St.Mary's
FAMILY LAW SPECIALISTS

Public Law Case Law Update

Phoebe Duterloo

September 2025

This judgment is of particular interest to practitioners working in children law with an international aspect, the process of homologation upon cross-border relocation and the use of wardship proceedings to safeguard the child prior to relocating.

A Local Authority in Wales v GDA & Anor [2025] EWFC 273

Introduction [1 – 8]

HHJ Paul Hopkins KC gives judgment on a case concerning one child ('X'), born in 2024, now circa 16 months old. Previous proceedings also have referred to the child as X.

Besides these proceedings, another case is ongoing pursuant to the court's inherent jurisdiction concerning X. A C66 application was issued on 10.07.2025, which seeks to make X a ward of the court concluding these Children Act 1898 proceedings.

The Local Authority ('LA') is located in Wales. X's mother ('M') is GDA, who is a citizen of another country (country 'Z'). She has been in the United Kingdom ('UK'), since the end of 2023. X's father is unconfirmed. X was represented through their Cafcass Cymru Guardian ('CG'). Ms L, who is from Country Z's consular team, also attended this hearing.

The LA previously sought a CO and ICO in relation to X, pursuant to an application dated 02.05.2024. To summarise, the LA's final position is that a SGO should be made in favour of X's maternal uncle and his partner, who reside in country Z. Ideally, the LA wanted this to be fully recognised (homologated), or at a minimum in the progress of homologation, prior to X relocating to their care. In the interim, the LA proposed for X to be made a ward of the court to ensure his ongoing protection.

This hearing functioned as a final hearing, with earlier judgments dated 24.04.2025, which dealt with issues in relation to section 31 of the Children Act 1989, alongside the welfare determination. That judgment was not the subject of any appeal; it follows that this judgment must be analysed in conjunction with that earlier judgment.

Parties current positions [9 – 11]

The LA remained wanting the orders above, alongside a further port alert order, to continue ideally until X's proposed relocation to country Z. The LA was neutral as to the 'mechanism' point regarding M's contact, which is refined below.

M's position remains that she does not accept the previous judgment, although she does now accept that X be relocated to live with the proposed SGs. M did not have any issues in relation to the principal orders sought by the LA and agreed to provide undertakings supporting (albeit partially) the transition arrangements. Only one small ancillary issue was raised by M in relation to contact with X. M accepted the overall plan of contact as detailed in X's final care plan but did want reference to the same detailed in a recital on the final court order.

The CG echoed the LA's final case, agreeing to the orders sought. The CG was of the view that reference to the contact between M and X in the final order should be shortened to a cross referencing the relevant part of X's final care plan. This was due to the CG being concerned that country Z may interpret the proposed recitals as 'concrete' rather than a reflection of the present intentions as to contact.

IRO

The judgment also acknowledged, out of completeness, that the IRO has endorsed the LA's final care plan for X.

Evidence and witnesses [14 – 15]

Before HHJ Hopkins had sight of the reduced core bundle of 1185 pages, the CG's final analysis (separately), case summaries, and closing position statements from all parties. The judge was also provided with draft order and a draft of the proposed undertakings of M. The context and reasoning for the undertakings are set out below in his judgment.

Besides the above, the court needed no further oral evidence but did benefit of the confirmation of further information (unsworn) provided by AA, the court appointed expert in the relevant law in country Z, who joined remotely.

Relevant law [16 - 21]

As indicated by the LA, the final law to be considered, remains relevant to the LA seeking X to be made a ward of the court until he relocates to country Z. Besides, the LA seeks a final SGO, ideally homologated before X would leave. This is likely to take 2 – 3 months. However, for this process to commence, the order has to be made first. The proposed SGs are currently in country Z. If an SGO is made unconditionally, the Ico would end and the only person in this country with PR of X would M. In other words, the LA would have no means of ensuring X's protection, which would be concerning in light of the earlier findings made against M.

A brief extempore judgment granting leave to the LA to seek wardship was given on 22.07.2025. What follows below, is a short recital of the relevant law that applied in determining that application.

The court was taken to section 100 of the Children Act 1989. Which sets out the relevant criteria of such applications;

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).

Specifically, the court was taken to section 100(2) and 100(3), which set out the restrictions imposed upon local authorities and the requirement for leave of the court.

The court was not asked to consider any authority directly relevant to the points as to whether leave should be granted in the presenting case. However, the LA submitted that it is not discharging and ongoing role on relation to X. The court was taken to Re E (Wardship Order: Child in Voluntary Accommodation) [2013] 2 FLR 63, which illustrates a case where the LA was granted leave where a parent had consented to section 20 of the Children Act 1989, this would directly relate to the instant case, albeit that the relevant section would be pursuant to section 76 of the Social Services and Well-being (Wales) Act 2014.

The court was further referred to other authorities, namely Re D (International SGO) [2024] EWFC 353; Re K, T and U (Placement of Children with Kinship Carers Abroad) [2019] EWFC 59 and Re S (Inherent Jurisdiction: Transgender Surgery Abroad) [2023] EWHC 347. These were to remind the court, inter alia, that resorting to the court's inherent jurisdiction should be used carefully, and only if there is no other way to address a deficit in the statutory regime of the Children Act 1989. This entails that its deployment is only appropriate if they are necessary and proportionate. If leave would then be granted by the court, it must make decisions based on the subject child's interests.

Ultimately, the court was satisfied that the specific circumstances which would arise at the conclusion of this case mean that there is no other options, other than invoking the court's inherent jurisdiction, for the court to ensure that X is safe in the interim period prior to being relocated to country Z. To summarise, the court was satisfied that the criteria set out above in section 100(4) of the Children Act 1989 were met by the LA.

Updating background / litigation history

At the end of the hearing on 24.04.2025, the court directed that a further risk assessment be undertaken of the proposed SGs, in order to assess, inter alia, their response to the court's judgment (the findings made against M), the continuation of their commitment to X, their capacity to keep X safe and the 'dynamic' relevant to the maternal family. The LA complied and updated a further assessment plan in relation to this on 06.05.2025.

The proposed SGs arrived in the UK on a date unknown, and the LA further assessed them, including their level of engagement with them and their contact with X over ensuing weeks. This report was again positive. The SGs then returned to country Z on a date unknown.

At the IRH, which also took place in front of HHJ Hopkins KC, the parties were largely agreed, which was a consequence of the updating positive assessment of the proposed SGs. The CG recommended wardship, addressing X's need for protection in the interim prior to relocation. The LA welcomed this

as a helpful proposal. Provision was also made for M to confirm her stance on the homologation process of country Z. M was also directed to file and serve documentation as to her asylum application.

Priorly indicated, the LA issued C99 application on 10.07.2025. The LA's final evidence care plan is dated 14.07.2025. Answers to further questions posed to AA were received on 16.07.2025.

Summary of further expert / professional evidence [26 – 42]

Adding on to previous advice from AA, further expert assistance has been given, stating that the court's earlier judgment did not alter his earlier advice. Which was summarised in earlier responses. He stated that it remained that it was grounded in the "best interests of the child", due process of law, and is consistent with the legal reasoning applied in country Z. He confirmed that foreign judgment can only be formally adopted if it has been homologated by country Z, which will take between 2 – 12 months. This depends on the documentation and absence of any challenges to the process. The court needing to do this, has been confirmed by AA to be one which prioritises cases involving the rights of children and adolescents.

For the process of homologation to progress effectively, the following must be complied with:

- The foreign decision is final and unappealable
- The decision must be observe due process of law in the country of origin;
- Authentication by the Consulate (or such other approved government agency in the light of the further information from the Consulate) accompanied by a sworn translation carried out by a certified translator in country Z.

Besides the above, AA confirmed that homologation could happen prior to C being relocated to country Z. X does not have to be physically present to request the temporary appointment of a guardian in country Z. AA opined that what is proposed for X is sufficient to ensure his legal protection and the continuity of his placement with his proposed SGs.

The court noted that the CG's solicitors provided an extensive note annexed to her position statement as to the relevant law concerning the recognition of foreign judgments in country Z. AA addressed specifically how the above note reflects the recognition process accurately. AA also confirmed that there is a mechanism for a party to object to the homologation process. AA went on to confirm that assuming the documents required would be submitted in a timely manner, the approximate timeframe for the homologation process would be 2 – 3 months on the condition that M would not oppose (which she agreed to confirm by way of an undertaking). If M were to oppose this process, the timeframe would be significantly extended to 6 – 12 months. AA also confirmed that for the process to be accelerated an application should be made to the relevant court to confirm the status of X as a child, invoking the absolute priority for children. AA stated:

".....With proper documentation, strategic procedural steps, and, if applicable, a formal undertaking from the mother, the process is likely to proceed swiftly and favourably".

And lastly confirmed that there is no upcoming 'vacation' period for the court in country Z.

Further assessment of the uncle of aunt [30 – 39]

In the prior judgment related to these proceedings, the assessment of the uncle and aunt facilitates CFAB, this judgment focusses on their further assessment.

This was positive, and it is not needed to reiterate the outcome of this. X's social worker confirmed that both the uncle and aunt understood and accepted the contents of the previous judgment in relation to M's findings.

The assessment of their engagement with X, as well as their ongoing commitment is incredibly positive. Prior, X was wary, as his uncle and aunt were essentially strangers to him. Besides this, they speak a language that is not his first language. Over time, X settled and became more comfortable. Later they initiated contact by meeting with X and his foster carer at a contact centre. The foster carer was optimistic about the contact between X and his uncle and aunt and requested future contact to take place at their residence. Contact was being undertaken on a daily basis for the first week. A meeting was convened and there was discussion of the contact progressing, as well as timetabling future contact sessions. Contact then progressed to three – four hours a day, supervised and within the community. After another meeting, contact was changed to being supervised on a lose basis, with varying times each day. Then the first overnight stay at the uncle and aunt's residence was arranged, X was reportedly settled and there were no concerns. During the contact X's routine was observed and the uncle and aunt acted upon any advice given by professionals.

Uncle and aunt's introduction to X was assessed as "very positive", they demonstrated "flexibility, dedication and commitment" to X. With the conclusion of the assessment period, X demonstrated he was content in their care. The social worker stated: "despite only meeting X three weeks earlier, there is developing a loving bond between the couple and X".

The foster carer confirmed she would ensure indirect contact would take place between X and the uncle and aunt upon their return to country Z.

The report also records that the uncle and aunt complied with all the "ground rules", the aunt specifically acknowledging that she understands the requirement for strict restrictions and / or supervision for X's welfare.

In a further assessment, X primary attachment is observed to naturally develop towards his uncle and aunt, who will be his full-time carers. Whilst M will have contact with X in country Z, the social worker noted that this must occur with the mother staying at the maternal grandmother's house and only visiting X at his uncle and aunt's.

The social worker also assessed the dynamic between the uncle, aunt and M. It was noted that the first interaction between aunt and uncle and M was emotional, reasoned by the fact that they had not been in contact with her for a number of years. However, the LA did note that the uncle and aunt acknowledge that their priority must lay with X, despite the overwhelming emotions of the situation before them.

The LA contends this to be different with the maternal grandmother, of which a negative viability assessment was conducted. This was because she was noted to be very emotional upon contact with M during her visit to the UK in 2024. Maternal grandmother did express that, understandably, M is suffering a great deal due to her separation from X. However, this does give the LA concerns in regard to her loyalties towards M, rather than X. As a consequence, she would therefore not be allowed to

have unsupervised contact with X. The LA also acknowledges that they are trepidatious M has not been fully open and honest with her own mother as to the concerns related to her.

In the further assessment, M admitted she seeks to remain in the UK and will appeal against the decision made to remove her. M also acknowledged she may seek to return to country Z, if her appeal were to be rejected. M informed the parties and social worker that if she would return to country Z, she would not attempt to remove X from the uncle and aunt's care, or attempt have unsupervised contact. She said she respected what they were undertaking to support X to keep him within the family. The social worker, although untested, stated she does not believe the uncle and aunt would allow the above to happen in any event. She adds that she has "no doubts that they are able to protect X". Besides, she feels they have shown that they would seek support from police or other local authorities if need be.

CG's analysis [40 – 42]

The CG was able to draw his opinion from the detailed overall assessments of the proposed SGs. He contends that placing X with his family within country Z would be beneficial for his sense of identity and culture. The care plan also seeks to encourage this to allow X to remain involved with is heritage, language and traditions. He also notes, that throughout the assessment period, uncle and aunt did not cause for any major concerns. Any issues that were raised were effectively addressed.

The CG also considered the final care plan and provisional transition plan. He is content that the risks regarding M possibly attempting to remove X from the care of his SGs unlawfully is addressed as much as it can be. He also notes that M's position is now one which is more cooperative for the benefit of X, and that this may be due to M's progress and stability. However, X relocation to country Z must still be approached with caution.

Concluding on the most appropriate result for X, the CG agreed that X being placed under the ward of the court prior to his relocation to X would be the safest due to the ongoing risk M poses.

M's updating evidence / undertaking [43]

M continues to not accept the findings, however, does accept the decision for X to be in his best interest. She accepts the proposed SGO, and further agrees to the proposed undertaking to not obstruct the homologation of X's relocation in country Z. The court commended her for this.

Welfare determination [44 – 45]

The earlier judgment addressed the welfare checklist (section 1(3) of the Children's Act 1989) in detail and deploys a holistic analysis of the options for X's future.

HHJ Hopkins KC accepted the evaluation before the court regarding the proposed SGs capacity to benefit X's welfare, as well as safeguard him from the risks posed by M.

Care / SGO support / transition plan [46]

The court considered the LA's care plan, which included the SGO support plan and tentative transition proposal. This was in favour of an SGO for uncle and aunt, which is extensively supported by the LA. The LA also provided funding for an extra bedroom for X as well as the assistance for any litigation needed in country Z. No issue was raised on the extent of the support available, and the provisional plan was found to be sensible. The court hopes the homologation process will be

completed within 3 months, and the parties invite the court to review this process albeit in the context of the ongoing wardship. The court finally approved the final care plan.

Contact [47 – 51]

Prior to X's relocation, contact will be reduced to once a week, before no contact taking place for 8 weeks upon X's relocation. After X is settled, thirty minutes of contact is to take place on 'WhatsApp' on a monthly basis, direct contact should take place on two occasions each year dependant on the length of stay of M in country Z.

If M does relocate to country Z herself, the court directs that contact with X can take place on a monthly basis for four hours duration each session to be arranged and supervised by the SGs.

In relation to direct contact, M may not remove X from the SG's care and is not to have unsupervised contact with him.

These arrangements are based on the opinions of professionals but will be kept under review over time. The court was satisfied that these are appropriate and safe, meeting X's needs.

Consequential directions / declaration [52 – 55]

The court finalised by being satisfied that X's welfare would be prioritised if placed with his uncle and aunt as Special Guardians.

Final remarks [56 – 57]

Upon conclusion, the court remarked that residual risks cannot be avoided upon relocation of X to country Z to the care of his aunt and uncle. However, considering the above, the court believed the uncle and aunt can be deemed as trustworthy. Lastly, HHJ Paul Hopkins KC concluded by reiterating the importance of the advantage X will have from his relocation to country Z, this regarding his nationality, language and rich cultural heritage.

Phoebe Duterloo

E: phoebe.duterloo@stmarysfamily.co.uk

T: 0115 950 3503