EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2022] CSIH 50
XA20/22

Lord Doherty
Lord Boyd of Duncansby
Lady Wise

OPINION OF THE COURT

delivered by LORD DOHERTY

in the Appeal by Stated Case under section 163(1)(a)(iii) of the Children's Hearing (Scotland) Act 2011

by

LO and EO

Appellants

against

ANNE MARIE MCGINLEY, Locality Reporter Manager, Scottish Children's Reporter Administration

Respondent

Appellants: Party
Respondent: Scullion; Anderson Strathern LLP

22 November 2022

Introduction

[1] This is an appeal by stated case against a decision of the sheriff at Glasgow refusing an appeal from a decision of a children's hearing dated 19 November 2021. The main issues raised are whether the sheriff erred in law (i) in deciding not to entertain the appellants' argument that the children's hearing did not have jurisdiction; (ii) in deciding that the

children's hearing's decision not to request an Italian court to assume jurisdiction in terms of Article 15 of Council Regulation 2201/2003 (Brussels II *bis*) was justified.

Relevant legislation

[2] The Children's Hearing (Scotland) Act 2011 ("the 2011 Act") provides:

> "**67 Meaning of 'section 67 ground'**
>
> (1) In this Act 'section 67 ground', in relation to a child, means any of the grounds mentioned in subsection (2).
>
> (2) The grounds are that—
> (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,
> (b) a schedule 1 offence has been committed in respect of the child,
> (c) the child has, or is likely to have, a close connection with a person who has committed a schedule 1 offence,
> …
>
> (6) In this section—
> …
> 'schedule 1 offence' means an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46) (offences against children under 17 years of age to which special provisions apply).
> …
>
> **83 Meaning of 'compulsory supervision order'**
>
> (1) In this Act, 'compulsory supervision order' in relation to a child, means an order –
> (a) including any of the measures mentioned in subsection (2),
> (b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (the 'implementation authority') and
> (c) having effect for the relevant period.
>
> (2) The measures are–
> (a) a requirement that the child reside at a specified place
> ……

154 Appeal to sheriff against decision of children's hearing

(1) A person mentioned in subsection (2) may appeal to the sheriff against a relevant decision of a children's hearing in relation to a child.

(2) The persons are—
(a) the child,
(b) a relevant person in relation to the child,

(3) A relevant decision is—
(a) a decision to make, vary or continue a compulsory supervision order
…

156 Determination of appeal

(1) If satisfied that the decision to which an appeal under section 154 relates is justified, the sheriff—
(a) must confirm the decision …

163 Appeals to sheriff principal and Court of Session: children's hearings etc.

(1) A person mentioned in subsection (3) may appeal by stated case to the sheriff principal or the Court of Session against—
(a) a determination by the sheriff of—
…
(iii) an appeal against a decision of a children's hearing,
…

(3) The persons are—
…
(b) a relevant person in relation to the child,
…

(9) An appeal under this section may be made—
(a) on a point of law, or
(b) in respect of any procedural irregularity.

(10) On deciding an appeal under subsection (1), the sheriff principal or the Court of Session must remit the case to the sheriff for disposal in accordance with such directions as the court may give.

(11) A decision in an appeal under subsection (1) or (2) by the Court of Session is final.

…"

[3] Schedule 1 to the Criminal Procedure (Scotland) Act 1995 lists certain sexual and other offences relating to children under the age of 17 including:

"…

2. Any offence under section 12, 15, 22 or 33 of the Children and Young Persons (Scotland) Act 1937 …

3. Any other offence involving bodily injury to a child under the age of 17 years.

…"

[4] Council Regulation (EC) No 2201/2003 (Brussels II *bis*) provides:

" *Article 8*

General Jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

…

Article 15

Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:
   (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
   (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:
   (a) upon application from a party; or
   (b) of the court's own motion; or
   (c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1 if that Member State:

…

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility;

…

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1. If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

…

Article 16

Seising of a court

1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;
or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Article 17

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has

> jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction."

[5] Brussels II *bis* applies to children's hearing proceedings (*Principal Reporter* v *LZ* 2017 SLT 961). It applies to the present proceedings notwithstanding Brexit because they were commenced prior to 1 January 2021 (The Jurisdiction and Judgements (Family, Civil Partnership and Marriage) (Same Sex Couples) (EU Exit) (Scotland) (Amendment etc) Regulations, Regulation 6; EU Withdrawal Agreement, Article 67.1).

Background

[6] The appellants are a married couple. They have four children, P (aged 21), MO (aged 17), NO (aged 11) and EO (aged 6). This appeal concerns only the two youngest children, NO and EO. The petitioners and their children all have dual nationality as Italian and Nigerian citizens. In 2016 their home in Italy was badly damaged by an earthquake and they became homeless. The family were housed in emergency temporary accommodation in Italy. The two older children attended boarding school in Nigeria. In November 2016 the appellants came to Glasgow with NO and EO. LO's sister lives in Glasgow and they stayed with her initially, but on 6 December 2016 the appellants obtained a private sector tenancy of a house. The lease commenced on 6 December 2016 and the term was to end on 30 June 2017. Shortly after the family's arrival in Scotland steps were taken to have NO enrolled in school. In January 2017 the appellants removed P and MO from boarding school. The boys travelled Glasgow, where the appellants arranged for them to attend school. All of the family members were registered with a GP practice in Glasgow. The appellants, NO and EO were registered on 14 November 2016, and P and MO were registered very shortly after their arrival. The applications to register were for permanent registration

rather than temporary registration (up to 3 months). In addition to GP appointments, the family used practice services such as the health visitor and the staff nurse, and other NHS services such as the Specialist Children's Paediatric Services.

[7] In late February 2017 MO disclosed to teachers and social workers that he had been physically and emotionally abused by the appellants over a period of several years. On 28 February 2017 the sheriff (Cathcart) made child protection orders under sections 37 - 39 of the 2011 Act in respect of all four children.

[8] On 7 March 2017 notification letters were sent for a children's hearing to be held on 10 March 2017 to consider the statement of grounds of referral. Thereafter, grounds of referral were duly prepared.

[9] On 16 March 2018, after many days of evidence, the sheriff (McCartney) found that grounds of referral were established in terms of section 67(2)(a), (b) and (c) of the 2011 Act in respect of P and MO, and in terms of section 67(2)(c) in respect of NO and EO. She found P and MO to be credible and largely reliable witnesses. She did not find the appellants to be credible witnesses. She found that they had assaulted and abused P and MO in both Italy and Scotland. She described the evidence of abuse which she heard as "overwhelming", and as being:

> "so clear and strong that in my view it would not be possible to reach any conclusion other than to be satisfied not only on the balance of probabilities but beyond reasonable doubt that that [P and MO] were subjected [to] assault by both parents."

The appellants did not appeal the sheriff's decision.

[10] On 14 May 2018 (by which date P was aged 17) the children's hearing made MO, NO and EO subject to compulsory supervision orders, and the appellants' appeal against

them was refused by the sheriff (Mackie) on 23 June 2018. None of those children have lived with the petitioners since the child protection orders were granted in February 2017.

[11] The appellants were prosecuted for assaulting P and MO in Scotland between 1 January 2017 and 28 February 2017. On 8 November 2018 they were acquitted after P, who had previously spoken to the assaults, retracted his evidence at the appellants' trial and the prosecutor decided not to lead any further evidence. Following their acquittal the appellants appealed against the continuation of the compulsory supervision orders. The appeal was refused by the sheriff (Cameron) on 7 March 2019, and a further appeal against that decision was refused by this court on 19 November 2019 (*LO and EO* v *Children's Reporter* [2019] CSIH 55). The court observed:

> "[7] At the criminal trial one of the boys did not repeat his evidence as to the assaults, but this does not remove the earlier establishment of the grounds for referral, nor take away any cause for concern in respect of the children's welfare. P's retraction meant that the evidence of MO would be uncorroborated and this resulted in the acquittal. It is relevant that MO remains fearful of his parents and does not wish to return to them. The children's hearing retained a jurisdiction and a responsibility to consider and keep the children's welfare in the forefront. Notwithstanding the parents' acquittal it was entitled to reach the view that compulsory protective measures were still required."

[12] On 18 June 2019 an appeal against a further decision of the children's hearing dated 13 May 2019 was allowed by the sheriff (Reid) in respect of NO and EO. The sheriff directed the children's hearing to hold a review. In a note appended to his interlocutor he queried whether the children were habitually resident in Italy at the commencement of the referral proceedings. At a children's hearing on 18 July 2019 the appellants argued for the first time that the children had not been habitually resident in Scotland at the commencement of the proceedings (7 March 2017), and that therefore the hearing did not have jurisdiction. The children's hearing disagreed. It determined that it had had, and did have, jurisdiction. It continued the compulsory supervision orders.

[13] At the children's hearing on 28 October 2019 the appellants renewed their submission about jurisdiction. By this time the children's hearing had received written advice from the National Convener of Children's Hearings Scotland (2011 Act, section 8). The National Convener advised that in his view the children had been habitually resident in Scotland on 7 March 2017 because (i) the family had made a planned move to Scotland from temporary accommodation in Italy, and they had obtained stable long-term accommodation in Scotland; (ii) the two older children had been brought from Nigeria; and (iii) the children had all been enrolled in schools. The children's hearing agreed with that advice. The appellants appealed. The appeal was heard by the sheriff (Kelly) over the course of 3 days. On 16 January 2020 he refused the appeal. Although he did not append a note to his interlocutor, it is common ground that the issue of jurisdiction was a central part of the appeal. He confirmed the decision of the children's hearing that the children were habitually resident in Scotland at the commencement of the proceedings. The appellants did not appeal against that decision.

[14] In July 2020, the Central Authority in Italy informed the Central Authority in Scotland that the appellants had asked the Juvenile Court of Ancona to request the Scottish courts in terms of Article 15 to transfer jurisdiction in the proceedings relating to MO, NO and EO to it. On 7 December 2020 the Juvenile Court declined to make such a request. By letter of 10 February 2021, the Italian Central Authority sent a copy of the court's judgment to the Central Authority in Scotland. In that judgment the court determined that it would not be in the best interests of MO, NO and EO to request that the proceedings be transferred to Italy from Scotland. It observed that over a lengthy period the proceedings in Scotland had "adopted the most appropriate measures in the best interests of the children, taking into

account the dangerous situations reported." It noted that over the years the appellants had not always acted straightforwardly or honestly with the Italian authorities.

The children's hearing of 19 November 2021

[15] A hearing was held 19 November 2021 to review the existing compulsory supervision orders relating to NO and EO. The orders were varied in certain respects which we need not specify, but otherwise they were renewed. For present purposes it is only necessary to mention two of the arguments which were advanced by the appellants at the hearing. First, they renewed the argument that the hearing had no jurisdiction. Second, they contended that the hearing should ask the Italian courts to make an Article 15 request to assume jurisdiction over the proceedings. The hearing had before it a note by the reporter which addressed each of those arguments. The note reminded the hearing that it was jurisdiction when the children's hearing was first seised which was relevant, and that it had first been seised on 7 March 2017. The children's hearing had previously decided on 28 October 2019 that it had jurisdiction, and that decision had been upheld on appeal by the sheriff on 17 January 2020. So far as an Article 15 request was concerned, the hearing could only make a transfer request if it was satisfied that an Italian court would be better placed to hear the cases and if it would be in the best interests of the children to make the request. Neither of those requirements was satisfied. The reporter's note also directed the children's hearing to the Italian court's judgment of 7 December 2020.

[16] The children's hearing did not record in writing its decision and reasons in relation to the jurisdiction and the Article 15 submissions, but it gave its decision and reasons on those matters orally. It was satisfied that jurisdiction had already been established; on that point it referred to the sheriff's decision of 16 January 2020. It was also satisfied, not least

because of the terms of the judgment of 7 December 2020, that the Italian court was not better placed to hear the cases, and that it would not be in the best interests of NO and EO for the hearing to make an Article 15 request.

The appeal to the sheriff

[17] On appeal to the sheriff (Divers) the main points argued by the appellants were (i) that the children's hearing did not have jurisdiction; and (ii) that it had erred in declining to make a request in terms of Article 15.

[18] The sheriff recognised that the hearing had not provided a written decision or reasons on these points, but he did not consider there had been procedural irregularity because an oral decision containing adequate reasons had been given.

[19] The sheriff observed that the question of jurisdiction had already been decided by Sheriff Kelly on 20 January 2020, which decision had not been appealed. Revisiting that decision would be tantamount to reviewing the decision of a fellow sheriff, which he had no power to do. The children's hearing had been in a similar position. It had had no power to revisit the issue. Its decision on the jurisdiction issue had been justified.

[20] As for the Article 15 submission, having regard to the evidence before the children's hearing, including in particular the terms of the judgment of 7 December 2020, it could not be said that its decision to decline to make a request was not justified.

[21] The sheriff notes four further points which the appellants argued made the children's hearing's decision unjustified. First, the reporter had not referred in his note to the fact that the appellants lived in Italy at the time of the hearing. Second, the hearing had not had regard to the terms of a letter from the Italian Ministry of Justice which, the appellants suggested, indicated that the Scottish Central Authority had conceded to the

Ministry that the Scottish courts did not have jurisdiction. Third, the hearing was said to have failed to have proper regard to the terms of a letter dated 11 February 2019 from the Consul General of Italy in Scotland to the reporter in which it was stated that the family came to the UK on a temporary basis, that their home in Italy had been repaired, and that they wished to return. That was said to support the appellants' submissions that the hearing did not have jurisdiction and that it ought to have made an Article 15 request. Fourth, it was maintained that the hearing had failed to give proper consideration to the Italian judgment of 7 December 2020. The sheriff was not persuaded that any of these points had substance. He was in no doubt that the hearing was well aware from the material before it of the appellants' links with Italy. He did not consider that the letter from the Italian Ministry of Justice ought to be construed as the appellants suggested, nor did he think that the terms of the letter from the Consul General were of any great significance. He was satisfied that the hearing gave appropriate consideration to the terms of the judgment of 7 December 2020. None of the points provided a basis for concluding that the hearing's decision was not justified.

The appeal to this court

[22] As the parents of NO and EO the appellants are "relevant persons" with a right of appeal against the sheriff's decision (2011 Act, section 163(1), (3)). They have exercised that right in order to appeal to this court.

[23] In the stated case the sheriff has set out the history of case, the arguments advanced to him, and his findings. The case poses the following questions of law:

> "1. Did I err in law in finding that the decision of the children's hearing on 19 November 2021 was justified?

2. Did I err in law in finding that the decision of the children's hearing on 19 November 2021 to refuse the appellants' request under article 15 was justified?

3. Did I err in law in not reconsidering the question of jurisdiction, that matter having been decided by this court in January 2020?

4. Did I err in law in not declaring under article 17 that his court did not have jurisdiction?"

Submissions for the appellants

[24] Most of the appellants' submissions were directed towards seeking to persuade the court that the children's hearing did not have jurisdiction at the time the proceedings were instituted. It was submitted that on 7 March 2017 the appellants and their children had not been habitually resident in Scotland because their presence was temporary while their home in Italy was being rebuilt, and because they continued to have Italian residency and nationality. Since the sheriff had not had jurisdiction, he ought to have exercised the power in Article 17 to decline jurisdiction and declare that the Italian court had jurisdiction.

[25] The second plank of the appeal was that the children's hearing and the sheriff had erred in law in declining to make an Article 15 request that the Italian court assume jurisdiction over the proceedings. Standing the family's strong connections with Italy, and because the alleged abuse was said to have taken place there, it was plain that such a request ought to have been made.

[26] Finally, the four further points which had been advanced before the sheriff were advanced to this court.

[27] The court understood the appellants' position was that each of Questions 1 to 4 should be answered in the affirmative.

Submissions for the respondent

[28] The sheriff had required to consider whether the children's hearing decision had been justified; and if it was, he had to confirm it (2011 Act, section 156(1)(a)). For a sheriff to uphold an appeal on the ground of a procedural irregularity, the irregularity must have had a material effect on the conduct or outcome of the proceedings (*C* v *Miller* 2003 SLT 1379, Opinion of the Court delivered by Lord Osborne at p 137). *Locality Reporter Manager* v *AM* 2018 Fam LR 14 was an example of a procedural irregularity (a failure by a children's hearing to record a decision regarding contact) which had not vitiated the decision.

[29] In *CF* v *MF* 2017 SLT 945 Lord Malcolm observed:

> "[37] … I agree with the observations of Sheriff Principal Nicholson in *Schaffer* [*W* v *Schaffer*] that a sheriff is not entitled to uphold an appeal simply because he/she disagrees with a decision. 'Instead, the sheriff's task is to see if there has been some procedural irregularity in the conduct of the case; to see whether the hearing has failed to give proper, or any consideration to a relevant factor in the case; and in general whether the decision reached by the hearing can be characterised as one which could not, upon any reasonable view, be regarded as being justified in all the circumstances of the case. The ground of appeal before a sheriff is accordingly quite a narrow one' (2001 S.L.T. (Sh Ct) 86, pp.87-88)…
>
> [38] … [T]he sheriff should only uphold an appeal on the basis of an error in law, procedural irregularity or the like, if satisfied that the decision cannot nonetheless be supported. In other words the identified problem must go to the root of the decision - it must vitiate it to a significant extent, and it must be clear that the outcome is unjustified, in the sense that it is wrong on any reasonable appraisal of the known facts…
>
> [39] None of this requires the sheriff to conduct a wholesale review of the merits of the matter and reach his own decision. He has no jurisdiction to do so… [S]imply to point to an error in law or some other irregularity will not automatically lead to a successful appeal. As the sheriff principal said, the ultimate requirement is to consider whether the decision reached by the hearing or panel can be characterised as one which could not, upon any reasonable view, be regarded as being justified in all the circumstances of the case. An error of law may point strongly to a fundamental problem with the decision making process, but nonetheless the sheriff, having regard to the underlying facts may not be satisfied that the decision itself is unjustified (an objective test)…"

[30] The children's hearing of 28 October 2019 had been entitled to decide that the children were habitually resident in Scotland on 7 March 2017, and the sheriff had been entitled to hold on 20 January 2020 that that decision was justified. On the evidence before them the appellants had come to Scotland to make it their home for a significant period while their home in Italy was rebuilt. They had removed their two older children from school in Nigeria in order to resume family life and education in Scotland. They had other family in Scotland. They entered into a lease of a home. They registered with a GP and availed themselves of other medical services. The children were enrolled in schools here. There had been a level of stability in the living arrangements and a degree of social and family integration. Reference was made to *AR* v *RN* 2015 SC (UKSC) 129, Lord Reed at para [16]. The sheriff's decision 20 January 2020 had not been appealed. In those circumstances the children's hearing of 19 November 2021 and the sheriff in the subsequent appeal had been entitled to hold that it had already been established that the children's hearing had jurisdiction.

[31] The sheriff had also been entitled to find that it had been open to the children's hearing to decline to make an Article 15 request to the Italian court. Article 15 was an exception to the general rule that the court where children were habitually resident when proceedings were instituted ought to deal with the case (*Practice Guide for the application of the Brussels IIa Regulation*, paragraph 3.3). Whether the Italian court was better placed and whether a transfer would be in the children's best interests were both matters which involved exercises of evaluation. It had been open to the hearing to find that, while NO and EO did have a particular connection with Italy (Article 15(1) and (3)), the Italian court was not better placed to hear the cases and it would not be in the best interests of the boys that it should do so (Article 15(1); *Nottingham City Council* v *LM* [2014] EWCA Civ 152 at

paras [15], [16] and [55]). It could reasonably be inferred from the terms of the judgment of 7 December 2020 that the Italian court did not consider itself to be better placed to hear the cases and did not believe that it would be in the children's best interests that the cases be transferred to it.

[32] The fact that the children's hearing had not issued a written decision had involved procedural irregularity, but that irregularity had not in fact resulted in any injustice. The appellants had been present at the hearing. They had heard the arguments and the oral decision. They had not been prejudiced by the lack of written reasons. It had not impeded them from appealing to the sheriff and from the sheriff to this court. Reference was made to *C* v *Miller* 2003 SLT 1379, at p 1395 of the opinion of the court delivered by Lord Osborne; *CF* v *MF* 2017 SLT 945, Lord Malcolm at paras [37] - [39]; *Locality Reporter Manager* v *AM* 2018 Fam LR 14; *X & Y* v *Principal Reporter* [2022] CSOH 32, Lady Wise at para [41]. Had written reasons been given their position would not have been different in any material respect.

[33] The sheriff had been entitled to find that the children's hearing's decision was justified. He had not erred in law in so finding.

[34] In the application to the sheriff for a stated case the appellants suggested for the first time that he ought to have exercised the power in Article 17 of Brussels II *bis* to declare of his own motion that the court did not have jurisdiction. There had been no proper basis for the sheriff to do that, since it had been determined that the children's hearing had jurisdiction and the Italian court did not have jurisdiction.

Decision and reasons

[35] The questions posed in the stated case require this court to rule on whether Sheriff Divers erred in law in taking the approach which he did in relation to the question of jurisdiction, and in relation to Articles 15 and 17 of Brussels II *bis*.

[36] Sheriff Divers noted that the children's hearing of 28 October 2019 had determined that NO and EO were habitually resident in Scotland at the time the proceedings were instituted, and that on appeal Sheriff Kelly had upheld that decision. The appellants had not appealed Sheriff Kelly's decision. The children's hearing of 19 November 2021 concluded that the question of jurisdiction had already been determined. It was correct to do so. Sheriff Divers held that the issue of jurisdiction had already been decided by the children's hearing and by Sheriff Kelly. He was right - it was not open to him to reach any other conclusion. It follows that he did not err in law in finding that the decision of the children's hearing on 19 November 2021 was justified. That is sufficient to dispose of that aspect of the appeal.

[37] Several times during the hearing the court reminded the appellants that the narrow appellate jurisdiction which the 2011 Act confers on it does not empower it to reassess the merits of the decision on habitual residence which the children's hearing of 28 October 2019 made. We observe, however, that none of the matters raised by the appellants cause us to doubt that that hearing had been entitled to reach the decision which it did.

[38] We turn to the Article 15 argument. We note at the outset that Article 15 applies where a court has jurisdiction but, notwithstanding that, and exceptionally, the child has a particular connection with another Member State; a court there is better placed to deal with the case; and it is in the best interests of the child that there should be a transfer. Here, however, the appellants' arguments before this court, the sheriff, and the children's hearing

were premised on the contention that the children's hearing did not have jurisdiction. For the reasons already discussed, that is not a sound premise.

[39] There were further reasons why the children's hearing was not convinced by the appellants' Article 15 argument. It was not persuaded that the Italian court was better placed to hear the cases, or that it would be in the best interests of the children that the proceedings should be transferred. The sheriff held that the children's hearing's decision on that matter was justified. We detect no error of law in his conclusion or reasons. The material before the children's hearing indicated that it had been seised of the proceedings since 7 March 2017 and that the children had been looked after in the care regime here since then. The behaviour which gave rise to the proceedings had occurred in both Scotland and Italy. The Juvenile Court of Ancona had declined to make a request that the proceedings be transferred to it, notwithstanding that the appellants had asked it to make such a request. We agree with the respondent that it may reasonably be inferred from the Italian court's judgment of 7 December 2020 that in the particular circumstances it did not consider itself better placed than the children's hearing to deal with the cases; and that it was not of the view that it would be in the children's best interests for the proceedings to be transferred to it.

[40] It is unfortunate that the children's hearing did not deal with these two issues in its written decision. We recognise that that was a procedural irregularity. In that regard we differ from the sheriff. Nevertheless, we are satisfied that he was entitled to conclude that the lack of a written decision and reasons did not have a material effect on the conduct or outcome of the proceedings. The appellants were present at the children's hearing. They heard the arguments and the oral decision. They were not prejudiced by the lack of written reasons because they were aware of the basis of the decision. They demonstrated that

awareness in the appeal to the sheriff and in the present appeal. Had written reasons been given their position would not have been different in any material respect. In the whole circumstances the procedural irregularity did not cause injustice (*C* v *Miller* 2003 SLT 1379, at p 1395 of the opinion of the court delivered by Lord Osborne; *CF* v *MF* 2017 SLT 945, Lord Malcolm at paras [37] - [39]; *Locality Reporter Manager* v *AM* 2018 Fam LR 14; *X & Y* v *Principal Reporter* [2022] CSOH 32, Lady Wise at para [41]). It did not preclude the sheriff from finding that the decision of the children's hearing was justified.

[41] That takes us to the Article 17 submission. It seems that the submission was not advanced before the children's hearing or before the sheriff during the appeal. It was put forward after he had issued his decision, during the application for the stated case. Be that as it may, the sheriff has dealt with it in the stated case. Here too, we see no error of law in the sheriff's approach. Article 17 only applies where the court is seised of a case over which it has no jurisdiction under Brussels II *bis* and where the court of another Member State has such jurisdiction. As the sheriff observed, since the children's hearing (and, on appeal, the sheriff) had jurisdiction in the proceedings and the Italian court did not have jurisdiction, there was no basis for him to declare that he had no jurisdiction.

[42] Finally, for completeness, we mention the four other arguments which the appellants advanced. Not all of them are relevant to the questions posed in the stated case. However, that is of no moment since we agree with the sheriff's observations in relation to each of them.

Disposal

[43] We shall answer Questions 1, 2, 3 and 4 in the negative and remit to the sheriff to proceed as accords.