



Neutral Citation Number: [2020] EWHC 3009 (Fam)

Case No: FD20P00158

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/11/2020

Before :

**THE HONOURABLE MR JUSTICE COBB**

Between :

**P**  
**- and -**  
**P**

**Applicant**

**Respondent**

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Re P (Discharge of Passport Order)  
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**Dingle Clark** (instructed by **Hudgells Solicitors**) for the Applicant (mother)  
**Tina Villarosa** (instructed by **Direct Access**) for the Respondent (father)

Hearing dates: 6 November 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.

.....  
**THE HONOURABLE MR JUSTICE COBB**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment 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.

## **The Honourable Mr Justice Cobb :**

### *Introduction*

1. This case concerns one child, aged 2½ years, who, for the purposes of this judgment, I shall call Maria. She is the only child of the Applicant mother (“the mother”) and the Respondent father (“father”); the parties are married but separated. The mother is a Bulgarian national, with indefinite leave to remain in this country; the father has dual Bulgarian and British nationality. Both parents have lived in England for many years. The mother and Maria are currently in Bulgaria, while the father is in London.
2. There are believed to be no fewer than eight applications before the English Courts currently concerning this family and its breakdown, brought variously under the inherent jurisdiction of the High Court, the *Family Law Act 1996* (‘FLA 1996’) and the *Children Act 1989*, in at least three different courts. There are also at least two applications (for divorce and ancillary – children and finance – issues) before the Bulgarian Courts. When the case was listed before me earlier this week, there was a high degree of confusion caused by an unhappy combination of factors –
  - i) The multiple applications which have been issued in this jurisdiction and in Bulgaria; some of these applications have led to orders made by one party without notice to the other;
  - ii) Fundamental jurisdiction issues arising from the family litigation currently proceeding in the two different jurisdictions (England and Bulgaria),
  - iii) The parties have at times acted in person, without legal advice and representation; the mother has only had legal aid and representation since July 2020. The documents which have been personally prepared by the father are clearly and elegantly drafted (particularly given that English is his second language), but are overly discursive, repetitive, and in parts unnecessarily tendentious;
  - iv) There has been a lack of judicial continuity; I am at least the sixth judge in the English courts to have considered applications made by these parties in the last eight months;
  - v) There has been regrettable drift, given the difficulties in listing return dates in a timely way at the present time;
  - vi) There has been non-compliance with court case management orders for the filing of evidence.

This somewhat chaotic litigation is being played out against a backdrop of a very low level trust and co-operation between these parties, and a background history which is characterised by multiple cross-allegations of domestic abuse on which there has been no adjudication.

3. The confusion, and lack of discipline and focus, in the case was illustrated, indeed compounded, by counsel appearing before me on 3 November who filed position statements which addressed principally (indeed the document prepared by Mr Russell

Steadman, who was then acting for the mother, exclusively) an application for the father's committal to prison for breach of earlier orders; this was not in fact the application which had been listed for hearing. Moreover, although Ms Villarosa had filed a position statement for the hearing on 3 November on behalf of the father (focusing on the proposed committal but dealing with other matters), very shortly before the hearing was due to begin, the father *personally* filed and served a second lengthy and detailed 'Position Statement' of his own, replete with new matters of evidence. Given the significance of its contents, I permitted the document to be filed; Mr Steadman understandably applied for an adjournment for the mother to file a response, which was opposed by Ms Villarosa. Given this further unfortunate twist, but recognising the need to grapple with the issues in this case, I granted a very short adjournment, restoring the matter before me today (6 November 2020) for further submissions and decisions.

4. The central issue before the Court is whether a passport order made on 16 March 2020 should be discharged. But in order to get the case back on track, I indicated at the outset of the hearing that I would endeavour also to deal in part at least with the following:
  - i) The committal; the mother's application to commit the father to prison for breach of two orders made on 16 March 2020 is listed for directions;
  - ii) The jurisdiction issue; the issue of whether the English Court or the Bulgarian Court has jurisdiction to make substantive orders in relation to Maria should be taken forward.

#### *Background facts*

5. The parties met in 2014 and were married in September 2016 in Bulgaria. Maria is their only child, born in the spring of 2018 in London. The mother works, I believe, for her family business in Bulgaria, and the father works in a senior position for the National Health Service in a hospital in London. The parties own a property in London which they bought in 2016; the father is currently living there.
6. The relationship of the parties appears to have been a difficult one; the relevant local authority Children's Services Department have been involved with the couple since before Maria's birth; issues of domestic abuse, and questions over the mother's mental health, prevailed. Children's Services remained involved periodically during the relevant period up to December 2019.
7. In March 2018, shortly after Maria's birth, the mother travelled to Bulgaria to receive support from her own family; she remained there until January 2019, when she returned to London to be with the father. The mother and Maria travelled back to Bulgaria for an extended period in the summer of 2019.
8. The marriage deteriorated during 2018 and 2019, with alleged domestic abuse on both sides, occasioning the involvement of the police at times. The parties effectively separated at the end of the year. On 18 December 2019, the father travelled to Bulgaria; it had originally been planned that the mother and Maria would travel with them, but they did not, and followed on 29 December 2019. Shortly before the mother travelled, she saw a social worker who reported:

“Referral from Health Visitor raising concern that [the mother] was experiencing on-going psychological and financial abuse from the father. MASH duty social worker explored the concerns with [the mother] who confirmed that she was experiencing emotional and financial abuse from the father as well as controlling behaviour. She denied that any further physical assault had occurred since the summer. [The mother] declined support from Safecore and also asked that the father not be contacted as she felt that this would put her at risk of further domestic abuse. [The mother] advised that the couple planned to visit Bulgaria the following week and she and [Maria] were not planning on returning to the UK. The duty social worker provided the relevant advice and alerted the Health visitor of the plans. The duty social worker observed that should [the mother] return to the UK then further support and intervention may need to be considered”. (emphasis by underlining added).

9. The mother’s case now (contrary to the impression given to the social worker – see [8] above) is that this trip to Bulgaria was only ever intended to be a holiday, and she expected that she and the father would return to London together on 5 January 2020. Shortly before the due date for the return, it is agreed that the father revoked his authority for Maria to travel, and he filed this revocation with the Bulgarian border police. The mother believes that the father took this step in order to oblige the mother and Maria to remain in Bulgaria, and thereby strengthen his case that the Bulgarian courts should deal with the divorce proceedings which by then he intended to launch; she believes that he saw a financial advantage to himself in the Bulgarian courts dealing with the divorce. The father’s case is that the mother chose not to return, having planned to base herself in Bulgaria; further, or alternatively, he felt that the mother was emotionally unstable and revoked his agreement for her to travel in order that the mother would engage with the court process in Bulgaria.
10. On 17 January 2020, the Bulgarian court is said to have issued an order  

“... wherein the prohibition for the Applicant to leave the country with the Child without the Respondent’s consent has been extended until the Child is 18 years old”.
11. Maria has been in Bulgaria since 29 December 2019, in the joint care of the mother and the maternal grandparents.
12. The mother has periodically travelled to London in the course of this year (2020), without Maria. In February 2020, the father visited Bulgaria for a short break; the mother tried to return to the UK with him and with Maria, but she maintains that he prevented her from doing so by advising the border authorities again that he did not consent to Maria’s removal from that country.
13. Litigation between these parties began in earnest in early January 2020, when the mother applied (on-line) for a divorce in the Court in England; her petition was issued on 29 January 2020. On 4 February 2020, the father applied for a divorce (and child arrangements and financial relief) through the Bulgarian Court. Confusingly, on 21

February the English Court issued a second divorce petition on the mother's application (bearing the same case number). The mother claims that the Bulgarian divorce proceedings have not been served on her, a fact disputed by the father who points out that the mother applied successfully on 16 March 2020 within the Bulgarian proceedings for those proceedings to be transferred to her local court. The father has confirmed, by an Answer filed in England on 16 March, his intention to defend the English divorce proceedings on the basis of the divorce proceedings in Bulgaria; the English divorce proceedings have therefore currently been stayed.

14. On 16 March 2020, the mother issued proceedings in wardship; she sought the following orders:
- i) A declaration that Maria is habitually resident in England and Wales;
  - ii) For Maria to be made a ward of the English court;
  - iii) For the father to provide to the mother with his written authority to enable Maria to leave Bulgaria, to return to England;
  - iv) An injunction to prevent the father from removing Maria from England and Wales once returned.

The mother further sought an order that the father's and Maria's passports be removed from him. In her application (and supporting statement) she purports to justify this step on two alternative bases:

- a) he is a "flight risk" (she says that he has spoken of moving to Germany and starting a new family there);
  - b) "to force him to engage in these proceedings".
15. In relation to [14](b) above, in her statement in support of the application the mother repeated that the passport order was necessary "to force him to engage in these proceedings and prevent him from moving to Germany until the proceedings are determined".
16. The application came before Judd J on 16 March 2020 sitting in the urgent applications court. The mother was unrepresented, and the father had not been given notice. The judge took the *provisional* view on the information provided that Maria was habitually resident in England. The judge made the following orders:
- i) Maria was made a ward of court;
  - ii) "[T]he Respondent shall execute all necessary documents and travel consents to ensure that the applicant is forthwith able to return [Maria] to the jurisdiction of England and Wales" (paragraph 6 of the order); a penal notice was said to attach to this part of the order.

However, although the order was adorned with the usual form of Penal Notice on the front page, the 'standard form' template order had not, regrettably, been populated with the specific information relevant to the case; thus the penal notice was addressed not to the father himself, but to "[YY] OF [ADDRESS]..... If you, [YY]...etc."

17. Judd J made a separate tipstaff ‘Passport Order’ (bearing a penal notice in the proper form) which contained the following requirements:
- i) To hand over every passport, identity card, ticket, travel warrant or other document in the name of [Maria], and/or which would enable [Maria] to leave England and Wales;
  - ii) To hand over every passport, identity card, ticket, travel warrant or other document in the father’s name, which would enable the father to leave England and Wales;
  - iii) Not to apply for a new passport for [Maria].

The order was, properly in my judgment, made for a finite period, being expressed to “expire in its entirety” if the documents referred to above had not been recovered by 15 September 2020.

18. On 21 March, the Tipstaff served the passport order on the father, who surrendered his British passport, and his Bulgarian ID documents, which remain in the safe keeping of the Tipstaff. The father has subsequently:
- i) lodged Maria’s British passport with the Tipstaff; he did not do this until 28 August 2020, having explained that from December 2019 (when the passport had been issued) through to August 2020 the passport was actually in Bulgaria;
  - ii) filed evidence purporting to demonstrate that he has reported to the Bulgarian Embassy in London that his Bulgarian passport is missing (3 September 2020), and requesting its cancellation.
19. On 24 March 2020, the mother issued an application for a non-molestation and occupation order in the Central Family Court. This was adjourned, at a without notice hearing, to await the outcome of the wardship.
20. On 26 March 2020, and following alleged “episodes of recent unreasonable and abusive behaviour from [the mother]” while she was staying in London to launch these proceedings, the father issued an application for a non-molestation order against the mother and sought a further order prohibiting her from entering within a defined zone around their home; these orders were granted, without notice to the mother, by HHJ Sapnara at the Family Court sitting in East London.
21. These proceedings under the inherent jurisdiction were restored (this time as a remote hearing) before Judd J again on 27 March; the father attended and was represented by counsel. The order made on that day reflected that the father disputed:
- i) the information contained in the mother’s application;
  - ii) the jurisdiction of the English Court to deal with matters concerning Maria given (a) that she is (he asserted) habitually resident in Bulgaria, and (b) the existence of proceedings in Bulgarian Courts.

The order further reflected that the father sought the return of his passport. The judge adjourned the application for the parties to file evidence, and gave directions to that effect. The evidence was to have been filed within 28 days, and the judge directed that the application be restored before her “on the first open date” thereafter.

22. Following that hearing, the father’s counsel sought clarification from Judd J about the terms/effect of the order. By e-mail on 1 April 2020 from the judge’s clerk, the Judge sent the following message:

“I have not ordered the father to provide for the child to be brought back to the jurisdiction as yet, but made directions last week. Equally, I am not prohibiting the mother from bringing the child to the jurisdiction, however, should she be able to do so with or without the father’s permission.”

The father has wrongly interpreted this message as countermanding paragraph 6 of the 16 March 2020 order (see [16](ii) above).

23. Pursuant to Judd J’s order, the father filed a witness statement on 16 April 2020, challenging the court’s jurisdiction, and laying out his case for the return of his passport. The mother did not comply with the direction, and did not file a statement.

24. On 10 August 2020, the father followed up his statement with a formal application to ‘set aside’ the passport order on the basis that:

“... it defies the clearly established in practice purposes of Passport Orders as legal tool (sic.). This is mainly so because it is the Applicant who has been abusing me and has taken the child away without my consent”.

25. He incorporated a detailed narrative submission within his application, making the following points:

- i) He has been trying to organise an urgent hearing to deal with the return of his passport since 16 June;
- ii) The mother is not actually asserting that the child has been abducted; the child is of course in her care, not the father’s;
- iii) The fact that the father’s passport is being retained does not impact on the mother’s wish to return to this country. If the mother truly wished to return to this country, she could make an application to the Bulgarian Court to obtain permission; he later amplified the position thus:

“... the Bulgarian Authorities informed the Applicant that she could bring proceedings before the Bulgarian Court and should her request to leave the country with the Child in the absence of an authorisation by the Respondent is granted, she could then travel with the Child being in possession of an entered into force Court order substituting the

authorisation. The Applicant has never addressed any claim to this regard to the Bulgarian Court.”

- iv) Even if the father had his passport, and travelled to Bulgaria, he could not remove Maria from Bulgaria without the mother’s consent;
  - v) The decisions of *Re B* [1994] 2 FLR 479; *B v B* [1997] 2 FLR 148 (at 153/154); and *Re B* [2014] EWCA Civ 843 are relevant. A passport order is not to be used as a “coercive method” for exerting pressure on a party, but only where it is necessary for finding an abducted child, or where a hearing is to take place “the efficacy of which would be frustrated by [their] absence”; he makes the point that “four and a half months after the Passport Order was made against me, this measure continues to be unnecessary, ungrounded and inappropriate”; there is no material flight risk as the child is with the mother;
  - vi) The seizure of his Bulgarian ID card: “represents a disproportional measurement, but also restricts my free movement rights, my rights to vote and prevents me to represent myself during the ongoing divorce, children and financial remedies proceedings that I have initiated in Bulgaria (where the marriage took place, where the child and the Applicant are habitually resident, have their centre of live interests and where the child has spent most of her time since birth, as per 16th March 2020), a fact that the Applicant conveniently withheld in her Wardship application.”
  - vii) The continuation of the passport order “gravely breaches my human rights and is disproportionate to what the passport order seeks to achieve”.
26. The application was, regrettably, not restored before Judd J.; judicial continuity would have been highly desirable in this case, as in other international cases. It was next listed before Mr Howe QC, sitting as a Deputy High Court Judge during vacation on 25 August 2020. On this occasion, the mother was represented for the first time, but the father was not. In a position statement prepared for that hearing, it is reported (I have not seen the document) that the mother’s then-instructed counsel said this:

“The applicant opposes the discharge of the passport order as the father has not provided his unequivocal consent for the mother to travel with the child back to the UK. The purpose for making the passport order was to incentivise the father in assisting their return to the jurisdiction. He has singularly failed to do so, and the mother would say that until he does both his British and Bulgarian passports and his Bulgarian ID remain with the tipstaff.” (emphasis by underlining added).

27. The order made on that day records the following recital:

“AND UPON it being accepted on behalf of the mother that the passport order was sought to influence the father’s conduct concerning [Maria’s] continued presence in Bulgaria and the father’s failure to agree to her relocating to England, rather than to protect [Maria] from abduction”.



Mr Steadman advised me at the hearing on 3 November that this recital had not been included on the draft submitted to the Judge by counsel but was added by the Judge himself; given the comments in the position statement (see [26] above), I am not surprised. In any event, there was apparently insufficient time on 25 August 2020 for the court to deal with the application, and the application was adjourned to a date to be fixed.

28. At that hearing, the mother intimated her intention to issue an application to have the father committed to prison for breach of (a) paragraph 6 of the substantive order of the 16 March 2020, and (b) those provisions within the passport order which required him to lodge his Bulgarian passport and Maria's British passport. The Deputy Judge directed that if such an application was made, it should be listed for directions on the same occasion as the application for 'setting aside' of the passport order.
29. On 1 September 2020, the mother filed her notice seeking the father's committal. She alleged that the father had failed:
  - i) To provide her with the authority to return to this country, contrary to the order of Judd J;
  - ii) To surrender Maria's British passport, contrary to the terms of the passport order;
  - iii) To surrender his Bulgarian passport contrary to the terms of the passport order.
30. On 21 September, the father apparently (though I have not seen it) issued an application for the discharge of the wardship order.

#### *Discussion and conclusion*

31. A Tipstaff passport order is a useful tool in the judicial armoury, particularly in circumstances where: (i) a court needs to take urgent action to try to prevent a parent from removing a child out of the country (see Wilson J as he then was in *B v B (Injunction: Restraint on Leaving Jurisdiction)* [1997] 2 FLR 148 remarked at p.153: '*B v B [1997]*'); (ii) where there is an assessed risk that a foreign parent may misuse a period of contact in England in order to remove a child overseas (again, *B v B [1997]* at p.153); (iii) where (as here) the court wishes to ensure the attendance of a person at a court hearing within the jurisdiction, and there is a risk that, absent such an order, the person may flee the country before doing so (see for instance Thorpe J as he then was in *Re S (Financial Provision: Non-Resident)* [1996] 1 FCR 148); and (iv) where without such an order the execution of an interlocutory order may be stymied (*B v B [1997]* at p.154).
32. But a passport order is a potent order, with significant implications, whose use it seems to me should be tightly controlled; thus:
  - i) A passport order should only ever be made for a finite period of time (this is likely to be, as it was in this case, for a period of six months before it would have expired unexecuted) (see *Re L (A Child)*, *Re Oddin* [2016] EWCA Civ 173);

- ii) A passport order should not be made where the sole purpose is to coerce the respondent into action of a particular kind; in his submissions, the father rightly referenced in this regard Hobhouse LJ's judgment in *B v B* [1994] 2 FLR 479 at 486 and Sir James Munby P in *Re B (A Child: Evidence: Passport Order)* [2014] EWCA Civ 843, [2015] 1 FCR 75, [2015] 1 FLR 871 at [33].

Furthermore, once granted and passports are seized:-

- iii) The passport order is unlikely to endure beyond the conclusion of the proceedings in which the order is made (*Re M (Children) (Care Proceedings: Passport Orders)* [2017] EWCA Civ 69). If an order for a passport to be held indefinitely can ever be justified (i.e. after the conclusion of proceedings), it is likely only to be in an unusual and probably quite extreme case where it can be demonstrated, after a close evaluation of the degree of risk to the children *and* of the harm to which they will be exposed if the risk becomes a reality, that such a serious invasion of the passport-holder's rights is proportionate and necessary: *Re M* (above); cf, *Re A (A Child)* [2016] EWCA Civ 572, [2016] 4 WLR 111, paras 69-70;
- iv) Consistent with the principles above, and the observations from the authorities, it seems to me to be incumbent on the court to keep under careful review during ongoing proceedings the need to deprive a person of their passport, under a tipstaff passport order; such an order should not remain in place for any longer than is necessary to achieve the legitimate desired protection or outcome.

The removal of an individual's passport, even on a temporary basis, be that of an adult or child, is a very significant incursion into the individual's freedom and personal autonomy. It is never an order that can be made lightly (Hayden J in *London Borough of Tower Hamlets v M* [2015] EWHC 869); a passport order should in my judgment rarely if ever be more than a very temporary measure.

- 33. For a more general discussion about passport orders and their use, it is instructive to reference *Re K (Forced Marriage: Passport Order)* [2020] EWCA Civ 19, in which the Court of Appeal considered the issue thus at [67]:

“... an open-ended passport order or travel ban should only be imposed in the most exceptional of cases and where the court can look sufficiently far into the future to be satisfied that highly restrictive orders of that nature will be required indefinitely. In all other cases, the court should impose a time limit when making such orders. The time limit will vary from case-to-case and, like all other elements, be a bespoke provision imposing a restriction only in so far as that is justified on the facts as found. Unless the court can see with clarity that there will be no need for any continuing order after a particular date, for example when it is clear that the circumstances will change so that the risk is removed, the appropriate course will be for the court to list the matter for further review a short time before the passport and/or travel ban will otherwise expire”

And at [77]:

“A travel ban and a Passport Order are highly intrusive in terms of their impact upon the private life and freedom of movement of the individual concerned”

34. On the particular facts of this case, on the father’s application to discharge the passport order, I have reached the following conclusions.
35. First, the father has rightly and properly argued that a passport order is the draconian measure to which I have referred, which should be imposed only in limited circumstances. While I fully understand that, on the evidence presented by the mother at the without notice hearing on 16 March 2020, it may well have been in Judd J’s mind that, absent such an order, the father may not engage in, or attend court for, these proceedings, I am satisfied that the father has now shown that he is actively engaging and participating in the proceedings, and that such an order is no longer necessary to secure the father’s active engagement.
36. Secondly, while Judd J was provisionally persuaded, albeit on the very limited information presented by the mother only, that the father was a ‘flight risk’, on the totality of the evidence *now* available, I am satisfied that this assertion is not now made out. The father has lived in the UK for over 10 years; he became a citizen in 2016. The father co-owns a property in London, he has a career in the UK in a secure and senior position on a permanent full-time contract with the National Health Service. His employer has confirmed that he has not given notice to terminate his employment. The assertion that the father has told the mother that he wishes to work and/or establish a new family in Germany is not supported (unlike many other allegations in this case) by any corroborative evidence.
37. Thirdly I do not regard it as appropriate to order the continued retention of the father’s passport in an attempt to secure his compliance with the requirement to execute the necessary documents to facilitate the mother in leaving Bulgaria with Maria, as argued by counsel for the mother at the earlier hearing (see [26] above). A more effective and legitimate form of compulsion will be the renewal of the order made by Judd J requiring him to execute the necessary documents, buttressed by an *effective* penal notice, and a time-limit for compliance (see [46] below). If the father does not comply with the obligation to execute the necessary document within the required time, the mother may apply to have him committed for contempt, and if such an application is made, I shall list it before me if I am available.
38. Fourthly, eight months have already passed since this order was made; it is unclear how much longer these proceedings may last. It would be disproportionate to continue the order simply to await the ultimate outcome of the case when the future of the proceedings is so uncertain.
39. For the reasons given above, I shall therefore direct that the father’s British passport and Bulgarian ID card shall be returned to him forthwith.
40. For the time being I propose to direct that Maria’s passport shall remain in the possession of the Tipstaff. At present I do not consider that the mother needs this passport to travel with Maria. If a compelling case can be made that Maria’s travel

would be made easier by her having the British passport in her possession, I would be prepared to review this.

*Order that the father provide an authority to the mother to travel*

41. As I have earlier indicated (see [16](ii) above), Judd J required the father to execute “all necessary documents and travel consents to ensure that [the mother] is forthwith able to return [Maria] to the jurisdiction of England and Wales.” He has not done so.
42. At the hearing today, the father has raised the following objections to the continuation of this order, which I summarise below:
  - i) Maria is settled in Bulgaria in the care of the mother and the maternal grandparents; he says that there are social services and/or police reports available which show that she is thriving in Bulgaria;
  - ii) The father is concerned about the risk that Maria will ‘yo-yo’ between Bulgaria and England if the mother is given the freedom to travel with her;
  - iii) As things stand there is no restriction on the *mother’s* right to travel; she can do so (albeit without her daughter), and has done so during 2020;
  - iv) Maria has a heart condition (a hole in the heart), which renders her vulnerable to travel particularly at this time;
  - v) The mother has no real firm plan for accommodation or support should she return to the UK.
43. There is, it seems to me, some irony in the father arguing vigorously for the discharge of the passport order which currently binds him, thus giving him once again the freedom to travel, while seeking significantly to curtail the mother’s own freedom to return to England, where she has lived for the majority of the last six or more years, accompanied by her daughter in whose care there is no doubt she should remain.
44. There is no real doubt that Maria is currently thriving in her mother’s care, but I am not persuaded that she will be any less well cared for by her mother in England than she is in Bulgaria. I consider that, on her return, the mother should self-refer to the Children’s Services department of the local authority which had supported the family previously (see [6] above), so that they may be aware of the new family situation. While I am conscious of the travel history in 2018/2019, I am not satisfied that this constitutes ‘yo-yoing’ between the two jurisdictions; nor is reason to believe that Maria will ‘yo-yo’ between the two jurisdictions now. The father has not previously mentioned Maria’s heart condition notwithstanding his lengthy and detailed statements. Maria travelled between England and Bulgaria five times in the first two years of her life without health incident; I cannot help but feel that if this had been a real and genuine concern, he would have raised it in one of his documents – indeed, I consider that it would have been a point of importance for him.
45. The father has now not seen Maria himself for about nine months. Shortly before announcing my decision and giving judgment, the father disclosed a further document: a statement in Bulgarian (with translation) dated 12 March 2020 which he

had prepared for the Social Services Department of Child Protection in Bulgaria, in which he raised his concern that the mother was obstructing his contact with Maria, and raising what he described as “the serious risk of parental alienation of the child from the father”. It seems to me that stranding Maria and her mother in Bulgaria is only likely to increase the difficulties for the father in having meaningful contact with his daughter. Given the current travel restrictions and quarantining requirements between the two countries caused by the coronavirus pandemic, should the father travel to Bulgaria now or over Christmas as he plans, he would have to dedicate a large proportion of his trip for self-quarantining before he could meet up with Maria. By contrast, if Maria were to be returned with her mother to this jurisdiction, then (after a period of quarantining here) he would be able far more easily and readily to spend time with her thus removing one clear obstacle to the restoration of their relationship. This not insignificant benefit to the father, and to Maria, was neither addressed nor acknowledged anywhere in his submissions; surprisingly, and contrary to the father’s stated concerns about alienation, I was told by Ms Villarosa that the father is “happy to wait” to see Maria.

46. I propose therefore to direct that by 4pm (GMT) on 16 November 2020 the father shall execute “all necessary documents and travel consents to ensure that [the mother] is forthwith able to return [Maria] to the jurisdiction of England and Wales.” These documents are to be lodged with the mother’s solicitors (Hudgell & Partners) at their Woolwich office. I shall attach an effective penal notice to this order. This order replaces the order made by Judd J. As I have said earlier should there then be an application to commit the father for breach of this order, I direct that such application shall be listed before me if I am available.

#### *Committal application*

47. At the outset of the hearing on 6 November, I discussed with Mr Clark the difficulties which I had identified on the documents in the mother pursuing her application to commit the father to prison for breach of the orders made on 16 March 2020. I gave the mother an opportunity to consider withdrawing her application; Mr Clark recognised the difficulties his client faced in pursuing the committal application, and indicated that he was not instructed actively to pursue it. I propose to dismiss the application. I do so for the following reasons:
- i) The mother’s application seeks the committal of the father for breach of paragraph 6 of the order of 16 March 2020; but it is accepted that the penal notice attached to that order (described at [16] above) is defective;
  - ii) The mother is likely, as Mr Clark acknowledges if not concedes, to have considerable difficulties in proving beyond reasonable doubt that at the time the passport order was served on the father (21 March 2020), the father’s Bulgarian passport and Maria’s British passport were “in [the father’s] possession or control”. It is accepted that the father *did* at that time hand over his British passport and his Bulgarian ID card which raises a reasonable inference that had he had possession of these other travel documents he would have handed them over. Furthermore, as I have indicated above, the father has in fact provided evidence (see [18] above) of his inability to comply with the order in relation to these documents;

- iii) I am satisfied that it is not a proportionate use of the court's time to allow a committal hearing to be listed which is, in my view, destined to fail.

*Lis Pendens, Habitual Residence and jurisdiction*

48. Arguments arise on the facts of this case about *lis pendens*, complicated by the fact that in England two petitions have been issued (bearing the same number) one before and one after the issue of divorce proceedings in Bulgaria. The father appears to have issued child arrangements proceedings in Bulgaria in early February 2020 with the petition, whereas the mother issued wardship proceedings only on 16 March 2020. There is also plainly a dispute between these parents as to where Maria is habitually resident. The father's case is that the mother and Maria have been permanently, and habitually, resident in Bulgaria since March 2018, visiting this country only sporadically in that period. He refers to the fact that the mother last left this country on 29 December 2019 with "five heavy bags of luggage" having told the local social services department that she was "not planning on returning to the UK" (see [8] above).
49. The mother's case, in summary, is that England is the court first seised of the divorce, and that Maria is habitually resident in England, and has been all of her life. Her absences from this country have been occasioned by the need to obtain family support during Maria's early infancy, and to offer respite from the alleged abuse from the father. In computing her periods of actual residence in England, she invites the court to ignore the period since January 2020, given that she has been unable to leave Bulgaria without the father's permission.
50. As I have mentioned above, there is concurrent family litigation in the two jurisdictions; I regard it as necessary to clarify precisely what applications and issues are before the Bulgarian Court, when they were issued, and how far they have proceeded. I am keen to avoid duplication of judicial decision-making, and to achieve clarity vis-à-vis the Bulgarian courts on the issue of habitual residence and/or primary jurisdiction. In this regard, during the course of the hearing, I made contact with the International Family Justice Office (IFJO) to establish whether the Hague Network Judges could possibly liaise over these issues in accordance with the guidance 'Direct Judicial Communications' ('DJC') published by the Hague Conference on Private International Law (2013), which I had referenced and discussed briefly in *N v K (No.2)* [2014] EWHC 507 (Fam) at [8]-[12].
51. Subject to the views of our Network Judges here, it will be necessary for any request for judicial liaison to be accompanied by: (a) a (preferably agreed) concise case summary; and (b) a set of questions to be put to the Bulgarian Network Judge which request information of a practical and emphatically non-legal nature.

*Orders*

52. Drawing together the conclusions discussed above, I confirm that I propose to make the following orders:
  - i) I shall discharge the 16 March 2020 passport order in part; allowing for the return of the father's British passport and Bulgarian ID card to him;

- ii) For the avoidance of doubt, Maria's British passport shall remain with the Tipstaff;
- iii) I shall dismiss the mother's application to commit the father to prison for breach of the passport order and paragraph 6 of the 16 March 2020 order made by Judd J;
- iv) I propose to make a fresh order in the same terms as paragraph 6 of the order of Judd J of 16 March 2020, save that the requirement to execute the documents shall be expressed to be required by 4pm [GMT] on 16 November 2020; this document shall be lodged with the mother's solicitors Hudgell Partners, at their Woolwich office. The order will be supported by a properly expressed penal notice;
- v) I shall direct that any application for committal for breach of the foregoing order shall be listed before me if available;
- vi) I shall pursue enquiries already made of the IFJO. The questions which it seems to me we would benefit from answers are:
  - i) What proceedings have been launched in Bulgaria in relation to this family? And when?
  - ii) What orders are sought there in relation to [Maria]?
  - iii) How far have the proceedings reached, and has the court established its jurisdiction in relation to matters concerning [Maria]?
  - iv) Has the Court there yet made a determination on primary jurisdiction? If not, is it intended that the court should do so?
- vii) I propose to list the case for further directions on the issue of *lis pendens*, habitual residence and jurisdiction once the IFJO have indicated either that it can progress this enquiry and has done so and has answers, or that it cannot do so;
- viii) I propose to make no orders in relation to the progress of the divorce or the *FLA 1996* matters.

53. That is my judgment.