Neutral Citation Number: [2020] EWHC 1450 (Fam)

Case No: FD20P00086

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/05/2020

Before:

MRS JUSTICE THEIS

- -

Between:

M	**Applicant**
- and -	
G	**Respondent**

- -
- -

Ms Katy Chokowry (instructed by **London Family Solicitor**) for the **Applicant**
Ms Jacqueline Renton (instructed by **Access Law LLP Solicitors**) for the **Respondent**

Hearing dates: 14th and 15th May 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. These proceedings concern X, now age 4 ½ years. He is currently here with mother, G, having travelled here with her from their home in Australia for a three-month trip to visit the maternal family, with the father's consent. They were due to return on 4 November 2019. When they did not X's father, M, made an application under the Hague Convention of the Civil Aspects of International Child Abduction (hereafter 'the Convention') for an order seeking X's return to Australia. That application is opposed by the mother, who relies on the defence under Article 13 (b) of the Convention.

2. This hearing has been heard remotely, via Skype for Business, due to the current Covid-19 health crisis. Both parents have been able to attend, together with their solicitors and counsel. No evidence has been called and the case has been dealt on consideration of the papers and submissions. There is an extensive electronic bundle, which includes all the relevant material.

3. The parties have been able to agree a number of key issues in the case. It is agreed that the mother retained X here at a time when he was habitually resident in Australia and the mother's retention was in breach of the father's rights of custody in respect of him. It is therefore agreed that the mother's retention of X here was wrongful for the purposes of Article 3 of the Convention.

4. The focus of this hearing has been on the Article 13 (b) defence, whether the mother has established that to order the summary return of X to Australia would expose him to a grave risk of physical or psychological harm or would otherwise place him in an intolerable situation. If I do, Ms Renton, on behalf of the mother submits the protection measures are not sufficient to mitigate that risk and I should exercise the court's discretion to refuse a return. Ms Chokowry, on behalf of the father, submits the Article 13 (b) test is not met, if it does get over the threshold the protection measure proposed mitigate that risk and the court should exercise its discretion to order a return.

5. Before turning to the detail, I recognise for each of these parents this decision is important for them. For the father who has not seen his son for over 8 months and for the mother who has become settled here and wishes to remain. They should both know that this decision is being made on a summary basis, in accordance with the principles set out in the Convention. The outcome in these proceedings will not determine the future arrangements for X's care, they are focussed on whether, in accordance with the terms of the Convention, X should be returned to Australia or not.

6. There was an issue raised at the start of this hearing as to whether the mother would accompany X, if this court ordered his return to Australia. I was able to give Ms Renton, the mother's counsel, and her solicitor an opportunity to discuss that with the mother. Following those discussions Ms Renton confirmed to the court that her instructions were that in the event the court ordered X's return, his mother would accompany him. That had been her position in her detailed statement and in her discussions with Dr Farhy, the jointly instructed expert. The court recognises and

acknowledges that that is not what she wants but as Ms Renton said yesterday the mother recognises that would meet X's best interests in the event of a return order being made.

Relevant background

7. The mother was born in the United Kingdom. The detail is not necessary to recite here but it is clear she had an extremely difficult background. She spent a period of time in the care of the local authority and was the subject of serious child protection issues in her own childhood, as described in detail in the reports before the court. She left home at an early age and had to fend for herself, with limited support.

8. She went to Australia in 2010 with a group of friends and met the father in 2014. They started living together in April 2015 and married in August 2015. X was born soon afterwards, in December 2015. The mother was able to secure permanent residency in June 2017.

9. The father is an Australian national and has always lived in the area the parties lived in. His mother lived nearby.

10. The parents and X came to visit the United Kingdom in December 2016 for 3 weeks.

11. In February 2017 X was enrolled with a creche and remained there until August 2019. The letter from them in March 2020 confirms the level of the father's involvement, describing him as an *'very active father in regards drop off and pick up. He was consistent and caring. It was noted at pickups George was a particularly loving father who would often come earlier than expected and would sit and interact with X as he played'.*

12. Although there had been difficulties in their relationship, including allegations by the mother of arguments and domestic abuse, there was an incident in April 2017 that resulted in the police being called. The mother alleged the father kicked her and punched her face. The father denies that. The parties separated, and X remained living with his mother.

13. An ADVO order was made for a period of a year, which prevented the father from returning to the home and provided protection for the mother. There was a criminal prosecution and the father was acquitted in November 2017, the mother says that was due to pressure from the father and/or his legal team for her not to give evidence. That is denied by the father and his solicitor who represented him at the time. It is noted that the mother repeated at the time of the alleged assault what she alleged had been the father's violent behaviour towards her to her doctor and therapist, who she was seeing at the time.

14. There are emails in the papers in July 2017 and January 2018 where the mother was seeking to engage in mediation with the father to improve their relationship, for the benefit of X. The father was having some contact during this period, and in June 2018 he cared for X for 3 weeks so the mother could attend a wedding here.

15. By October 2018 the father was seeing X regularly and by April 2019 the parents had agreed a parenting plan, with an alternate week 5:2 arrangement, with X spending

Monday and Tuesday with one parent, then Tuesday to Sunday with the other, and then alternating the following week.

16. In March 2019 the mother asked the father to agree to her taking X to the United Kingdom for 3 months so she could visit and stay with family here. The father refused but by 12 August 2019 he had agreed, the parties signed a document confirming that this was a time limited visit in the presence of a notary and the mother and X flew here on the same day. The agreement said they would return on 4 November.

17. The mother and X initially stayed with family and then from October 2019 to the area where the mother grew up.

18. In the communications prior to early November there was no suggestion the mother would not be returning X to Australia. Whilst some of her messages set out how settled she felt here and wished to stay longer it didn't go further than that. The father began to be concerned about whether they would return and contacted a friend of the mother's, who lives in Australia. The messages in the papers make it clear she felt awkward finding herself in the middle. When requested the mother failed to confirm the arrangements for her return and on 9 November suggested the parties agreed to mediation.

19. The father made his application to the central authority on 28 November, which resulted in these proceedings commencing on 14 February 2020.

20. As a result of directions made on 17 February, 18 March and 6 and 7 April 2020 the father has filed three statements and the mother one. In addition the mother has filed two additional statements, one relating to her general position and the other relaying details of what the mother had described were sexually inappropriate comments made by X on two occasions in September 2019 that implicated the father in some form of sexual touching. These were referred to a child protection agency, who X did not repeat the matters to and there is no evidence of any other occasions when X has said such things. The agency took no further action. The father denies any inappropriate sexual behaviour.

21. Although there was a direction made on 17 February 2020 for a wishes and feelings report regarding X to be prepared by Cafcass, that direction was discharged on 7 April 2020 when it was agreed that was not required due to X's young age.

22. On 7 April 2020 Judd J permitted the mother's application for an expert, Dr Farhy (Consultant Counselling and Psychotherapeutic Psychologist), to be instructed to assess the mother's mental health, the likely impact on her of a return to Australia and what therapy was recommended.

23. During her time in Australia the mother was referred by her doctor there for psychological support, from clinical psychologists. There is a letter from Ms Y who she saw in 2016 and from Dr Z who she saw between 2014 and 2018. This was to deal with issues relating to anxiety, insomnia and relationship difficulties. During this period there were times when the mother was prescribed anti-depressants.

24. For Dr Farhy's report directions were made for disclosure of the mother's medical records here and in Australia, including those of Dr Z. Following a 2 hour video

appointment with the mother on 20 April, Dr Farhy filed his report before Dr Z's records were available. As there was some delay in getting the records from the latter, due to the Covid-19 restrictions, I directed that her letter, which had been before the court in April, to be redacted as to its recommendation and sent to Dr Farhy. Dr Z confirmed it was a summary of her appointments with the mother, as required by Judd J's order, in the absence of the original records. Dr Farhy considered this report and filed an addendum report. On the first day of the hearing, the records from Dr Z arrived. Dr Farhy considered helpfully those and filed a further report during the first day of this hearing. All parties had an opportunity to consider this additional material.

25. The final material that was filed related to the results of continued drug testing of the father. Weekly urine tests that confirmed he remained free from drugs since March.

26. As it is accepted the burden is on the mother regarding establishing the Article 13 (b) defence. I heard oral submissions yesterday and reserved judgment until today.

Legal framework

27. The legal framework for dealing with this defence is well settled.

28. In **Re E (Children) (Abduction: Custody Appeal) [2011] 2 FLR 758**, the Supreme Court reiterated the test to be applied when assessing an article 13(b) defence at **[31 – 35]**:

> **"[31]** *Both Professor Pérez-Vera and the House of Lords referred to the application, rather than the interpretation, of Art 13. We share the view expressed in the High Court of Australia in DP v Commonwealth Central Authority; JLM v Director-General NSW Department of Community Services [2001] HCA 39, paras 9, 44, that there is no need for the Article to be 'narrowly construed'. By its very terms, it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or 'gloss'.*
>
> **[32]** *First, it is clear that the burden of proof lies with the 'person, institution or other body' which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will, of course, be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under Art 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.*
>
> **[33]** *Second, the risk to the child must be 'grave'. It is not enough, as it is in other contexts such as asylum, that the risk be 'real'. It must have reached such a level of seriousness as to be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as 'grave' while a higher level of risk might be required for other less serious forms of harm.*
>
> **[34]** *Third, the words 'physical or psychological harm' are not qualified. However, they do gain colour from the alternative 'or otherwise' placed 'in an intolerable*

situation' (emphasis supplied). As was said in Re D, at para [52], '"Intolerable" is a strong word, but when applied to a child must mean "a situation which this particular child in these particular circumstances should not be expected to tolerate"'. Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. Mr Turner accepts that, if there is such a risk, the source of it is irrelevant: eg, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.

[35] *Fourth, Art 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although, of course, it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home. Mr Turner accepts that if the risk is serious enough to fall within Art 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.*

29. **In the matter of S (A Child) [2012] UKSC 10**, the Supreme Court made clear at [**27**] that the subjective anxieties of a Respondent can found an article 13(b) defence. At **[34]**, Lord Wilson stated: -

"The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned, It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will be, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned."

30. Ms Chokowry refers to the summary of these principles by MacDonald J in *Uhd v McKay [2019] EWHC 1239 (Fam)* at paragraph 67.

31. She suggests that the court is not bound to take the allegations relied upon by the mother at their highest and can, if required, undertake an evaluative assessment of them, although noting the words of caution by Moylan LJ in *Re C (Children)(Abduction: Article 13b) [2018] EWCA Civ 2834* paragraph 39 *'Of course a judge has to be careful when conducting a paper evaluation but this does not mean that there should be no assessment at all about the credibility or substance of the allegations…'.*

Submissions

32. Ms Renton submits when assessing the mother's defence the court must bear in mind that (1) it is the subjective perception of the mother that must be considered when assessing the impact of a return on her, and (2) in respect of the allegations the mother makes against the father, this court should proceed on the basis that they are assumed to be true.

33. She premises her submissions on the basis that the mother has been the main carer of X, as a consequence there is a direct link between the mother's mental health and well-being and that of the assessment of risk and/or intolerability that the child will experience if he is returned to Australia.

34. Ms Renton relies on the conclusions in Dr Farhy's report that the mother has clear maladaptive personality characteristics; mainly of the borderline personality disorder (BPD) (emotional) unstable type, which were apparent in her early life. In his addendum report he refers to the PTSD diagnosis in Dr Z's report as being reflected in his BPD diagnosis, since chronic PTSD underlies the majority of BPD cases.

35. Dr Farhy states if the mother returns to Australia, then looking at her history and past reactions to stressors, particularly in view of her BPD traits, he considers a significant increase to her distress, depression and anxiety could be expected. He considers there will be an exacerbation to her pre-existing depression and anxious tendencies which are part of underlying personality streaks.

36. Ms Renton submits this assessment supports the mother's position regarding the Article 13 (b) threshold. She relies on this evidence to support her position that the impact on the mother's mental health of a return to Australia is such that an intolerable situation will be created for the child. Following this through this means the level of risk of harm is so high that it will impact in her ability to care for X thereby placing him an intolerable position.

37. Dr Farhy's conclusions need to be seen in the context of the difficult background to this case, to enable the court to assess the impact on the mother subjectively. Ms Renton submits this wider lens, in which the mother's position should be viewed, includes the following matters:

    (1) The mother's own difficult background as a child and young person, which are detailed in the papers;

    (2) The mother's lack of family or other support in Australia.

    (3) The history of domestic abuse including evidence of the father being physically and emotionally abusive. There are a number of allegations of serious physical assault, often witnessed by X. The last one in April 2017 resulted in the police attending. According to the mother she was unable to give evidence at the subsequent criminal proceedings due to pressure from the father. There are a number of contemporary documents to support the allegations, in particular the letter from Ms Y in May 2017 reporting what the mother said to her, the mother's emails in July 2017, January 2018 and March 2019 and the medical records from 2017 where she describes the father's abusive behaviour.

(4) The mother's allegations regarding the father's drug taking and dealing, which she repeated to Dr Z.

(5) The allegations regarding sexual abuse arising from what X said in September 2019.

(6) The mother's wish to have a double mastectomy due to the family history, and her wish to have that procedure in England where more support is on hand.

38. Mr Renton submits that the conclusions of Dr Farhy of the significant increase in her distress, depression and anxiety that could be expected on a return to Australia need to be viewed in the context of this difficult background which is a reality for this mother. The risk to the mother's mental health deteriorating is high and that would have a direct impact on her ability to care for X.

39. She submits the protective measures put forward by the father are insufficient to mitigate this harm, particularly as it is necessary to assess the situation as it would be if X returned to Australia. In particular, the fact that no counselling or therapy is likely to assist as, in Dr Farhy's view, the mother's presentation is not conducive to change. So, the fact that she has accessed such help previously is unlikely to effectively mitigate the harm

40. If her submissions are accepted, she invites the court to exercise its wider discretion to refuse to order a return as to do otherwise would be inconsistent with protecting exposure to the harm the defence is intended cover.

41. Ms Chokowry submits the mother has failed to get over the Article 13 (b) threshold on the evidence. Dr Farhy's report confirms in his assessment the mother did not display any depressive symptoms and only mild anxiety, which she associated with these proceedings. Whilst Dr Farhy does conclude that a significant increase to her distress, depression and anxiety could be expected this is inherent in her BPD presentation. The notes Dr Farhy reviewed do not suggest that an illness will arise rather an exacerbation to her pre-existing depressive and anxious tendencies *'which are part of her underlying personality streaks'.*

42. Ms Chokowry submits the mother's symptoms of anxiety and depression have been a constant feature of the mother's personality which, as Dr Farhy notes, has existed since the mother's early life, and the mother has managed both here and in Australia relatively well.

43. When looking at the background matters the mother relies upon Ms Chokowry makes the following points.

44. In relation to the issue of domestic abuse the allegations of physical harm pre-date the parties' separation in April 2017. The mother's references regarding the father's behaviour in her subsequent emails need to be viewed in the context of the other messages between the parties which demonstrate an improvement in their relationship. The parties engaged in mediation successfully in October 2018, which resulted in the shared care arrangement for X that operated for at least six months prior to the mother and X leaving for this jurisdiction. It is of note that when the mother left her most recent accommodation she stayed with the father's mother and X

stayed with his father. All of the indicators when the mother left Australia were that she planned to return with X. She had viewed a school for X, her messages in early October were on the basis of her returning and the message from the mother's friend to the father on 2 November informed the father that the mother knows she needs to come back to sort things out for X. It is of note that while complaining of the father's behaviour and the risks he poses to X on 3 October the mother suggests the father applies for a British passport so that he can come here when he pleases. Ms Chokowry submits the position only changed when the mother engaged in a relationship in this jurisdiction. On 31 October the mother first reports to her GP that she intends to remain here and by January 2020 she reports to her GP here that she is in a *'very good relationship which she is afraid of losing'.*

45. Turning to the issue of drug use the father admits recreational drug use in the past, as has the mother as set out in her medical notes. The father seeks to rely on the recent drug testing that indicate he is now drug free.

46. Ms Chokowry submits that when Dr Farhy's conclusions are looked at in the context of the background with the timeline outlined above in mind with the positive steps taken by the parties to move their relationship forward will drive the court to conclude that the mother has not established her case on the balance of probabilities such that the threshold of an Article 13 (b) defence is not met.

Discussion and decision

47. Ms Renton founds her submissions on the basis that the mother is and has been the full time carer for X, and that feature means there is, as she describes, a direct nexus between the mother's mental health and well-being and that of the assessment of risk and or intolerability that will befall the child if he is returned to Australia.

48. Whilst it is correct the mother has been X's main carer since they arrived here, when looked at in the context of the six months or so preceding that, that was not the whole picture. X spent significant periods in the care of his father.

49. The reliance by Ms Renton on what Dr Farhy states would be a significant increase to her distress, depression and anxiety can't be considered in isolation. They need to be viewed with what he states, a little later in his report, that this would be an exacerbation to her pre-existing depressive and anxious tendencies which are a part of her underlying personality streaks.

50. Whilst there have undoubtedly been difficulties in the parties relationship, with allegations by the mother of serious domestic abuse, they need to be viewed also in the context of the way the parties have managed their relationship more recently, the outcome of mediation, the lack of recent complaint by the mother to the GP in Australia regarding the father's behaviour, the mother stopping seeing Dr Z in November 2018, the more positive periods of communication between them and the occasions when the mother has suggested the father applies for a British passport and comes to visit here. Whilst not at any stage undermining the seriousness of the incidents the mother alleged took place, they can't be viewed without the wider canvas.

51. It is right that the mother has reported concerning sexual comments made by X about his father which will need to be investigated. However, they were referred to the child protection agency she referred them to, who took no further steps and there are no other reported occasions when such things have been said again, or any concerning behaviour by X, and the mother subsequently suggested the father came to collect X as described at paragraph 77 of her statement.

52. In relation to the issue of drugs, these are serious allegations although the father denies he has dealt in drugs and on the face of the recent material available to the court the father appears to be drug free.

53. There is some force in the points made by Ms Chokowry that, whilst recognising the difficulties the parents had experienced in the past many of the indicators were that the mother intended to return to Australia. She had made plans consistent with that taking place, such as the steps taken in relation to securing X a school place and as late as 3 October stating in a message that she hadn't said she wouldn't return. There is some evidence to suggest that what may have, in part, changed the mother's position is a new relationship that she has formed here and did not want to lose.

54. This would, in my judgment, tie in with the most recent observations made by Dr Farhy once he had reviewed the original notes from Dr Z. He commented these added more detail about the mother's chronic symptoms and emotional lability as well as the treatment phases. As he notes to give but one example; in a statement made on 18.8.15 the mother wrote of the great mental anguish she would experience if she had to return here, as he notes *'a 180 degree reversal of her current claims'* He continues *'this is not to suggest that her feelings of distress are not genuine, but rather to highlight her very high emotional lability and the extreme sensitivity to contretemps*' which the mother continues to display and which, in his opinion, suggests an entrenched difficulty to her psychological functioning which will require further ongoing therapy whatever her life circumstances will be.

55. Whilst I do not doubt the mother's wish is to remain here and that to return to Australia with X, if he was ordered to return, would risk a significant increase to her distress, depression and anxiety this would be an exacerbation of her pre-existing tendencies. Whilst not doubting the impact these may have on the mother they would not, in my judgment, amount to a grave risk that the return would expose X to physical or psychological harm or otherwise place the child in an intolerable situation for the following reasons:

    (1) Due to the mother's difficult background and life experiences and her pre-existing depressive and anxious tendencies these are a reality to the mother's life wherever she is and cannot be solely or mainly linked to a return to Australia.

    (2) The mother has demonstrated that she has the resources to readily seek support and manage her psychological difficulties. The history demonstrates she requested and effectively accessed support between 2014 and 2018, assisted when required with prescribed medication. At no stage during that period is there any evidence that she was not in a position to provide care for X and was not able to access support, either professionally or otherwise. For example, in June 2017, Ms Y, the clinical psychologist the mother was seeing at the time around the time of the very real difficulties the mother was experiencing following the recent separation

between the parents *'I found Ms G to be a capable, resilient, and resourceful woman…a devoted and loving mother..[and] her son…is a thriving, active and content toddler.'* She continued in that letter to note the mother had *'made Australia her home'* and *'has significant support persons and systems in place here'.* The mother continued seeing Dr Z until November 2018.

(3) Whilst not diminishing the seriousness of the allegations and taking them at their highest I do not regard the background features of domestic abuse and allegations of drug taking and dealing have been such a prominent feature of the parties relationship since October 2018, as that would not be consistent with the significant periods of time X was spending with his father, with the mother's agreement. That does not in any way undermine the seriousness of the allegations, which will require proper investigation, but it puts them into context in the assessment the court is undertaking within these proceedings.

(4) The allegations made by the mother of what X is reported to have said regarding sexual abuse are serious and will require investigation but they too have to be seen in the context of no further evidence of them and the mother subsequently suggesting the father comes to collect X, as set out in the mother's statement.

(5) All the indications are that the mother was planning to return to Australia in November, for example with the steps she took in relation to X's schooling. It is right that there are some references in Dr Z's original notes that the mother was saying to her in 2018 she may want to return here, but that is not reflected in the practical steps she took. Her position now could, in part, be influenced by a newly formed relationship that the mother has which she told her GP in January she was afraid of losing.

(6) I have factored in the difficulties the mother has regarding the prospect of surgical treatment due to the maternal family history. There remains some uncertainty as to whether she has had the relevant genetic test. The evidence points to some delays before anything can be done, whichever jurisdiction the mother is in. Whilst I accept there is likely to be more support for the mother here for such a procedure, the information the court has on this issue is very limited and not altogether clear regarding the timetable.

56. Standing back whilst I do not doubt if the mother returns with X she is likely to suffer in the way described by Dr Farhy, but that does not, in my judgment, in the circumstances of this case, meet the threshold in Article 13 (b)

57. Even if I am wrong about that I am entirely satisfied the protective measures that the parties have agreed will be able to mitigate any harm. Together they provide a package of support that will provide for accommodation, financial provision and an overall framework that protects and provides stability for the mother and X until the matter can be considered by the court in Australia. This includes the availability of counselling or therapy, recognising of course, the chronic nature of the mother's psychological difficulties. There are ongoing proceedings in Australia, a hearing is listed on 1 June. That court can be informed of the timetable in these proceedings and they can make directions accordingly. It is that court that is best placed to determine what the future care arrangements are for X and where the mother can issue an application for permission to bring X to live with her here, if that remains her plan.

58. For the reasons set out above I will order that X is to return to Australia on a date to be fixed, once I have heard submissions from counsel about what that date should be. Due to the current travel restrictions, both here and in Australia, there will be a date for the protective measures to be in place and a date thereafter for X to return, with liberty to apply.