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.

Neutral Citation Number: [2021] EWHC 572 (Fam)

Case No: FD20P00714

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

IN THE MATTER OF THE SENIOR COURTS ACT 1981

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

IN THE MATTER OF COUNCIL REGULATION (EC) NO. 2210/2003 OF 27 NOVEMBER 2003 (BRUSSELS II REVISED)

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF A AND B (BORN IN 2015), AND C (BORN IN 2019)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 February 2021

Before :

MR JUSTICE PEEL

- -

Between :

PQ	**Applicant**
- and -	
RS	**1st Respondent**

- and -

TU **2nd Respondent**

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Katy Chokowry (instructed by Miles and Partners) for the **Applicant**
Graham Crosthwaite (instructed by Thomas Dunton) for the **1st Respondent**
Tina Villarosa (instructed on Direct Access) for the **2nd Respondent**

Hearing dates: 21-23 February 2021
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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.

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Mr Justice Peel:

Introduction

1. PQ ("F") seeks the return of, A and B, aged 5, to the Republic of Ireland under the Hague Convention. RS ("M") opposes the application.

2. M has another child, C, by a different father ("TU") who she removed from Ireland to this country, along with A and B, in September 2020. M and all three children are presently living in England. By direction of the court, M has applied under the Children Act 1989 for leave to remove C from this jurisdiction to Ireland. The purpose, of course, is to enable her to travel with all 3 children to Ireland in the event that I make a return order in respect of A and B. M's Children Act application has been consolidated with the Hague Convention application and TU has been joined to these proceedings.

3. The day before the hearing, TU, who lives in England, filed a Children Act application seeking orders that, in the event of a return order, (i) C live with him and/or (ii) C spends 2/3 days per week with him and/or (iii) M be prohibited from removing C from this jurisdiction. It was made plain to me during the hearing that he considers C should primarily live with M, but he wishes that to be in England; hence his application, although there does seem to me to be some tension between advocating M as the primary carer of C, and applying for a residence order in respect of C.

4. There are, therefore, three applications before me:
   i) F's for a return order under the Hague Convention in respect of A and B;
   ii) M's relocation application under the Children Act in respect of C;
   iii) TU's application for residence/contact/PSO under the Children Act in respect of C.

   Strictly speaking, the Hague Convention application proceeds in the High Court (Family Division) and the s8 applications in the Family Court.

5. I remind myself of the purpose of the Hague Convention.
   i) In **Re D (A Child) (Abduction: Rights of Custody) [2006] UKHL 51**, Baroness Hale of Richmond observed at para.48 that:
   > "The whole object of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their 'home', but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed."

   ii) As Mostyn J put it in **CA v KA [2019] EWHC 1347**:
   > "The role of the 1980 Convention in such a case is procedural. It does not render any substantive relief beyond ordering a return of the child to the land of her habitual residence where the court of her homeland will make the substantive welfare decision. That the role of the court under the 1980 Convention is strictly one of being procedurally ancillary to the relief that will be rendered in the court of the home state is made clear by Article 7.3 of the 1996 Hague Convention, which the Supreme Court in *Re J* [2016] AC 1291] held substantially bolstered the operation of the 1980 Hague Convention. That provides:
   > "So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child."

6. By contrast with the decision which I must make under the Hague Convention, the respective Children Act applications in respect of C made by M (for relocation) and TU (residence/contact/PSO) require a welfare-based analysis applying the Children Act checklist. I will return to the nature and extent of such an analysis.

7. The bundle consisted of 541 pages, comprising no fewer than 8 long and detailed statements, including exhibits, from F, M and TU. The narrative alone ran to over 120 pages. In addition, I received over 60 pages of skeleton arguments. The exhaustive presentation left no stone unturned.

Defences

8. M's Answer pleads 3 defences in respect of A and B:
   i) That F did not have rights of custody under Article 3. That is a matter for F to prove.
   ii) Acquiescence under Article 13(a). That is for M to prove.
   iii) Under Article 13(b) that there is a grave risk that a return to Ireland would expose the children to physical or psychological harm or otherwise place the children in an intolerable situation. That also is for M to prove.

   In his skeleton argument, counsel for M abandoned the acquiescence defence.

9. M makes plain that she will accompany A and B to Ireland, if a return order is made, and would intend to take C as well. In her written evidence she says: "If the children have to return then so must I because I cannot contemplate being separated from my children, and nor can they be separated from one another as siblings". That, of course, is dependent upon whether I grant her relocation application in respect of C.

Applications for adjournment

10. M applied for permission to obtain a psychiatric report on her mental health. She submitted I should consider the first defence (rights of custody) at this hearing and, if I found in F's favour, adjourn part heard to enable the psychiatric evidence to be obtained. I rejected the application in an ex-tempore judgment for the following two principal reasons:
    i) The application was made far too late in the day. M has not sought expert evidence at any time since the proceedings began. Her Answer made no mention of mental health issues. Mental health was not mentioned at either case management hearing. Inevitably, there would be a lengthy delay to these proceedings whilst such a report is obtained.
    ii) M has not advanced any substantive evidence to justify the necessity of an expert report. There is nothing before me from a GP, or mental health service, about diagnosis, treatment and prognosis. Insofar as she has issues, they date back to teenage years and are linked to her relationship with her family. There is nothing of substance before me to suggest that her relationship with F has detrimentally affected her mental health, or that her ability to care for her children has been impacted in the past, or that a return to Ireland would impact on her ability to care for the children in the future. Distress and disruption are not the same as the high level of finding required for the Article 13(b) defence.

I concluded that the circumstances of this case were similar to those in **Re F [2014] 2 FLR 1115** where an application for expert evidence was rejected, a decision which was upheld by the Court of Appeal.

11. TU applied for an adjournment so as to obtain a Cafcass report and for further inquiries to be made, arguing that the sort of "global holistic evaluation" envisaged in **Re F [2015] EWCA Civ 882** is not currently capable of being undertaken. I rejected the application:
    i) Although TU has been aware of the proceedings since 1 December 2020, and is a party, he has not previously applied for a Cafcass report, or other welfare report from the relevant Local Authority.
    ii) The application was made to me on the morning of the final hearing. It was far too late in the day. It would have necessitated a lengthy delay to these proceedings which are intended to be dealt with expeditiously.
    iii) The case management orders in this case specifically directed that there is no need for a Cafcass report on the relocation application, a decision which Cafcass itself agreed with by letter dated 14 January 2021. TU has not sought to appeal, set aside or otherwise challenge that decision.
    iv) It was accepted by counsel for TU that his own s8 application is effectively on all fours with his opposition to the relocation application, and accordingly in my judgment no fresh justification arises for commissioning a Cafcass report.
    v) I have a very substantial body of evidence enabling me to deal justly with both the Hague Convention application and the Children Act applications.

12. Having now heard and considered the case, I am abundantly satisfied that my rulings on these two preliminary applications were correct.

Oral evidence

13. After I had made my rulings on the adjournment applications, all counsel agreed that:
    i) There should be oral evidence from F and M on the rights of custody issue
    ii) There should be no other oral evidence, including in respect of the Children Act applications made by M and TU.
    I proceeded on that basis.

Background

14. F is 33 years old. He is an Irish national who has lived all his life in the Republic of Ireland. He has recently secured employment in County Mayo, where he lives. M is 26 years old. She is a British national. In 2005 M (then aged 11) moved to Ireland with her family where she lived thereafter, apart from a period of 1-2 years whilst a teenager when she was in the United Kingdom with her father.

15. In 2012 they met and started a relationship, but lived in separate houses in an area within County Mayo. Both have extended family (in M's case her maternal side) in the area. Tragically, they lost two still born children in March 2013 and again in February 2014.

16. It appears to be agreed that in late 2013/early 2014 F moved into M's house in X town in County Mayo, a property rented in the name of one of M's family members but made available for M's use.

17. In 2015 A and B were born.

18. The parties are in issue as to when they separated. According to F (disputed by M), it was in October 2017 when he moved out, and went to live nearby with his parents. According to M (equally strongly disputed by F), from about 3 months after A and B's birth (so from approximately January 2016) F moved to and from his parents' house for two reasons, namely (i) the relationship between M and F was rocky and (ii) to look after his mother who was being abused by his father. The parties do, however, agree that their relationship finally broke down in September/October 2017.

19. The dispute about the period between January 2016 and October 2017 is of particular relevance because the operation of Irish law entitles F to a declaration of guardianship status (and thereby custody rights) if he and M cohabited for a period of 12 consecutive months at any time and in any period after January 2016, when the relevant law came into force.

20. After October 2017, the parties disagree about the precise child arrangements which were put in place consensually. It is common ground that the children lived with M who was their primary carer. But as to the time spent with F, their accounts vary; F says they spent at least 2 nights per week with him, whereas M says it was less. On any view, the children spent significant time with F, including staying at his home, and from the evidence which I have read he played a meaningful role in their lives.

21. In 2018, M began a relationship with TU, who is an Irish citizen. They swiftly started living together. From early 2018 to early 2020 they lived together at 4 different properties in County Mayo, two in X town and two in Y town, the most recent being at an address in Y town. It is obvious that there was no love lost between F and TU either then or now.

22. In 2019 C was born in Ireland.

23. On 27 February 2020 M obtained a barring order in the Z District Court against TU due to domestic violence, in particular by reference to an incident on 5 February 2020 in which M alleged that TU had assaulted her and B. TU was ordered to leave the family home. Immediately after the incident, on 6 February 2020, TU left M's address and went to live with his parents in Greater London, England where he remains to this day.

24. At **C333-C336** of the bundle, there is compelling evidence in text messages, and transcripts of recordings between M and TU, in which M describes vividly a relationship characterised by volatile arguments and violence perpetrated by TU on M in front of the children, and references to a "weed" habit as well (almost all of which is denied by TU). M later told social services in England that TU has had anger management issues.

25. It seems from the evidence that M and TU, despite these events, remained on good terms. They both say their relationship is good.

26. After TU's departure from their home, in June 2020 M moved to her mother's house in X town, later moving next door, a property apparently rented by (or at any rate available to) her grandmother. In August 2020 she agreed to her uncle coming to live with them.

27. On 5 July 2020, in an exchange of text messages, M spoke of her disillusionment with X town, the lack of opportunities or things to do, and a clear desire to leave. The messages said nothing about going to England. On the contrary, they referred to moving to Galway. Given that M asserts she told F on 4 July 2020 that she was going to leave permanently to England, and he raised no objection, these text messages are obviously significant, undermining her putative case on acquiescence.

28. Between 23 July and 3 August 2020, M took C to England to see TU's parents, leaving A and B in the care of F, albeit with the assistance of F's parents. Although M has criticised F as a father, there can be little substance in this. A and B had spent plenty of time staying with F after October 2017, including this 11-day period in July/August 2020. M apparently had no qualms about leaving them with him while she was in England for this period, and had never sought or obtained orders from the Irish court restricting his ability to see the children. Nor is there anything before me which even hints at safeguarding issues in Ireland.

29. On 6 or 7 August 2020, M asked F to sign documents enabling her to obtain passports for the children. F refused, suspecting (presciently as it turned out) that she might remove the children from Ireland.

30. On 27 September 2020 F texted M to check what time he could collect the children. M told him that she had left for England and would not be returning. It appears that she had, the day before, flown from Ireland to England, using the children's birth certificates to enable them to travel with her. M says in her written evidence that she was struggling, felt at breaking point, her family in Ireland would have stopped her leaving and "I felt I had no choice but to conceal my plans from everyone". This was, therefore, a clandestine departure. It seems that nobody was aware except TU who, unbeknown to F, was looking for properties in England for M in August 2020.

31. That same day, i.e 27 September 2020, F reported the matter to the Irish police and local social services. As a result, a referral to social services in England was made; no safeguarding issues in England have been raised by them.

32. After living initially with TU's parents in Greater London (where TU also lives) for 6 weeks, M and the 3 children moved into rented accommodation nearby. C stays with TU at his parents' house from Friday to Sunday each weekend, and during the week from time to time TU and his parents go round to M's house. It seems that TU's parents have assumed a significant role in the general care of C during these periods. M describes his parents as a "protective element". F believes that M and TU are in fact living together, but I cannot make a finding to that effect.

33. Since the move from Ireland by M and the children, no evidence has been put before me that F has acquiesced in the move. There are no text messages, or WhatsApps, or other forms of communication which spell out, in terms, that he agreed to the children remaining in this jurisdiction.

34. The reverse seems to be the case. I have already mentioned that the departure of the children was immediately reported to police and social services in Ireland. On 7 October

2020 F made a referral to the Irish Central Authority which led to the C67 application being issued in this country on 5 November 2020.

35. On 19 November 2020 a Deputy High Court Judge made directions for:
    i) Filing of evidence.
    ii) Listing of the final hearing.
    iii) M to file an application for leave to remove C from England to Ireland in the event of a Hague return order in respect of A and B.
    iv) The court noted that a welfare report was not required in respect of the application for permission to remove C from England to Ireland.
    v) The Children Act application to be consolidated with the Hague proceedings and served on TU.
    vi) TU to be made a party.
    vii) Expert evidence on Irish law as to custody rights.

36. M duly filed her relocation application on 20 November 2020. On 1 December 2020 it was served on TU.

37. On 21 January 2021 at a further directions hearing, TU (who was represented by counsel) was ordered to file by 29 January 2021 any application for a Child Arrangements Order that he wished to make. In the event, he filed it on 19 February 2021.

Undertakings offered by F

38. In the event of a return, F offers in conventional form:
    i) To pay child maintenance of 100 euros per week.
    ii) To pay one month rental deposit of 400 euros and one month upfront payment of 400 euros, followed by a further two months at 400 euros per month.
    iii) He will undertake not to support any prosecution of M.
    iv) He will not remove the children from M's care save for periods of agreed contact.
    v) He will not attend at M's property save to collect the children for periods of agreed contact.
    vi) He will pay for the cost of return flights of M and the children.

Article 3: Rights of Custody

39. By Article 3 a removal is to be considered wrongful where "it is in breach of rights of custody to a person…, either jointly or alone, under the law of the State in which the child was habitually resident before the removal" and that at the time of removal he was exercising those rights. It is for F to satisfy the court that he had custody rights, which he was exercising, as at 27 September 2020.

40. The expert report of Ann Kelly B.L on the applicable Irish law is comprehensive and clear. It prompted no questions in writing from the parties. She says:
    i) The governing statute is the Guardianship of Infants Act 1964 as amended by the Children and Families Relationships Act 2015.

    ii) Under s6(1) of Part II of the 1964 Act a father and a mother shall be joint guardians

iii) Under s2 of the 1964 Act (the Interpretation Section), "father" specifically excludes a father who is not married.

iv) By the 2015 Act, the definition of "father" was expanded to include an unmarried father where the father and mother of the child concerned:

> "have been cohabitants for not less than 12 consecutive months occurring after the date on which this subsection comes into operation, which shall include a period, occurring at any time after the birth of the child, of not less than 3 consecutive months during which both the mother and the father have lived with the child."

v) The interpretation section requires "Cohabitant" to be construed in accordance with s172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 which provides:

> "For the purposes of this part a cohabitant is one of two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other."

vi) The relevant section of the 2015 Act came into force on 18 January 2016, and therefore the requirement for 12 months cohabitation (including 3 months with the children) must have taken place after that date. It follows that the undisputed period of cohabitation between M and F from early 2014 to January 2016 does not fall into the reckoning.

vii) In **MW v DC [2017] IECA 255,** Geoghegan J said:

> "The concept of "living with the other adult as a couple" or living "together as a couple" as stated in s.172 (1) is a legal concept for the purposes of s.172. There was considerable debate in the submissions before this court as to whether the concept of living together as a couple for the purposes of s.172 required both adults to live physically in the same shared residence at all times. Examples were given of persons in an intimate and committed relationship living together as a couple and holding themselves out as a couple but where either work demands of one or other or ill health and hospitalisation required the couples to physically live in difference places or even different countries for periods of time. I conclude that the legal concept of living together as a couple for the purposes of s.172 does not require two persons to live physically at all times in the same shared premises. Hence, notwithstanding that a couple may not be physically living day by day in the same residence, during the two-year period immediately prior to the end of the relationship s.172 envisages that a court may decide on all the relevant facts that they nonetheless continued to live together as a couple during that period.

viii) In **GR v Niamh Regan [2020] IEHC 89,** Allen J said:

> "I have clear evidence that from the 1st of July, 1998 the Plaintiff and the deceased were living together in the house in South Dublin. Between then and 2005 the deceased was working abroad and commuting home at weekends and for holidays but, again, the fact that the deceased was away from home regularly, and sometimes for long periods, did not mean that he and the Plaintiff was not living together.

ix) Ms Kelly summarises thus in her report:

> "It is apparent from the above judgments that a court will consider parties to be cohabiting for the purposes of Section 172(1), even if they are not living under the one roof for some, or indeed much, of relevant time. However, it appears that the reason or reasons for separation will be crucial.
>
> Therefore, if, in this case, the court concludes that the parties were not living under the one roof continuously for the requisite period, the reason for the separation becomes relevant. From what Geoghegan J said, it appears that what a court must decide is whether it can consider "the relationship to have ceased such that the parties are not cohabitants", or

> whether for some reason such as work demands, or ill health "require the couples to live physically in different places".
> In this instance, if the Court were to conclude that PQ was absent from the parties' shared home because he was required to assist his family of origin, such an absence would appear not to sever the period of cohabitation. However, if the Court found that Mr PQ was away from the shared home for reasons going to the heart of the relationship, such that it amounted to a temporary break in that relationship, I believe he could not satisfy the requirements of the Act."

x) If F satisfies the criteria, he is a guardian without the need of court intervention.

xi) A declaration of guardianship does not confer guardianship on F, rather it acknowledges the existence of his guardianship rights.

xii) Cohabitation must be proved on the balance of probabilities and a declaration is retrospective

41. I unhesitatingly accept this lucid and reasoned expert opinion. In so doing, I bear in mind that by Article 14 of the Hague Convention, I am entitled to "take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable."

42. Can F satisfy the court, to the requisite standard, that the parties cohabited after January 2016 for a period of 12 months, including 3 months with the children? If so, the rights of custody are engaged.

43. Having surveyed the extensive evidence carefully I conclude that F succeeds in establishing the requisite period of cohabitation, and therefore that he has rights of custody under Irish law:

i) F has produced a significant volume of evidence that they were cohabiting until October 2017. He produces his driving licences registered to the house (a learner driver licence to September 2016 and, during his oral evidence, a full driver licence from September 2016), various shopping receipts, a receipt from January 2018 showing his new address, WhatsApp messages from members of his family living in England who were coming to stay at the family home, Facebook photographs of them presenting as a couple to the outside world, proof of them going to a Gala event in April 2016 and to a hotel in Galway for a weekend in July 2017. They continued to present to the authorities as a cohabiting couple, receiving social welfare payments as a result.

ii) In addition, F has produced statements and letters from his mother and brother that F and M lived throughout at the same address. Additionally, a letter from M's own mother confirms the same. And, finally, there is a statement from Mr M, who is not from either family and lived just down the road, saying "I would see them every day. F was living there throughout the time until their relationship ended, and he moved out in October 2017".

iii) M says that from January 2016 "F had been moving back and forth between my home and his parents' home because our relationship was very rocky. At the same time, however, F's father was suffering with his mental health and had physically assaulted his mother and trashed the house. As a result, F spent more and more time with his parents in order to help his mum and look after the farm. F was scared of leaving his mum with his dad when he was in that mental state.

His father was diagnosed with bipolar disorder. His father also attacked his brother, grabbing him by the throat and pinning him to the wall. As a result, F was most concerned about leaving his mum alone and spent much of the time from 2015 onwards at his parents' home."

iv) The bulk of this narrative asserts that F was away from home looking after his family. Even if true (and it is denied by F, save that he accepts he went round regularly to help with manual jobs on the farm which were physically beyond either of his parents), that in my judgment falls plainly within the reservation set out in the expert report on Irish law that the period of cohabitation does not come to an end unless it is directly related to the relationship between F and M; what might be termed an issue internal to the relationship. Here, it is related to what might be termed an issue external to the relationship. In my judgment it is clearly unrelated to the partnership of M and F. I am fortified by Ms Kelly's view that this would not sever the period of cohabitation.

v) Other than saying in the first sentence of the above narrative "because our relationship was very rocky" M provides minimal evidence that F left home regularly in order to escape the relationship. She told me that she could not access her phone records from this period, but one might have expected to see emails, or text messages, or social media communications, perhaps obtained from the devices of friends or family, during this period from January 2016 to October 2017 in which the parties discuss the alleged breakdown in relations between them.

vi) Nor is there anything to substantiate M's assertions that they had periods of separation, for whatever reason. Again, I would expect to see prima facie evidence in their communications.

vii) Although M's first statement at paragraph 4 introduces her case as cited at (iii) above, the detailed "fleshing out" of that introduction in a section headed "History of relationship" says nothing about periods of separation.

viii) M told me about two periods of separation which were not referred to in her written narrative; 6 weeks in about March/April 2016 and 2 months in July and August 2016.

ix) On her own case the parties did not definitively separate until September/October 2017. That is what she told me in evidence. I do not accept, having heard the evidence, that they in fact separated during a weekend away at a hotel in Galway in July 2017.

x) It therefore follows that, taking M's case at its highest, there was a period of cohabitation of at least 1 continuous year between 1 September 2016 and 31 August 2017. That satisfies the test under Irish law.

xi) Further and in any event, I generally preferred the oral evidence of F (which is backed up by corroborative documentation) on this point rather than the evidence. The parties had difficult and rocky moments, with the pressure of having A and B a considerable burden, but in my judgment, they did not separate in the manner described by M.

xii) I am therefore satisfied that the parties in fact cohabited under the meaning ascribed by Irish law from no later than January 2014 to no earlier than September 2017.

44. In my judgment F satisfies the court of the necessary ingredients to establish that he had rights of custody under Irish law. If so, nobody argues that he was not exercising

those rights. The children were clearly habitually resident in Ireland at the time of removal. Therefore, F has made out his case for a wrongful removal under Article 12.

Consent/Acquiescence

45. M has abandoned her case on consent/acquiescence, rightly so in my judgment. It is clear from my background summary above, that it is without foundation.

Article 13(b)

46. The leading authority is **Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27**, per Baroness Hale and Lord Wilson:

"29. Article 12 of the Hague Convention requires a requested state to return a child forthwith to her country of habitual residence if she has been wrongfully removed in breach of rights of custody. There is an exception for children who have been settled in the requested state for 12 months or more. Article 13 provides three further exceptions. We are concerned with the second:

". . . the requested state is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that - (a) . . . ; or (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. . . . In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence." (emphasis supplied)

30. As was pointed out in a unanimous House of Lords decision in *Re D*, para 51, and quoted by Thorpe LJ in this case:

"It is obvious, as Professor Pérez-Vera points out, that these limitations on the duty to return must be restrictively applied if the object of the Convention is not to be defeated: [Explanatory Report to the Hague Convention] para 34. The authorities of the requested state are not to conduct their own investigation and evaluation of what will be best for the child. There is a particular risk that an expansive application of article 13b, which focuses on the situation of the child, could lead to this result. Nevertheless, there must be circumstances in which a summary return would be so inimical to the interests of the particular child that it would also be contrary to the object of the Convention to require it. A restrictive application of article 13 does not mean that it should never be applied at all."

31. Both Professor Pérez-Vera and the House of Lords referred to the application, rather than the interpretation, of article 13. We share the view expressed in the High Court of Australia in *DP v Commonwealth Central Authority* [2001] HCA 39, (2001) 206 CLR 401, 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 article 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 article 13b 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: e.g., where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.

35. Fourth, article 13b 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.

36. There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true. Mr Turner submits that there is a sensible and pragmatic solution. Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues."

47. In **Re S (a Child) [2012] UKSC 10** Lord Wilson said at paragraph 34:

"In the light of these passages we must make clear the effect of what this court said in In *re E*. 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, 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."

48. In **Re D [2007] 1 FLR 961** Baroness Hale said at paragraph 52:

"In this case, it is argued that the delay has been such that the return of this child to Romania would place him in an intolerable situation. "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". It is, as article 13(b) makes clear, the return to the requesting state, rather than the enforced removal from the requested state, which must have this effect. Thus the English courts have sought to avoid placing the child in an intolerable situation by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there. In many cases this will be sufficient. But once again, the fact that this will usually be sufficient to avoid the risk does not mean that it will invariably be so. In Hague Convention cases within the European Union, article 11.4 of the Brussels II Revised Regulation (Council Regulation (EC) No 2201/2003) expressly provides that a court cannot refuse to return a child on the basis of Article 13(b) "if it is established that adequate arrangements have been made to secure the protection of the child after his or her return". Thus it has to be shown that those arrangements will be effective to secure the protection of the child. With the best will in the world, this will not always be the case. No one intended that an instrument decided to secure the protection of children from the harmful effects of international child abduction should itself be turned into an instrument of harm".

49. The court should ordinarily assume the risk of harm at its highest and then go on to consider whether protective measures are sufficient to mitigate the identified harm. That said, as Macdonald J pointed out in **Uhd v McKay[2019] EWHC 1239**, the evidence cannot be viewed entirely in the abstract. The court is entitled to weigh all the evidence and make an assessment about the credibility and substance of the allegations. He cited dicta from Moylan LJ in **Re C (Children) (Abduction: Article 13(b) [2018] EWCA Civ 2834** and said this at paragraphs 70-72:

"70.In the circumstances, the methodology articulated in *Re E* forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see *Re S (A Child)(Abduction: Rights of Custody)* [2012] 2 WLR 721), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.

71.That the analytical process described in *Re E* includes consideration of any relevant objective evidence with respect to risk is further made clear in the approach articulated by Lord Wilson in *Re S* to cases in which it is alleged, as it is in this case, that the subjective anxieties of a respondent regarding a return with the child are, whatever the objective level of risk, nevertheless of such intensity as to be likely, in the event of a return, to destabilise the respondent's parenting of the child to a point where the child's situation would become intolerable. As noted above, in *Re E* the Supreme Court made clear that such subjective anxieties are, in principle, capable of founding the exception under Art 13 (b). However, it is also clear from the decisions of the Supreme Court in *Re E* and in *Re S* that there are three important caveats with respect to this principle.

72. First, the court will look very critically at an assertion of intense anxieties not based upon objective risk (see *Re S (A Child) (Abduction: Rights of Custody)* at [27]). Second, the court will need to consider any evidence demonstrating the extent to which there will, objectively, be good cause for the respondent to be anxious on return, which evidence will remain relevant to the court's assessment of the respondent's mental state if the child is returned (see *Re S (A Child)(Abduction: Rights of Custody)* at [34] and see also *Re G (Child Abduction: Psychological Harm* [1995] 1 FLR 64 and *Re F (Abduction: Art 13(b): Psychiatric Assessment)* [2014] 2 FLR 1115). Third, where the court considers that the anxieties of a respondent about a return with the child are not based upon objective risk to the respondent but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise the respondent's parenting of the child to a point where the child's situation would become intolerable, the court will still ask if those anxieties can be dispelled, i.e. whether protective measures sufficient to mitigate harm can be identified (see *Re E (Children)(Abduction: Custody Appeal* at [49]). Within this context, in *Re S* Lord Wilson observed at [34] as follows:

"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, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the courts mental state if the child is returned".

50. Should the Article 13(b) exception be established, that is not the end of the matter. The court is required to go on to consider whether, notwithstanding the availability of the defence, the child should nevertheless be returned. This is an exercise of discretion, albeit it is well established that in the usual course of events it is unlikely that the court will order a return if to do so would place the returning child in the way of the very harm which has been found to constitute the Article 13(b) defence.

51. M raises a number of matters:

i) She says the house which she and the children occupied before departure is in a state of disrepair; windows are rotten, the back door cannot open, and there are leaks and draughts. She provides photographic evidence.

ii) She says that also living in the house is her Uncle T who is unwell, and suffers from mental health problems**.**

iii) She raises issues about F's conduct towards her and lack of support.

iv) She says that she has anorexia nervosa which she has suffered from since childhood. She says that her mental state will "go backwards" if she is forced to return to Ireland.

v) She says that she cannot rely on any family support and relations between her and her family have largely broken down. She describes her mother as a compulsive liar and her brother as aggressive and threatening.

52. I found these submissions to be unpersuasive for the following reasons:

i) A return order would be to the Republic of Ireland, not to a specific place (e.g X town), let alone to a specific property.

ii) She has in the past 3 years rented accommodation some distance away (albeit still in County Mayo) in Z town. She is under no obligation to go to X town. She is entitled to return to wherever she wants in Ireland.

iii) She does not have to return to the house which she lived in before and which, so it appeared to me, is acceptable even if not in ideal condition.

iv) She could, for example, rent a property. The rental cost of the most recent property she shared with TU in Z town was €58 per week, which I assume is well within her means. Other properties in different areas may cost more, but that at least gives me some indicative evidence.

v) M raises concerns about F's conduct towards her although not, I note, towards the children. But she would not be returning to live with F and, so far as required, she is able to make court applications for any necessary protection.

vi) The concern about her uncle may be exaggerated given that she agreed to him coming to live with her in August 2020. M's grandmother has in a letter set out plainly that M's uncle is not living next door in X town and will not live there.

vii) She does not have to seek the company or support of her family although I note various social media messages produced by F which describe her mother and other family members in glowing terms. And Mr M mentions the considerable assistance given by M's mother, JB who he described as "very actively involved" and "a very loving grandmother". It may be of note that in June 2020, when M moved out of the property she had shared in Z town with TU, she went to live with her mother for a few weeks at an address in X town in County Mayo before moving to the property next door, rented by her grandmother.

viii) The undertakings offered by F assist in a soft landing. They constitute adequate protective measures for M. Article 11(4) of Brussels II Revised (which applies in this case as the application was issued before 31 December 2020) provides the following:

> "A court cannot refuse to return a child on the basis of Article 13(b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return."

ix) There is no allegation that F will in any way mistreat the children, and I am confident he will do all he can to ensure their wellbeing.

x) I am entitled to assume that the Irish authorities will be able to safeguard M and the children (as they did in February 2020 against the misconduct of TU) and ensure that their essential needs are provided for.

xi) The question of impact on M's mental wellbeing was mentioned for the first time in her third and final written statement. No medical evidence in support is produced. There is no independent evidence to suggest how seriously it impacts on M. There is nothing to indicate that it impacts upon her ability to care for her children. It appears to have started in childhood and is caused or impacted by relations with her family; there is little or no evidence to link it to her relationship with F, or with a return to Ireland. If it was so significant, it would have been raised before now in the welter of documentation produced. M's relationship with F is over and she will not return to live with him, nor is there any need for them to communicate other than about child arrangements. And I am confident that if she requires assistance, she can seek it in Ireland.

53. M says that if I were to order a return to Ireland of A and B, but refuse a relocation order in respect of C, that would lead to separation of the children. I accept that splitting a sibling group can give rise to an Article 13(b) defence: M's counsel refers me to cases such as **Re C (Abduction: Grave Risk of Psychological Harm) [1999] 1 FLR 1145; Re C (Abduction: Grave Risk of Physical and Psychological Harm) [1999] 2 FLR 478; Re T (Abduction: Child's Objection to Return) [2000] 2 FLR 192; Re H (Abduction) [2009] EWHC 1735 (Fam), [2009] 2 FLR 1513; WF v FJ and Others [2010] EWHC 2909 (Fam), [2011] 1 FLR 1153**. However, sibling separation is far from an automatic bar. Each case will require evaluation, and return orders have been made even where separation of siblings is the consequence. In **Re S (Habitual Residence and Child's Objections: Brazil) [2015] EWCA Civ 2** the Court of Appeal upheld an order, based on child objections, which had the effect of separating a 12-year-old (who objected to a return to Brazil after a holiday here) from a 10-year-old sibling. And I note that The Guide to Good Practice Under the Hague Convention 1980 indicates that separation of siblings, while difficult and disruptive, "does not usually result in a grave risk of harm determination and the courts have been willing to make orders having that effect. Further, a separation is not necessarily or inevitably permanent as the state of habitual residence will consider all welfare issues".

54. In any event, in this case, as will be apparent from my conclusions below, in my judgment M should be given permission to relocate with C to Ireland. She has said she will return with them all. That being so, the three children will remain in the care of M and will not be separated.

The Children Act applications

55. In considering the Children Act applications, I do so in the round along with the Hague Convention application. Although I have first addressed the Hague proceedings, this is the effect of a judgment which, as a linear document, has to start somewhere. I have had in mind both sets of proceedings and how they interact with each other. Neither has taken precedence. I have looked at the totality of the case, which seems to me to be the only fair way in which I can approach the applications both separately and together, because there is clearly a considerable interplay.

56. Plainly, if TU did not object, a relocation order in respect of C must be made in M's favour, thereby enabling her to return with all three children to Ireland. To do otherwise

would be irrational. Such an order would clearly be in C's best interests, and needs only the most cursory survey of the welfare checklist to be satisfied.

57. The issue therefore is whether TU's objections to a relocation order are made out, and whether his applications for residence/contact/PSO in respect of C, which in turn are predicated upon a return order in respect of A and B, should be granted.

58. I see no reason in principle why I cannot determine the cross Children Act applications on a summary basis:

i) The availability and legitimacy of exercising a summary process under the Children Act 1989 for a return order to a non-Hague Convention cases is well established. In **Re J 2006 1 AC 80**, where the application was for a s8 specific issue order returning the child, at paragraph 26 Baroness Hale said: "Thirdly, however, the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits".

ii) I accept that the Children Act applications before me are not for child abduction return orders as was the case in **Re J**. But they flow directly from the wrongful abduction of A and B. They are a consequence of the Hague Convention proceedings. It would be surprising if the court did not have the ability to deal swiftly with such closely entwined matters.

iii) It would, to my mind, make a nonsense of the treaty obligations on this country to dispose swiftly of Hague Convention applications if linked Children Act applications were to generate lengthy delay while a full welfare investigation is undertaken by the court. Experience tells that even relatively straightforward Children Act applications can take several months before they are finally disposed of, well beyond the mandated time limits in Hague cases.

iv) The court has long had the power to control the process as appropriate. In **Re B [1994] 2 FLR 1** Butler Sloss P considered the circumstances in which courts could make final orders in a number of different situations without a full hearing:

> "……Applications for residence orders or for committal to the care of a local authority or revocation of a care order are likely to be decided on full oral evidence, but not invariably. Such is not the case on contact applications which may be and are heard sometimes with and sometimes without oral evidence or with a limited amount of oral evidence.
>
> The considerations which should weigh with the court include:
>
> (1) whether there is sufficient evidence…. upon which to make the relevant decision;
> (2) whether the proposed evidence which the applicant for a full trial wishes to adduce is likely to affect the outcome of the proceedings;
> (3) whether the opportunity of cross-examining the witnesses……is likely to affect the outcome of the proceedings;
> (4) the welfare of the child and the effect of further litigation – whether the delay in itself will be so detrimental to the child's well-being that exceptionally there should not be a full hearing. This may be because of the urgent need to place the child, or as is alleged in this case, the emotional stress suffered by both children and particularly D;
> (5) the prospects of success of the applicant on a full trial;
> (6) does the justice of the case require a full investigation with oral evidence?

v) This pragmatic approach is reinforced by the well-established exhortation under rule 1 of the Family Procedure Rules 2010 for the court to "deal with cases justly, having regard to any welfare issues involved", and in so doing to deal

with the case in "ways which are proportionate to the nature, importance and complexity of the issues".

vi) **Re F (supra),** relied upon by TU, does not mandate the court to conduct a full-scale inquiry in every Children Act case. It depends on all the relevant factors, looking at the case as a whole. As McFarlane LJ said:

> "50. In the context that I have described, it is clear that a 'global, holistic evaluation' is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant welfare checklist [CA 1989, s 1(3) or Adoption and Children Act 2002, s 1(4)]. Such an analysis is required, by CA 1989, s 1(1) and/or ACA 2002, s 1(2) when a court determines any question with respect to a child's upbringing. In some cases, for example where the issue is whether the location for a 'handover' under a Child Arrangements Order under CA 1989, s 8 is to take place at MacDonalds or Starbucks, the evaluation will be short and very straight forward. In other cases, for example a case of international relocation, the factors that must be given due consideration and appropriate weight on either side of the scales of the welfare balance may be such as to require an analysis of some sophistication and complexity. However, whatever the issue before the court, the task is the same; the court must weigh up all of the relevant factors, look at the case as a whole, and determine the course that best meets the need to afford paramount consideration to the child's welfare. That is what, and that is all, that I intended to convey by the short phrase 'global, holistic evaluation"

vii) Obviously, the court has the power to deal with cases swiftly and in a summary way where appropriate, provided that it is consistent with the interests of justice. Plainly, for example, as McFarlane LJ pointed out, a dispute between two parents about the contact handover venue can be determined by the court in very short order. At the other end of the scale, although very rare, it is clear that even in public law proceedings, where children are at risk of being taken into care, the court can make an early, and summary decision. As another example, inward return orders, for a child to be brought back from overseas, are regularly made on a summary basis. Courts every day, up and down the land, make judgment decisions about how best to proceed in any given case. It all depends on the circumstances; there is not a one size fits all prescribed approach.

viii) In this case, the interests of determining the Hague Convention application swiftly is a powerful consideration when deciding how to approach the Children Act applications which are so obviously related.

ix) This final hearing was, by earlier case management orders, set up for determination of the Hague Convention and Children Act applications at the same time, on a summary basis. Hence the court specifically ruled out a Cafcass report.

x) The relocation application of M is undoubtedly before the court. F's application is in a different category, having been brought out of time. Strictly speaking, he needs relief from sanctions in accordance with well-established principle (**Denton v TH White [2014] EWCA Civ 906**) to place his application before the court. He has had since 1 December 2020 to make an application, was ordered to file by 21 January, yet applies the working day before the final hearing with no obvious reason for the delay other than that he has acted in person, instructing counsel for hearings. That may be an explanation, but litigants in person must abide by the rules in the same way that represented parties must.

xi) I am confident that I have all the evidence I need. TU has filed his own evidence (a 17-page witness statement plus exhibits), and included evidence from his parents who, on his case, will carry the bulk of the responsibility of caring for

C. I have large tracts of evidence from M and F. I have detailed evidence about A and B, C's siblings.

xii) This is not a permanent decision. If I provide for M to be permitted to take C to Ireland, and refuse TU's applications, in practice matters will be reviewed in the near future by the court in Ireland. In particular, the Irish court will no doubt consider M's wish to relocate with all three children to England as well as residence and contact issues which TU will be able to make submissions about.

xiii) In my judgment, I can deal fairly with the Children Act applications, as envisaged by the case management decisions. In so doing, I have well in mind all the matters raised by TU as to why I should not grant the application.

59. Finally, I have used the word "summary" to describe the hearing and process before me. In fact, I doubt that this is an appropriate description of my consideration of the Children Act applications. In reality, my decision is far from a summary determination. It has involved careful consideration of C's welfare. I have had the opportunity to read a very large volume of evidence. I have received oral submissions. I have had lengthy written submissions. I am well placed to make a determination of the Children Act applications. I am not doing so in a "summary" way. True, I am dealing with the case expeditiously so as to avoid delay which is contrary to the interests of all the children, but the inquiry has been extensive

60. I have had in mind the welfare checklist. I have also had in mind the well-known line of authority on relocation applications. In **Re F (supra)** the Court of Appeal made clear that whether an application is being considered under s 8 or s13 of the Children Act 1989, the only authentic principle is the paramount welfare of the child. At paragraph 19, Ryder LJ endorsed the following summary from Munby LJ in **Re F [2012] EWCA Civ 1364** at paragraphs 37 and 61:

> "[37] … There can be no presumptions in a case governed by s 1 of the Children Act 1989. From the beginning to the end the child's welfare is paramount, and the evaluation of where the child's interests truly lie is to be determined having regard to the "welfare checklist" in s 1(3) … [61] The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regards to the "welfare checklist", though of course also having regard, where relevant and helpful, to such guidance as may have been given by this court."

61. TU's submissions are, in summary:

i) He can offer good care to C.

ii) The bulk of the daily care will be provided by his parents, while he is out working, who in turn can offer good care.

iii) C has a very good bond with TU and TU's parents.

iv) The current contact arrangements are successful, and any interruption would affect detrimentally C's relationship with TU.

62. Against those points made by TU, are the following powerful considerations which in my judgment tip the balance firmly in favour of rejecting TU's application for Children Act orders, and in favour of M's relocation application.

i) Regrettably, TU has shown himself capable of violence (a) to M in front of the children, and (b) to one of the children, as confirmed both in the recordings and

in the barring order of the Irish Court. Since then, he has not had C in his sole care; his parents have always been present whether at their house or accompanying TU to visit at M's house. M describes the parents as a "protective measure". None of this fills me with confidence when deciding whether to commit the care of C to F.

ii) TU has had no experience of looking after C on his own, without assistance. Indeed, from February, until M's move to England in September 2020, he did not even see C other than during M's short trip to England at the end of July/early August.

iii) The assistance of TU's parents is no doubt invaluable, but it is TU who seeks the orders, not his parents, and it is TU who would have sole care and responsibility. I am not satisfied that he is able to discharge those responsibilities.

iv) Like A and B, C was born and, for just over a year, brought up in Ireland where C was habitually resident before removal. The relocation would be back toC's place of origin rather than a new, third country with which C has no connection.

v) I do not consider that there are any insuperable difficulties in practical arrangements. I am confident that M can obtain appropriate housing in Ireland. Schooling does not arise for C given C's young age. M will assuredly make all necessary arrangements.

vi) If a return order for A and B is made, and the relocation application is refused (and/or TU's s8 application is granted), then C will be separated from A and B. Everyone agrees that this would be undesirable, and, in my judgment, it would be detrimental to C's wellbeing.

vii) If M returns with A and B to Ireland, as she assuredly will do, and the relocation order is refused (and/or TU's s8 application is granted), C will be removed from the primary care of M. I do not consider this would be conducive to C's welfare. Indeed, I judge this as potentially very damaging for C to be removed from the primary carer who has been C's focal point and rock since birth. C has never been separated from her before and I judge a separation of this sort now to be inestimably risky.

viii) If M remained permanently in Ireland with A and B, in my view it would not be entirely easy for her to come to England to see C, restricted as she would be by caring for them. By contrast, TU as a single man in employment and therefore possessed of the means to travel, can make the necessary arrangements to go to Ireland more easily, particularly if M chooses to live somewhere more convenient than an area within County Mayo. If TU is dissatisfied with the contact arrangements, he can make the appropriate application to court.

ix) Permission to relocate with C to Ireland does not necessarily mean that C will live there forever. I assume that M will apply to relocate with A and B to England. Whether her application is granted will be a matter for the Irish court and it will no doubt take into account the impact on C as part of its overall analysis. TU can make such applications as he thinks fit.

63. I propose to dismiss F's application for a residence order and a PSO as these essentially fall away upon my making a return order in respect of A and B, and a relocation order in respect of C. As for F's contact application I shall stay it for 6 months, at which point it shall stand dismissed unless he has applied before the expiry of the term for the stay to be lifted. That will allow him to await M's return to Ireland with all 3 children and, if he thinks fit, to renew his contact application (for example if M obtains an order in Ireland permitting her to relocate to this country). In the meantime, there is nothing to stop him applying in Ireland for contact arrangements.

Conclusion

64. A return order will be made upon the undertakings offered by F. I have considered the further written submissions by M, responded to by F, as to the adequacy of the financial package offered for what is intended to be the short term. In my judgment, and largely for the reasons put forward by F, the undertakings as currently drafted are appropriate.

65. M's relocation application in respect of C is granted.

66. TU's s8 applications for a residence order and a PSO are refused. His contact application is stayed for 6 months on the terms stated above.