Case No: ZE15C00253

Neutral Citation Number: [2015] EWHC 2299 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF THE HAGUE CONVENTION OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2015

Before :

MR JUSTICE COBB

- -

Between :

	Re: NH (1996 Child Protection Convention: Habitual Residence) **London Borough of Sutton**	**Applicant**
	- and -	
	AH (Mother) **TT (Father)** **NH (Child, by his Guardian, Clare Brooks)**	**Respondent**

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- -

Ms Anne-Marie Lucey (instructed by **Rachel Hergest, Local Authority Solicitor**) for the Applicant
AH was neither present nor represented
TT was neither present nor represented
Mr Robin Barda (instructed by Cafcass Legal) for NH (by his Guardian)

Hearing dates: 21 July – 22 July

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Judgment**The Honourable Mr Justice Cobb :**

Introduction and summary of outcome

1.At the conclusion of the hearing on 22 July 2015, I announced my decision, and gave brief reasons. This judgment explains the decision and reasoning more fully.

2.The applications before the Court concern NH; he was born in October 1999 and is 15 years old. The applications have been brought by the London Borough of Sutton for orders under the inherent jurisdiction (issued 12 May 2015), and/or a public law order under *Part IV* of the *Children Act 1989* (issued 14 May 2015). The unusual circumstances in which these applications have been brought require me, by way of preliminary adjudication in accordance with the guidance given by Sir James Munby P in *Re E (A Child) (Care Proceedings: European Dimension)* [2014] EWHC 6 (Fam), [2014] 1 WLR 2670*, sub nom Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)* [2014] 2 FLR 151, FD, (and see also, for its general application: *Purrucker v Vallés Pérez (No 1) Case C-256/09* [2011] Fam 254; [2011] 3 WLR 982; [2012] 1 FLR 903), to determine whether the English Court has jurisdiction.

3.This reasoned judgment leads to the conclusion that the English Court does have jurisdiction. I have concluded on the evidence that it is not possible to establish NH's habitual residence; jurisdiction is founded merely upon NH's physical presence in England. I recognise that I am, in these circumstances, exercising a "jurisdiction of necessity" (as it is so described by Paul Lagarde in his 1997 Explanatory Report to the *1996 Child Protection Convention*, see [45]) enabling me to make substantive orders in relation to NH. I readily acknowledge that NH's connections with England are tenuous and, according to NH's Guardian, NH enjoys no "affinity" with this country. My conclusion follows, however, a careful review and application of the key provisions of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children* ("*the 1996 Child Protection Convention*").

4.Before descending into the factual and legal detail, I summarise the outcome and my essential reasoning. NH is a national of Canada and Zimbabwe. He has lived an unsettled life; he has not attended any school for more than one year. For the last three years he has lived in Switzerland, though has been educated during that period in residential schools in both Zimbabwe and Germany. He has spent two months this year in residential care in Zurich.

5.On 25 April 2015, NH travelled to this jurisdiction on a flight from Zurich; on arrival here, he

was met by relatives with whom he stayed briefly in the Midlands before heading to other relatives in South London. Three days after his arrival, his mother, AH ("the mother"), joined him, also travelling here from Zurich. The mother had intended that NH would, within a few days or weeks of his arrival here, travel onwards from England to South Africa and then Zimbabwe, to attend a therapeutic clinic and residential boarding school. NH was (and is) adamantly opposed to this outcome and had (has) no intention of complying with his mother's wishes. NH believed he was merely in England on holiday, though accepted that he would not be returning to live in Switzerland largely because his residence permit ('B-Permit' or *Aufenthaltsbewilligung*) had expired there and had not been renewed. His mother had indeed taken the step of de-registering him as a resident, thus comprehensively extinguishing his right of residence there. Although the mother had successfully applied for a Schengen visa for herself (though not for NH), her application for an extension of that visa has been refused, and she is required to leave Switzerland by 10 September 2015.

6. The jurisdiction of the Court was invoked following an incident on 8 May 2015, when the police were called to the home at which NH and his mother were staying in the area of the London Borough of Sutton ("the local authority"). NH alleged that he had been assaulted by his mother. The mother was arrested, and NH was taken into police protection, and placed in foster care. When the mother (although bailed, with a condition to have no contact with NH) withheld her agreement to NH's continued placement in foster care, the local authority sought to initiate proceedings under the inherent jurisdiction of the High Court. On 13 May 2015, Roderic Wood J declined the relief sought under the inherent jurisdiction (given the provisions of *section 100* of the *Children Act 1989*), but made an interim care order under *section 38* of the *Children Act 1989* in respect of NH (a formal application for an order under *Part IV* of the *Children Act 1989* followed on the next day). Given the obvious uncertainties over jurisdiction, this order was made for a time-limited period expressly pursuant to the emergency powers vested in the court under *Article 11* of the *1996 Child Protection Convention*.

7. The issue of substantive jurisdiction was then listed for determination following further case management directions given at a hearing on 26 June 2015; that case management order included a direction that the local authority should obtain clarification from the Swiss Central Authority "whether they consider [NH] to have habitual residence in Switzerland or to have no habitual residence", and whether they would "readmit [NH] into their care".

8. I am satisfied that this is the first realistic stage in these proceedings at which a Court could reach an informed view about jurisdiction. I have been assisted by Ms Lucey and Mr Barda for the local authority and NH respectively; NH has actually been present in court for much of the hearing. The mother has not attended this hearing, though she has communicated extensively with the Court and the parties by e-mail over the course of the two days, conveying her views in the clearest terms, and presenting documents in both English and German which she wishes me to consider. I am wholly satisfied that

she is aware of this hearing and its purpose. She has had publicly-funded lawyers acting for her here, but has recently terminated their instruction. The documents generated in these proceedings have been served on the Zimbabwean Embassy, the Canadian Embassy, the Swiss Embassy in London and the Swiss Central Authority; none of these bodies has sought to make representations.

9.In order to explain my reasoning (set out from [34] below), it is necessary for me to set out in a little detail the unusual chronology, the facts of this case, and the relevant law.

Background facts

10.NH is the second of two children of the mother; his older half-sister (now aged 27) resides in Canada. NH's father (TT) has, so far as I am aware, played no part in NH's life; it is not known whether he has parental responsibility for NH. Efforts are currently being made to locate him. NH has dual Canadian and Zimbabwean citizenship.

11.NH was born in South Africa in 1999, where he lived for the first five years of his life. In 2004, NH together with his half-sister and mother moved to Canada, where they remained for eight years. In 2012, NH and his mother moved to Switzerland, where the mother married a Swiss national; the marriage did not in fact last more than a couple of years, and the mother is now divorced. In the following year (2013), NH was sent to boarding school in Zimbabwe; he remained there for an academic year, albeit returning to Switzerland (apart from one holiday when he travelled to Australia) for the school holidays. He then attended boarding school in Germany for a period; latterly he has been at a day school in Zurich.

12.The relationship between NH and his mother appears to have been an increasingly difficult one particularly in NH's adolescent years; the mother asserts that in many ways NH presented challenging behaviours with which she struggled to cope. In February 2015, NH moved to reside temporarily at the 'Schlupfhuuse' in Zurich at his mother's instigation; the Schlupfhuus offers residential care to a limited number of young people (aged 13-18) for a maximum of three months together with a "*Beratungsstelle*" (advice centre) and a "*Krisenwohngruppe*" (crisis residential centre). A child protection file was opened in relation to NH.

13.In February 2015, the Swiss authorities informed the mother (in view of her divorce from her husband) that they would not extend the B-Permits (issued annually) for the mother and NH beyond 26 March 2015; consistent with the mother's plan that NH should be sent to South Africa for treatment before transferring to boarding school in Zimbabwe, the mother appealed against that decision in relation to herself only, not NH. Her appeal was rejected.

14. At a meeting at the Schlupfhuuse in March 2015, NH made it abundantly clear that he "refused to migrate to Zimbabwe to enrol in boarding school".

15. On 22 April NH instigated proceedings in Switzerland with a view to divesting the mother of parental responsibility, principally so that she could not determine where he lived. The application was supported by a statement which I have not seen but which was summarised by the Swiss local authority thus (the translation appears clumsy but the gist is clear):

> "… the stories of the youth and the documents available to the solicitor provided clear indications of a structural situation detrimental to the welfare of the child having been in existence for several years, which was especially due to the educational, care and communication behaviour of the mother. Furthermore the youth suffers years of domestic violence and has been examined several times medically and psychologically. The youth wanted to remain in Switzerland, complete his schooling and finish some training, because he was no longer prepared today to have the centre of his life moved for the umpteenth time upon the whim of his mother".

16. NH was then persuaded by a cousin in the UK to come to England for a holiday; on 25 April 2015 he arrived here by aeroplane.

17. On 26 April 2015, the mother formally de-registered NH, and this (according to the Migration Officer in Zurich) finally extinguished NH's right of residence in Switzerland. Following this step, the proceedings between NH and his mother referred to above were discontinued.

18. On 28 April 2015 the mother arrived in England; NH then travelled to Mitcham where he met up with his mother on or about 6 May 2015. On 8 May (as earlier mentioned), following an incident at the home of relatives, in which NH alleged that he had been assaulted and his Canadian passport "wrestled" (his mother's word) from him and then destroyed, the mother was arrested and NH was placed in foster care. The mother told the police when interviewed that NH was "beyond parental control", thus explaining (from her perspective at least) his earlier placement in the Schlupfhuuse. On 9 May the mother returned for three days to Switzerland; on her return to this country on 12 May, the mother was asked for, but declined to give, her consent to NH's continued accommodation. Hence the launch of these proceedings.

19. Within these proceedings information has been sought and obtained from the Swiss Central Authority and the relevant local authority (namely the Canton of Zurich). On 15 June

2015, the Schlupfhuus wrote directly to the English local authority indicating that it could not accept NH back to the centre without the consent of the mother (which would not be forthcoming), or a court ordered 'injunction'.

20. On 15 July 2015, the President of Zurich's Child Protection Authority wrote to the Central Authority in Switzerland, which in turn forwarded the same to the local authority here, answering questions posed by the Central Authority in England (see [7] above). In answer to the question:

> "… whether they [i.e. the Swiss Central Authority] consider [NH] to have habitual residence in Switzerland or to have no habitual residence..",

the following answer was provided:

> "According to our information … [NH] left Switzerland on April 26 2015. According to the information given by the Migration Office of the Canton of Zurich, [NH] was deregistered by his mother to leave for abroad, thus the pending proceedings regarding the renewal of his residence permit were rendered obsolete. Due to a lack of an actual center of his life in Switzerland and a focus of relationships in Switzerland, we are unable to determine [NH]'s habitual residence. Therefore according to Article 6(2) of the Hague Convention for the protection of children, the Contracting State on the territory of which the child is present has the jurisdiction. The child and adult protection agency of the city of Zurich therefore does not consider itself to be competent according to the Hague Convention".

21. On 20 July 2015, the eve of this hearing, a representative of the relevant Swiss local Canton expressly acting on behalf of the Central Authority of Switzerland sent an important e-mail to the parties containing this further information:

> "… we can confirm that [NH] no longer has a right of residence in Switzerland as he has been deregistered from abroad. Therefore the general entry requirements are applicable…. The entry requirements of Art.5 of our Federal Act on Foreign Nationals of December 2005 have to be met. Namely he must have the required financial means for the period of stay."

The author of the e-mail goes on to point out that under *Article 33* of the *1996 Child Protection Convention* it would not be open to the Courts of this jurisdiction to consider the placement of the child "in a foster family or institutional care" in the 'requested state' (Switzerland), without the requested state's agreement to such placement. There would be no public funding for such a placement given that NH is no longer a resident of the Canton; therefore unless the parents would be prepared to fund the placement (which I interpolate to say, they are not), they would not consent to a placement of NH in the Schlupfhuuse or other residential care.

The 1996 Child Protection Convention

22. The *1996 Child Protection Convention* is intended to centralise jurisdiction in the courts of the child's habitual residence; *Chapter II* of the *1996 Convention* is specifically concerned with jurisdiction. The general rule as to jurisdiction (which in large measure mirrors the 'general rule' which informs the jurisdictional scheme of *Council Regulation 2201/2003: Brussels IIa: 'BIIa'*) is contained within *Article 5(1)*, pursuant to which:

> "The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property".

Article 5(1) is qualified by *Article 5(2)*, which provides that:

> "Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction."

23. *Article 6* of the *1996 Convention* reads:

> (1) "For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.
>
> (2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established".

24. Although like *BIIa*, the *1996 Child Protection Convention* founds primary jurisdiction

on the country of the child's habitual residence, unlike *BIIa*, the *1996 Child Protection Convention* does not specify the time at which habitual residence is to be determined; in *BIIa* it is specifically said to be "at the time the court is seised", words which are absent from the equivalent provision of the *1996 Convention*. Ms. Lucey and Mr. Barda presented their respective submissions as if the words "at the time the court is seised" were imported into *Article 5*. It is not on the facts material for a determination of the issues in this case for me to identify specifically the date at which habitual residence is to be assessed; whether the evidence were to be evaluated as at 12 May 2015 (the date on which the proceedings were issued) or 21 July 2015 (the date of the hearing), the test would be unlikely to produce a different result. But as the principle of *perpetuatio fori* does not apply under the *1996 Child Protection Convention* as it does under *BIIa* (see in this context *Article 13* of the *1996 Child Protection Convention*) it seems to me that the phrase should be applied as at the date of the hearing (see generally, paragraphs 38-43 of the Explanatory Report of Paul Lagarde, 1997).

25. As to the test of habitual residence itself, in *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)* [2013] UKSC 60, [2014] AC 1, [2013] 3 WLR 761 the UK Supreme Court held that the test applicable to the determination of a child's habitual residence established by the CJEU in *A, Proceedings brought by (Case C-523/07)* [2009] ECR I-2805, [2010] Fam 42, [2010] 2 WLR 527 sub nom *Re A (Area of Freedom, Security and Justice)* [2009] 2 FLR 1, CJEU and, later, *Mercredi v Chaffe (Case C-497/10 PPU)* (EU:C:2010:829) [2010] ECR I-14309, [2012] Fam 22, [2011] 3 WLR 1229, [2011] 1 FLR 1293, CJEU should be applied in England and Wales. This principle has been considered further and re-confirmed in *Re KL (A Child) (Custody: Habitual Residence)(Reunite: International Child Abduction Centre Intervening)* [2013] UKSC 75, [2014] AC 1017, *Re LC (Reunite: International Child Abduction Centre Intervening)* [2014] UKSC 1 and *AR v RN (Scotland)* [2015] UKSC 35.

26. I have taken as my starting point the comments of Lady Hale in *A v A* (above) at [54], thus:

> "Drawing the threads together, therefore:
>
> i) All are agreed that habitual residence is a question of fact and not a legal concept such as domicile. There is no legal rule akin to that whereby a child automatically takes the domicile of his parents.
>
> ii) It was the purpose of the 1986 Act to adopt a concept which was the same as that adopted in the Hague and European Conventions. The Regulation must also be

interpreted consistently with those Conventions.

iii) The test adopted by the European Court is "the place which reflects some degree of integration by the child in a social and family environment" in the country concerned. This depends upon numerous factors, including the reasons for the family's stay in the country in question.

iv) It is now unlikely that that test would produce any different results from that hitherto adopted in the English courts under the 1986 Act and the Hague Child Abduction Convention.

v) In my view, the test adopted by the European Court is preferable to that earlier adopted by the English courts, being focussed on the situation of the child, with the purposes and intentions of the parents being merely one of the relevant factors. The test derived from *R v Barnet London Borough Council, ex p Shah* should be abandoned when deciding the habitual residence of a child.

vi) The social and family environment of an infant or young child is shared with those (whether parents or others) upon whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned.

vii) The essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce.

viii) As the Advocate General pointed out in para AG45 and the court confirmed in para 43 of *Proceedings brought by A,* it is possible that a child may have no country of habitual residence at a particular point in time."

27. Further points of principle can be established from the authorities as follows:

i) "Nevertheless, it is clear that parental intent does play a part in establishing or changing the habitual residence of a child: not parental intent in relation to

habitual residence as a legal concept, but parental intent in relation to the reasons for a child's leaving one country and going to stay in another. This will have to be factored in, along with all the other relevant factors, in deciding whether a move from one country to another has a sufficient degree of stability to amount to a change of habitual residence": see *Re KL* at [23];

ii) Where the child is older, in particular one who is an adolescent or who should be treated as an adolescent because she (or he) has the maturity of an adolescent, the inquiry into his integration in the new environment must encompass more than the surface features of his life there: see *Re LC* at [37].

28. The question of stability is important; in *Re LC* [2014] UKSC 1, Lady Hale said this at [59]:

> "The first principle is that habitual residence is a question of fact: has the residence of a particular person in a particular place acquired the necessary degree of stability (permanent is the word used in the English versions of the two CJEU judgments) to become habitual? It is not a matter of intention: one does not acquire a habitual residence merely by intending to do so; nor does one fail to acquire one merely by not intending to do so. An illegal immigrant may desperately want to become habitually resident in this country, but that does not mean that he does so. A tax exile may desperately want to lose his habitual residence here, but that does not mean that he does so. Hence, although much was made of it in argument, the question of whether or not a child is "Gillick-competent" is not the point".

A point raised earlier in the judgments:

> "the fact that the child's residence is precarious may prevent it from acquiring the necessary quality of stability." [26]

And discussed again in *AR v RN*, in which it was said (per Lord Reed) at [16]

> "It is therefore <u>the stability of the residence that is important, not whether it is of a permanent character</u>. There is no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely" (emphasis

added).

NH's state of mind

29. As I have commented above, the views of a young person of NH's age (15 years 8 months) are highly material to the issue of habitual residence. NH is described by his Guardian as "a mature, confident and amiable young man"; his foster carers in England have described him as a "polite, likeable, well-behaved young person"; the workers at Schlupfhuus describe him as "a resilient youth in an age-appropriate developmental stage". No independent observer has, so far as I can tell, observed the challenging aggressive behaviour that his mother describes. NH has filed a recent statement which contains this ostensibly authentic description of his perception of home:

> "I see my time in Switzerland as that of any other teenager living in a country where their home is. I have a good network of friends there and after school or in the holidays I spent most of my time playing basketball or hanging out with friends by the lake. Sometimes I would crash with my friends at their house at weekends or we would hang out or go to the cinema – the usual stuff that people my age do."

30. In an earlier interview with the Guardian (19 May 2015) he had nonetheless indicated that he regarded Canada as his "home"; in an attendance note of the meeting, the Guardian further reported:

> "[NH] was perfectly clear that his primary wish would be to return to Canada to live with his sister. He views Canada as his nation, it has been where he has spent most of his life. As he knows this is not possible until September he would like assistance to return to Switzerland…"

31. In considering and giving weight to these views, I have in mind Lord Wilson's judgment in *Re LC* [2014] UKSC 1 at [37] wherein he said:

> "… where the child is older, in particular one who is an adolescent or who should be treated as an adolescent because she (or he) has the maturity of an adolescent, and perhaps also where (to take the facts of this case) the older child's residence with the parent proves to be of short duration, the inquiry into her integration in the new environment must encompass more than the surface features of her life there. I see no justification for a refusal even to consider evidence of her own state of

> mind during the period of her residence there. Her mind may – possibly – have been in a state of rebellious turmoil about the home chosen for her which would be inconsistent with any significant degree of integration on her part. In the debate in this court about the occasional relevance of this dimension, references have been made to the "wishes" "views" "intentions" and "decisions" of the child. But, in my opinion, none of those words is apt. What can occasionally be relevant to whether an older child shares her parent's habitual residence is her *state of mind* during the period of her residence with that parent." (emphasis by underlining added; emphasis by italics in the original).

32. And in the same case at [87], Lady Hale said this:

> "the perception of the children is at least as important as that of the adults in arriving at a correct conclusion as to the stability and degree of their integration. The relevant reality is that of the child, not the parents. This approach accords with our increasing recognition of children as people with a part to play in their own lives, rather than as passive recipients of their parents' decisions."

33. In my final analysis I weigh carefully and explicitly NH's perceptions within the overall review.

Discussion

34. Through her extensive written representations, which I have read with care, the mother passionately argues that NH is habitually resident in Zimbabwe and that "it is now the responsibility of Zimbabwe to make long term arrangements for him". Her case appears essentially to be founded upon a combination of (a) NH's Zimbabwean nationality, and (b) her intention that NH should move now to live there. Neither of these points supports a finding of habitual residence, and I unhesitatingly reject her submission. Although a national of Zimbabwe, NH has never lived there, and has spent relatively little of his life there, indeed only when in residential school. I am clear that he is not habitually resident there, nor has he – on the information which I have received – ever been so. For the avoidance of doubt, I also reject any argument that the Canadian courts should exercise substantive welfare-based jurisdiction, given that NH last lived there more than three years ago, and he is plainly not habitually resident there either. It is perfectly clear on the evidence (and no-one argues otherwise) that NH is not habitually resident in England; he arrived here in late April, on any view only temporarily; on his

mother's case, he was only in transit between Switzerland and Zimbabwe.

35. The local authority vacillated in the presentation of its case, urging on me variously that I could/should conclude on the facts that NH is habitually resident in Switzerland, and alternately that it was not possible for me to establish NH's habitual residence. When the former argument was advanced, this caused me to consider carefully with counsel at the hearing the 'transfer in' provisions of *Article 9* of the *1996 Child Protection Convention* (read alongside the provisions of *Article 8(2)* ibid.); these transfer provisions are in different terms to those set out in the more familiar *Article 15* of *BIIa*. Ms Lucey acknowledged that if on the facts NH were indeed habitually resident in Switzerland, it would be difficult to mount a case for transfer of jurisdiction to this country (which would not, on these facts, fall into one of the specific criteria listed in *Article 8(2)*). Mr. Barda, while highlighting NH's own perception of his habitual residence (in Switzerland), nonetheless recognised realistically the difficulties for the court in reaching a conclusion which was consistent with NH's personal view.

36. In favour of the contention that NH is habitually resident in Switzerland, I have borne very much in mind:

i) That NH has stated that he considers that Switzerland is his home, and has advanced evidence (see [29] above) which supports the contention that he is integrated there; NH's wishes are entitled to careful consideration, given Lord Wilson's comments and Lady Hale's comments in *Re LC*; however, his wishes do not trump other factors, just as (per Lady Hale: see [28] above) the illegal immigrant who earnestly wishes habitual residence in a particular country cannot acquire it;

and

ii) That NH has spent much of the last three years in Switzerland (although he has of course been elsewhere for periods of term-time, in school in Zimbabwe and Germany).

37. While those powerful factors in combination may point to a conclusion that NH is habitually resident in Switzerland, contrary evidence (filed in part by the mother, and in part by the local authority) more powerfully demonstrates the opposition conclusion, specifically that:

i) NH's residence B-Permit expired in March 2015; at that time (and therefore before he left Switzerland) he lost his right to remain in, or to return to, Switzerland for any more than 90 days in any 180 day period going forward;

ii) If he wished to return to Switzerland now he would only be able to do so if he could demonstrate that he had the necessary financial resources to satisfy Swiss immigration authorities (which on the evidence would not be possible);

iii) NH's residence registration in Switzerland was cancelled by his mother on 26 April (i.e. before the date at which habitual residence was, on any view, to be assessed);

iv) The purposes and intentions of NH's mother are relevant factors (*A v A Re KL* above); the mother has expressed strong views against NH returning to Switzerland, and vigorously disputes his having any continuing habitual residence there;

v) In the unlikely event that NH were able to return to Switzerland legally at this stage, he would not be able to return to school in Switzerland without a valid residence permit (which, of course, he no longer has); nor would he be able to work in Switzerland or obtain an apprenticeship;

vi) On my reading of the materials, there was a high degree of instability in NH's life when he was residing in Switzerland. This instability may not have prevented him from integrating into a life in Switzerland to a sufficient 'degree' (see Lady Hale's test quoted at [28] above) to acquire or maintain habitual residence there prior to April 2015; indeed I believe he probably did so integrate. However, it seems to me that where integration is founded upon connections with a country which are of relatively recent origin and are inherently fragile, the 'degree' of integration will be less than that which is established by long-standing and robust connections; they are accordingly likely to be more easily dismantled. In this regard, I have in mind that NH was not fluent in the German language (though he indicates that "there is not much that I don't understand or can't say"); his schooling had taken place for extended periods away from Switzerland; when with his mother he had lived at more than one address in Zurich, and latterly had lived in residential care. As I indicated when announcing my decision at the conclusion of the hearing on 22 July, his habitual residence in Switzerland appeared to 'hang by a thread' even before his right of residence was finally terminated by his mother on 26 April 2015;

vii) At the point at which NH left Switzerland in April 2015, he did not expect to be returning given that he knew that he had no right to return to live there; he accepts that he told his mother "I won't be coming back to Switzerland";

viii) NH told the Guardian (19 May 2015) that he considers Canada as his "home".

38. Perhaps most significant of all the factors weighing in my review, is that, as indicated above (see [20]) the relevant representative of the Canton of Zurich (President Alguier), who has responded on behalf of the Central Authority of Switzerland, has concluded that the Swiss authorities would not themselves regard NH as habitually resident in Switzerland, and specifically contend on the facts that *Article 6(2)* of the *1996 Child Protection Convention* is engaged here.

39. It will, I consider, be a relatively rare case where it is impossible to establish a child's habitual residence; such a conclusion is likely to reflect a material level of rootlessness in a child, which is not common and may indeed be indicative of some interference with the child's emotional and/or physical welfare and development. It would be wrong for me to strain to find facts to establish a habitual residence simply to achieve an outcome more generally contemplated by the *1996 Convention*, particularly where the potential target of the determination is a country which does not itself support that conclusion.

40. The *1996 Child Protection Convention*, like *BIIa*, is designed to ensure that States which have only tenuous connections with a child do not generally assume jurisdiction to make welfare-based decisions for that child. As indicated above, *Article 6(2)* will only ever establish a jurisdiction of necessity. But this is such a case.

41. In light of my conclusions, it is right that I should now give directions for the management of the proceedings to achieve a swift, efficient, and child-focused solution to plan for NH's long term future.

42. That is my judgment.