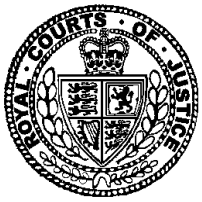

This judgment was delivered in private. The judge has given permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly 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.

Neutral Citation Number: [2021] EWHC 1957 (Fam)

Case No: FD20P00570

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF the Young Persons AE (born [on a date in] 2003) & JE (born [on a date in] 2006)
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2021

Before:

MS JUSTICE RUSSELL DBE

- -

Between:

AE & JE	**Applicants**
and	
M	**1st Respondent**
and	
F	**2nd Respondent**

AE & JE Henry Setright QC and Jonathan Evans on behalf of the **Applicants** (the young persons), instructed by their Guardian ad Litem Janet Broadley
M (their mother) in person and unrepresented
F (their father) did not attend and was not represented.

Hearing date: 27th May 2021

- -

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 MS JUSTICE RUSSELL

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 Ms Justice Russell DBE:

Introduction

1. This case, which concerns two young people of Spanish parents and nationality has been for some years, as I observed in my previous judgment in 2019, no stranger to this court or to the family courts in Spain. Most regrettably these young people, the elder of whom is fast approaching her majority, have been the subjects of litigation for most of their lives and are still caught in a conflict of laws that is not of their making but which continues to define and circumscribe their existence and autonomy. For a full background to this application brought by the young people themselves reference should be made to the previous judgments of this court made by Baker J (as he then was) reported as *FE v MR & Ors.*; neutral citation [2017] EWHC 2298 (Fam) (14 September2017) and to my judgment neutral citation [2020] EWHC 162 (Fam) to which I have alluded, as upheld by the Court of Appeal and reported under neutral citation [2020] EWCA Civ 1030 in August 2020.

2. The proceedings concerning these children commenced in Spain in 2013 and at the end of 2013 the children moved to the UK and it is England living with their mother (the 1st respondent M) where they have remained. The proceedings should have come to an end by the summer of 2020 but unusually, if not extraordinarily, to use the word of their leading counsel Mr Setright QC in his written submissions to the court, this is the young people's own application for wardship orders, and for initial orders securing their immediate return to England, along with a variation of the existing Child Arrangements Order dated 27th February 2020, they having been detained in France over the summer holiday in 2020 as a result of applications made to the Spanish Courts by F (the 2nd respondent father).

3. I am indebted to Mr Setright QC and to his junior Counsel Mr Evans for their assistance along with that of their solicitor Ms Broadley, who acts as the guardian ad litem. The Applicants now apply to the court for declarations in respect of their status with a view to taking further proceedings to regularise their legal status.

History & Background

4. As previous background to the case is set out in the judgments referred to above I shall not rehearse it again here, nonetheless it is necessary for the events which took place in the summer of 2020 to be set out as they form the basis of the applications before the court. By way of a brief historical background, the parents are both Spanish nationals, born in Spain, and were married in 2002, in Barcelona. AE was born, in Spain, in [on a date in] 2003. In 2004 the family moved to another city in Spain (P where F still lives). In 2006, when AE was still an infant, the family moved to Kent in England, where JE was born in [on a date in] of the same year. The family remained in England until July 2011 when they all briefly moved back to the city of P for a few weeks, before moving to the Canarias. Within a year, in July 2012, F left the family home and moved back to the city of P, since when he has remained. M and children initially stayed in Tenerife, before, their mother having been granted provisional custody of the children by the Spanish Court, she returned to work (as a doctor in the NHS) in England with the children in December of 2013 and they have remained living in England since then.

5. There then were conflicting proceedings concerning the children brought by F in Spain and by M in England during which orders were made awarding F custody in Spain in 2016 and again in 2018. Throughout the children remained living, with their mother, in

the South of England. A request made by the High Court in London pursuant to Art 15 of Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (hereafter BIIa) for the case to be heard in the English and Welsh jurisdiction was refused by the Spanish Court in P. The Spanish proceedings concluded in December 2018 with an order that the children were to live with F in Spain. Throughout the proceedings in the UK the children made clear through their court appointed guardian that they did not wish to live in Spain with F but to remain with their mother in England.

6. F then made an application for recognition and enforcement of the Spanish order in London and it was at the conclusion of the proceedings arising out of this application I made child arrangement orders for AE and JE to remain living with their mother in England and refused the F's application for registration and enforcement of the Spanish Order. The Court also provided for the F to withdraw all family and criminal proceedings in Spain. These orders were upheld by the Court of Appeal on 4th August 2020, dismissing F's appeal. Notwithstanding the orders I had made and despite having agreed not to, just prior to the decision of the Court of Appeal, on 30th July 2020, F applied to the Spanish Court in P without notice and seemingly without informing the court of the orders I had made the Spanish Court then made an order that his children should be detained by the police and placed with F if they were to come to Spain. This is precisely what was done to them when they then went on holiday to the Canarias with their mother.

7. What Mr Setright succinctly describes as the fundamental issue is the fact that these two young persons (AE will be eighteen and an adult in October 2021 and JE will be fifteen in December) remain caught in a dispute between the jurisdiction of England and Wales and that of the Kingdom of Spain courts in matters pertaining to their welfare. There are conflicting orders in Spain and in England with the Spanish order providing for the Applicants to be in F's custody and the English and Welsh order providing for the Applicants to be in their mother's custody. F recognises the Spanish order and refuses to recognise the authority of the English court and M recognises the English order and not the Spanish order, moreover the English courts has declined to recognise the Spanish order and the Spanish court has declined to recognise the English order. The result is that they are unable to travel outside of this jurisdiction for fear of their detention or retention.

8. These are very real fears given what they experienced last summer (set out below) and extend to fears for their mother. They are scared that she cannot travel in Europe without being arrested. As was submitted on behalf of the Applicants this, arguably at the lowest, significantly impacts upon their right to family life, their right to liberty and their right to free movement; a submission which I accept.

Events in the summer of 2020

9. Unaware of the orders of 30th July 2020 made by the court in P, M and her children travelled to Tenerife for a 10 day holiday on 10th August 2020. They were on their way home to the UK when, on 19th August 2020 and, as they were to board their flight back, the Applicants were detained. M was then arrested and detained separately. The Applicants were forcibly placed with F. I have had the benefit of their direct evidence as set out in their own witness statements, and will refer to them below, as they make graphic reading not only as to what happened to them but also as to their feelings at the time and their wishes about what should happen in the future. Their descriptions of what F did to them, and the distress and trauma

caused by his actions is at times visceral. They complain that they were given no choice but to travel to mainland Spain with F, against their will, where they stayed locked in his home for a period of 10 days. Notwithstanding their close confinement on 1st September 2020, the Applicants managed to get away from F's friend when they were out (they were not allowed out on their own) and, by using public transport got to Biarritz in France. Their mother met them there and they proceeded to Calais with the intention of travelling on to England.

10. Their flight from their father was registered with the Spanish police who put out an alert as a result of which the Applicants were prevented when they reached Calais from leaving France to come home. The Spanish Police issued an European Arrest Warrant for the M for child abduction (although his children on their own evidence had in fact escaped from F's incarceration of them). M was duly arrested and detained on 2nd September 2020 in Calais. The Applicants were separated from their mother again and put in a hostel used for unaccompanied migrants before being placed with non-Spanish or English speaking French foster-carers on 5th September 2020, so at the time that they were separated from both parents.

11. The young people managed to contact a solicitor in England and their applications came before me sitting as the Urgent Applications Judge on 11th September 2020. When I had made orders in February 2020, including that the Applicants live with their mother (they had been living with her in England since 2013) and orders for contact with F, the latter had been conditional on F withdrawing his applications in the Spanish Courts and criminal complaints against M. Although the Applicants were able directly to instruct their solicitor to issue this application in wardship on the 8th September and were made wards of court on 11th September along with an order for their immediate return to this jurisdiction, it was not until the 22nd that the French Court discharged its interim protection order and directed they be returned to England

12. When the facts of the case had became clearer to the French courts by 15th September 2020 the French criminal court in France decided not to enforce the European Arrest Warrant. The Applicants' case was to be heard again on 22nd September 2020 to consider whether AE and JE should remain in foster care in France. The matter came before this court again on 16th September 2020 when further orders were sought to enlist the support and cooperation of the British Embassy in France in obtaining emergency travel documents to the Applicants to ensure their safe return to England.

13. The case came before the French family court on 22nd September 2020 when the French judge discharged the interim Protection Order in respect of AE and JE (so that they were no longer in foster care) and further made an order pursuant to Article 20 of BIIa that they were to be returned to their mother's care and returned to England pursuant to the orders of this court. The Court in France heard from the applicants directly. AE described the hearing in her statement of May 2021 in this way, *"[JE] and I travelled to the court on 22nd September and appeared before the Judge. Our mother was also there with her lawyer. It was very intense. I was very clear about what I wanted and informed the Judge, with the assistance of an interpreter, that I desperately wanted to be returned to my mother's care and allowed to go back home to England. The Judge was concerned, sympathetic and pleasant and discharged the order. I did not know at the time that my father had secured yet a further return order in the Spanish courts on 11th September 2020. My father was not present at the hearing in France."*

14. They finally returned home to England late on 23rd September 2020, close to midnight and because of the Covid pandemic had to self-isolate for 14 days. AE told this court in her statement that "*It was an enormous relief arriving home having spent the previous 5 weeks not knowing what was going to happen to us or our mother*." Although they returned to school on 7th October 2020 that was over one month after the new school year had started, a year that had already been disrupted by Covid-19 restrictions. It was a new school for them both and they describe the upset and the difficulties they experienced as a result in their statements to the Court.

15. As AE said in her later statement, *"Both [JE] and I were due to start a new school, [CB] School, on 1st September 2020. We had both been nervous and excited about this new start but after our experience in Spain and France, I felt vulnerable and unable to cope. I needed the security of my old school friends around me. The earliest we were able to start at [CB], having self-isolated, was on 7th October 2020, missing 5 weeks of the Autumn term. I felt lost and bewildered. I spoke to my mother and we agreed for me to return to [my previous school]. I only attended at [CB] for about a week before starting back at [my old school] on 15th October, which was a week before the half term break. It was an unsettled start to the new academic year which we did not need and did not deserve. This time of uncertainty right now, around the world with the pandemic is causing enough anxiety without the added stress of what we experienced. My father knows [JE] and I are diligent students…He knows we love our work and want to get good grades yet his actions caused us enormous disruption at the start of our school year."*

16. The case had been listed for 25th September 2020 but the hearing was adjourned by the court on the application of the Applicants' solicitor to allow for a period of settling into school and she instead sought directions for both parents to file evidence to explain their position as to the events over the summer before the matter returned to court. In light of the fact that their parents have been litigating in two jurisdictions for the last 7 years it is that wholly unsurprisingly AE and JE are desperate for this litigation to stop and it was hoped by this court that the order made by me on 27th February 2020 would have marked the end of the litigation. It is of note that F could have taken action to stop all litigation in line with their wishes in February 2020 and again after he lost his appeal on 4th August 2020. It is clear from F's actions over the summer including seeking a further return order on 11th September 2020 and his failure to engage in these proceedings brought by his children that not only has F refused to accept the decision of this court upheld by the Court of Appeal, but that he continues to refuse to accept, respect or even acknowledge the wishes and feelings of his own children.

17. On 20th October 2020 the M applied to the Spanish Court for recognition and enforcement of the Orders of 27th February 2020 but her application was dismissed by the Spanish court on 3rd November 2020.

18. These are the bare facts behind their application but the effects of the events which took place in the summer of 2020 on the Applicants emotionally and in terms of their autonomy and freedom of movement has been profound. They have on any common sense analysis suffered significant emotional harm and continue to do so as can be seen in the fear and anxiety they have expressed. Their education (which already disturbed by Covid-19 restrictions) had been disrupted at the start of what was, for AE in particular, a crucial time. The resolution of this situation in a manner that, as has been submitted on their behalf, does

not in itself cause further harm to the Applicants is an imperative for any Court which puts (as do the Courts of England and Wales and Spain) the welfare interest of children at a premium, both in accordance with domestic law and in accordance with international Instruments and Conventions. This is the urgent requirement of the Applicants, to whom the current situation is so clearly injurious, and in accepting the submission as put by leading counsel on their behalf, is the court's view that this requirement should now take priority over consideration of arguments in the adults' dispute.

Evidence

19. When the matter came before the court for final hearing on 27th May 2021, M continued to appear in person but F did not attend court and was not represented (he had been represented in the previous proceedings). Due to the continuing restrictions in place because of the Covid 19 pandemic the hearing took place remotely as had the previous hearings in these applications. The Court is satisfied that F has been given notice of all the hearings and at all times there have been proactive steps taken to put him on notice and encourage his participation but F has not actively engaged with these proceedings since November 2020 and he had not communicated with the Applicants' solicitor at all since the previous hearing although both parents were served with the previous order and the notice of this hearing on 11th April 2021.

20. As a result of F absenting himself from the hearing and the lack of any real engagement with these proceedings brought by his children on his part at least since November 2020 the evidence before the court was unchallenged; nonetheless the evidence was assiduously prepared by those instructed by the Applicants. The trial bundle included two witness statements from each of the Applicants themselves (to which I have already referred) as well as statements from M, one previous statement and more recent emails from F and two from their solicitor and guardian ad litem Ms Broadley. The Court had the benefit of two expert witnesses in respect of Spanish Law.

Confirmation of jurisdiction and the Law

21. As referred to above F sought to appeal the previous order of this court. In the judgment in the Court of Appeal, Lord Justice Peter Jackson set out the legal framework underpinning the jurisdiction of the Court as follows.

> "*The lynchpin of BIIa in relation to parental responsibility is found in Article 8, entitled 'General Jurisdiction' which provides that:*
> *"1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that member state at the time the court is seised…*' and went on to say'*…general jurisdiction in matters of parental responsibility will rest with the court of the Member State of habitual residence from the commencement of its proceedings until their conclusion. The corollary is that general jurisdiction thereafter lies with the court of any Member State in which the children are habitually resident*."

He then considered the principles applicable to recognition and enforcement, as set out in Articles 21, 23, 26, 27 and 28 of the regulation.

22. The Court of Appeal judgment recorded the following as facts upon which the appeal was considered including that when the case had been before me "*it was common ground that the dismissal of the mother's appeal in August 2018 brought the Spanish proceedings to an end. That consensus was recorded in the order of 9 April 2019*." Further the Court of

Appeal found that "*the position taken by the parties and adopted by the judge was correct, but in the end it makes no difference as the English court was plainly seised throughout 2019 and since*." And that "*[i]n this case there can be no doubt that the English court had jurisdiction to make welfare orders at the time that it did. The children were habitually resident here and the Spanish court was no longer seised*."

23. Reference was made to paragraph 31 of my 2020 judgment which I said stated "*on any objective and neutral analysis both children are habitually resident in England. They have lived here since 2013, are settled here and fully integrated into their school and education as well as in their peer group and social environment; there is no evidence before this Court which could be said to amount to anything of substance contrary to such a finding*." The Court of Appeal's assessment was that "*The judge identified the principal facts as being the length of time the children had been in England, their ages and their strong wishes to remain living here. On any view, these were factors of magnetic and almost certainly decisive importance that were bound to dominate any welfare assessment*…". Thus, as there are no outstanding applications in respect of the same, the analysis of Peter Jackson LJ on the basis of this Court's jurisdiction remains binding and apposite.

Experts' evidence in respect of Spanish Law

24. The two experts in Spanish law who were been instructed within these proceedings provided written opinions. Sñr. Bayo Delgado considered possible the option of new proceedings for recognition and enforcement of a judgment and order resulting from these proceedings, taking into account the circumstances after 2016. He considered that a) the residence of the children is legal according to the Spanish Order of 19th September 2013; b) it was not replaced in the UK by the order of 27th June 2016, whose recognition was denied; and, c) in any event, Article 10(b) (i) of BIIA would apply from June 2017.

25. The second expert to be instructed, Señora Lopez, in her report considered the same hypothesis and it was her opinion that "*If in the English judicial process this possibility of modifying measures on guardianship and custody due to change of circumstances is also foreseen, it is evidence that by application of the 1996 Hague Convention, the resolution of modification of measures due to change of circumstances issued by the Court of England and Wales, should be recognised and executed by the Court of P*".

26. The Applicants invite the Court to consider making final orders that they live with their M. As a result of their experiences with F in the summer of 2020 understandably neither AE or JE wished to spend time with F. The court received no requests or submissions from him or on his behalf in respect of contact with his children.

27. A new Child Arrangements Order is sought on behalf of the Applicants based on their wishes and feelings and current circumstances which will take into account the history of the case since June 2016, in particular the removal of the children to South East Asia and latterly the events in France and in Spain in August and September 2020. The hope is that this order can then be recognised and enforced in Spain, pursuant to either the 1996 Hague Convention of 19th 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 Convention) or to BIIa in bringing an end to the current legal stalemate and releasing the Applicants from the invidious position in which they currently find themselves.

28. When AE filed an updating statement for this hearing she described the effect at the time she was detained in Spain by her father and later in France by the French authorities, as a direct result of the action taken by her father, in August and September 2020 saying that she *"was desperately unhappy and felt vulnerable, distressed and helpless. I was panic stricken that I would not be able to return to my home in England, to my life, friends and safety. The thought of what happens still makes me feel physically sick, anxious and nervous.* " She went on to describe her feelings in respect of the 2nd Respondent conduct and said that she was "*angry and distressed at my father's complete disregard for our physical and emotional wellbeing and his lack of insight into how his actions impacted on his own children's mental, physical and emotional wellbeing. I find this hard to comprehend and come to terms with [it]*."

29. AE's distress at her inability to travel freely outside the United Kingdom in Europe and elsewhere, effectively preventing her from travelling and inhibiting her movement including to her country of origin (she is a Spanish national), is also described in her statement to the court. She said "*We of course want to be able to visit our family in Spain but through [my father's] actions he has prevented this; we are just too scared to travel there for fear of not being able to get out. The consequence of this is that we have felt unable to attend my aunt's wedding in Spain in December 2020 nor our paternal grandfather's funeral in January 2021*." The effective and severe curtailment of her freedom to travel within the European Union as she should be able to at her age is an infringement of her autonomy and her fears are real, substantiated by the events of last summer.

30. JE, who also filed witness statements in these proceedings told the court of his distress and fear, not only for himself but for his mother and sister. He said "*I still worry that if me or my mum and sister travel anywhere the same will happen, we will be detained, my mother arrested and weeks or months of uncertainty. So for the moment I cannot travel anywhere. It is safer not to. But this cannot be right. It cannot be fair."*

31. JE too describes his feelings about the 2nd Respondent and the action his father chose to take against his own children and their mother. He said "*I am angry with my father and I have blocked him from my phone so he cannot call me or text me…It is his actions and behaviour that has made me stop communicating with him. Not my mum. It is him. I have had enough and I do not want to be made to have contact with him…Ideally we would be able to travel to Spain and other countries but he has prevented us from doing that. I am now 14 ½ years old and I would like this court to understand that I do not want a contact order for me to see my father. I just want an order regulating where I live, with my mum in England, and for that order to be recognised by the Spanish Court*…" And he told the court, "*I just want my dad to stop this and let me and [AE] enjoy our teenage years. All he is doing right now is pushing us away and destroying his relationship with is. We are too scared now to go abroad for fear of what will happen."*

32. JE has given the court a vivid and lucid description of what happened when they were detained in the airport in Tenerife on their way back to the UK after their holiday. JE told the Court in his first statement in these wardship proceedings dated 10th September 2020 that he had had to watch his father grabbing his sister AE by the throat when she panicked at being taken away by him to board an aircraft to mainland Spain. He said "*Our lives in the last two weeks have been hell and it was distressing for me to see my older sister suffer*

in the way she did on 19th and 20th August when she had an anxiety attack at Tenerife airport and witnessing my father shouting, swearing and screaming at us and at one point grabbing my sister aggressively by the neck" JE went on to say "*I just want my dad to stop this and let me and [AE] enjoy our teenage years. All he is doing right now is pushing us away and destroying his relationship with is. We are too scared now to go abroad for fear of what will happen."*

33. Not only have these two young people witnessed each other's distress as well as experiencing their own trauma during the events orchestrated by F in which he actively participated, they have also been caused further emotional harm and considerable worry over their mother; about what happened to her and what may happen to her again in the future. AE told the Court in her second statement for the hearing in May 2021 that she had "*… seen my father's emails sent to this court in response to our application. It makes me feel physically sick to read my dad's words 'I will do my best to get [M] in prison'. What father would say that knowing that our mother has looked after us by herself for the last 8 years? He does not even comprehend the impact of this outcome on me and [JE]. His behaviour is unacceptable. I am not sure what complaint my father made to the Spanish police in September 2020 when [JE] and I ran away to Biarritz, France. He mentions 'on 1st September when the mother took the children'. This is a lie possibly to get my mother in trouble but [JE] and I ran away and left Spain and travelled to Biarritz on our own. I have already explained above how we did this. I am not sure what has happened to the European Arrest Warrant as my mum is now in England but it remains a worry. Another thing to worry about for me and [JE]. My father's behaviour towards us and threats about my mother are impacting on me and my health. I do not deserve to be treated like this and neither does [JE]."* AE told this court in terms, "*my father's behaviour towards us and threats about my mother are impacting on me and my health…*"

34. If the email AE refers to is a true reflection of F's real underlying intentions it betrays vindictiveness and lack of any insight both into the effect of his word on his children and on his blatant disregard of the longer-term effects on the nature of his relationship with the Applicants. F has, as well, suggested in an email that if M were to sign a property in P over to him unencumbered he would bring the litigation in Sain to an end. AE puts it in this way in her statement, *"In one of his emails my father refers to a flat in [P] and suggests that if my mother gives him the flat then he will agree to resolve the litigation. I am sad to read this but it does not surprise me as it fits into the rest of his behaviour towards us and our mum. Frankly it confirms that this litigation is not really about us anymore. He would be happy with the flat in [P] and will agree for us to live in England on that basis. Are these the words of a loving father, committed to his children's physical, mental and emotional development? The court in Spain should need to know this information and the motivation behind my father's intent on enforcing orders made years ago. Living with my father now would probably and most likely cause us emotional harm. I doubt he would encourage any form of relationship or contact with my mum and we would pretty much be held prisoner in his home …He believes that we should be living with him and tells us that our mother is to blame for what has happened. My mother says nothing negative against my father. She is worn down, fatigued by being a single parent to two growing teenagers needy in our own ways but having this constant litigation, this fight for resolution. I am so proud of her commitment to her work, to us, to her friends."*

Orders sought

35. It was submitted on their behalf that a Child Arrangements Order pursuant to s8 of the Children Act (CA) 1989 should be made reflecting the young persons' clearly stated views, views which they had already made clear in 2019 and which have been reinforced significantly by the events of the past year. I unhesitatingly accept the submission that the facts of this case are exceptional, and it follows, fall within s.9(7) of the CA 1989 and so that that an order is required in respect of AE despite her age. Both of these young people are quite clear that they do not want there to be an order for them to spend time with the 2nd Respondent and I accept the submission that their ages and the circumstances of this case require an order reflecting the situation in real terms and releasing the Applicants and their mother from any legal obligations within this jurisdiction and in the country where they are habitually resident that would have obliged them to spend time with the 2nd Respondent. Although the previous order providing for AE to spend time with the 2nd Respondent was discharged while a similar provision in respect of JE was suspended (Cf. paragraph 2 & 3 of the order of 15th December 2020) the conclusion of these proceedings necessitates in these most unusual of circumstances a final order congruent with the decisions of the court and the evidence before it.

36. The Applicants did not seek other orders but asked that the order made by this court following the hearing sets out recitals or declarations to make plain the jurisdictional basis of the order including as to habitual residence of the young persons for the purpose of understanding, recognition and enforcement in courts outside the United Kingdom. This is intended to confirm the position which has previously been found in this Court and in the Court of Appeal. It must be noted that the recitals or declarations do not indicate a new state of affairs but confirm the pre-existing basis of the Court's jurisdiction. To enable the Applicants to seek relief outside this jurisdiction permission will be granted to disclose the papers from these proceedings to any solicitors they (or indeed their parents) instruct in Spain. They seek permission and are granted permission to disclose the papers to the AIRE Centre for the self-same reasons.

37. The Applicants seek the Court's assistance to remedy the situation in which they now find themselves and it is intended that on their behalf an application will then be made for it to be recognised and enforced in Spain pursuant to the 1996 Convention or BIIa: as this application pre-dated 31st December 2020, the Regulation should still apply. The Applicants are caught, one might say trapped, in the middle of an international jurisdictional impasse over which they have no control. As young people approaching adulthood and independence they must be permitted to get on with their lives, free from the fear and real risk that if they travel to Europe that they or their mother will be detained, or that they will again retained by the 2nd Respondent in Spain against their will. The present situation means that travel and their contact with their extended families in Spain are restricted and constrained. There is no doubt that the Applicants are habitually resident in this jurisdiction and that this Court has jurisdiction over matters relating to parental responsibility for the Applicants (as was confirmed by the Court of Appeal in August 2020).

38. As I have already set out, the orders sought on their behalf are in the best interests of the Applicants as it pays particular regard to their clearly stated wishes and feelings based on their experiences of last summer and gives due weight to their ages and understanding. From the evidence they have given to the court there is little doubt that they have been caused significant emotional harm and distress by their detention last August and

September and there is a clear risk that if the current situation is allowed to continue, it will cause them further significant harm in the future.

39. It is most instructive to read how the young persons feel in AE's own words, "*I just want my father AND the Court in [Spain to listen to me and my brother. To date I just do not feel as if I have been listened to or respected by either my father or the Court in [Spain]. I really hoped that the Court in [Spain] would listen to me when we were at our father's house in August 2020 but they declined to listen to us. What were we to do? And now, how can we stop this dreadful impasse between the two jurisdictions? Our mother has tried and cannot. Our father refuses to and the Court in [Spain] refuses to, accepting my father's narrative. Don't we have a voice? It is so unfair. I say this in distress and with no disrespect to authority. The Court in Spain has to understand how harrowing our experience was last summer and this cannot be allowed to happen again. It has to come to a stop. If my father is unable to prevent himself from continuing his campaign to get us back to Spain, I implore the Court in [Spain] to listen to me and my brother and discharge all orders made and to recognise the orders made by this court*."

40. The orders made by this Court are a reflection of the reality of the Applicants' lives, their wishes and feelings and their obligations in respect of F. This latter in turn reflects the reality of the impact that his own actions have had on them and the extent of harm that he caused independently of the orders of the Spanish Courts. It is intended that the Applicants may make such use of these orders as they are advised to both in Spain and elsewhere to enable them to be released from the legal trap in which they now find themselves.