

iv) A further application to adjourn this final hearing made by way of an email dated 17 March 2016 sent to my Clerk by the mother at 09:57. The grounds of that application were, *inter alia*, that the mother intended to appeal to the Court of Appeal my order of 9 March 2016 and to seek a stay of these proceedings pending appeal, that NH had clearly stated that he did not want restrictions placed on what documents his mother could see, that her legal team had not kept her fully informed, that this court does not have jurisdiction, that she needed time to submit a response to certain documents and that an adjournment was merited to allow the parties to "*reconsider*" their positions.

v) An undated C2 application purporting to be from NH but lodged by the mother for a specific issue order requiring the local authority to disclose to NH all police, medical and social care records concerning him, a chronology of meetings by phone or in person between NH and social services, records of all meetings in person or by phone between the mother and social services and any reports or assessments in respect of NH's placement.

11. Save for the applications to adjourn, I dealt with very similar applications by the mother to those listed above at a directions hearing on 12 February 2016 (at which hearing the mother did not attend but was represented by junior counsel), which applications the mother simply renewed by her application dated 26 February 2012 as set out above.

12. The number of applications issued by the mother in this case reflects wider conduct by

the mother that has created real issues in the management of this matter.

13. This case has been characterised by the mother bombarding the court, the other parties and a wide range of other individuals with email communications concerning this case, often containing multiple attachments, which attachments have included, on occasion, documents confidential to these proceedings. In another context the mother's ability to produce detailed, articulate and, for the most part, coherent written communications at such a rate would be impressive. However, the effect of her doing so within these proceedings has been, at times, simply to overwhelm the parties and the court. Whilst I am certain that the mother believes that her near constant stream of emails clarify and advance her position on a given issue, they in fact do largely the opposite, at times obfuscating it to the point where the other parties, and the court, are at a loss to understand what her position is.

14. Of greater concern is that the mother has, primarily by the method I have just recounted, disseminated to persons not involved in these proceedings information and documents confidential to the same by virtue of the provisions of the Children Act 1989 s 97, the Administration Act 1960 s 12 and FPR 2010 Part 27. This conduct led to Cobb J to make an interim reporting restriction order on 27 November 2015, which order was confirmed on 17 December 2015 and which order has not been appealed by the mother and remains in force at this time.

15. Within this context, those acting on behalf of NH made an application by way of a form C2 dated 8 February 2016 for the manner in which the mother is given access to certain further documents concerning NH's recent and current medical treatment to be regulated. I considered that application at the pre-hearing review on 9 March 2015 and granted an interim order, indicating that I would further consider the application at this hearing. As noted above, my reasons for making such an order are set out in a separate judgment handed down on that date, a copy of which judgment has been transcribed and provided to the parties. As I say, I made clear in my judgment of 9 March 2016 that I would review the interim order at this hearing and I do so below.

16. The final issue before the court today concerns that of jurisdiction. In July 2015 Cobb J determined that this court had jurisdiction in respect of NH. Cobb J's reasons for do determining are set out in his detailed and closely reasoned judgment of 30 July 2015, the neutral citation for which is *Re NH (1996 Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam).

17. As noted by Cobb J, the mother did not attend that hearing and had terminated the instruction of her lawyers shortly before the commencement of that hearing (as she has done, albeit at a slightly later point, during the course of this hearing). At Paragraph [34] of his judgment Cobb J records that he had read carefully the extensive written representations of the mother setting out her passionate argument that NH was habitually resident in Zimbabwe, noting that the mother's case in that regard appeared to be

founded on (a) NH's Zimbabwean nationality and (b) the mother's intention that NH should live in Zimbabwe. Cobb J was clear in his conclusion that NH was not habitually resident in Zimbabwe. Cobb J further concluded that NH was not habitually resident anywhere and that, accordingly, this court had, unusually, jurisdiction in respect of NH based on necessity.

18. On 28 October 2015 the mother, through solicitors then acting on her behalf, applied for a direction that

> "…the case be listed for urgent reconsideration of the issue of jurisdiction forthwith given NH's right to remain in the UK has expired, he has passed his sixteenth birthday, and the issue of his habitual residence was not considered at the hearing resulting in the judgment dated 30 July 2015."

19. As set out above, Cobb J *did* consider carefully the issue of NH's habitual residence and the question of his habitual residence in Zimbabwe during the course of his judgment of 30 July 2015. In any event, and given that the mother had not been at the hearing that gave rise to his judgment of 30 July 2015, Cobb J directed on 27 November 2015 that the mother file and serve any further evidence she had to support her assertion that this court did not, in fact, have jurisdiction and made provision for the court to review the issue of jurisdiction at the final hearing. The mother filed her evidence in this respect, as did NH, and I have carefully considered the same, along with the Skeleton Argument lodged by her legal team ahead of this hearing. I have also had access to the large amount of correspondence the mother has sent to the court and the parties by means of email.

20. Most regrettably, it has now been necessary to adjourn this final hearing for a further 16 weeks (the length of that adjournment being dictated primarily by my availability given the obvious need for judicial continuity in this case, the need for which will be readily apparent from the procedural history I have set out above). Once again, I deal with the background to and the reasons for this adjournment in more detail below.

Background

21. I have taken the essential background to this matter primarily from the judgment of Cobb J given in July 2015 and reported as *Re NH (1996) Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam), which essential background is as follows.

22. NH is the second of two children of the mother; his older half-sister (now aged 27) resides in Canada. NH's father has played no part in his life. Cobb J was not able to ascertain whether he has parental responsibility for NH and it would appear that this is still to be ascertained. Efforts were being made to locate the father but those efforts have

not born fruit. It is important to note that NH has dual Canadian and Zimbabwean citizenship.

23. The chronology of NH's life set out in the judgment of Cobb J is not substantially disputed in the documents that the mother has filed concerning the issue of habitual residence since that decision was handed down.

24. NH was born in South Africa in 1999. He lived in that country for the first five years of his life. In 2004 NH, together with his half-sister and mother, moved to Canada, where they resided for eight years. In 2012, NH and his mother moved to Switzerland, where the mother married a Swiss national. That marriage did not last and the mother is now divorced. In the 2013 NH was sent by his mother to boarding school in Zimbabwe. He remained at that school for an academic year, returning to Switzerland for the school holidays (save for one holiday when he travelled to Australia). NH then attended boarding school in Germany for a period of time. Latterly he attended a day school in Zurich.

25. As recorded by Cobb J in July 2015, the relationship between NH and his mother appears to have been an increasingly difficult one, particularly in NH's teenage years. The mother asserts, in evidence that was before Cobb J, that during this period NH presented challenging behaviours, with which behaviours she struggled to cope. Within this context, in February 2015 NH moved to reside temporarily at the "*Schlupfhuuse*" in Zurich at his mother's instigation. The Schlupfhuus offers residential care to a limited number of young people for a maximum of three months together with the services of a "*Beratungsstelle*" (advice centre) and a "*Krisenwohngruppe*" (crisis residential centre). A child protection file was opened in relation to NH by the Swiss authorities.

26. In February 2015, the Swiss authorities informed the mother that, given her divorce from her Swiss husband, those authorities would not be willing to extend beyond 26 March 2015 the B-Permits which enabled the mother and NH to reside in Switzerland. As the mother's plan that at this time was that NH should be sent to South Africa for treatment before transferring to boarding school in Zimbabwe, the mother appealed against that decision in relation to herself only, not NH. Her appeal was rejected by the Swiss authorities.

27. As noted by Cobb J, at a meeting at the Schlupfhuuse in March 2015 NH made it abundantly clear that he "*refused to migrate to Zimbabwe to enroll in boarding school*". On 22 April 2015 NH instigated proceedings in Switzerland with a view to divesting his mother of parental responsibility for him, principally in order that his mother could not determine where he lived. NH was then persuaded by a cousin in the United Kingdom to come to England for a holiday. On 25 April 2015 NH arrived in this jurisdiction. On arrival here, he was met by relatives with whom he stayed briefly in the Midlands before heading to other relatives in South London.

28. On 26 April 2015, the mother formally de-registered NH in Switzerland, this de-registration finally extinguishing NH's right of residence in Switzerland. Following this step, the proceedings between NH and his mother concerning the mother's parental responsibility for NH in Switzerland were discontinued.

29. On 28 April 2015 the mother also arrived in England. As set out above, the mother had intended that NH would, within a few days or weeks of his arrival in this jurisdiction, travel onwards from England to South Africa and then to Zimbabwe, to attend a therapeutic clinic and thereafter a residential boarding school. NH remained at that time adamantly opposed to that outcome and indicated that he had no intention of complying with his mother's wishes. NH believed that he was in England on holiday, though he accepted that he would not be returning to live in Switzerland in circumstances where his residence permit had expired there and had not been renewed. Indeed, as noted above, the mother had taken the step of de-registering him as a resident, thus comprehensively extinguishing NH's right of residence in Switzerland.

30. On or around 6 May 2015 NH travelled to Mitcham where he met up with his mother. On 8 May 2015 the police were called to the home at which NH and his mother were staying in the area of the London Borough of Sutton. NH alleged that he had been assaulted by his mother. During this incident NH alleged that his Canadian passport was "*wrestled*" (his mother's word) from him by his mother and then destroyed by her, thereby preventing him from travelling to Canada.

31. The mother was arrested by Police. NH was taken into police protection and thereafter placed in foster care. The mother told the police when interviewed that NH was "*beyond parental control*".

32. On 9 May the mother returned for three days to Switzerland. On her re-entry to this country on 12 May 2015, the mother was asked for, but declined to give, her consent to NH's continued accommodation. In the circumstances, the local authority sought to initiate proceedings under the inherent jurisdiction of the High Court. On 13 May 2015, Roderic Wood J declined the relief sought under the inherent jurisdiction but made an interim care order under the Children Act 1989 in respect of NH.

33. As set out above, on 30 July 2015 Cobb J determined that this court had jurisdiction in respect of M for the reasons set out in *Re NH (1996) Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam).

34. The following further matters of relevant background information fall to be set out subsequent to the decision of Cobb J in July 2015.

35. NH has remained under the auspices of an interim care order since 13 May 2015. However, his time in the care of the local authority has not been smooth. This has

included incidents of drinking and drug taking and an incident in which NH sustained knife injuries to his hand and neck in August 2015 in respect of which he required hospital treatment and which, understandably, caused his mother considerable and justifiable concern. The mother has also alleged that NH has been the victim of a sexual assault by way of an alleged "gang rape" whilst in care, although NH has consistently denied this and there is no evidence to suggest such an incident occurred.

36. On 23 September 2015 the mother went NH's placement. The staff at the placement were unable to prevent the mother from removing NH. The mother took NH to a hospital and insisted on having him examined by a psychiatrist. The mother contends that NH tried to jump from the car and he refused to engage in any assessment. After allegedly punching a security guard, NH was arrested. An evaluation by a psychiatric nurse at the Police station on 24 September 2015 raised concerns regarding NH's mental health.

37. The mother again took NH to a private hospital on 29 September 2015 and requested a "*blood borne virus screen*", apparently on the grounds that, as set out above, she considered NH had been sexually assaulted during a "gang rape". As noted, NH has denied any such assault has taken place.

38. On 10 December 2015 NH absconded from his residential placement and was reported missing. He was found three days later by British Transport Police at St Pancras trying to catch a Eurostar to Paris. After being returned to his placement he absconded again and was once again found at St Pancras. He was subsequently taken into Police protection but absconded once again. He was then moved to the Holbrook Residential Unit in Lewisham.

39. On 2 February 2016 the Unit became concerned about NH's behaviour and presentation. On 4 February 2016 NH was sectioned under the provisions of the Mental Health Act 1983 s 2. A month later, on 3 March 2016 NH was detained pursuant to the provisions of the Mental Health Act 1983 s 3. He remains detained his hospital at this time. As set out above, notwithstanding his being sectioned, on 8 March 2016 his treating psychiatrist felt able to certify him as having capacity to conduct proceedings, and signed a certificate of capacity accordingly. The treating psychiatrist changed her opinion regarding NH's capacity to conduct proceedings following events during the course of this hearing.

40. Following her unsuccessful attempt to get this hearing adjourned through her then legal team on the morning of 15 March 2016, later on 15 March 2016 the mother went to the hospital at which NH is currently detained under the Mental Health Act 1983. She attended with NH's cousin, LN.

41. Whilst I do not at present have signed statements from members of staff at the hospital, it would appear from documents that have been received from the hospital that the

mother and LN were permitted to see NH on 15 March 2016. Whilst a Senior Support Worker initially insisted on being present during the meeting, he alleges that he felt unsafe in the presence of the mother and left the room. Watching through a window the Support Worker contends that he witnessed certain documents being produced from the trousers of the mother or the cousin, which documents had not been apparent when the women passed through the security measures at the hospital. The Senior Support Worker relates that the mother and LN proceeded to discuss the pre-prepared documents with NH and persuaded him to sign the same. Watching from outside the room the Senior Support Worker considered NH to have been coerced into signing the documents, some of which he did not read before signing.

42. On 16 March 2016 at 09.34 the court received an email from the mother attaching a statement purportedly from NH and signed by him in which he indicated that he wished the interim care order discharged, that he had not provided his legal team with instructions and did not wish them to continue to represent him, that he had been told that Canada was not ready to receive him and that his sister would not be able to support him, that he does not wish to live in the United Kingdom any longer and that he would like to go and live with his family until he is ready to move, with the support of his family, to Canada.

43. The facts I have recounted will no doubt be disputed by the mother and, in the circumstances, I make no findings in respect of the same at this stage. That said, I do have grave concerns over the manner in which the statement I have described was obtained from NH and in relation to the mother's visit to the hospital more generally. Of further concern is the apparent impact that the mother's visit, and her conduct during the course of that visit has had on NH's emotional equilibrium. NH's treating psychiatrist considers that the impact of the events that I have recounted on NH's mental health has been such that it appears that NH has now lost capacity to conduct proceedings.

The Issues

44. Given the developments set out above, it has been necessary to limit the extent of his hearing to consideration of the following issues:

i) Whether any of the information provided by the mother subsequent to the decision of Cobb J *Re NH (1996) Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam) justifies the court revisiting the conclusion on the issue of jurisdiction reached by Cobb J in July 2015?

ii) Whether this matter should be adjourned in light of NH losing capacity to litigate and the lack of clarity that has, in consequence, developed in respect of his wishes and feelings regarding his future care, upon which wishes and feelings the local authority had founded its final care plan?

iii) Whether any of the ancillary applications made by the mother should be granted at this stage of the proceedings?

iv) Whether the order made by the court on 9 March 2016 regulating the manner in which the mother can access certain items of documentary evidence filed in this case should be continued, varied or discharged?

v) If the hearing is adjourned, what further directions are required to ensure a timely determination of the adjourned final hearing?

Discussion

(i) Jurisdiction

45. I have concluded that the evidence provided by the mother subsequent to the decision of Cobb J in *Re NH (1996) Child Protection Convention Habitual Residence)* [2015] EWHC 229 (Fam) does not justify the court revisiting Cobb J's conclusion that NH is not habitually resident in any jurisdiction and, accordingly, that this court has jurisdiction based on necessity. My reasons for so concluding are as follows.

46. Whilst the mother was not in attendance at this hearing for the reasons set out above, I have had the benefit of seeing a statement filed by her in relation to the issue of habitual residence dated 3 December 2015 and a comprehensive Skeleton Argument filed on her behalf by the legal team she had until recently been instructing, which Skeleton Argument deals comprehensively with the question of habitual residence. I have also had access to the large amount of email correspondence that the mother has provided to the court and to the parties. In the circumstances, I have felt able to deal with at least the review exercise mandated by the order of Cobb J of 27 November 2015.

47. As noted above, the mother agrees broadly with the chronology set out in the judgment of Cobb J. The additional matters that the mother produces by way of evidence in her statement of 3 December 2015 centre on reinforcing the primary argument that she advanced before Cobb J in July 2015, namely that NH is habitually resident in Zimbabwe. To this end, the mother provides additional evidence of the fact that she brought a plot of land in Harare in August 2013 and set out two businesses in Zimbabwe in 2014, that NH spent most of his school holidays between July 2013 and August 2014 in Zimbabwe (a fact reflected in Cobb J's judgment), that NH spent Christmas 2014 in Zimbabwe, that on 3 March 2015 the mother informed the Swiss Education Board of her intention to remove NH from private education and that in 2015 she enrolled him in school in Zimbabwe and made enquiries of a clinic in South Africa. The Skeleton Argument filed on behalf of the mother argues that this evidence, together with certain aspects of the OECD Model Tax Convention, further supports the primary submission she advanced in writing to Cobb J in July 2015, namely that it demonstrate that the

mother and NH were habitually resident in Zimbabwe at the time they entered the England in 2015.

48. NH likewise agrees broadly with the chronology set out by Cobb J in his judgment. In his statement of 8 December 2015 on the issue of habitual residence he contends he has only spent approximately 12 months in Zimbabwe throughout his sixteen years (the longest period being the academic year from July 2013 to July 2014, during which period NH states that he had extensive holidays away from Zimbabwe), that the mother's property in Harare is her house and not his home, that he was forced against his will to go to Zimbabwe and has no desire to return there. NH contends that he was tricked into coming to England in April 2014 and, had he known his mother's true intentions, he would never had left Switzerland.

49. I am of course mindful that I have not heard evidence from either the mother (by reason of her failure to attend this hearing) or from NH (by reason of his not being fit enough to attend this hearing). However, I am satisfied that the evidence filed by the mother taken at its highest in no way undermines the factual determinations made by Cobb J in his judgment of 30 July 2015 and, indeed, is consistent with those determinations. I am likewise satisfied that the evidence filed by NH in no way undermines the factual determinations made by Cobb J in his judgment of 30 July 2015 and does not undermine the same.

50. In reaching his decision in July 2015 Cobb J considered that the views of NH and his state of mind were highly material to the issue of habitual residence. Prior to this hearing, the information and evidence available to me makes clear that NH saw his home as being in Switzerland or Canada (albeit his right to remain in Switzerland was extinguished and he has not been to Canada for a number of years) and at no point considered himself to be habitually resident in Zimbabwe. The mother argues that the weight to be attached to NH's state of mind must be considered in light of his being a vulnerable child and particularises in her Skeleton Argument a series of factors which support that submission. Whilst I am mindful that NH's mental health has deteriorated to the point that his current wishes and feelings are now unclear, there is no evidence currently before the court to suggest that NH seeks to resile from what he has said with regard to his own state of mind insofar as relevant to the issue of habitual residence or that, on the basis of the facts broadly accepted by all parties, he would be in a position to do so. It is plain from the history I have set out above that, since his arrival in England, NH cannot be said to have become integrated into a social and family environment.

51. I am also mindful that since Cobb J decided the issue of jurisdiction in July 2015 the Supreme Court has decided the case of *Re B (A Child)* [2016] UKSC 4. Whilst reiterating that the question of habitual residence is a question of fact, Lord Wilson concluded in *Re B* that, as reflected in previous case law, a situation in which a child has no habitual residence will be a situation that is exceptional in nature. Within this context I note that Cobb J expressly recognised, although in slight less categoric terms, that such

situations will be "*relatively rare*".

52. I am satisfied that given the factual position in this case was, and on the survey of the additional evidence I have carried out remains, so stark that it continues to lead to the conclusion that NH does not have a habitual residence, having regard to the modern approach to be adopted in assessing that question, namely one focused on the situation of the child, with the purposes and intentions of the parents being merely relevant factors (see *A v A (Children: Habitual Residence)* [2013] UKSC 60). In particular, I am satisfied that the evidence filed by the mother with a view to reiterating and reinforcing her submission that NH was habitually resident in Zimbabwe, of which submission Cobb J was fully cognisant, is capable of disturbing Cobb J's finding that this was not the case.

53. In all the circumstances, and taking into account the additional evidence provided by the mother and NH and the developments in the law that have taken place since July 2015, I am satisfied that there is nothing in the information that has been filed and served since Cobb J reached his decision in July 2015 to justify revisiting his conclusion that this is one of those exceptional cases where the child has no habitual residence and hence this court has, by necessity, jurisdiction.

(ii) Adjournment

54. At the time he became the subject of a section under the Mental Health Act 1983 NH nonetheless remained committed to returning to live in Canada, which plan represented his clear wishes and feelings. Those wishes and feelings formed the basis of his instructions to his legal team and the foundation of the local authority's care plan. He was also advancing a case, through his legal team, that the threshold under s 31(2) of the Children Act 1989 were met on the basis of the care given to him by his mother.

55. The upshot of the events at the hospital of 15 March 2013 that I have recounted above is that:

i) Given the manner in which his latest statement was obtained from him, it is now unclear whether NH has genuinely changed his mind about moving to Canada or whether he has been coerced into signing a statement to this effect and in fact maintains his wish to return to Canada;

ii) It would appear that NH no longer has capacity to conduct proceedings and, accordingly, it is necessary to take steps to involve the Official Solicitor before steps are taken by a legal team establish NH's wishes and feelings; and

iii) In any event, his treating psychiatrist assesses that it would not be appropriate at

this time to tax NH further with questions concerning his wishes and feelings as to the future in order to clarify what is position in fact is, which wishes and feelings form the very foundation of the local authority's final care plan.

56. Within this context, I have taken the view that it is simply not possible to proceed fairly with the final hearing at this time.

57. First, in circumstances where NH's wishes and feelings form the foundation stone of the local authority's final care plan (in respect of which in any event, as I have already set out, I entertained significant doubts as to whether the court had sufficient clarity concerning the likely position of NH in Canada to consider, let alone approve), it seems to me that it is simply not possible to evaluate the option represented by that plan in the manner I am required to in circumstances where the wishes and feelings of the 16 year old to whom it applies are now opaque, and cannot for the time being be readily clarified, for the reasons I have described.

58. Second, by reason of the events that transpired at the hospital on 15 March 2016 and NH's subsequent apparent loss of capacity to conduct proceedings I am, with regret, satisfied that this matter must be adjourned to allow the steps necessarily consequent upon NH losing capacity to conduct proceedings to be taken.

59. Finally, with respect to the issue of threshold, in circumstances where NH is 16 years old, in circumstances where it is now unclear whether the instructions he has previously given in relation to the issue of threshold can continue to be relied upon by those representing him and, in any event, in circumstances where it would appear that NH lacks capacity to litigate, with the procedural steps that are now required consequent thereon, I am satisfied that it would not be appropriate now even to utilise this hearing to deal with the question of threshold.

60. I am extremely mindful, as I must be having regard to the statutory imperative contained in the Children Act 1989 s 1(2), of the adverse impact on NH of further delay in determining his future. However, I am also mindful of the fact that, in light of his current mental health and give the lack of clarity in respect of certain aspects of the local authority's current care plan that in any event existed at the outset of this hearing, it was inevitable that the court was not going to be able to reach a *final* determination in respect of NH's future at this hearing.

61. Having regard to the matters set out above, and with regret, I am satisfied that it is necessary to adjourn this final hearing. This necessarily means that the mother's application to adjourn of 17 March 2016 will likewise be granted by default.

(ii) The mother's Ancillary Applications

62. With respect to the mother's application to discharge the interim care order in respect of NH set out in her C2 forms of 9 February 2016 and 26 February 2016, I adjourn that application to the final hearing listed on 11 July 2016.

63. I dismiss each of the other applications set out in the mother's C2 application forms dated 9 February and 26 February 2016.

i) With respect to the mother's application to discharge an order made by Cobb J on 27 November 2015 restricting the mother's access to medical and police records, it would not appear that Cobb J made such an order (although he did on that date make an interim reporting restriction order).

ii) I am satisfied that, having regard to his fragile emotional state, it would not be appropriate at this time to order the hospital treating NH disclose to him certain documents from Alberta.

iii) I am further satisfied that it would not be in NH's best interests for the local authority be prohibited from giving instructions to the hospital treating NH under the auspices of the interim care order or for the court to prescribe to the local authority the extent to which that the mother should be involved in decision making regarding NH's treatment and the formulation of any treatment plan for NH.

iv) With respect to her request that her solicitors receive copies of all letters sent to or received from the Canadian High Commission and the authorities in Alberta and Ontario, as far as I can ascertain the mother has received copies of this correspondence.

v) I am not satisfied that it would be appropriate for the local authority and those representing NH's to disclose fully to "*external parties*" their position, input, advice or legal opinion.

vi) With regard to the mother's application for an order that the local authority submit a detailed education, healthcare and placement plan for NH if he were to go and live in Canada alone or remain in the United Kingdom, the local authority will be filing and serving a further final care plan.

vii) Finally, I am not satisfied that it is in NH's best interests to set aside the order of 27 November 2015 regarding custody of NH's passport.

(iv) Access to Documents

64. With respect to the control of documents, as set out above, on 9 March 2016 (at a hearing listed as a result of the mother's C2 application dated 26 February 2106 and which I treated as a pre-hearing review) I considered, following an application dated 8 February 2016 made by those representing NH, the issue of whether the mother should be allowed to keep in her possession certain documentary evidence ahead of the final hearing.

65. Those documents in question comprised a psychological report in respect of NH from his treating psychiatrist dated 9 March 2016, a section 3 report under the Mental Health Act 1983 in respect of NH and various of NH's medical records that were to be obtained by those representing NH which the parties considered may, or may not be relevant to the issues that fell for determination at the final hearing. To my understanding, prior to 9 March 2016 the mother had been served with all other documents filed in these proceedings.

66. On 9 March 2016 I made an interim order covering the period between that date and the commencement of the final hearing on 15 March 2016 intended to provide for the mother to see, but not to have physical custody of these documents. In respect of the latter point, on 9 March 2016 leading and junior counsel then instructed by the mother told me that arrangements had been made for the mother to attend counsel's chambers on 11 March 2016 to see and read all relevant documents, including the documents I have specified above, and give her instructions in respect of the same in preparation for the final hearing commencing on 15 March 2016. At the commencement of the hearing on 15 March 2016 I was informed by the mother's legal team that she had not, in fact, availed herself of this opportunity.

67. It is right to note that having reviewed the terms of the orders that I approved on that date I consider that the drafting of the order in fact leaves something to be desired as far as translating the intent of my judgment into the terms of an order, with the orders being in somewhat wider terms wider than that which I had intended. That said, I am satisfied that all parties, including those then representing the mother, were clear from my judgment what was intended in the interim (specifying as it does the documents concerned). As set out above, arrangements had been made for the mother to attend counsel's chambers on 11 March 2016 to see and read all relevant documents and give her instructions in respect of the same in preparation for the final hearing. Further, I made clear in my judgment of 9 March 2016 that the order I was making was an interim order and that I would revisit at this hearing the terms of the interim order. In reviewing the terms of the order as I now do, I clarify below the precise and narrow ambit of the

order I am making.

68. As I noted on 9 March 2016, it is important to emphasise that it was not in any way being suggested by any party on that date, much less the court, that the mother should not *see* the documents I have set out above, should not be able to read them or should not be able to give instructions to her lawyers. In short, there was no suggestion that should be deprived of access to these documents but, rather, that such access should be regulated. That remains the position.

69. What I was being asked to do on 9 March 2016, and what I am being asked to reconsider at this hearing, is to determine (in light of certain aspects of the history of this matter which I shall again come to shortly) *how* the mother is to be given access to these documents. Specifically, I am invited by those acting on behalf of the other parties to put in place a mechanism whereby the mother can see the documents and read them (and give instructions on them to her lawyers if she instructs the same) but shall be prevented from being given or taking copies of those documents having had the opportunity to peruse the same.

70. The application for an order regulating how the mother gains access to documentary evidence is pursued in light of the mother's record of disseminating documents that are confidential to these proceedings to a wide audience by way of email. As I noted on 9 March 2016, some of those emails, sent in the manner I have described, have had attached to them documents which have been filed in these proceedings and which are confidential to these proceedings by virtue of provisions of the Administration of Justice Act 1960 s 12, the Children Act 1989 s 97 and Part 27 of the FPR 2010. Indeed, the emails that the mother has continued to send to the court between the conclusion of the hearing and the handing down of this judgment contain information confidential to these proceedings copied to those not party to the same.

71. Within this context, I am asked by the other parties to these proceedings to keep in place the interim order I made on 9 March 2016 in respect of the documents that order covered and to extend it to the documents that are to be filed in these proceedings ahead of the adjourned final hearing that will now take place on 11 July 2016. The mother opposes this course of action and considers that she is being deprived of the opportunity to see the documents in question. Before they retired the mother's legal team made brief submissions on behalf of the mother in support of the mother's contention that the interim order of 9 March 2016 should not be continued.

72. In considering the application I apply the legal principles that I set out in my judgment of 9 March 2016 at Paragraphs 12 to 18. In summary:

    i) The right to a fair hearing embodies the principle of 'equality of arms', which principle requires that anybody who is a party to proceedings must have a reasonable opportunity of presenting his or her case to the court under conditions

which do not place that party at a substantial disadvantage *vis a vis* their opponent;

ii) Where there is a dispute which engages this principle the resolution of that dispute involves striking a fair balance between the rights of each of parties;

iii) The principle imposes on local authorities an obligation to disclose any material in their possession or to which they can gain access which may assist a party in exonerating himself or in obtaining a particular position in a given case. The principle extends to material which might undermine the credibility of the case of the local authority;

iv) The right, to the disclosure of documents is not an absolute one. In some cases it may be necessary to withhold certain evidence so as to preserve the rights of another person;

v) Any departure from the principles of open and adversarial justice must be strictly necessary and any detriment to a party must be counterbalanced by appropriate procedural safeguards;

vi) The principle of equality of arms as it impacts on disclosure also applies in civil proceedings between two parties as individuals or between an individual and the State, including in the context of care proceedings (see *Buchberger v Austria* (2003) 37 EHRR 356 at [50]);

vii) Within the foregoing context, there may be a violation of a right to a fair hearing if a respondent State, without good cause, prevents an applicant from gaining access to documents in its possession which are of assistance to the other party's case (see *McMichael v United Kingdom* (1995) 20 EHRR 205).

73. As noted in my judgment of 9 March 2015, most recently in the case of *A (A Child)* [2012] UKSC 60, the Supreme Court has reiterated that, whilst there is no absolute right of disclosure in relation to documents upon which the court relies, the discretion to refuse such disclosure should be exercised occasionally and with great caution.

74. As I further noted at Paragraph 19 of that judgment, and I once again reiterate, in this case what I am being invited to do is to control the *manner* in which the mother sees the relevant documents as opposed to *whether* or not she sees them. No one is suggesting that disclosure itself should be refused in this case.

75. The mother's conduct in relation to the documentary evidence in these proceedings places the court in a very difficult position. The court is anxious to safeguard her Art 6

rights and to ensure that she has proper access to all evidence relevant to the determination of the issues. However, the court is also anxious to ensure that NH is not subjected to the stress of having his very sensitive private information broadcast outside the confines of these proceedings. In the circumstances, the mother by her conduct compels the court to consider limitations on the manner in which she can access the evidence filed in this case, which limitations bring with them their own difficulties.

76. Having regard to the matters set out above, and to the legal principles that I have outlined, I remain satisfied that it is necessary to regulate the mother's access to documents with which the interim order related in order to prevent her from disseminating the same outside the confines of these proceedings and in breach of the provisions of, in particular, the Children Act 1989 s 97 and NH's rights under Art 8.

77. I am reinforced in this conclusion by the apparent deterioration in NH's mental health following the visit of the mother and his cousin to him on 15 March 2016. In circumstances where NH's emotional equilibrium is apparently now even more fragile than it was as at 9 March 2016, in my judgment the need to protect NH from the emotional harm of knowing that very personal details are at risk of being publicised in the manner the mother has publicised other documents in this case is even greater. Within this context, I bear in mind in particular the importance that is ascribed to the confidentiality attaching to personal medical matters. Within this context, I am satisfied that the order should also extend to cover the report and Certificate of Capacity from NH's treating psychiatrist filed by 4pm on 18 March 2016.

78. I remain satisfied that the modest restriction on the mother's Art 6 rights constituted by an order allowing her to see, but not to retain custody of these documents is a proportionate approach balancing the competing rights engaged. Once again, that restriction is limited to a degree of control being exercised over *how* the mother gains access to this evidence (which mechanism is often relied on in other contexts, for example where a parent is of no fixed abode). The restriction does not prevent the mother seeing and reading the documents.

79. At the present time however I am not satisfied that the order should be extended to cover the updating report from NH's treating psychiatrist due to be filed by 4pm on 21 June 2016, the final evidence and amended care plan of the local authority due to be filed and served by 4pm on 23 June 2016, the statements of the Official Solicitor and/or Munsashe due to be filed and served on 30 June 2016 and the final analysis and recommendations of the Children's Guardian due to be filed and served by 4pm on 5 July 2016. These documents are not yet available and will not be available for some time. The circumstances that pertain at the time they are due to be filed and served may be different to the circumstances that pertain now. In my judgment a proportionate approach requires that the question of whether the order regulating the manner in which the mother has access to the evidence in this case should extend to such documents be decided only once those documents have been produced so that the court may take its decision in light of the actual contents of the same when undertaking the requisite

balancing exercise.

80. In the circumstances, if any party seeks to regulate the manner in which the mother gains access to the updating report from NH's treating psychiatrist due to be filed by 4pm on 21 June 2016, the final evidence and amended care plan of the local authority due to be filed and served by 4pm on 23 June 2016, the statements of the Official Solicitor and/or Munsashe due to be filed and served on 30 June 2016 and the final analysis and recommendations of the Children's Guardian due to be filed and served by 4pm on 5 July 2016 that party should restore the matter to court at the appropriate time.

81. The draft order provides for the mother to be supervised when viewing the documents covered by the order by either an employee of the local authority or, if instructed, the mother's solicitor and for them to police closely the mother's viewing of the documents. This again is an issue and creates a number of difficulties. First, there are difficulties in a party to care proceedings being watched closely by an employee or solicitor of the local authority when viewing documents in circumstances where the authority is the "prosecuting" authority. Conversely, unless there is *some* species of supervision then no one is going to know whether the mother has abided by the terms of the order. In addition, in circumstances where the mother instructs lawyers, there is a tension between the professional obligations owed by her lawyers to the mother and the obligations owed by her lawyers to the court under the terms of any order.

82. Endeavouring to strike the right balance, it seems to me that if viewing the documents at the offices of the local authority, the order should provide for the mother to be supervised when viewing the documents, for the viewing to be terminated if the mother seeks to take copies of the documents and a report made to the court.

83. If the mother is viewing the documents with a solicitor then she will be accompanied in any event when doing so and the order can provide simply for the viewing to be terminated if the mother seeks to take copies of the documents and a report made to the court. The order I made on 9 March included an injunction against those then representing the mother providing her with the documents covered by the order, the terms of which were amended in consultation with those lawyers (I having decided in principle that such an order should be made). I am invited to make a similar injunction against any lawyers who may be instructed by the mother in the future. Having given further consideration to the matter it seems to me that there are inherent difficulties in making an injunctive order against lawyers who are not yet instructed and who, by definition, have had no notice of the application for such relief and I have, on further reflection, decided not to make such an order at this stage. I will consider any further application for such relief if and when the mother seeks to instruct a further set of lawyers in this case.

84. Finally, it was suggested at the conclusion of the hearing (and is anticipated by the draft order I have been sent for my consideration) that the mother could view the relevant

documents at the British Embassy in Harare subject to supervision by Embassy staff there. I made clear the parties that I would not be prepared to countenance such a direction without seeing written confirmation from the relevant Embassy that this was a service they were willing to offer. That confirmation has not yet been forthcoming. Whilst I have caused enquiries to be made of the local authority as to whether confirmation in this regard has been received, I have simply been referred to the terms of the draft order which provide that the direction be made "subject to the consent" of the Embassy. I have already indicated that this is not sufficient. In the circumstances, and pending confirmation from the relevant Embassy (if forthcoming) I decline to include a term in this regard at this stage.

Conclusion

85. In conclusion, I am satisfied that the evidence filed by the mother and by NH subsequent to the decision of Cobb J in July last year with respect to the issue of jurisdiction is not such as to justify revisiting Cobb J's conclusion with respect to that issue.

86. Having reviewed the order I made on 9 March 2016 I am satisfied that it is necessary to continue the operation of the order controlling the access the mother has to the following documents (I am satisfied, having reviewed NH's medical records, which relate solely to the manner of his treatment in respect of his consumption of drugs and his knife wounds, that the same are not relevant to the issues before the court and are therefore not disclosable in any event):

    i) The report compiled pursuant to s 3 of the Mental Health Act 1983 in respect of NH;

    ii) The psychological report in respect of NH from his treating psychiatrist dated 9 March 2016;

    iii) The report and Certificate of Capacity from NH's treating psychiatrist to be filed by 4pm on 18 March 2016;

87. Having regard to the matters set out above the order regulating the mother's access to these documents will be in the following terms:

    i) The parties shall not serve the following documents upon MH personally, whether by post, email or otherwise:

        a) The section 3 report under the Mental Health Act 1983 in respect of NH;

b) The psychological report in respect of NH from his treating psychiatrist dated 9 March 2016;

c) The report and Certificate of Capacity from NH's treating psychiatrist to be filed by 4pm on 18 March 2016;

ii) Whilst the mother is not legally represented, the parties shall confirm to the mother by email that the said documents in the list set out above have been filed and served in the proceedings;

iii) Upon receipt of such notification the mother shall be entitled to view the said documents by attending by prior appointment the legal offices of the local authority;

iv) The mother may only view the said documents at the legal offices of the local authority and may not take copies of the documents (whether paper, electronic or photographic). In the event that the mother takes, or attempts to take a copy of the documents the court will be notified by the local authority will terminate the session, notify the court and the mother shall be precluded from viewing documents pending further consideration of the issue by the court;

v) In the event that the mother re-instructs lawyers, for as long as those lawyers remain on record the said documents in the list set out above shall be sent to the solicitors representing the mother. Upon service of the documents on her solicitors the mother shall be entitled to view the documents by attending by offices of her solicitors;

vi) Any solicitor or barrister acting for the mother is prohibited from providing to the mother with copies of the said documents specified in this order.

vii) The mother may not take copies of the said documents (whether paper, electronic or photographic) held by her solicitors. In the event that the mother takes, or attempts to take a copy of the documents the court will be notified by those acting for the mother and the mother shall be precluded from viewing documents pending further consideration of the issue by the court;

viii) Any party may apply (on short notice if necessary) for variation or discharge of this order. Any application to extend the terms of this order to cover the updating report from NH's treating psychiatrist due to be filed by 4pm on 21 June 2016, the final evidence and amended care plan of the local authority due to be filed and served by 4pm on 23 June 2016, the statements of the Official Solicitor and/ or Munsashe due to be filed and served on 30 June 2016 and the final analysis

and recommendations of the Children's Guardian due to be filed and served by 4pm on 5 July 2016 or other documentary evidence shall be made on notice to me.

88. Finally, for the reasons set out above and with great reluctance, I adjourn this final hearing in order that the procedural steps consequent upon it appearing that NH has lost capacity to conduct litigation to be taken. The following directions for the adjourned final hearing listed on 11 July 2016 shall apply (subject to the terms in the foregoing paragraph):

i) The local authority shall file and serve a report and Certificate of Capacity from NH's treating psychiatrist by 4pm on 18 March 2016;

ii) He having agreed to the appointment, the Official Solicitor shall be appointed as litigation friend for NH subject to funding being confirmed;

iii) In the event that NH regains capacity to conduct proceedings, the local authority shall immediately notify the court and the parties and shall file a report and an updated Certificate of Capacity from NH's treating psychiatrist;

iv) The local authority shall in any event file and serve an updating report from NH's treating psychiatrist by 4pm on 21 June 2016, the costs of that report to be shared equally between the parties (except the mother if she is not legally represented) the costs being in the opinion of the court a necessary and reasonable disbursement on the public funding certificates of the publically funded parties;

v) The local authority shall file and serve its final evidence and an updated care plan by 4pm on 23 June 2016;

vi) The mother, the Official Solicitor (if still appointed) or NH (if he has regained capacity to conduct proceedings) shall file and serve their respective final statements of evidence by 4pm on 30 June 2016;

vii) The Children's Guardian shall file and serve her final analysis and recommendations report by 4pm on 5 July 2016;

viii) The local authority shall file and serve an agree reading list and authorities bundle by 4pm on 7 July 2016;

ix) The local authority shall file and serve an agreed Witness Template by 12noon on 8 July 2016. The following witnesses will give evidence at the final hearing:

Marcus Sixta (expert in Canadian law), Jabu Sabeko (social worker), the mother and the Children's Guardian;

x) Permission is given for Mr Sixta to give evidence by way of a video link, to be arranged by the solicitor for the child in co-operation with the Clerk of the Rules. The cost of the video link and the cost of Mr Sixta attending to give evidence shall be shared equally between the parties (except the mother if she is not legally represented), the costs being in the opinion of the court a necessary and reasonable disbursement on the public funding certificates of the publically funded parties;

xi) This matter shall be listed before me for an adjourned final hearing with a time estimate of 5 days commencing on 11 July 2016, the morning of the first day of the hearing to be allocated as judicial reading time;

xii) The mother's application to discharge the interim care order in respect of NH is adjourned to the final hearing on 112 July 2016;

xiii) The remaining applications set out in the mother's C2 applications dated 9 February 2016 and 26 February 2016 are dismissed;

xiv) The local authority shall convene an advocates meeting on 16 June 2016 at 5pm by telephone;

xv) In the event that any party seeks to vary the reporting restriction order made by Cobb J on 17 December 2015 they shall apply on notice to the press given via the Copy Direct service;

xvi) For the avoidance of doubt, and notwithstanding the order made regulating the mother's access to certain documents in this case, a copy of this judgment (and its associated order) and the judgments and orders of the court given on 9 March 2016 and 15 March 2016 shall be provided to the mother. The judgments of the court given on 9 March 2016 and 15 March 2016 shall be transcribed at public expense.

89. Having regard to the terms of FPR 2010 Parts 15 and 16 I am satisfied that it is proper in this case for the Official Solicitor to act as litigation friend to NH, the Official Solicitor having agreed to act in that capacity.

Request for Permission to Appeal

90. By an email dated 21 March 2016 at 08.45 the mother applied to me for permission to appeal my orders of 9 March 2016 and 15 March 2016. It would appear that the mother also seeks permission to appeal this judgment, although at the time of making that application she has not yet seen it.

91. With respect to my interim order of the 9 March 2016 I decline the mother's application for permission to appeal. The mother was represented at the hearing on 9 March 2016 by leading and junior counsel who made full submissions on her behalf opposing the order regulating the manner in which she gains access to the relevant documents. The order made on 9 March 2016 covered only three sets of documents, namely the report compiled pursuant to s 3 of the Mental Health Act 1983 in respect of NH, the psychological report in respect of NH from his treating psychiatrist and medical records pertaining to NH. Provision was made for the mother to see and read these documents at the chambers of leading and junior counsel ahead of the commencement of the final hearing but the mother did not avail herself of this opportunity. Finally, for the reasons set out in my judgment of 9 March 2016 the order was an interim order and one which I am satisfied struck the correct balance between the mother's Art 6 rights and the Art 8 rights of NH. In the circumstances, I adjudge that an appeal against my order of 9 March 2016 has no real prospect of success.

92. With respect to my decision of 15 March 2016 to refuse an adjournment, I likewise refuse the mother permission to appeal. I remain satisfied that the mother's criticism of the bundle did not amount to a proper ground for adjourning the final hearing for the reasons set out in this judgment. Save the documents which were the subject of my order of 9 March 2016, to the best of my knowledge the mother has had all of the documents filed and served in this case. The mother had notice of the final hearing since 17 December 2015 and was in the jurisdiction at the time the same commenced. Further, and in any event, it has become necessary to adjourn this hearing for the reasons I have likewise set out herein. In the circumstances, an appeal again the order refusing an adjournment is otiose. In the circumstances, I likewise adjudge the mother's appeal in respect of my decision of 15 March 2016 to have no real prospect of success.

93. In the circumstances, I refuse the mother permission to appeal my orders of 9 March 2016 and 15 March 2016. As to any application by the mother to appeal the order consequent upon this judgment, I will consider any such application in writing once the mother has had chance to read and digest this judgment and the order consequent upon it.

94. That is my judgment.