Neutral Citation Number: [2016] EWHC 517 (Fam)

Case No: FD16P00021

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 March 2016

Before Sir Peter Singer

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Between :

FK	**Applicant**
- and -	
ML	**First Respondent**
- and -	
A **(a minor through his solicitor guardian)**	**Second Respondent**

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Alistair Perkins (instructed by **Covent Garden Family Law**) for the **Applicant father**
Victoria Miller (instructed by **Creighton and Partners**) for the **First Respondent mother**
Jason Green (and, on 11 March 2015, **Mehvish Chaudhry**) (instructed by **Dawson Cornwell**) for the **Second Respondent minor** by his solicitor guardian **Katherine Res Pritchard**

Hearing dates: 22 and 23 February and 11 March 2016

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Judgment

Approved Judgment

This judgment is being handed down in private on 11 March 2016. It consists of 51 paragraphs and has been signed and dated by the judge. The judge hereby gives leave for it to be reported on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Sir Peter Singer:

1. As this judgment will be placed on the BAILII website I have anonymised it. The initials employed are not those of the parties concerned.

2. F, the father, applies for the return to Dublin of his son A, now just 13, who lived with him there from about December 2011 until he went to but did not return from agreed staying contact with his mother, M, in London between 16 December 2015 and 4 January 2016. F seeks an order pursuant to the provisions of the Child Abduction and Custody Act 1985 and the thereby incorporated provisions of the Hague Child Abduction Convention 1980 as supplemented by article 11 of the Council Regulation (EC) [2201/2003: [BIIR]].

3. On 8 February 2016 A was joined as a party to these proceedings and was represented at the hearing before me on 22 and 23 February by Mr Jason Green on the instructions of A's solicitor guardian Ms Res Pritchard. A wished to meet the judge charged with making decisions so clearly affecting him, and on 23 February I met him for about 25 minutes in the presence of Ms Res Pritchard and of Ms Jacqueline Roddy of the CAFCASS High Court team who had at the court's direction interviewed A on 22 January 2016.

4. F and M were respectively and ably represented before me by Mr Alistair Perkins and Ms Victoria Miller.

5. The only live witness of substance before me was Ms Roddy, although at my invitation a representative of the local authority in whose area M lives came to court to explain the nature and extent of their investigation so far, and the prospect for completion of a report already commissioned into A's circumstances with his mother.

6. As final submissions drew towards their close an issue of law about which counsel disagreed emerged into relative prominence, upon which I invited written submissions which were completed by 28 February. I then on 1 March received an email exchange between Ms Roddy and two representatives of Irish Social Services which supplemented and to an extent filled the gap in information from that quarter which Ms Roddy had identified during the course of the hearing. None of the parties took up my invitation to make submissions about that further evidence.

7. A made common cause with M in resisting a return order upon the twin grounds of A's objections and of the article 13(b) exception that his return to Ireland would

give rise to a grave risk that A would be exposed to physical or psychological harm or otherwise be placed in an intolerable situation. It was conceded by each of them that A's failure to return to Ireland at the conclusion of the agreed contact period was a wrongful retention in terms of article 3 of the Convention, M though emphasising that A's refusal to return was his and not at all inspired by her.

8. A (then aged 9) and his older half-brother B (then aged 15 and now 19) were the subject of care and private law proceedings which culminated in a 5-day hearing before HHJ Glenn Brasse who delivered his reserved judgment on or about 16 July 2012. The outcome so far as A is concerned was that he remained in Dublin subject to residence orders in favour both of F and of his parents, PGF and PGM.

9. There was evidence from the guardian who acted for the children in those proceedings that A when visited in Ireland at the end of April 2012 appeared to be settled and having his needs met by F and his parents, and that he was receiving consistent care which was dependable and sensitive. He himself told the guardian that he liked Ireland and wanted to stay. His only recorded complaint was that it rained too much. He was, in the view of the guardian, clearly settled and progressing in that placement.

10. B as a result of that July 2012 decision for some time also made his home with a relative rather than with M but at some subsequent stage returned to live with her. He currently lives in her household and is undoubtedly an influence within it and strongly supportive of his mother. It was (and I have no reason to suspect that this has changed) a feature of his presentation in 2012 that it was wrong for A to have been removed to Dublin and wrong of the court not to have returned him to his mother's care.

11. These parents had separated in about 2007, at which point F left to live in Dublin. He was at the time of the July 2012 decision sharing his home with a cohabitee, but since that relationship broke down A has been primarily cared for by F alone, with the supportive assistance of his parents who live a few doors down the same street.

12. The outcome in 2012 for M thus was that both her sons were removed from her care. The facts established in the course of the proceedings demonstrated a number of serious deficits in her ability safely and appropriately to manage her sons' upbringing. There was a series of well-documented incidents over some years when she became completely unable to cope and where the histrionics, the hysteria and the emotional firestorms set raging by her inappropriate tendency to turn to alcohol for support at times of stress directly threatened the children's emotional and indeed their physical well-being.

13. M was in the course of the proceedings diagnosed by a psychiatrist as subject to a borderline personality disorder featuring emotional instability. This was a root cause of her impulsive and damaging behaviours. She was at that stage considered to be at best an uncertain candidate for long-term cure or sustained improvement which, if achievable, would require substantial periods of intensive psychiatric/psychotherapeutic involvement and support. A negative factor was that she lacked, or denied herself, insight into the nature of her problems and

consistently blamed her and the children's misfortunes (including their own maladaptive behaviour) on the local authority's and on the court's wrong-minded and unnecessary intervention into their family life.

14. Both boys had adopted this inadequate and inaccurate view of life at home with their mother. A, as well as B, has retained that view in the years which have since passed. A remains adamantly supportive of M as well as of her perspective of past events. He is, for instance, recorded as being of the belief that he was to blame for his removal and the upset it brought to M through his own disruptive behaviours, at home as well as at school. HHJ Brasse, on the other hand, expressed himself (at [62] of his judgment) as 'fully satisfied that the evidence overwhelmingly proves that M's parenting style led to the behavioural and emotional difficulties that these children have shown. Further, I find as a fact that there is no evidence that their problems were innate.'

15. The careful and detailed judgment of HHJ Brasse is available for consultation if need be, and I have given but the barest summary of what he found on the evidence to have been a bleak situation from which the children's removal was imperative. He summed up his conclusions thus at [103]:

    1 There is no doubt about M's commitment to her children.
    2 She is prone to serious emotional reactions to stress.
    3 A high level of intervention over the years has not brought about any significant change.
    4 She has still inadequate insight into the causes of the children's disturbance and the risks they have faced.
    5 She is not able to help either child understand why their lives have been disrupted because she is unable or unwilling to take responsibility herself and tends to blame F, the local authority or innate problems in the children. I accept the advice [of one of the expert witnesses] that she needs to accept responsibility for her actions. She has begun to do this by engaging with psychotherapy and alcohol dependency treatment, but still has a long way to go.
    6 While she has shown some awareness of her problems in that engagement with therapeutic services, in my judgment she is unlikely to change sufficiently in a timescale which would meet the children's pressing needs.
    7 It is highly likely that if they return to her care at this time, together or singly, the problems of the past would quickly recur.

16. I would like to stress that although I did not hear from her directly I had the opportunity of observing M in court throughout the hearing, during which for what for her must have been an intensely emotional and anxious experience she did not, as far as I could observe, lose her composure. From what I have read it is clear that she deserves sympathy rather than blame for the situation in which she found herself with her children and the inadequacy of her response. She has had to cope with many misfortunes, not of her making.

17. M maintains that she has been much assisted by therapy in which she has engaged since 2012, and is considerably changed. I very much hope that is the case but the fact is that there is at present no independent validation or evaluation of these claims, of which she gave details in a statement filed but days before this hearing.

It would be necessary to undertake a thorough investigation of her current situation and state of mind and understanding before A could safely be committed to her care on a long term basis, an investigation which might well be measured in months rather than days or weeks. And if, contrary to what I am sure would be M's best endeavours, past patterns of behaviour reasserted themselves not only would A be at what was assessed 3 1/2 years ago as unacceptable risk of harm, but circumstances might dictate his removal from her home with all the disruption that would cause. This is a factor of which I must not lose sight when considering what effect I should give to what are accepted on all sides to be A's objections to a return to Ireland.

18. The orders made by HHJ Brasse in relation to A laid out a programme of contact with his mother which recognised and was intended to guard against the fact that seeing his mother would arouse both memories and aspirations for him which could well prove unsettling and potentially damaging to his Dublin placement with F. The local authority was to be involved, and an ongoing role was assigned to A's guardian. The reasons why nothing happened remain unexplained, but might have to do with the fact that A at some stage became habitually resident in Ireland, and that after the completion of the care proceedings and the confirmation of his residence in Ireland the continuing validity and involvement of the English court and the other agencies might have been regarded as spent, given his lawful removal there pursuant to permission granted by the English court, and having regard not least to the provisions of article 8 of BIIR which puts the country of the child's habitual residence firmly in the driving seat so far as continuing arrangements for that child are concerned.

19. But, be that as it may, the parties resolved contact issues between themselves such that by 2013 or 2014 M's contact to A, in Ireland, was unsupervised; and by December 2014 had progressed to staying contact with her in London. There were two such occasions (the first, 14 days or so at Christmas 2014, and then in the summer of 2015 for 3 weeks) before this most recent visit which was intended to cover both Christmas and the New Year. It was timed to end in time for A's return to his highly-regarded (including by him!) Dublin school on 6 January 2016 where he was to have had the opportunity of sitting a number of significant in-school examinations which his absence in London had prevented him from taking.

20. A's Dublin family, F and the paternal grandparents, report that after his return from the 2015 summer school holiday staying contact with his mother A's behaviour became more troublesome both at school and with them.

21. There have been some identifiable precipitating events in the development of what F now concedes to be A's sufficient objections to returning to Ireland to open the door and pass through the gateway to the Hague 1980 article 13 exception, and thus to give rise to a discretion in the court not to order his summary return to what clearly for some time by the turn of last year had become the country of his habitual residence.

22. I am persuaded that that concession as to A's objections does indeed appear appropriate in the light of last year's most recent radical reappraisal by the Court of Appeal of the topic in a series of decisions commencing with *Re M (Republic of*

Ireland) Child's Objections) (Joinder of Children As Parties To Appeal) [2015] EWCA Civ 26, [2016] 2 FLR 1074 (and particularly per Black LJ at [69 to 71]. The *Re M* approach has since been expressly acknowledged and agreed in *Re U-B (Abduction: Objections to Return)* [2015] EWCA Civ 60, [2015] 2 FLR 1382 (and see in particular [51, 52]). Black LJ also confirmed in *Re F (Child's Objections)* [2015] EWCA Civ 1022 at [33] that this approach should discourage any 'over prescriptive or over intellectualised approach' and instead requires a 'straightforward' analysis of the simple question: 'does the child object to being returned to his or her country of habitual residence?' Whether a child objects is a question of fact to be analysed on the evidence [35].

23. From the written evidence in the case filed on A's behalf by his solicitor guardian and by F, much of it inconsistent with the other's account, a sequence emerges that A got into trouble at school and was twice suspended, and that at home the supplemental discipline applied by F (the confiscation of A's phone, the more modern-day technological equivalent of a physical grounding) grated with the boy. His resentment simmered and there undoubtedly towards the end of November 2015 there was some sort of disagreeable if not (on A's not always entirely consistent account) positively abusive behaviour by F towards him. And I do not disregard A's more general complaints that over an extended period he has been subjected in a number of ways to what he describes as abuse.

24. I am no more able nor is it within my province in proceedings such as these to decide the rights and wrongs of those allegations. In relation to the November incident F appears to accept some degree of blame for which he is prepared to make amends. No more able to decide were either the teacher at the school to whom he first made complaint the following day, or the representatives of Irish social services who concluded that they could not decide between the conflicting accounts of father and son. And so I leave open the questions whether F has minimised the gravity of that and other occasions; or A to an extent is exaggerating what transpired (which was certainly a feature of his presentation when he was only 9); or whether the truth lies somewhere in between.

25. The conclusion reached by the Irish social services representatives who replied to Ms Roddy's emails was in fact inconclusive not least because their intended intervention was unconcluded: both father's and son's accounts were deemed credible, and in the absence of any corroborating information (as might have been provided by a timely medical inspection, but none was performed in time) it was not possible to substantiate what exactly happened. Even at that stage, however, A was vociferous in his view that he wanted to return to live in England.

26. I cannot, and do not, draw any conclusions one way or the other as to the impact that desire may have had upon the allegations he raised, except to bear in mind the obvious hypothesis (obviously espoused on behalf of F) that motive for exaggeration was at least to hand if not in his mind. In the case of a 13-year-old it would not be surprising if his recollection of incidents differed from one narration to another, indeed it might give rise to well-founded suspicions if his descriptions were accurate in every detail on each occasion. The fact is indeed that his accounts (for instance as recounted by M, and as described by him to Ms Roddy) have at times been inconsistent in the detail with which he fleshed them out. Even

so, given this 13-year-old's past history it is not reassuring to find that the only occasion within the available documentation on which he has spoken of a punch which punctured his lip came during his interview with Ms Roddy, and is not replicated in his solicitor guardian's account of the complaints he made to her.

27. For good reason therefore, as it seems to me, Irish social services adopted a cautious but protective approach. They transferred A's case to their welfare team a week before A came to London, with a view to conducting a longer term intervention in the form of family support planning. It was initially agreed that meanwhile A should live in his grandparents' home to secure, if it needed securing, his safety while the initial assessment was carried out. I am not sure what if anything to make of the fact that the welfare team were apparently unaware that A returned after about five days to the immediate care of his father and there spent the last fortnight or so prior to his departure to England, without so far as I am aware any further complaint by A.

28. In any event it appears that father was and remains prepared to assure not only the Irish authorities but also, by way of undertaking, this court that if A is returned to Dublin he will stay with his grandparents until such time as the Irish court can be seised of the issues relating to A, and that to that end he will promptly initiate court proceedings there either to register the 2012 residence order or to make an application for the equivalent of a child arrangements order. Meanwhile he will have no unsupervised contact with A and will cooperate with the proposed programme of work recommended by Irish social services. They envisage their role as being to carry through their plan that the family engage with support services, specifically to support and hopefully to restore the relationship between A and his father, and also to support A individually with his emotional needs.

29. No one has submitted to me that more by way of arrangements would be required to secure A's protection after his return, so as to satisfy article 11.4 of BIIR. As 'a court cannot refuse to return a child on the basis of article 13(b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return' in my view F has satisfied that onus. Were I minded to find that M and A had established the article 13(b) exception (which in fact I would not be in the light of the leading passages on the topic in the authoritative judgment of the Supreme Court in *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144, especially at [31] to [35]) that conclusion therefore dictates that I should not exercise discretion in favour of a non-return order based on the article 13(b) exception.

30. It was against that background that A travelled to England in the company of B to whom, M states, he confided en route the abuse to which he said he had been subjected on that evening in November. When M heard of it (which would unsurprisingly seem to have been more or less immediately on his arrival in London) there seems to be little doubt but that she embarked upon a campaign to involve any number of potentially interested agencies. She relates that it was over the course of the Christmas period that A told her that he did not want to go home, and that if he were to return he feared that he would be so angry that he would be at risk of doing injury to his father and his grandparents. But M's reaction was

swift and she seems to have mobilised within days of A's arrival. Thus by 19 December the local authority within whose area she lives had despatched a social worker to see the child. On her own account she also contacted 'several agencies like' Family Action Group, Barnardos, the NSPCC, ChildLine and (when told, she says, that Irish social services did not propose to take further action) she contacted the police who came to see A 'in the New Year.' She sought advice from two firms of solicitors as she wished to make an emergency application for a child arrangements order, but was then served with F's Hague application. There now seems little doubt that it was at the instigation of the local authority that she took prompt steps to secure a school place for A although she well knew that this was a matter upon which the court said it would rule at a hearing which took place on 8 February.

31. In statements she has lodged in connection with these proceedings M has raised a catalogue of complaints about what she claims to have been F's neglect and indeed mistreatment of his son over the years. As I have said, I cannot judge whether there may be some substance to some of them, but the weight I give to allegations of this sort must be tempered by the obvious consideration that this has been part and parcel of M's presentation down the years. Nor is it at all surprising to learn from her that A has on numerous occasions expressed to her his dissatisfaction at living with F in Dublin, together with accounts of how his father has abused him 'emotionally, physically and mentally' and how he dislikes his grandparents, particularly PGM.

32. Ms Roddy had 13 years of experience as a public law guardian before joining the CAFCASS High Court team last October. She gave oral evidence as to the circumstances and the conclusions which she drew from her meeting with A on 22 January and which she described in her report to the court. She assessed him in the course of their 75 minute interview on 22 January as a bright and engaging young man whose maturity is consistent with his chronological age. That said, when considering his predicament and giving due weight to his stated objections she reminded herself and me a number of times that his views were 'entirely aligned with those of his mother', and that he was still only a 13-year-old child. He found himself in an invidious situation and had been, in her view, clearly exposed to the adult (and, I would add, partisan) views of both his mother and B.

33. A expresses strongly his grievance and his anger at F's reaction to his second school suspension, as described by him variously to M, his solicitor guardian and to Ms Roddy. Ms Roddy categorised his complaints as 'concerning', whether or not they were accurately based on faithful narration. It is true that if his allegations are untrue or dramatically exaggerated it remains the case that he is a child who has had an unhappy upbringing involving poor parenting and conflicting parental styles and perspectives (or, in M's case, lack of insightful perspective). He will be in need of support services whether he lives in England or in Dublin.

34. Importantly, Ms Roddy was at a loss to suggest how his relationship with F might be improved or indeed restored if he is not returned to Ireland, but continues to live with and within the attitudes of M's household. I agree with her prognosis. It seems very likely that for him to continue to live in London will lead to increasing barriers between this young adolescent and his paternal family, in whose care he

has lived for the last 5 of his 12 years. The level of his stated hostility towards his grandparents, for instance, appears at odds with earlier descriptions of their relationship, and cannot the justified by anything about them which A has as yet disclosed. I find that profoundly disturbing.

35. One must take into account the potential seriousness of some of A's assertions as to his behaviour and attitude if his return to Ireland is ordered. These range through claimed risk or intention on his part that he might or would self-harm or inflict injury on F and on his grandparents, through to running away and preferring placement in foster care to any return to live with his father. One has to wonder how such extreme responses have been evoked in him. They reflect quite strikingly the sort of thing B would express, at the time of the 2012 proceedings, if his preference that he and A should continue living with M were not to be the outcome.

36. The main thrust of the arguments presented to me proceeded, as I have described, on what amongst the advocates was agreed: that in the light of the approach confirmed in the authorities I have cited A's objections were established as such for the purposes of article 13 of the Hague Abduction Convention. That being so, the remaining issue for decision is the final stage, the exercise of discretion whether, his objections notwithstanding, I should order A's return to Ireland.

37. The authoritative exposition on the approach to this discretion was explained by Baroness Hale in *Re M (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 AC 1288. At [43] she observed:

> In cases where discretion arises from the terms of the [1980] Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare.

Specifically in relation to child's objections cases at [46] she continued:

> In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to be returned and second, that she has attained an age and degree of maturity and which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play the court may have to consider the nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of influence of the abducting parent, the extent to which they coincide with or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that

> the child's objections should only prevail in the most exceptional circumstances.

38. The nature and strength of a child's objections must, in this discretionary process, be weighed alongside an objective albeit summary evaluation of what is in the child's best interests. Amongst the plethora of judicial observations in relation to this I find those made by Ward LJ as long ago as in the case of *T (Children) (Abduction: Child's Objections to Return)* [2000] 2 FLR 192 particularly helpful:

> So a discrete finding as to age and maturity is necessary in order to judge the next question, which is whether it is appropriate to take account of the child's views. That requires an ascertainment of the strength and validity of those views which will call for an examination of the following matters, among others: (a) What is the child's own perspective of what is in her interests, short, medium and long term? Self-perception is important because it is *her* views which have to be judged appropriate. (b) To what extent, if at all, are the reasons for objection rooted in reality or might reasonably appear to the child to be so grounded? (c) To what extent have those views been shaped or even coloured by undue influence and pressure, directly or indirectly exerted by the abducting parent? (d) To what extent will the objections be mollified on return and, where it is the case, on removal from any pernicious influence from the abducting parent?

39. After careful and lengthy consideration I am persuaded that between the two options the balanced decision must be for A's return to Ireland.

40. Against the expressed strength of his objections the countervailing considerations to my mind are compelling. I bear very much in mind that I am unable to form firm conclusions about how F has been treating, and in some respects allegedly mistreating, A in his care in Dublin. But what I regard as the clear influence of M and of B upon the development of his objections cannot be ignored.

41. Certainly M in her scattergun approach to enlist support for him seems not to have attempted any balanced appraisal of the validity of what A was telling her had occurred between him and his father. She never took the opportunity to enquire what might have been F's side of the story, and although she now expresses regret for not informing him until after A's flight home had not taken place of what she says was their son's independently arrived at resolve not to return, it appears clear from the documentation that she was preparing the ground for what qualifies as a wrongful retention within days of the boy's arrival in London in mid-December.

42. Against that background I cannot afford full credit to the account A has given, nor indeed to the strength with which he has said he opposes return. He is clearly still operating upon the basis of a narrative which Ms Roddy describes him as having constructed, supported in its unreality by both M and B, that he and M suffered a serious injustice in 2011 and 2012 perpetuated at least in part by F's application for him to move to live with him in Ireland, supported by lies about M peddled to the court by the local authority.

43. The effect of A's objections is on the facts and evidence in this case seriously undermined. His removal from the sources sustaining his attitudes back to the care of his paternal family, supported in the manner described as may be necessary by social services and his school, offers this 13-year-old the potential for a far better balanced perspective of his past and a far better prospective set of circumstances in which to thrive and achieve his goals.

44. A return to Dublin will also restore A to the school and educational system in which he was making progress till its interruption at the New Year. The exclusion episodes were it is to be hoped an aberration which A will not repeat, and the school certainly has in place what appears to be a suitable regime to monitor his progress and encourage his compliance with the school's disciplinary Ms Roddy as 'the best Dublin [state] school money can't buy'. In his discussions with me A expressed his desire to go on to university, and although he might achieve that from the London school where he has now been found a place, consistency in education is valuable at his age. Whether his return should be timed to allow him to complete the current term, given the imminence of the Easter break, remains for consideration by me if his parents cannot agree.

45. F has offered a raft of undertakings which I am prepared to accept and indeed if need be to impose. They are designed to promote so far as can be achieved a phased return of A to his father's home (as and when that is what the relevant Irish authorities deem to be in his best interests) via an intermediate stay with his grandparents.

46. If there are difficulties or concerns, or fine-tuning is required, the Irish social services and indeed the Irish courts provide the obvious forum for decision-making. They are moreover the natural forum given that A is habitually resident there. The Irish courts have exclusive jurisdiction to make welfare decisions affecting A and (by virtue of the provisions of article 10 of BIIR) would retain jurisdiction until January 2017 even were I not to order his return. Meanwhile, however, it is eminently possible that faced with a non-return order the father might have recourse to the Irish court, inviting that court to examine the question of custody of A pursuant to the provisions of article 11(6) to 11(8) of that Council Regulation. If the Irish court were then to require A's return to Ireland that apparently conflicting decision would have precedence over this court's earlier non-return order.

47. Meanwhile, I cannot overlook the fact that if A remains in his mother's household there is a risk of chaotic incidents such as led to the 2012 care proceedings. There is no speedy procedure whereby that risk could be evaluated, given the unvalidated and untested nature of the progress M claims, and the undoubted persistence of her inability to face up to her own responsibility for A's removal. The risk cannot be regarded as contained simply because the local authority enquiries thus far, such as they have been, had detected no cause for immediate concern arising from A's stay in M's household. Their visits appear to have been uncoordinated, but far more unfortunately conducted without knowledge of or access on the part of those concerned to any information about the serious concerns which required his removal from that self-same household in 2011 and which so fully justify the 2012 judgment and order.

48. There was disagreement between the advocates as to the scope for continuing involvement, supervision and if need be control by this court in the event a non-return order were made. This centred upon the true impact and effect of the 'interim powers' which this Court has under section 5 of the Child Abduction and Custody Act 1985, on the one hand, and the 'provisional, including protective, measures' permissible under article 20 of BIIR.

49. I am very grateful to all counsel for their written submissions on this issue. I owe them a particular debt of gratitude, and indeed an apology, because in the event I have decided that it is clear, whatever and irrespective of the merits of the rival claims, that I should order A's return to Ireland despite his objections. Anything I said in relation to these powers would therefore be irrelevant to my conclusion, and thus obiter. That relieves me of the invidious risk of potentially differing from the views and the course expressed and adopted in *Re S (Care; Jurisdiction)* [2008] EWHC 3013 Fam, [2009] 2 FLR 550 by Charles J at [49] and [89], and in *Re H (Abduction)* [2009] EWHC 1735 Fam, [2009] 2 FLR 1513 by Roderic Wood J.

50. Such a non-return order would give rise to a period (till January 2017 or indeed later if article 11(6) proceedings were taken in Ireland and had not concluded by then: see article 10 of BIIR) during which jurisdiction as to the substance of matters of parental responsibility in regard to A would remain fixed with the Irish courts. Once this current Hague application is determined, then the section 5 power to make interim orders 'for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application' is spent. It is at least questionable to what extent if at all this court could properly exercise the power, for instance, to direct a section 37 Children Act report, or to prolong the involvement of either A's solicitor guardian to act on his behalf, or indeed of Ms Roddy.

51. Considerations of comity and of the objectives of the Convention also play their part in what is my firm conclusion that I should not exercise the discretion not to order A's return to Ireland.