THE HIGH COURT

FAMILY LAW

[2024] IEHC 325

[2023 No. 37 CAF]

[2023 No. 79 CAF]

[2023 No. 76 CAF]

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964, AS AMENDED,

AND IN THE MATTER OF THE FAMILY LAW (SPOUSES AND CHILDREN) ACT, 1976,

AND IN THE MATTER OF THE FAMILY LAW ACT, 1995, AS AMENDED

BETWEEN:

Q.D.

APPLICANT/RESPONDENT

-AND-

O.G.

RESPONDENT/APPELLANT

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 2nd day of May, 2024.

INTRODUCTION

1. This is the judgment of the court on an appeal from orders that were made in the Dublin Circuit Family Court on the 23 June 2023. The case concerns the welfare circumstances of a young boy, who will be described as "*John*" for the purposes of this judgment. John was born in June 2017 in a city in the UK but lived in Dublin since shortly after

his birth. At the time of the hearing in the Circuit Family Court he was 6 years old, and he is now approaching his 7th birthday.

2. John's parents are the parties to this appeal. His father "*Mr. D.*" was the applicant in the Circuit Family Court proceedings, and his mother "*Ms. G.*" was the respondent in the proceedings. At all material times, Mr. D. resided and worked in a city in the UK, and Ms. G. lived in Dublin. Prior to the orders made in the Circuit Family Court, John lived with his mother in Dublin and access with his father was regulated by a series of orders made in the Circuit Family Court. The effect of the orders made in the Circuit Family Court on the 23 June 2023 was that John was transferred to his father's custody in the UK, and provision was made for access with his mother, both in terms of regular remote calls and by his mother travelling to the UK for regular supervised access. John has lived with Mr. D. and Mr. D.'s family in the UK since the orders were made. This appeal was brought by John's mother, and she has asked the court to reverse the effect of the Circuit Family Court orders so that John will return to live with her in Dublin.

3. Extensive affidavit evidence was available to the court from the proceedings in the Circuit Family Court, and oral evidence was heard in this appeal over a number of days. As I will set out in more detail below, the relationship between Ms. G. and Mr. D. has been acrimonious and there was a strong and understandable emotional tension throughout the hearings before this court. There is no doubt that the appeal is of critical importance to the parents. However, the focus of the court must be on engaging in a process, and reaching a conclusion, where John's best interests are the paramount consideration.

4. For the reasons that I explain in this judgment, I have concluded that the decision of the Circuit Family Court should be affirmed, and that John should remain with his father in the UK. In addition, provision will be made to ensure that the case is the subject of further reviews in the Circuit Family Court, particularly to ensure that regular access is maintained and, if appropriate at some stage in the future, modified to proceed on an unsupervised basis.

5. Before addressing the evidence that was considered by the court, it is necessary to set out the issues in the underlying proceedings and to address the legal principles that have been relied upon. The precise nature of the application and the applicable legal principles were the subject of some dispute at the hearing. The underlying proceedings concerned an application by Mr. D. for sole custody pursuant to the provisions of the Guardianship of Infants Act, 1964, as amended. Mr. D.'s legal representatives submitted that the case was in effect a legally straightforward custody and access application and that the movement of John from this jurisdiction to the UK did not lead to it being considered as a "*relocation case*". On the other hand, Ms. G.'s representatives framed the case not only as a relocation case but as one in which the relocation in some sense was a penalty for what was treated as parental alienation. I should make clear at the outset that there was no evidence or application to suggest that this was a case in which there was an allegation of parental alienation, and I should also be entirely clear that there can be no question of the court in any sense penalising Ms. G. for her conduct. The focus of the court is on determining, by reference to the relevant principles and based on the evidence, what solution is in John's best interests. To understand the correct principles to be applied it is necessary to set out the parameters of the case before the Circuit Family Court and in this appeal.

THE PRECISE ISSUES BEFORE THE COURT

6. Mr. D. commenced these proceedings by way of a Family Law Civil Bill dated the 25 June 2018. The primary relief sought was framed as follows:

> *"An Order pursuant to Section 11 of the Guardianship of Infants Act 1964, as amended, granting the Applicant sole custody and/or primary care of the dependent child and an Order regulating access to the said child by the Respondent."*

7. In addition, directions were sought to provide for the commissioning of a report prepared pursuant to section 47 of the Family Law Act 1995, and for certain other matters. It follows that it ought to have been clear to Ms. G. – even if this was not fully appreciated by her or considered by her to be the likely outcome – that Mr. D. was seeking sole custody of John, and if that order was granted it would involve John moving to the UK.

8. Since the proceedings commenced in June 2018, various motions were brought by the parties, predominantly concerning issues around access pending the full hearing. Over the course of the history of the case, various orders were made. In addition to routine procedural and case management orders, the Circuit Family Court made the following orders:

    a. In August 2018, Judge Ryan made orders pursuant to section 47 of the Family Law Act 1995, appointing Professor Jim Sheehan to prepare those reports.
    b. In March 2019, Judge Ryan made orders regulating access in terms that had been agreed by the parties.

c. In October 2019, Judge Horgan made further orders based on terms agreed by the parties dealing with maintenance and certain further access issues.

d. In July 2021, Judge McDonnell made further orders regulating access, an order granting joint custody to the parties with primary care to John's mother, Ms. G..

e. In March 2022, Judge McDonnell made orders by consent that the parties attend with Ms. Ruth More O'Ferrall, and providing that Ms. More O'Ferrall should be furnished with the various section 47 reports that had been prepared by Prof. Sheehan, and permitting her to contact Prof. Sheehan directly.

9. The procedural history of the case involved, at almost every stage, exchanges of affidavits that demonstrated the seemingly intractable disputes between, and forcefully expressed concerns of, the parties. As set out in more detail below, between December 2018 and April 2023, Prof. Sheehan prepared five detailed section 47 reports; and Ms. More O'Ferrall prepared a report in June 2023.

10. The case came on for hearing before Judge Ni Chúlacháin in June 2023. Following hearings over a number of days, the learned judge made orders dated the 23 June 2023. The main elements of those orders can be summarised as follows:

- First, John was transferred to the sole custody and primary care of his father, Mr. D., and that he was to live with Mr. D. in the UK. That order was to take place "*forthwith*".
- Second, orders were made providing John with fortnightly in-person supervised access with his mother, Ms. G., in a contact centre close to where Mr. D. resided in the UK. In addition, John was to have Skype access with his mother on the weekends when in-person access was not

taking place. Effectively, John was to have weekly access with his mother, with that access being in person on alternate weekends.

- Third, John was to be enrolled in an identified school in Mr. D.'s locality no later than the 5 July 2023.
- Finally, other orders were made providing for further reviews, certain costs associated with the implementation of the orders, and access for other family members. Ms. G.'s application for a stay was refused.

11. Ms. G. issued a Notice of Appeal on the 26 June 2023, appealing from the whole of the judgment of the Circuit Court. On the 20 July 2023, in an *ex tempore* judgment, Mr. Justice Jordan refused to grant a stay on the transfer orders. The appeal before this court was heard over 4 days between the 8 February 2024 and the 15 March 2024. As noted above, and understandably, the parties to the appeal found the hearings very difficult and had to deal with an underlying situation and questions that were very challenging. I want to express my gratitude to the legal teams for the parties, who approached their tasks robustly and professionally but with manifest due care and respect for the strong feelings on both sides.

LEGAL PRINCIPLES

12. The statutory provisions in Irish law concerning custody and access are the same whether the case involves parents residing in the jurisdiction, one parent proposing to reside outside the jurisdiction, or a proposal that a child should move to live with a parent who already resides outside the jurisdiction. In each case the governing law is found in the Guardianship of Infants Act 1964, as amended ("*the Act of 1964*").

13. Ordinarily, a relocation case is understood as one where the parent with custody proposes to leave the jurisdiction with the child, with self-evident potentially far-reaching consequences for the relationship between the child and the parent who will remain in the jurisdiction. Those cases fall to be considered by reference to the Act of 1964, as amended. The way the court should approach such a relocation case has been considered and described in two extremely helpful and very considered recent judgments from the Court of Appeal, *S.K. v. A.L.* [2019] IECA 177, and *K. v. K*. [2022] IECA 246. As noted by Collins J. in *K. v. K*. (at para. 4):

> "*Relocation decisions are enormously consequential, for both child and parents. They may have lifelong impacts on the entire family. However, the alternatives that a court must choose between cannot be modelled or simulated in advance. The future trajectory of the life of a child (and/or of their parents) cannot be confidently mapped. There are far too many contingencies and uncertainties for that."*

14. Having considered those judgments, it seems to me that for the purposes of this appeal there is no meaningful difference in principle between how this court should approach, on the one hand, an application that John should be transferred to the sole custody of his father and relocated to live with him in the UK, and, on the other hand, an application by a parent within the jurisdiction to obtain sole custody of a child with a view to moving out of the jurisdiction with that child. In each case, the effect on the relationship between the child and the remaining parent will be subject to the same stress and constraints. In each case, there will need to be a consideration of the effect on the child of the proposed move by reference to the likely effect on other welfare considerations, such as their education and upbringing, their existing relationships with

friends and family, and, if appropriate, the nature of the new jurisdiction. In each case the court, by reference to the evidence and the paramountcy principle, will have to attempt to decide on a result that best serves the welfare interests of the child.

15. Accordingly, although the two Court of Appeal judgments are addressed to a slightly different factual scenario, I consider that they are applicable to the situation that arises in this appeal.

16. Both judgments involved relocation proposals. In *S.K. v. A.L.*, the applicant mother was the primary carer of a 10 year old girl, and the respondent was her father. The mother was proposing to move to the United States with her daughter. In *K. v. K.*, the situation was complicated by several factors, including that there were three children affected by the proposal and the children had different or nuanced views about the proposal. The father was Irish, and the mother was a national of a different country. The family was based outside the jurisdiction for reasons connected to the father's work. The mother had sought orders directing that the children be placed in her primary care and permitting her to permanently relocate the children to her country of origin.

17. Whelan J. delivered the judgment of the Court of Appeal in *S.K. v. A.L.,* and that judgment was relied on heavily in the later *K. v. K.* case. The Court noted that the approach to be taken by the court in such a case is governed by the Constitution, the Act of 1964, and the existing authorities on how the best interests of the child are to be ascertained. The rights of a number of persons likely will be engaged, including the child affected by the decision, the parent who is seeking the relocation, and the parent who will remain in the jurisdiction. As observed by Whelan J., in such a case there

almost invariably will be a conflict between the rights and interests of the parents. Clearly, those conflicts have the potential to exist in many cases concerning the custody of children, but an international move often will make access, particularly in-person access, for the child with the remaining parent more difficult.

18. Significantly, Whelan J. highlighted that the role of the court is to engage in what she described as "*purely an exercise in welfare assessment*" (at para 42). In that regard, no presumption could operate in respect of other parent. The exercise had to be directed away from parental recriminations, fault finding, or blame; parental conduct was irrelevant unless it was relevant to the child's welfare and best interests. At para. 55, Whelan J. identified certain factors that were potentially relevant to assessing the best interests of the child in a relocation case:

> *"(a) The minor's emotional and/psychological dependency upon the primary carer.*
>
> *(b) The relationship between the child and the remaining parent.*
>
> *(c) The relationship between the child and his or her extended family, including siblings, step-siblings, step-parents and grandparents and the extent to which the dynamics of those relationships that operate positively and beneficially for the minor may be affected by the relocation, and considerations as to how such changes might be ameliorated or addressed.*
>
> *(d) The reasonableness of the proposed relocation and, so far as relevant, the motivation of the parent who proposes to relocate which is required to be objectively assessed.*

(e) The practical consequences of a refusal of the application for all of the directly concerned parties and in particular the minor, the directly concerned parents or guardians."

19. In addition to the factors identified by Whelan J., section 31(2) of the Act of 1964 provides what was described by Collins J. in *K. v. K.* as a "*useful checklist which helps to structure the court's assessment of what is in the best interests of the child in any given circumstance.*" Before listing the factors in that checklist, I also note that Collins J. at para. 90, made the practical point that:

> "*However, the extent to which those factors are engaged, and the weight to be given to them, will vary from case to case. In any given case, different factors may point in different directions. That is not a criticism of the section; rather it is a reflection of the complex and untidy reality of family relationships and the breakdown of such relationships."*

20. As noted, section 3(1) of the Act of 1964 provides that the interests of the child shall be the paramount consideration. The Court of Appeal noted in *K. v. K.* that the word "*paramount*" (as opposed to "*only*") implied that other considerations may be relevant. In relocation cases, one such consideration clearly must be the question of access for the non-custodial parent, and the need to vindicate the child's relationship with that parent. In addition, the Court noted that identifying what will be in the best interests of the child is a difficult exercise as it involves predictions made in situations that are enormously consequential for all the affected parties, but also where the analysis is fraught with contingencies and uncertainties. In the present appeal, some but by no means all of the uncertainties and contingencies have been resolved to a certain extent

by the fact that John has been in the UK since late June 2023 and it has been possible for Prof. Sheehan to carry out a review visit, and for the court to access the reports from the centre where Ms. G. availed of supervised access.

21. Section 31(1) of the Act of 1964 provides that in determining what is in the best interests of a child, the court " *shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family*." Section 31(2) provides that the best interests of the child are to be determined in accordance with Part V of the 1964 Act, which was inserted by the Children and Family Relationships Act 2015. Section 31(2) goes on to list the following factors and circumstances as included in those to be considered for the purposes of section 31(1):

> *"(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;*
>
> *(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);*
>
> *(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;*
>
> *(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;*

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

(f) the child's social, intellectual and educational upbringing and needs;

(g) the child's age and any special characteristics;

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,

(ii) to communicate and co-operate on issues relating to the child, and

(iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates."

22. At para. 91 of his judgment in *K. v. K.* Collins J. summarised the task of the court in in the following way:

> "*As Whelan J stressed in her judgment in SK v AL, what is involved is " an exercise in welfare assessment", without any presumption either in favour of or against the proposed relocation. The exercise is necessarily comparative: what the court is required to do is to identify and evaluate the available options, carrying out a "balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options" (per McFarlane LJ in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670, at [54]). The judicial task is " to evaluate all the options, undertaking a global, holistic and .. multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option"(per Sir James Munby P in Re B-S (Children) (Adoption Order: Leave to Oppose) [2013] EWCA Civ 1146, [2014] 1 WLR 563, at [44]). " Holistic" in this context means simply that all the factors bearing on the child's best interests must be considered as a whole rather than in isolation (per McFarlane LJ in Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882, [2017] 1 FLR 979, at [48]). In all of this, the only principle, properly so-called, is that the welfare of the child is paramount: K v K (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793, [2012] Fam 134*."

23. In addition to the factors addressed by the Court of Appeal, it can also be noted that the 1964 Act makes clear that the term "*welfare*" in relation to a child comprises "*the religious, moral, intellectual, physical and social welfare of the child*".

24. The final matters to be addressed in establishing the framework within which the decision must be made are the questions of the voice of the child and the issue of the weight to be attached to the expert evidence that was heard. As set out below, the court in this appeal has the benefit of a number of reports prepared by Prof. Sheehan pursuant to s. 47 of the Family Law Act, 1995, and Prof. Sheehan was examined by both sides at the hearing of the appeal. Section 27 of the Act of 1964 makes clear that there is no need for the child to whom the proceedings relate to be present in court at the hearing of the applications. For the purposes of this appeal, I was not asked to meet with the child, and I am satisfied that this was not a necessary measure. For the reasons explained in connection with my treatment of Prof. Sheehan's evidence, I have concluded that it is possible to ascertain the general wishes of the child by reference to his expert reports and evidence. In addition, I considered that given the young age of the child and his experiences to date, the potential distress of having to discuss his wishes regarding where he wishes to live outweighed any benefit in direct communication with the court.

25. The manner in which I ought to approach the expert evidence of Prof. Sheehan, and to some extent the evidence of Ms. More O'Ferrall, has been addressed in detail by the Court of Appeal in *K. v. K.*. In her judgment in that case, Whelan J. agreed with the analysis of Collins J., and highlighted that (a) the expert should confine their opinions to their particular area of expertise, (b) the evidence of the expert is one of the factors

that must be evaluated as part of the court's exercise, and (c) the court is entitled to reject the evidence – or part of the evidence of an expert – but where that occurs the court should provide clear reasons and identify any perceived deficits in that evidence. Overall, reflecting the views expressed by Collins J. on the predictive nature of the overall exercise, Whelan J. observed in para. 37:

> "*37. Inevitably, where an assessment is directed towards future care and future prospects involving a child, it is to be borne in mind and the court is entitled to have regard to the fact that to some extent, an expert's views involve conjecture and surmise rather than certitude*."

26. In addressing the question of expert evidence in his judgment, Collins J. took as his starting point the decisions of the Supreme Court in *McD. v. L.* [2009] IESC 81, [2010] 2 IR 199. That case concerned a child conceived by artificial insemination using donated sperm. The respondents had proposed relocating, which was resisted by the father who sought to be made a guardian and granted access. The High Court had appointed an expert pursuant to section 47. The expert, following interviews, recommended against the applicant father being granted access or made a guardian. A second expert was called by the father, and that expert took a position that was more favourable to the father.

27. The High Court did not find the second expert's views very convincing and decided that particular weight ought to be afforded to the expert appointed by the court, and expressed the views that "*grave reasons*" were required if the court was to depart from the recommendations of a court appointed expert. The Supreme Court disagreed with that approach.

28. As noted by Collins J., all five judges in the Supreme Court were of the view that the High Court had erred in its approach to the expert evidence. The Supreme Court expressed their views in different ways. Collins J., at para. 120, considered that the judgment of Fennelly J. reflected the majority view:

> "*The judgment of Fennelly J is clearly the majority judgment on the issue of the status of the section 47 report. Although "great respect" should be accorded to such a report, the court was nonetheless free to depart from it and was not limited to doing so only where there were "grave reasons". While Fennelly J did not say so in explicit terms, it seems to me to be implicit in his judgment that, where the court departs from a section 47 report, it must articulate its reasons for doing so. Notably, that was the ratio that he extracted from Re W, without any expression of disagreement with it. Furthermore, Murray CJ – who was of the view that a judge departing from a section 47 report should state his or her reasons for doing so – seems clearly to have understood Fennelly J's judgment to be to the same effect, given his stated agreement with its conclusions on the section 47 issue."*

29. The views of Collins J. were reinforced by the principles set out by the Supreme Court in subsequent cases, such as *Donegal Investment Group plc v. Danbywiske & Ors* [2017] IESC 14, [2017] 2 ILRM 1, and he noted (at para. 121):

> *"…Requiring a judge to give some explanation for rejecting a section 47 report — particularly where there is no contrary report or evidence – is consistent with what I understand to be the law generally: see the discussion in my judgment in Morgan v Electricity Supply Board [2021] IECA 29, at paras 20–22. That*

explanation need not necessarily be an elaborate one but the reasons should be sufficient to enable the parties … to understand why [the expert's] *evidence has been rejected and to allow this Court effectively to exercise its functions of review."*

30. I should note that in their final submissions, counsel for Ms. G. placed some emphasis on the fact that as matters stand Prof. Sheehan does not hold the qualifications that would allow for his appointment as an expert pursuant to section 32 of the Act of 1964, as amended. It should be noted that his appointment was made pursuant to section 47 of the 1995 Act and not pursuant to the provisions of the Act of 1964. Under section 32(10) of the Act of 1964, the Minister for Justice is empowered to make regulations specifying the qualifications and experience of an expert appointed under that section, and regulations have been made setting out the qualifications required for a person preparing a report pursuant to section 32(1)(b) of the Act of 1964 (a "voice of the child" report). It was agreed that Prof. Sheehan did not hold the qualifications required under the current regulations to provide a "voice of the child" report under section 32(1)(b) of the Act of 1964, although he does appear to be qualified to carry out a welfare report under section 32(1)(a) of the Act of 1964.

31. I am not satisfied that this is a factor that detracts from the value of Prof. Sheehan's evidence or that prevents him from providing his expert opinion. Prof. Sheehan was *not* appointed pursuant to section 32 of the Act of 1964. Section 32 provides the court with the power to appoint an expert qualified for that purpose under the applicable regulations. It is framed as discretionary and not a mandatory power. The power in section 47 of the 1995 Act is also discretionary and, by section 47(6)(a), expressly

applies to proceedings under the Act of 1964. There was no objection to Prof. Sheehan being appointed by the Circuit Court or to him giving evidence at this appeal. In the premises, and for the avoidance of any doubt, I am satisfied that Prof. Sheehan was appointed properly under section 47 of the Act of 1995, and that the court was fully entitled to have regard to his evidence.

BACKGROUND

32. The court has available to it affidavits from both parties regarding the appeal. It also has booklets of reports issued by Prof. Sheehan and Ms. More O'Ferrall, together with medical reports from Ms. G. and reports from the supervised contact centre in the UK. It may be helpful to summarise that evidence before considering the oral evidence that was given at the hearing of the appeal.

33. Certain factual matters do not appear to be in dispute. John was born, with the assistance of IVF in June 2017. Mr. D. and Ms. G. were not married but were in a committed relationship. At the time of the birth, Mr. D. was living in a UK city where he still resides with his current family, and where he has stable employment. Ms. G. is an Irish national. She resided in Ireland but stayed with Mr. D. in the UK in advance of their son's birth. Shortly after John's birth, the relationship broke down, and Ms. G. alleged that there was an apparent element of controlling behaviour on the part of Mr.-D..

34. Following the breakdown of the relationship, Ms. G. moved back to Ireland with John. This move appears to have been undertaken without reference to Mr. D., and before he

asserted any claim for parental rights. Ms. G. seems to have made some reports at the time that Mr. D. was abusive towards her, and those reports were repeated later in social media posts. However, no direct evidence was adduced to address whether Mr. D. engaged in any abusive behaviour during the currency of the relationship. Ms. G. lives in a house in a Dublin suburb which is close to her parents' home. Her parents appear to spend their time between Spain and Ireland.

35. There is a history of difficulties with access arrangements. As noted above these proceedings have been active since 2018, essentially for most of John's life.

36. There have been periods when Mr. D. was able to avail of regular access with John, but this was mainly restricted to periods when he travelled to Ireland to avail of access. When that occurred, Mr. D. tended to stay in hotels and accordingly access mainly involved him going on trips in and around Dublin with John, who it must be remembered was very young throughout this period. Access arrangements were altered to provide for John to travel to the UK city where Mr. D. resides. That allowed for a more stable form of access to take place in a home environment. The trips involved John taking a flight that was in or around 30 minutes in duration, but which obviously required the additional time involved in getting to and through the airports. It is undisputed that considerable difficulties arose in connection with the access arrangements in the UK, which had been mandated by Circuit Court orders.

37. While there were differences of interpretation and differences in the explanations for the difficulties that arose in connection with access, many core facts were not disputed. Instead, the disputes related to the explanations for those events and their construction

in the context of John's welfare circumstances. From my consideration of the very extensive affidavit evidence, the following core matters did not appear to be disputed:

a. For a lengthy period of time Ms. G. repeatedly and deliberately failed and refused to comply with orders for access. She provided a number of reasons for doing so, including cost, illness, travel delays, airport conditions and separation anxiety on the part of John.

b. Ms. G. has however been able to facilitate access for periods when she had her own travel plans.

c. In addition to failing to facilitate physical access, Ms. G. also for prolonged periods did not facilitate Skype access between John and Mr. D..

d. As a result, there have been considerable periods where there was no contact between John and his father.

e. Prof. Sheehan was appointed pursuant to s. 47 of the Family Law Act, 1995 and has prepared reports over the course of these proceedings.

f. Ms. More O'Ferrall was appointed by consent to work with the parties around issues concerning hand overs of John between the parents for access. Ms. G. withdrew from that process, but Mr. D. continued to work with Ms. More O'Ferrall, with the agreement of Ms. G..

g. The expert reports are clear that the conduct and approach of Ms. G. carried a real potential to cause harm to John's relationship with his father. Ms. G.'s strongly held antipathy towards Mr. D., and the associated restrictions on access involved John being exposed to a state of affairs that could have long term harmful effects.

h. Despite advice to this effect, Ms. G. has not sought professional assistance in relation to her situation or in relation to how to manage John's anxiety around

the dispute between his parents. On the other hand, Mr. D. has engaged appropriately and actively with the experts and does not appear to have allowed his views about Ms. G. or her conduct to impact on John.

38. Both parties refer to the reports issued by Prof. Sheehan over the course of the proceedings, most notably his report of the 12 April 2023 where he recommended that custody be transferred to Mr. D. in circumstances where Ms. G. was clear that she would not facilitate access between John and his father in the UK.

39. There is helpful evidence in Prof. Sheehan's most recent report from November 2023, where he charts the progress made by John in the UK. I have decided not to refer to certain matters in the report. This was because I was not satisfied that they were relevant – particularly certain references to actions by Ms. G's parents – or were matters that did not arise in or were not possible to address in oral evidence. In summary, Prof. Sheehan sets out the following matters:

    a. John's settling in period was dominated by an arson attack on his home, and attacks on Mr. D.'s home in the UK, with police and social services being involved at the time.
    b. Ms. G. was detained at a UK airport by the police for questioning in relation to communications she had online with Mr. D's. partner, L.. As a result of this, there was a gap in physical access in July and August.
    c. John has settled well into school, is catching up on his phonics and his reading with Mr. D. and his partner and in school, and he is attending play therapy.
    d. John has joined a local football team which he plays with on Saturday morning.

e. L., Mr. D.'s partner ,notes that both John and her eldest child from a previous relationship are very fearful following the attacks; and that John is getting used to a situation where he has two parental figures present together.

f. During a meeting with Prof. Sheehan it was noted that John was in excellent form; he said he really likes his primary school; that he was playing football; that he misses his mum '*but not all the time*'; that he does not have tears now saying goodbye to her; that he was worried the fire might happen again; that he likes seeing his mum on Skype and likes attending play therapy.

g. Following meetings with personnel at John's new school, Prof. Sheehan noted that John was settling in well; that Ms. G. has not made contact with the school.

h. Regarding the contact centre, Prof. Sheehan noted that from their reports there were five different supervisors, but he was not able to ask Ms. G. how she found this. He noted that it seems John's expressed desires to visit Dublin were well handled by Ms. G..

40. Prof. Sheehan made the following recommendations:-

a. That John remains in his father's sole care and custody.

b. That he should have access with his mother every second Saturday from 1pm-5pm at the supervised contact centre, and a mid-week Skype call from 4pm-5pm with her alone on an afternoon to be agreed between the parents (replacing the Saturday calls).

c. That Mr. D. arrange for John's hearing to be checked.

d. That Ms. G. be encouraged to arrange a visit to the school to meet the principal and John's learning mentor, or failing that, to organise a Zoom call with them.

e. That the matter of access be reviewed again by the court in May 2024 when the situation could be considered in light of updated reports.

41. Both parties also referred to the report of Ms. More O'Ferrall, dated the 2 June 2023, which was a parenting report addressing how the parties could help John deal with access handovers. Her findings can be summarised as follows:-

a. Mr. D. has engaged with Ms. More O'Ferrall from the outset whereas Ms. G. withdrew from working with her following the first parenting intervention and she suggested that Mr. D. was manipulating Ms. More O'Ferrall.

b. She observed Mr. D. engaging earnestly in all sessions, putting himself in John's shoes.

c. She noted Ms. G. presents as dysregulated and gives the example of her telling John that Mr. D. was "disgusting" and a "disgrace of a father".

d. Ms. More O'Ferrall noted that despite Ms. G.'s comments, Mr. D. maintained his focus on John.

e. Mr. D. expressed a concern to Ms. More O'Ferrall that, while in Ms. G.'s care, John had missed 21 days of school, had a referral to CAMHS and was reported to be experiencing several possible health issues.

f. Ms. G. expressed a desire for access between John and his father to be in Ireland rather than in the UK.

g. Ms. More O'Ferrall expressed a concern for John's wellbeing: the apparent unilateral decision making by his mother, his poor school attendance and the apparent sabotaging of his relationship with his father were likely to have adversely affected John.

h. Ms. More O'Ferrall's recommendations were that John should engage in non-directive play therapy, with a therapist who has particular experience of working with children of separated parents.

THE EVIDENCE

42. As noted above, these proceedings have been actively pursued since 2018. The court has an extensive volume of evidence in the form of the affidavit evidence and professional reports that were before the Circuit Family Court. In addition, the court has heard extensive oral evidence in the course of the appeal. I will set out below those aspects of the evidence that I consider most material to the matters that must be decided. That treatment should be considered in light of the fact that there was little dispute about what happened, the disputes arose mainly around the issue of why certain events occurred and how they should be understood by the court.

43. It should be noted that both Ms. G. and Mr. D. clearly have found the entire process difficult, for understandable reasons. It was clear to the court that both parents love John and have tried to do their best to parent him. Ultimately, the court has had to decide what will be in John's best interests. In that regard, the court cannot ignore that for almost all the periods when Mr. D. was entitled to access, this was rendered extremely difficult to achieve due to Ms. G.'s actions and her very negative attitude towards John's father. Ms. G. expressed to the court directly that she considered that she had learned her lessons and that if John was returned to her care and custody her previous behaviour would not be repeated. The court accepts that this assurance was

heartfelt; but I do not consider that this is a basis for directing that John should return to this State in light of the following.

44. First, Ms. G. gave the strong impression that, in some sense, the decision of the Circuit Family Court was a form of punishment for her conduct and that the punishment could be lifted if she expressed her contrition. I consider that this profoundly misunderstood that the decisions of the Circuit Court, and the decision of this court, are in no way directed to penalising any party. Although Ms. G.'s actions were the subject of detailed consideration, the case was not about her. The decisions were based on evidence that the actions of Ms. G. were potentially harmful to John and that a decision had to be made about the option for care and custody that best secured his overall welfare interests.

45. Second, and relatedly, it was not at all clear to the court that Ms. G. fully appreciated the harm or potential harm inherent in her behaviour. John has been deprived of proper access for a number of years. This is harmful to his relationship with his father, and if Mr. D. had not been as proactive as he was, there was every prospect that John's relationship with his father could have seriously damaged. The potential implications for John's welfare of Ms. G.'s conduct was a consistent theme in the reports of Prof. Sheehan.

46. Third, a clear thread running through the evidence was that Ms. G. did not respond appropriately to John's difficulties with separating from her at the start of access visits. Ms. G. disengaged almost immediately and for no good reason from the court directed work with Ms. More O'Ferrall, which was intended to address that difficulty. It is hard to avoid the conclusion that, whether or not this was a conscious choice, Ms. G. used John's distress as an instrument to further reduce access with Mr. D..

47. Fourth, Ms. G.'s obstructive and uncooperative approach to access – even when court ordered – has been consistent since 2018. Since July 2023, Ms. G. did not seek any professional advice or assistance to help her understand or address the manner in which she could adjust her behaviours to avoid the difficulties arising again. The court is not satisfied that a return of John to Ms. G.'s care will not precipitate a reversion to the previous behaviours if Ms. G. has not fully grasped the seriousness of what occurred previously. I am satisfied that Mr. D. was very upset by Ms. G.'s conduct but that he was not motivated by any ill feeling towards her. On the other hand, I was satisfied that both currently and historically Ms. G. harbours significant feelings of ill will towards Mr. D.. In many ways it was hard to avoid the impression that she resented the fact that Mr. D. sought to have a meaningful relationship with John.

48. Fifth, and very significantly, the evidence was clear that John was thriving in his new home. Clearly, he misses his mother, and probably like most young children whose parents have separated would like to be close to both parents, but there is no evidence that his overall welfare circumstances have in any sense been damaged by his move to the UK. In fact, the evidence is to the contrary: he very quickly managed the adjustment, and he is extremely well cared for in the UK.

49. In reality, there are two potential outcomes to this appeal. In each outcome John will reside with one parent while access with the other will be through remote means and periodic visits from another jurisdiction. The evidence was clear that when John resided in Ireland he was generally well cared for, but his welfare was exposed to harm by an obstructive attitude to access that was rooted at least in part by the ill feeling directed by Ms. G. towards Mr. D.. Since John moved to the UK he has been well cared for, and there have been no issues with access.

The father's evidence

50. I want to begin by noting that I found Mr. D. to be a truthful and conscientious witness. I was satisfied that he was motivated by a desire to have a meaningful parenting relationship with John, and maintained John's best interests to the fore. Contrary to Ms. G.'s suggestion, there was no basis on the evidence that Mr. D. was motivated by a desire to "*win*" the litigation or otherwise gain some advantage over Ms. G.. I have summarised the evidence that was given below.

51. Mr. D. met Ms. G. in March 2015; they were together for approximately 2 and a half years and separated in September 2017. Ms. G. had become pregnant through IVF, and John was born in June 2017 in the UK. According to the father, the original plan was that the mother and an older child from Ms. G.'s previous relationship would move to the UK. Shortly after John's birth, the mother moved back to Ireland, and the relationship ended shortly after that.

52. Mr. D. had been paying maintenance of €500 per month on a voluntary basis since August 2017, and he enjoyed regular access with John from August until December 2017. Since December 2017 access was problematic. In August 2018, the Circuit Family Court made orders for the immediate resumption of access, with fortnightly access to occur in Ireland. The Circuit Family Court also appointed Prof. Sheehan as an expert to assist the court pursuant to the provisions of section 47 of the 1995 Act. That did not resolve issues and a further order was made by the Circuit Family Court in October 2018. In December 2018, Prof. Sheehan made his first report.

53. Access proceeded in Ireland on a fortnightly basis from October 2018 until March 2019, and it involved Mr. D. flying over on Friday nights for weekend access. Even then, difficulties were encountered. In March 2019, the Circuit Court ordered that fortnightly access in Ireland should continue and that there should be five access trips per year in the UK. Access appears to have progressed reasonably smoothly between March 2019 and June 2019.

54. Matters appear to have deteriorated considerably during the period of the Covid pandemic in 2020. As traffic and travel between Ireland and the UK became difficult, the father sought to have access by way of Skype, but stated that he received abusive responses to this suggestion. Mr. D. was restricted to Skype calls between February 2020 and July 2020. When restrictions were eased, Mr. D. engaged in some access in the UK, but that involved ferry travel which was very time consuming. Between August 2020 and November 2020, Mr. D. only enjoyed very sporadic contact with John, and in December 2020 he was informed that there would be no more contact until all restrictions were lifted. Given the young age of the child, Skype calls, when they occurred, were difficult. In early 2021 there was what Mr. D. described as "a bad period" for seven months until July 2021. He attempted to engage in Skype access every Wednesday and every Saturday but this was not facilitated by Ms. G. and he states that she engaged with him in an abusive manner.

55. In May 2021, Mr. D. unexpectedly was informed that John was to come to Manchester for two weeks because the mother was taking a holiday. He stated that he took 18 days off work and had a very good time with John. When he returned to Dublin with John, John's grandfather put him on a flight to Spain immediately so that he could meet his mother. At that point, all contact stopped including Skype access.

56. In July 2021, the Circuit Court made further orders appointing Mr. D. as a joint custodian, and at that point Prof. Sheehan had prepared his third report. Access continued on a reasonable basis between July and December 2021. However, in early 2022 problems emerged again. Essentially, at this point Ms. G. had adopted the position that John would not go to the UK at all. This was attributed by Ms. G. to an assertion that John did not want to travel. Mr. D. accepted that handovers were never very good, and that while John was excited to see him there was a lot of upset and discomfort around handovers. This contrasted, according to the father with situations where handovers were conducted by the child's grandfather, which were straightforward.

57. In March 2022, Prof. Sheehan prepared his fourth report, which included a discussion of a potential change of custody if matters didn't improve. This was followed by a short period of compliance between April and May 2022, but by July 2022 access had ceased. In August 2022, there was some, with contact then being severed until October 2022 when Mr. D. was able to avail of access because Ms. G. was travelling to Spain. Mr. D. described how John presented as nervous and anxious in November and December 2022 during Skype access and stated that Ms. G. subjected him to verbal abuse and criticism in front of John.

58. In December 2022, Ms. G. made social media posts that implied that Mr. D. was a person who engaged in domestic abuse. The court saw print outs of these posts, which clearly were inappropriate and evidenced a strong antipathy towards Mr. D. on Ms. G.'s part. Between December 2022 and June 2023, there was no physical access and only one Skype access.

59. In April 2023, Prof. Sheehan produced his fifth report. The report advised that custody should be transferred by June 2023. There was a hearing in the Circuit Court for a number of days in early June 2023, which had been specially fixed. Part of the evidence in the Circuit Court and seen by this court were approximately eleven video clips which had been furnished by Ms. G..

60. All of the recordings were made by Ms. G., and showed John in situations of considerable emotional distress, where he appeared to express the wish that he did not want to be sent to the UK. The videos appear to have been recorded between July 2022 and December 2022. The videos were very distressing, and I found it hard to understand why they were taken. The explanation given by Ms. G. was that she wanted to show how distressed John had become about travelling to the UK. However, the court considers that the videos – which seemed to have been taken over a reasonably lengthy period – in fact demonstrated how Ms. G. was willing to allow that level of distress to arise so that her side of the narrative could be bolstered. That conduct manifestly was not in John's welfare interests. On the fourth day of the hearing, the Circuit Family Court made an order for John's immediate transfer to his father.

61. Mr. D. is employed in a well-paying stable job as a professional. It appears to be the case that his employer has been flexible in allowing him to take time to deal with the issues that have arisen. His immediate family in the UK is made up of his partner, their children -who currently are aged four and three – and his partner's daughter. Following John's arrival in the UK, Mr. D. took two weeks off work and had arranged for John to begin in school before the start of the summer break so that he could become acclimatised. Mr. D. also referred to the fact that shortly after John moved to the UK

his partner received a series of very inappropriate emails from Ms. G., and these were shown to the court.

62. Since arriving in the UK, John has settled very well. The process of settling was seriously disrupted by two particular incidents. On the 27 July 2023, Mr. D.'s mother's home was attacked in the evening. Later the same day, two men in motorbike helmets arrived at Mr. D.'s house and broke windows and damaged his car. On the 29 July 2023, at close to midnight, two men on motorbikes set fire to a car in Mr. D.'s driveway. Fortuitously, the fire did not spread to the house, but there was a serious conflagration very close to his home. Following the incident, social services and the police became involved. The family was advised to stay in a hotel and take certain security precautions. The understandable effect was that the family was deeply traumatised and felt very unsafe. There was a police investigation but there does not seem to have been any conclusion reached. This matter is referred to because of its importance to John's welfare and the way that Mr. D. and his partner responded very appropriately to the resulting distress.

63. Following the incident, the children were terrified, and it took until Christmas of 2023 for things to calm down. John's transition was set back for a period. He started back in school in September, and Mr. D. reported that the school was concerned about his stage of learning and his development in the areas of writing, reading and phonics. Thankfully, John has made very considerable progress educationally, he has settled in school, and is very involved in after-school activities and sports.

64. In terms of access, in accordance with the Circuit Court order which in turn reflected recommendations made by Prof. Sheehan, there is regular Skype contact between the child, his mother, his grandparents and other family members, and neighbours. In

addition, Ms. G. travels to the UK where she engages in regular supervised access. The court was furnished with reports prepared on foot of those access visits, and they support and corroborate the views expressed by all of the parties (notwithstanding their difficulties) that the access visits have been handled very well by Ms. G.. While John still struggles with goodbyes and handovers, matters are improving considerably and clearly this is a beneficial intervention for John.

65. Mr. D. was asked for his views on the impact of John returning to Ireland. He noted that he had effectively been frozen out of John's life from when John was nine months old, and he anticipated that matters would revert to the previous position within a reasonably short period if John was returned to Ireland. He considered that a return to Ireland would reintroduce high levels of anxiety and uncertainty for John which would not be in his best interests. Mr. D. stated that he did not understand why Ms. G. had acted in the way that she did, but he believed that she could not accept him having a close bond with John. Mr. D. stated that John was very happy in the UK.

66. Mr. D. was cross examined by counsel for the mother. As noted above, most of the issues raised related to the construction of events rather than any contest about the fact that the events occurred. It was put to Mr. D. that the solution imposed by the Circuit Court was far too extreme. Mr. D. disagreed, he was clear from his point of view that everything he did had his son's welfare at the heart of it, and that John was in considerable distress prior to the move to the UK. Mr. D. disagreed that the child flying to a city in the west of the UK, which was a short flight, once a month, was not disruptive. He emphasised the benefits of spending time with John in a home environment rather than in an artificial hotel environment.

67. It was put to Mr. D., in a variety of ways that, to paraphrase, he had been too rigid in his approach to access, by insisting on the court ordered access to proceed and also by not engaging in more ad hoc visits to Ireland, for example, to see John playing sports. Mr. D. responded that he had always sought to follow the recommendations that were made and to comply with court ordered regime of access.

68. Mr. D. acknowledged that when the child moved to the UK this inevitably required John leaving behind his school friends, family and Irish activities. He acknowledged that this was a difficult issue, but noted that it been recommended by Prof. Sheehan and ordered by the court. He expressed the view that the child was healthier and happier since the move. Ultimately, when he was asked whether he considered it to be in the best interests of John that he be transferred to the UK, Mr. D. stated that he wholeheartedly agreed with the order, and he also agreed that contact with the child's mother should be expanded and ultimately moved from a supervised access situation.

69. When questioned about the prospect of the child returning to Ireland, Mr. D. stated that when John came to the UK he was soiling himself, he could not read, he had sleeping difficulties and he was anxious. All of those matters have been resolved, and Mr. D. expressed the belief that he was 100% certain that John was where he should be. He stated he would be very guided by the recommendations of Prof. Sheehan.

The mother's evidence

70. Ms. G., in her oral evidence, explained that she had made mistakes and that she should not have disobeyed the court orders. She explained that as a mother she tried to protect and comfort John, and explained how important John was to her. Following the

commencement of the pandemic, and for the subsequent period, John started displaying signs of distress whenever he was required to travel to meet his father.

71. Ms. G. stated that she regretted recording the videos now, but she wanted to have a snippet of what the child experienced, and had been advised by family and friends to have some evidence of his distress. Ms. G. accepted that she was seen as obstructive by Prof. Sheehan, and that she did not cooperate with Ms. More O'Ferrall. She stated that she had honestly tried to encourage the relationship between John and his father.

72. Ms. G. accepted up to a point that Mr. D. was a good father, but believed that John should be with her. She expressed the view that now that the child has spent time in the UK, he will happily go for a week or weekend and that he loves his father. When she was cross examined, Ms. G. accepted that John's best interests were the main priority, however she did not accept that Mr. D.'s motivations had John's best interests at heart. She expressed the belief that Mr. D. was motivated by what was best and most convenient for him. Likewise, Ms. G. was not willing to accept that John was well after looked after in UK. This was based on the fact that John remained upset when she left the supervised contact meetings, and she believed that she provided better care to John. Ultimately, her view, which was repeated on a number of occasions in a number of ways, was that John was upset at being so far from her and would be better off in her care. She observed that John had spent six years with her and was established in school and with family, friends and activities.

73. Ms. G. accepted that where parents cannot agree on access issues it is necessary for the court to make orders and that the parties are bound by those orders. Ms. G. was pressed in cross examination to explain precisely what she considered what she did wrong or

how she had behaved badly. Her response to this was somewhat concerning. Her view that she had erred by not abiding by the court orders, and that she should have forced John to visit her his father in the UK. It was put to Ms. G. that, in truth, she regretted the consequences of her actions rather than the actions themselves.

74. When pressed, Ms. G. expressed some regret about the emails that she sent to Mr. D.'s partner in June 2023. She explained that this was an act of desperation and that she reached out to Mr. D.'s partner as a fellow mother. She was very surprised and distressed when the emails led to her being questioned by the police in the UK.

75. Ms. G. explained why she disengaged from the work with Ms. More O'Ferrall. The parties agreed that Ms. More O'Ferrall should be appointed to work with the parties in dealing with the difficulties around access handovers. In that regard, the relevant Circuit Court Order permitted Ms. More O'Ferrall to liaise with Prof. Sheehan. Ms. G. explained that, in December 2022, John had been given an advent calendar by Mr. D. which contained small presents behind the doors. John had opened all the presents from the calendar very quickly, and that it been thrown out in the recycling bin. Mr. D. had mentioned this to Ms. More O'Ferrall, and in turn, Ms. More O'Ferrall's had raised this with Ms. G.. Ms. G. sought to explain that she saw Ms. More O'Ferrall's role as seeking to improve communication between the parents around access and handovers, and that the work was not as a mediator. Ms. G. had signed a contract on 2 December 2022, but terminated her involvement with Ms. More O'Ferrall two days later. She explained that her first communication by email from Ms. More O'Ferrall included a question as to how she managed John's expectations in the context of allowing him to open all the boxes in the advent calendar. Effectively, Ms. G. believed that Ms. More O'Ferrall was not a right fit for her.

76. With regard to Prof. Sheehan, Ms. G. disagreed that she had said she would not comply with orders she did not agree with, but she agreed that she had stated that she would not force John to go to the UK. She sought to explain that she was trying to communicate how John did not want to go to the UK despite the efforts that had been made.

77. It was put to Ms. G. that she had known as far back as 2021 that one of the options being considered by Prof. Sheehan was a recommendation that John could be removed from her care. Her response was that she never thought that John would be removed. Ms. G. was adamant that her focus was always on what was best for John. She explained that although Prof. Sheehan's report recommended a change of custody, she was not provided with a copy of the report until shortly before the hearing in June, despite her efforts to obtain a copy.

78. A number of elements in Prof. Sheehan's reports were put to the mother. Prof. Sheehan had noted that the mother had negative feelings about the father and that child picked up on this. This was denied by Ms. G.. Prof. Sheehan had noted that Ms. G. had difficulty regulating the child's emotional world in the context of the access orders. Ms. G. responded by stating that Prof. Sheehan left out a lot of context, including that she went to play therapy with John for nine months and that he was still experiencing trauma and distress around leaving her. Ms. G. was of the view that Prof. Sheehan's report was not child-centred and that the child's welfare was not considered. Prof. Sheehan had noted it was unlikely that the mother would be able to develop the skills to deal with the issues around access, but she disagreed.

79. Ms. G. accepted that she had not contacted his school since John moved to the UK. She stated that she did not know who to contact. Ms. G. explained that she had missed one of the recent supervised access visits in the UK in January 2024 because she went on holidays with her parents to Thailand. She noted that she had not missed anything prior to that, and that the whole family had been affected by the child's removal and she wanted to spend time with them. She agreed that she had left the child with her father when she had gone to Spain but that this was three years ago. She explained she also had missed a Skype session on around the 17 or 18 of January 2024. Ms. G. sought to explain that because all communication was conducted through solicitors it was difficult to deal with unforeseen events.

80. In response to a question from the court, Ms. G. agreed that Prof. Sheehan had suggested that she take steps to improve her parenting skills but that she had not looked into that yet as she was devoting her time to the case and visiting John in the UK.

Other witnesses to fact

81. Two witnesses were called on behalf of the mother. The first was a father of one of John's friends in Ireland, and he described his observations that John was a happy, polite child. He described John's friendship with other boys that he had met initially in Montessori and with whom he maintained friendships through sports and school.

82. The second witness was the mother's eldest child from a previous relationship and John's sister. She lived with her mother until 2020 when she began living with her father, and when John was only two or three. Nevertheless, she maintained close contact with John, had a good relationship with him and clearly missed him. She has

visited John in the UK, but described the whole experience as traumatic when she had to say goodbye.

83. While I found both additional witnesses to be entirely truthful and well meaning, and I particularly appreciate the evidence given by John's sister, I do not consider that they established anything that was not already evident. There is no doubt that John enjoyed a generally healthy normal upbringing in Ireland and that he formed strong friendships and was close to his maternal family. That much is uncontested. The question for the court is whether John's welfare interests are best served by him being in the custody of his mother or his father.

Summary on the evidence from the parties

84. Overall, the evidence from Ms. G. left the court with the strong impression that she loved John dearly and wanted to do her best for him. It was very clear that John's move to the UK has had a substantial impact on Ms. G., and that she has struggled to adjust to his absence. It is hard for the court to imagine the emotional impact of that move on Ms. G., and the court does not in any way underestimate or lack sympathy for the predicament in which she finds herself. The court also fully accepts that moving to the UK has had an impact on John's relationship with his mother and an impact on his relationship with his mother's family and his broader circle of friends and neighbours.

85. However, I found it very difficult to disentangle Ms. G.'s own understandable reaction to John's move from her views on whether the move could ever be in his best interests. Despite strong evidence to the contrary, Ms. G. was not able to accept that there were positive elements to the move. Likewise, Ms. G. found it difficult to accept that Mr. D. was not motivated by self-interest and Ms. G.'s evidence established that she retained

strong feelings of hostility towards Mr. D.. Moreover, I am concerned that Ms. G. has not taken on board the professional evidence that her conduct around facilitating access was harmful or potentially harmful for John, and that she has not sought any professional assistance in relation to how she might best achieve John's welfare in this difficult situation. Instead, she continued to view the move to the UK as a form of penalty and through the prism of her construction of John's welfare as only capable of being achieved by a return to her care and custody.

86. In those premises, I have formed the view that I cannot be satisfied that returning John to Ms. G.'s custody would be in his best interests, and I have formed that view on the basis that the circumstances that gave rise to difficulties would repeat themselves if John returned to this jurisdiction.

The expert evidence

87. I am fortified in those conclusions by my consideration of the professional evidence. As noted above, I am not bound in any sense by the views of the experts. However, those experts were subject to extensive testing and questioning at the hearing of the appeal and I did not ascertain any reason to disregard or dismiss the views expressed. This was particularly so where the facts grounding those expert views were not the subject of any substantial dispute.

Ms. More O'Ferrall

88. In March 2022, Ms. More O'Ferrall was appointed on a consent basis by the Circuit Court to facilitate communication between the parents to support John's access with Mr. D. in the UK. Ms. More O'Ferrall met with each of the parties remotely and separately, and heard from them on what they considered were the main issues. She

then explained what her role was – that she would meet with the parties and help them to think about the child and hold the child central to the issues. She said each session took about an hour. Her understanding was that the main issue was that John was upset when he left his mother, but that he quickly settled once he was with his father. Ms. More O'Ferrall met Ms. G. before she met Mr. D.. She explained that Ms. G.'s. position was that John found the trips very difficult, that the travel was not in John's best interest, and she could not understand why Mr. D. could not have access to John in Dublin.

89. Ms. More O'Ferrall entered an agreement with the parents: she would oversee communications between them, that the parties would communicate via email, and she would be copied in, then she would follow up with meetings, and if an issue arose, they would deal with it quickly. Ms. More O'Ferrall said that approximately two days after the parties signed the agreement, there was an email exchange between the parties in relation to the advent calendar given to John by Mr. D.. Ms. More O'Ferrall said that she spoke to the parties and that Ms. G. said, in effect, that she (Ms. More O'Ferrall) had been hoodwinked by Mr. D. and, as such, she would have nothing useful to offer her and Ms. G. was withdrawing from the process. Ms. More O'Ferrall said that what she was trying to do was to encourage the parties to look at matters from John's perspective and work on managing his expectations and childhood excitement.

90. After this incident, Ms. More O'Ferrall said Mr. D. requested to continue to work with her. Because it was a different concept to the project that the parties signed up to, she wrote to Ms. G., who had no objection to that work continuing.

91. Ms. More O'Ferrall, on the basis of her work with Mr. D., was satisfied that he was capable of holding John central, to think about what was important to John at considerable emotional cost to himself, particularly with some of the more difficult Skype calls. Ms. More O'Ferrall observed two recorded Zoom calls between Mr. D. and John, one of which showed excellent interactions and another more difficult session where John was looking to his father for reassurance. Ms. More O'Ferrall was aware of some recordings where Ms. G. was telling John negative things about his father. John appeared stressed and distressed, he was not sure what to do and was looking at his father. She heard Ms. G. call Mr. D. "a disgrace of a father" while John was present, and gave some other examples of similar issues. Mr. D. did not respond, but was focused on John. His emails in response to provocative emails were neutral and focused on John.

92. Ms. More O'Ferrall had noted in her report that John had made statements that seemed unfamiliar: he used the word "vomiting" instantly as soon as he came on a call, that it was not in context or part of the conversation. She said it felt incongruent with previous conversations. The inference she drew from this was this was information he received rather than reporting his own experience.

93. Ms. More O'Ferrall said her work with Mr. D. decreased in intensity when access with John began to cease in 2023 and she saw Mr. D. to give advice a couple of times after the transfer was executed. Ms. More O'Ferrall made clear that throughout her involvement in this case her focus, as part of her profession, was about working with children and childcare, and that she expressed findings out of concern for John's wellbeing, and not to support one parent.

94. Ms. More O'Ferrall said she met John in person during the Circuit Court hearing, and that she spoke to him about a lot of 5 year old-type interests and had a general chat with him. She said John mentioned he did not like going to Manchester, but that he didn't mind planes to Spain. He spoke a little about his father and his job, and his mother.

95. Ultimately, I found that Ms. More O'Ferrall was an honest witness who approached her work in a child-centred manner. It cannot be ignored that she was appointed on a joint basis to help both parents address John's anxiety around handovers, but that Ms. G. simply withdrew from the process at the first sign of what she perceived as bias. I did not find that her evidence was biased in favour of Mr. D. and I consider that Ms. More O'Ferrall's approach to the advent calendar issue was a perfectly appropriate way to begin the process of asking the parties to start looking at things from John's perspective and to consider how his expectations and actions could be managed. I accept her evidence that she observed some remote access events and that she observed very different approaches to that access on the part of Ms. G. and Mr. D. respectively, including Ms. G.. behaving inappropriately towards Mr. D. I also accept her opinion that Mr. D. was approaching matters in a way that endeavoured to place John's welfare interests as the central concern.

Professor Jim Sheehan

96. Prof. Sheehan is a highly experienced expert in child and family relationships, with a number of qualifications and training related to social care and family therapy. Prof. Sheehan was appointed by the Circuit Court to work on this case pursuant to section 47 of the Family Law Act, 1995. As part of his work, Prof. Sheehan prepared a series of reports between December 2018 and November 2023. That work was carried out

effectively from the time John was 18 months old until he was 6 and a half years old, as such it provides a valuable expert insight into the developing welfare circumstances of the child.

97. In his evidence, Prof. Sheehan was brought through the reports that he prepared in the proceedings. As part of the work preparing the reports, Prof. Sheehan had relatively extensive interactions with John and his parents. I will set out below the core aspects of that evidence.

98. Prof. Sheehan's first report was dated the 1 December 2018. He noted that by that stage Ms. G. had acknowledged breaching court access orders. It was brought up that she had sent John to Spain without her and he noted that, at that point, Mr. D. was seeking a joint custody arrangement.

99. Prof. Sheehan set out observations of a handover involving John and he noted that John appeared to be quite clingy. Ms. G. was unwilling to facilitate access in the UK and given that John was only circa 18 months old, there was a question of how long he should be away from his mother. Prof. Sheehan acknowledged the importance of John travelling to the UK, but recommended against joint custody at the time. Ms. G. needed time to come to terms with the need to share some of the access, and Prof. Sheehan set out his recommendations for access over 2 years, which involved a mixture of access arrangements. He also recommended that each parent would attend a parenting professional.

100. The next report is dated 29 June 2020, and was an interim report during the time of Covid-19 due to the alarm over the failure of contact between the child and father,

where Prof. Sheehan noted a period of 2.5 months of no facilitated contact. Prof. Sheehan stated in evidence that the gap in access resulted in a breakdown in predictability for John with his father. John was a young child at this stage and the access difficulty could result in insecurity and anxiety. Prof. Sheehan said he had contacted both parents to ensure Skype calls remained weekly and had emailed Ms. G. explaining what was required of her and what the impacts on John could be if she did not cooperate.

101. The third report was from December 2021 where access was noted as continuing to be contentious. Prof. Sheehan said he met with Ms. G. earlier in the year. Ms. G. told Prof. Sheehan that she would like to move away from Skype access and had difficulties interacting with Mr. D. Towards the end of the conversation, Ms. G. expressed her negative views of Mr. D.. Prof. Sheehan was not satisfied that the stance adopted by Ms. G was warranted and the strength of her expressions worried him. In evidence, Prof Sheehan stated his belief that Ms. G. had not factored in the impact on John of her behaviour and views.

102. Prof. Sheehan's updated assessment and recommendations from the third report were that John at that point had had to cope with uncertain contact with his father in that he had gone from long periods of no contact to long access with his father. Prof. Sheehan queried Ms. G.'s ability to cope, whether she was suffering some effects from her medication (there was clear medical evidence that Ms. G suffered from a physical illness that at times was debilitating) and noted that she seemed very distressed, with the distress being at a higher level to that previously observed. Prof. Sheehan noted the positive bond between John and Ms. G., but that the option of a change in custody

should be kept in mind. He said that this option was something that should be put on the table for the court to consider.

103. The fourth report is dated 7 March 2022. Here, Prof. Sheehan noted that John seemed to be meeting his milestones and presented as a healthy, intelligent and communicative child. John told him he did not want to go to the UK but he could not say why. Prof. Sheehan noted that John had spent periods in the UK and that there were difficult handovers so it was understandable why John did not want to go. He also noted negative Skype access and highlighted the importance of the parents regulating negative behaviour, detailing the impact of anxiety on a child of John's age. The anxiety could make him very insecure, unable to engage fully in the tasks in play and learning, that it causes the child to pull inwards towards himself. Prof. Sheehan said he was concerned about the impact of John being exposed to high conflict and expressions of physical violence, and set out the effects such exposure could have on a child such as poor academic achievement, depression and poor adult relationships. This does not mean John would necessarily suffer from those outcomes, but there was a risk those things could evolve.

104. Prof. Sheehan made recommendations that Mr. D. and Ms. G. get help; that they attend a parenting professional to regulate challenges which arise (the second time recommending this in the series of reports). Ms. More O'Ferrall was then appointed by the Circuit Court. At the time of this report, access was happening in Ireland on occasion and in UK. Prof. Sheehan concluded by recommending that all access take place in the UK to allow John to have a more comfortable environment. He explained that up to that point Mr. D. was travelling and staying in uncertain places and had no

support. There was also no opportunity for John to know other people in his world such as his siblings and to know his dad in a stable environment.

105. While John was expressing an unwillingness to go to the UK, Prof. Sheehan said that he thought it was in his best interests to go, that John was 4 years and 9 months old at the time and was influenced by Ms. G.'s views that she would never go to UK. Prof. Sheehan said John had had successful lengthy periods in the UK; with one handover happening very swiftly and John seemed to get on fine. His conclusion was that this was a child who found the handovers difficult and John was responsive to his mother's discomfort about him going to the UK.

106. The fourth report was from April 2023. Prof. Sheehan said he viewed the video recordings (the ones played in court referred to earlier in this judgment). In his professional opinion from the video taken in an airport where John was distressed, he thought that Ms. G. was more engaged in getting the recording rather than responding to him. There were videos of John in a bedroom where he asked Ms. G. if she was recording; Prof. Sheehan got the sense the recordings were about parental positions rather than taking care of John and his anxieties.

107. Prof. Sheehan said Ms. G. spoke about her own health condition in that she needed to take an injection and that John had mopped up blood. Prof. Sheehan expressed some concern that she was engaging John, as a very young child in something that was personal to Ms. G..

108. Ms. G. had informed Prof. Sheehan of a number of conditions that she wanted for the future regarding access: that she only saw a future for John in Dublin; that some holidays in the UK might work; that she had guaranteed to John under no

circumstances would he go to the UK. Prof. Sheehan said making an unrealistic promise to John was "*a bit of a wild method to adopt*". Ms. G. said to Prof. Sheehan that if court orders required access in the UK, she would not facilitate that.

109. Prof. Sheehan gave evidence that he thought Ms G. had no insight into her own behaviour. She was convinced of the correctness of her own behaviour, believed other people were wrong, and she minimised the importance of John's relationship with his siblings living in the UK as she did not think those relationships were necessary.

110. Prof. Sheehan said he specifically spoke with John about his dad and the UK. John said he missed his father, but did not want to go to the UK. His trips to the UK reminded him of how much he missed his mother, and that he wanted his father to come to Dublin. Prof. Sheehan also observed a Skype call between John and his father. He noted that John was shy to begin with and he went to his mum for support but that she did not support him going back to the call. In his view, John just needed a little coaxing as he was a little distressed, but no effort was made to encourage him back. John had about ten minutes on the call and there was certain engagement talking about cars with his father. Prof. Sheehan commented that Mr. D. was good and supportive on the call.

111. Prof. Sheehan had visited the UK city where Mr. D. resides. He had a conversation with principal of the school that John would attend, should a move be decided on by the court. Prof. Sheehan said he felt obliged to keep an open mind to all recommendations and that these visits happened without prejudice to his final recommendation.

112. Prof. Sheehan was of the view that there was a lot of evidence to suggest that the negativity around the UK trips was because of conflict between the parents at

handover. In his April 2023 report, Prof. Sheehan set out and repeated his professional opinion. He acknowledged Ms. G.'s health condition and the impact of travel on it. However, he considered that the emotional regulation of John belonged in another domain: Ms. G. was poorly motivated to contain John and his distress, which was linked to her own determination to not want to go to the UK.

113. Prof. Sheehan, in evidence, said he has since seen behaviour which suggests Ms. G. has the skills to work well with John if she chooses to deploy them. He said he was impressed with her ability to manage John following the order of the Circuit Court, and that Ms. G. rose to the occasion exceptionally well. Prof. Sheehan, in evidence, said he has seen evidence of times where Ms. G. was unable to manage her own emotions, such as the videos of Skype calls and video recordings; that she had difficulty regulating her and John's emotional world when access was at stake. Prof. Sheehan said, in effect, that parents are required to contain their negative feelings due to the long term impact of instability on a child later in life. Prof. Sheehan was concerned that Ms. G.'s refusal to accept help suggests she would not be able to establish the necessary skills to ensure John's welfare.

114. In his April 2023 report, Prof. Sheehan acknowledged that John was happy on a day-to-day level but his relationship with his father was at an impasse. He found that Ms. G.'s attitude and refusal to engage meant it was unlikely she would be able to fulfil the role as a full custodian and Mr. D. would be a more responsible guardian. Prof. Sheehan therefore recommended John should be transferred into his father's care.

115. Prof. Sheehan rejected the suggestion that his recommendation was grounded in Ms. G.'s refusal to facilitate access. His recommendation was grounded, in his view, on John's best interests, in trying to create predictability for John, and ensuring the

continuity of his relationship with both parents. In evidence, he did not consider that the transfer should be treated as temporary. There were no signs here that kind of a move would bring a future stabilisation and that there was nothing in Ms. G.'s actions to suggest she was focused in securing a relationship for John with his father and siblings.

116. Following the transfer to the UK in June 2023, Prof. Sheehan prepared his most recent report in November 2023. At that point, Ms. G. was no longer engaging with him. He acknowledged that it was probably very difficult for her given the circumstances.

117. Regarding John's transition to the UK, Prof. Sheehan had spoken to John on his own and he seemed to be settling in very well. Prof. Sheehan said the school placement had been enormously important to John, and he was impressed with the school principal and learning mentor about their understanding and commitment to John. John was reported as having made great progress, his attendance in school was excellent, his schooling was going very well, he was engaged in football and he working well with his siblings.

118. Prof. Sheehan noted, both in his November 2023 report and in evidence, that John had been quite distressed by the 'fire incident'; that it was very traumatic for John and the whole family. Prof. Sheehan said the removal of John from his home following the incident for the safety of the family could not have been a worse start. Prof. Sheehan said that, when speaking to John, he found him to be in excellent form and more contained in himself; that previously he had been a bit hyperactive and all over the place but he was now able to sit on the corner of the kitchen island and have a good conversation with the Professor. Prof. Sheehan said he was impressed that John could stay with him right the way through their conversation. John said that it was better

being in the UK than in Dublin, he liked being in school, he missed his mother but not all the time, that he was to play football then would see his mother (at the access centre) and he liked seeing his mother. John told Prof. Sheehan that he used to have tears saying goodbye to his mother and that he missed all his family in Dublin but most of all missed his mother.

119. Prof. Sheehan had reviewed the reports from the supervised contact centre. He said that he was struck by Ms. G.'s management of herself and the situation, and that she has been handling herself very well. Prof. Sheehan said he asked John about wanting to or not wanting to stay with his father, and that John said he wanted to stay with his father. Professor Sheehan said this is important as John now has experience of the two access options. His ultimate recommendation was that John should be in the custody of his father, and that unsupervised access would not be recommended at this stage. His view was that moving John would be another level of destabilisation; that John now has guaranteed regularity and stabilisation with both parents. At this short vantage point, they have secured stability with both parents, John gets on well with his father and Mr. D.'s partner and his siblings and he likes school. It was the Professor's clear view was it was not in John's best interest that he be returned to Ireland at this time.

120. Prof. Sheehan was cross examined extensively in a firm, searching but polite manner. The examination was less related to the underlying facts and more focused on the interpretation of events. The following points were explored.

121. Prof Sheehan accepted that it was unlikely that Ms. G. would want to talk to him after the recommendation that John move to the UK. Prof Sheehan accepted that her illness poses an extra challenge in life for Ms. G..

122. With regard to his report from March 2022, Prof. Sheehan noted that at that point John would have been 4 years and 9 months old. He agreed that Ms. G. was John's primary attachment figure and that situation would extend to a point beyond when John was 10 years old. A number of questions were put to Prof. Sheehan, in effect, that he overemphasised Ms. G.'s negative feelings towards Mr. D. but did not highlight Mr. D.'s negative feelings towards Ms. G.. Prof. Sheehan explained, first, that containment of negativity is a joint responsibility. Second, he made the point that having followed the parents since John was very young, the negativity was almost exclusively on Ms. G.'s part; that Mr. D. was focused on building a relationship with his child and wanted to secure predictable contact with John.

123. Prof. Sheehan stood over his recommendation from March 2022 that all physical access was to be in the UK. He considered that the overall trip took 1.5 - 2 hours, which was very short; it seemed to him that John's best interest would be to have access with his father in his father's own home. He noted that Mr. D. travelling to Ireland imposed a strain on him and account had to be taken of Mr. D.'s relationship with his other children (who were very young), but the arrangement was not designed for the benefit of Mr. D. One of the benefits of having access in the UK was that John had a chance in building up his relationship with his siblings. Prof. Sheehan highlighted that sibling bonds were important in the context where John was never going to see his parents getting on well. He was clear that his March 2022 recommendation was not in any way a prelude to John moving to the UK full-time.

124. Prof. Sheehan agreed that John's relationship with his older sister was important, and had to be taken into account.

125. It was put to Prof. Sheehan that access in a supervised access centre for 4 hours on a twice monthly basis is a very artificial situation. He reiterated that Ms. G. seems to have managed this situation very well, and that this was reflected in all the reports from the contact centre. Prof. Sheehan said that it would be extraordinary if John did not miss his mother, but that any anxiety was capable of being managed. The impact on John of the visits with his mother depends upon when the change is made, the attitude of the parents, the predictability of the environment and it depends on the parent's capacity to engage with the other parent. Prof. Sheehan discussed the importance of there being no fraught exchanges at handover.

126. Turning to Prof. Sheehan's report from November 2023, he considered it appropriate to meet John on his own. Prof. Sheehan said he spoke with John for 25-30 minutes, and the conversation ranged over different things from football and school to what happens in the contact centre. John was able to give a very nuanced report of his relationships in Dublin, saying how he misses his mother, and saying he prefers being in the UK rather than Dublin.

127. Prof. Sheehan was asked why he had met with the principal of the UK school but did not carry out inquiries with John's former school in Ireland. He explained that having obtained parental permission, he made contact with the school in Ireland and asked to have a meeting with the schoolteacher, however he received no response. Prof. Sheehan said he rang again but it went to voicemail. Prof. Sheehan also noted that the UK principal expressed concerns about how far behind John was when he came to them.

128. Prof. Sheehan was clear that he did not see this case as a traditional parental alienation case: the child expressed positive feelings towards his father, that overall this was a

child who was caught in a significant conflict between his parents. He went onto say, in effect, that because it was a s. 47 report situation, he was looking at the best interests of the child. The child has a good positive relationship with both parents, but the mother's relationship with the father was exceptionally poor and she indicated she would not comply with court orders where the child's relationship with the father is facilitated in the father's home. He reiterated the supervised contact recommendation was not meant as a long term access proposal. In that regard, the next step would be unsupervised access, and access in Ireland with the mother and extended family; that there was nothing suggested from Mr. D. to suggest he would withhold the child should the court suggest that.

129. Prof. Sheehan disputed the contention that John would cease to be an "Irish boy", noting that the UK city has very strong Irish roots and Irish culture. He noted that one could get to the city as quickly as one could travel to Cork.

130. In terms of the impact of the move on John's relationships with his friends and family in Ireland this could be facilitated in the future by trips back to Ireland. It was put to Prof. Sheehan that he recommended, effectively, a permanent removal of John from his primary attachment figure and has set out no pathway for this to change. In response, Prof. Sheehan explained that at the moment John does not just have the removal of his primary carer to deal with, he also suffered trauma as a result of an attack on his new home. Prof. Sheehan said, from the supervised access report, that Ms. G. is handling access very well and she is responding to John in a good way but that he did not have the benefit of Ms. G.'s involvement in his review in November. He noted that since John has moved to father's sole custody, he has had an unbroken

relationship with his mother, and there has been no failure to comply with the court orders. John now has the benefit of a consistent relationship with both parents.

131. In relation to further reviews, Prof. Sheehan said that it was important to allow a rhythm to start, that we are still at a stage where the family home and his grandmother's home was attacked, and that some time was needed to allow matters to settle down. When it was put to Prof Sheehan that the attack was nothing to do with John and that the biggest thing for Ms. G. was her relationship with John, he responded to the effect that this position says something about the mother's limited view of her child's safety.

132. With regard to the question of whether John would be returned to his mother's custody, he responded that it depended a lot on a lot of things, like a change of attitude or disposition of the mother, or a breakdown with the current situation. He said that John is not an object to get back. Ms. G. would need to position herself in a much more positive way towards the child's father. His view was that matters were not at the stage where he was setting out steps or a pathway for John to go back to his mother.

133. In re-examination, Prof. Sheehan spoke of the destabilising effect ongoing reviews can have on John, and that it is unfair on children to be subjected to ongoing protracted litigations. Prof. Sheehan said, going by the views of the child, he would like to see a situation before final orders are made where there is unsupervised access and where there is stability around access in Ireland.

134. Overall, I was satisfied that Prof. Sheehan had ample expertise to carry out the work that he did. I found his evidence reliable and compelling, and his expert views were of great assistance to the court. His evidence and reports were presented in a clear, fair and balanced manner, and very focused on the question of John's welfare. In evidence

he made strenuous efforts to highlight what he saw as positive elements in Ms. G.'s approach to matters. I do not accept that he was in any way biased towards Ms. G.; instead, as was his professional obligation, he highlighted that Ms. G.'s conduct and attitudes around contact between John and his father raised serious welfare issues and that there was a real prospect that if matters were not addressed John was at risk of suffering from adverse long-term consequences.

135. Furthermore, I was satisfied that through Prof. Sheehan I was in a position to understand John's wishes having regard to his age and understanding. In that way, the voice of the child has been heard and considered in this appeal.

DISCUSSION

136. I will set out my conclusions by reference to the factors identified in section 31(2) of the Act of 1964: -

> *(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;*

In this regard, it is in John's best interests that he maintains a meaningful relationship with both parents. I consider that placing John in his father's sole custody achieves that objective. The history of the case combined with my concern about Ms. G.'s lack of insight into the potential effects of her actions strongly suggests that if John was returned to his mother's sole custody there is a real and appreciable risk that matters will return to their previous unhappy position. That eventuality will have an adverse impact on John's beneficial

relationship with his father. While John remains in the UK this will have an impact on his relationships with his Irish family. However, this would be true if he was moved from Dublin to another part of Ireland. That difficulty is ameliorated by the availability of regular in person and remote access. As noted by Prof. Sheehan, John's placement in the UK allows him to develop relationships with his English siblings, and this was identified as an important welfare consideration in the context of the problems between his parents.

(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);

John remains a very young child who has experienced considerable difficulties between his parents. Prof. Sheehan has been considering his welfare circumstances for most of his life. I am satisfied that Prof. Sheehan appropriately ascertained John's wishes in November 2023 and communicated them to the court. As matters stand, although John understandably misses his mother, he is happy and wishes to remain in the UK, where he doing extremely well.

(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

This seems to me to be a critical factor in this appeal. Prior to the move to the UK, John was improperly exposed to his mother's antipathy towards his father,

and was effectively deprived of proper access with his father for extensive periods of his young life. I accept Prof. Sheehan's evidence that Ms. G.'s approach to access and her views about Mr. D. had the real potential to cause harm to John in terms of his psychological development. I also accept his recommendations that the only reasonable response to the seemingly intractable difficulties presented by that issue was for John to be transferred to the sole custody of his father.

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;

As noted already, John's history of care and upbringing was largely positive and Ms. G. catered assiduously for most of his needs. However, her views on access were wrong and damaging. He faced a situation where potentially serious harm was caused to his relationship with his father, and by extension, his relationship with his siblings in the UK. While access to his Irish family is now not straightforward, those relationships have been and can be maintained by regular contact. The move to the UK, it seems to me, brings a more beneficial and healthy balance to maintaining his family relationships.

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

There was no debate in the appeal around John's religious or spiritual needs. Linguistically, his primary language is English and the move to the UK will not have an impact in that regard. Culturally, there will certainly be differences. However, those impacts can be ameliorated by Mr. D. ensuring that John maintains a cultural awareness of his Irish half. I recommend that this is a matter that should be addressed in any further reviews in the Circuit Court.

(f) the child's social, intellectual and educational upbringing and needs;

There was some discussion at the hearing about the extent to which John had advanced educationally in Ireland, and some suggestion that his UK school found him to be slightly behind where he ought to have been educationally. The uncontested view was that educationally he was developing very well in his new school, and developing very well socially through school and sport. I am satisfied that John's social, educational, intellectual needs and upbringing will be maintained in a positive way in the UK.

(g) the child's age and any special characteristics;

John will turn 7 years old later this year. Thankfully, with the exception of a query around his hearing which should be explored by Mr. D., he does not have any particular difficulties that require special interventions or assistance above what he is obtaining from his school.

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

There is no question in this case about John being exposed to violence or any deliberate harm. However, the court must take account of the expert views that Ms. G.'s approach to the access issues with his father placed John's welfare in some jeopardy. The placement in the UK has meant that he is no longer exposed to that risk of harm.

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

I am satisfied that an appropriate and developing regime of contact and access can be addressed in the Circuit Court. While Ms. G. is very unhappy with the overall situation it is notable and to her immense credit that she has participated properly and in a child centred manner in her access visits with John.

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other

parent, and to maintain and foster relationships between the child and his or her relatives;

I am satisfied that Mr. D. is fully willing to facilitate and encourage access and the relationship with his mother and her family for John. For the reasons already explained, I am not satisfied that in the medium to long term Ms. G. would facilitate and encourage John's relationship with his father.

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,

(ii) to communicate and co-operate on issues relating to the child, and

(iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates."

Here, the stark problem was that with the exception of the issues around access each parent has the general capacity to care for and meet John's needs. However, the caveat is a very significant one. As explained, the issues around access have persisted for almost the entire duration of John's life to date. John was entitled to proper access with his father, but Ms. G. obstructed that in a steadfast manner. Ms. G. had a responsibility to permit access under the terms of court orders made on the basis of expert evidence and in the best welfare interests of John,

but these were simply ignored. Ms. G. has not sought out professional assistance to help her surmount her issues with access – which carried a risk of harm to John. In the premises, I am satisfied that Mr. D. is the parent best placed to care for and meet John's overall needs, and that he is best placed to carry out those responsibilities.

137. In all the circumstances, and for the reasons explained herein, I am satisfied that the orders made by the Circuit Family Court should be affirmed. I will direct that any further applications in relation to the case should be made in the Circuit Family Court. I would like to hear from the parties on whether further redactions are required in the judgment pending a final approved form being published. I would also ask the parties to consider the final form of orders to be made, and to address the question of setting dates for a further report from Prof. Sheehan and an appropriate date for review in the Circuit Family Court. My strong view is that there is a need for a further such report, perhaps towards the end of John's school term before his summer vacation. I consider that pending any report and review the current access arrangements should be continued in place.

138. My preliminary view, given that this judgment will be delivered electronically, is that there should be no order as to costs, but I will hear from the parties in that regard. This appeal will be listed for final orders before me on Tuesday the 4 June 2024 at 10.30 am.