



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 26

P1119/24

OPINION OF LADY CARMICHAEL

in Petition of

SMA

Petitioner

for

orders under the Child Abduction and Custody Act 1985

**Petitioner: Reekie, (sol adv); Brodies LLP**  
**Respondent: Allison; Drummond Miller LLP**

11 March 2025

**Introduction**

[1] The petitioner seeks an order for the return to France of his son, whom I will call Adam. Adam was born in 2023 and is nearly 2 years old.

[2] The petitioner father and the respondent mother lived together with Adam in France until October 2024. Adam was habitually resident in France, and the father was exercising his rights of custody in relation to Adam, when the mother wrongfully retained Adam in Scotland in October 2024. She brought him to Scotland for a holiday with the permission of the father, but did not return to France with him.

[3] The mother's case is that there is a grave risk that Adam's return to France would expose him to physical and/or psychological harm: Article 13(b) of the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Convention"). She says that he is at direct and indirect risk of such harm in the context of a history of domestic abuse by the father perpetrated against her, and that she has remained in Scotland with Adam because she perceives that doing so was the only way to avoid the father's controlling and abusive behaviour.

[4] The father came to Scotland when he learned that the mother did not plan to return to France. He searched for the mother and found her. He was charged with two contraventions of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, with a domestic aggravation, and placed on special conditions of bail, prohibiting him from approaching or contacting the mother. On 10 February 2025 he pleaded guilty to one offence committed on 9 October 2024, and not guilty to another allegedly committed the following day. The Crown accepted those pleas. The sheriff admonished him and imposed a non-harassment order with a duration of 3 years.

[5] The father largely denies the allegations of abuse. He says that the parties had a "volatile" relationship, and argued frequently. He admits telling the mother that "her presence was not wanted", but says that he did so in the heat of the moment. He claims that the mother is obsessive, sensitive and jealous.

[6] The parties had another child together, Anna, who was born in late 2021. Very sadly, Anna died in early February 2022. About 3 months after Anna died, the mother tried to take her own life.

[7] Although there are disputes between the parents as to the level of the father's involvement in caring for Adam, there is no dispute that the mother is, and always has been, his primary carer.

### **The law**

[8] There was no dispute as to the applicable law. The burden of making out a case under Article 13(b) that the court should not order the return of the child falls on the respondent. That article is not to be narrowly construed, and its plain terms need no elaboration or gloss: *In re E (Children)* [2012] 1 AC 144, paragraph 31. Although the standard of proof is the balance of probabilities, in evaluating the evidence the court must be mindful of the limitations involved in the summary nature of the Hague Convention process: *In re E*, paragraph 32. The risk to the child must be grave. Although "grave" characterises the risk rather than the harm, there is link between the two, so that a relatively low risk of death or really serious injury might properly be qualified as "grave", while a higher level of risk might be required for other less serious forms of harm.

[9] Among the things that it is not reasonable to expect a child to tolerate can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of a parent. A mother's subjective perception of events could lead to mental illness which could have intolerable consequences for the child: *In re E*, paragraph 34. The question is not whether the parent's anxieties are reasonable, but what will happen if the child is returned with her: *AD v SD* 2023 SLT 438, paragraph 28.

[10] The court must carry out a two stage assessment. The first question is whether, if disputed allegations are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. The court

must then ask how the child can be protected against the risk: *In re E*, paragraph 36, *AD*, paragraph 26.

[11] Unless there is no *prima facie* case made out at all, it is necessary to evaluate the available material and analyse the nature and severity of the risk to the child. The allegations are assumed to be truthful for the purpose of that exercise. A high risk of severe harm will need to be balanced by more effective protection than a lower risk of either that or less severe harm: *AD*, paragraph 27.

[12] Although there may be distinct strands in the case made by a taking parent which need to be analysed separately, the court must not overlook the need to consider the cumulative effect of the taking parent's allegations for the purpose of evaluating the nature and level of any grave risk or risks that might be established, as well as the protective measures available to address the risks: *In re B (Children)* [2022] 3 WLR 1315, paragraph 70, referred to with approval in *S (A Child) (Abduction: Article 13(b): Mental Health)* [2023] EWCA Civ 208, at paragraph 95.

## **Evidence**

### ***The mother***

#### *The mother's affidavits*

[13] The mother is British, and is currently living in Scotland with her parents. Her evidence is that the father has been verbally and physically abusive and violent towards her. She has provided three affidavits. They include accounts of physical, psychological and sexual abuse. I do not narrate here every allegation that she has made. The father disputes all of her allegations to a greater or lesser extent. He submits that some of the

evidence she has given is a snapshot of more protracted exchanges between them, and that their arguments could last for hours, or even days.

[14] The mother gives an account of incidents of non-consensual sexual activity. That includes an account of the circumstances in which Anna came to be conceived.

[15] Her accounts of physical and verbal abuse include the following.

- (a) On 9 April 2021 the father threw the mother's laptop against a wall. She was looking at apartments with a view to moving out. Her phone received a notification, and he threw it against the wall. In doing so he destroyed photographs that the mother had taken of her late grandmother, who had died a few months before the incident. The mother became upset, and he said, "You are crying over that." He threw the telephone against the wall again. He punched a hole in the wall and threw the mother to the floor. She was pregnant with Anna at the time, but neither party was aware of that.
- (b) On 12 August 2021 the father came home in the early hours after drinking with friends. He asked for oral sex, and the mother refused. As a result he did not speak to her for 3 days. She left him. He then bombarded her with messages and calls, and sent her photographs of her belongings on fire. He told her never to come back. There are text messages that support this account, referred to more fully below. She says that the following day the father drove to Paris to find her, and phoned her to tell her that he was going to drive into a wall if she did not go back with him.
- (c) On 4 September 2021, when the parties were travelling to attend a party, an argument took place. The father was driving. He shouted at the mother in the car, and drove recklessly by braking and accelerating harshly, and driving on

the wrong side of the road. He did so to scare the mother. When they arrived at their hotel, he told her she was crazy, and that he was going to take the baby (Anna, with whom the mother was pregnant at the time) away from the mother when she was born.

- (d) On 16 February 2022, which was the day of Anna's funeral, the father told the mother that he wished to invite to the funeral a woman who had been the subject of arguments between them. The mother refused. The father screamed at her and threw her on the bed.
- (e) On 26 February 2022, after an argument, the mother left the apartment and ignored texts and calls from the father. The father sent her a message saying that he would smash the urn containing Anna's ashes if she did not return. The mother has produced a text in those terms, dated 26 February 2022.
- (f) In September 2022 the father became angry because the mother would not participate in a barbecue with friends in the evening. He shouted at her, pulled her off the bed by her feet and dragged her into the living room. She ran out of the building, but he pursued her and grabbed her by the arm. She refused to go back with him. When she returned home later, he told her he was going to kill her one day. She was pregnant with Adam at the time. She returned to Scotland in October 2022.
- (g) On 19 April 2023 there was an argument about Adam's bottle. The mother was holding Adam. The father told her to put Adam down. She initially refused to do so, but then did so because she was afraid that the father would hurt Adam. The father assaulted her by dragging her into the living room, and putting her against the wall by her neck, with her feet not touching the ground. He let her

fall to the floor. The following morning, when she was holding Adam, he struck her on the head, and grabbed her left hand and bent her fingers back. She phoned the father's sister to ask for help. The sister came over, but the father did not let her in. The sister then said that it was not the right time to discuss matters because it was her mother's birthday. When the father returned from work he did not let the mother feed Adam, and told her that Adam did not need her, and would forget about her in a week. Earlier that day she had phoned a helpline and been told that she could go to the police and obtain a document that would allow her to leave with Adam. The police arrested the father. The outcome was not the one that the mother had wanted, as what she had been looking for was a document that would allow her to leave. When the police interviewed her she did not reveal the extent of the arguments between herself and the father, because she was scared of what his reaction would be when he came home. One of the officers pressed charges against the father for verbal abuse in relation to a struggle while he was being arrested. The father had a hearing to appeal in relation to this matter on 3 September 2024, but missed the hearing. He said it was the mother's fault he had missed the hearing, and instructed her to write an email saying that the police had used excessive force against him.

- (h) On 21 November 2023 the father became angry when the mother refused to have sex with him out of doors in a wooded area while Adam was asleep in the car.
- (i) In June 2024 the mother suggested to the father that they see a judge about what would be best for Adam, as they could not agree. He told her that he would break every bone in her body before he would let her leave with Adam, even

if she were awarded full custody. The mother had Adam in her lap. The father pulled her hair. He told her he would kill her in front of Adam if he had to, then would kill Adam, and then himself.

[16] The mother left the father and came to Scotland in October 2022, while pregnant with Adam. She says that she agreed to return to France on condition that she and the father would not continue in a relationship, but would co-parent Adam. She believed, and continues to believe, that a child will benefit from having both parents in his life. The parties, however, resumed their relationship when she return to France.

[17] The mother is concerned that on moving to France, she would lose the protection that has been afforded to her by the conditions of bail imposed on the father, and, more recently, the non-harassment order. She would be devastated if she were forced to return. She is afraid that the father will harm her or Adam, "or worse". She does not think she will be able to cope if returned to France, where she will be alone and without support. She believes that she will not be safe even if the courts impose protective measures.

#### *The father's plea of guilty*

[18] The conduct libelled was, on 9 October 2024, uttering a threat of violence towards her by text message. The father's averments narrate that the text message included a threat to kill. There is no dispute that his plea included sending a message of that sort. Notwithstanding that, his counsel submitted that he did not accept that he had sent a text message on 9 October 2024 which included a threat to kill. Counsel referred to 6/51 of process, which I was told was a Crown production. It contains a series of screenshots of text messages. It is clear that a number of the messages are from October 2024, as they refer to abduction, and the father writes that he will not go home without his son. Most



of the sheets have a file name in the format "Screenshot 1 (2, 3 etc)". On the final page of the production, the file name is "Screenshot -2.12.22". It contains two messages from the father, with the same timestamp, which read together say, "I will kill you one day [name of mother] Really". This was the only message in the Crown production which was a threat to kill. Counsel said she was instructed that the file name indicated that the message was sent in December 2022, not October 2024. I have found identical messages in a sequence in the mother's third inventory of productions in an undated sequence that appears to date from late 2022.

[19] I do not consider that the submission serves to rebut the presumption that the father engaged in the conduct to which he pleaded guilty: Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, section 10.

[20] In any event, the submission that he sent a message threatening to kill the mother in December 2022 does not assist his case in these proceedings. It supports the mother's position that he habitually engaged in conduct of that sort, and made threats to kill at a time remote from any immediate anger or distress associated with her retention of Adam in Scotland in October 2024.

[21] The father's affidavit contains a denial of ever having threatened to kill the mother, which is inconsistent both with his plea and the submission made in these proceedings.

#### *The mother's interactions with professionals*

[22] Yaëlle Garner-Magnan is a clinical psychologist who worked at the hospital which treated Anna after she became ill. She provided support to the mother during Anna's time in hospital and after she died. During consultations the mother disclosed that she suffered "psychological domestic violence" in her relationship. She did not at that time feel ready

to leave the family home, because she was afraid of her partner, and of the repercussions of leaving: 7/26 of process and translation in the final pages of 7/18 of process. The mother left the relationship for a time and came to Scotland. A colleague of Mme Garner-Magnan, Mme Bintner, saw the mother for an appointment at a later date: email from Mme Garner-Magnan dated 28 January 2025.

[23] While the mother was in Scotland in 2022, she saw Dr Joan Burns, a consultant clinical psychologist working in the National Health Service. She met the mother when the mother attended the hospital for a maternity and neonatal psychological intervention initial assessment appointment on 17 November 2022. During that meeting the mother gave accounts of the father's abusive behaviour which are consistent with the allegations that she has made in these proceedings. Those include the allegation that he threatened to smash the container holding Anna's ashes. She told Dr Burns that she was living with her parents in Scotland and that her partner did not know where she was. He never hit her, but would push her and throw her, and get angry when she did not want to have sexual relations. The mother cancelled her next appointment with Dr Burns. Dr Burns has provided a letter dated 27 December 2024, and an affidavit.

[24] The evidence from Mme Garner-Magnan and Dr Burns supports the mother's account in that it demonstrates that she has given on earlier occasions accounts of domestic abuse which are in some respects consistent with her allegations in these proceedings. Their accounts also indicate that the mother attempted to leave the relationship on an earlier occasion, when pregnant with Adam, but returned to it.

*Audio recordings*

[25] The mother produced a number of audio recordings which fall into three categories. Recordings 7/1, 7/3, 7/5 and 7/16 are recordings made during car journeys in November 2023 and May 2024. Two recordings lodged as 7/7 are of telephone conversations on 9 October 2024. It is not entirely clear when all of recordings 7/30-31 were made. According to the mother's second supplementary affidavit, one of them was made on 2 October 2024. These recordings have been produced because the conversations include reference to earlier incidents of domestic abuse to which the mother has referred in her evidence. All of the speech in the recordings is in French.

[26] The recordings from November 2023 and May 2024 contain extremely angry and aggressive speech by the father, directed at the mother. He shouts repeatedly. Both his tone and his language are abusive. He refers to the mother as a "fucking pain in the ass", and as a "piece of shit". He likens her to a virus and accuses her of being disrespectful. He says that the only thing he wants to do is to die. During some of the recordings the mother asks the father to stop shouting. She points out that Adam is in the car, and that he is going to cry because he is scared. In response to her saying that Adam is scared, he repeatedly shouts: "Shut the fuck up!" The conduct recorded in these recordings would be likely to constitute a statutory criminal offence if it took place in Scotland, under the Criminal Justice and Licensing (Scotland) Act 2010 or the Domestic Abuse (Scotland) Act 2018. It is objectively likely to cause fear, alarm and distress. Transcripts in English were produced: 7/21, 7/22.

[27] The recordings from 9 October 2024 (the translations at 7/21 are wrongly dated 9 October 2023) are of telephone conversations that took place after the father learned that

the mother did not intend to return to France with Adam. The dialogue includes the following:

“Father: Adam, will never see his mother again, he will never see you again. Never again. I’m going to sell everything, move to Australia and he’ll never see his mum again. That’s what’s going to happen.

Mother: If a judge decides that we have to see him ...

Father: I don’t give a fuck about the judge. The judge has limits and boundaries. You’ll never set eyes on me again. I’m going to disappear.

[...]

Father: There you go, I have no choice. What I’m going to do is file a complaint for theft and I’m going to come and if there’s anyone standing in front of me, I’m going to beat them to death.

Mother: It’ll be the police.

Father: I’ll beat them to death, OK, is that what you want? Do you think the police will solve anything? If they don’t kill me on the spot, I’ll kill myself on the spot. I’m going to come and kill myself on the spot.

Mother: But that’s only going to affect Adam.

Father: You’re ruining his future anyway. In any case, you’re fucking up his future.

Mother: No I’m not. I’m trying to protect him.

Father: So if he doesn’t have a father, his father will die in front of him because his father wants his son.”

[28] The father’s threats during the calls on 9 October 2024 to kill both himself and others are concerning in their own right. They include a threat to kill himself in front of Adam.

They also support some of the allegations that the mother makes about the father’s conduct on earlier occasions. They are consistent with her account that on one occasion he threatened to drive into a wall if she did not return to him, in that they contain threats of self-harm. The references to the police and the judiciary are concerning in that they may indicate a risk that the father does not intend to respect the proper functions of either of those authorities. That

risk must, however, be viewed in a context in which the father appears to have cooperated with Police Scotland following his arrest, and to have adhered to his conditions of bail in the summary criminal proceedings.

[29] Recording 7/30 is of a conversation about the incident in September 2021 in which the mother says the father drove recklessly. He does not demur from her allegation that he braked and accelerated, but queries whether she was in danger as a result. He says that she was scared because she was not in control. In recordings 7/31 and 7/32, he himself raises the subject of an incident involving his pulling her hair, by saying:

“Now, the third thing I want to talk to you about is what you talked to me about before, and then you just left like that. The thing that you keep harping on about every time. ‘You pulled my hair, you did that’.”

He suggests that her reaction to that incident was a result of her pride, and accuses her of provoking him and being aggressive. He appears to criticise the way she is breathing, and challenges her not to behave in that way for a week.

[30] The father submits that the recordings were of parts only of longer conversations or arguments. In relation to recordings 7/30-7/32 he says that he chose not to challenge the mother’s accounts of abuse so as not to aggravate the situation, but was not accepting her accounts of them. That is difficult to reconcile with the content of the conversation recorded about the incident in which he is said to have pulled her hair. I regard the recordings as supportive of the mother’s evidence.

#### *Text messages*

[31] The narration here of some of the text messages between the mother and the father is necessarily selective. I note that there are some messages in which the father denies some of the mother’s allegations. Those include messages in the father’s own inventory, collated

as a Crown production. Most of the text messages were produced in the mother's third inventory, and I have used the pdf page numbering in that inventory to identify them in some instances. A number of them date from October 2022, which is when the mother left the father to come to Scotland when she was pregnant with Adam. If not otherwise specified, they are from the father to the mother.

- (a) Production 7/11 is a photograph of items on fire which appears to be part of a text message from the father to her, dated 16 August 2021. It shows a number of books on fire. The same photo appears in a sequence of texts lodged with translations. Texts from the father say, "Stay where you are now, never come back. I've burnt everything there's nothing left of yours here." In that sequence the photograph of books on fire is followed immediately by a picture of a number of items of clothing on fire: pdf pages 33-38.
- (b) "If you don't answer me I'm going to blow up Anna's urn": 26 February 2022, pdf pages 49-50.
- (c) "... When I dragged you across the floor to take you back to the party you didn't see a passionate and desperate gesture. I wanted it to work so much that I was willing to do anything. Move forward or die. Both of us or nothing. But you just saw a senseless act of violence": 6 October 2022, pdf pages 61-62. This is capable of being read as a reference to the incident at the barbecue in September 2022.
- (d) In an exchange of messages from 7 October 2022, pdf pages 67-73 the father appears to accept that he told the mother that he was going to smash her face in, while suggesting that she should not have believed him when said that. In the same exchange he accepts having dragged her along the floor. He says that he did so because she treated him like a criminal, and that when someone is treated

like a criminal they will become a criminal. He blames her for the behaviour he is admitting.

(e) "You've chosen the worst path for your life. The path of destruction. You've come up against a lot of problems in life. I'll be there to see how you get out of them. If the smallest thing goes wrong I'll leave you and take the child. I don't give a damn if I have to put you in a nuthouse to do it. I'll spend all my energy and money to do it." (9 October 2022, pdf pages 75-76).

(f) An exchange, which appears to date from 9 October 2022:

"Mother: [...] To be capable of saying that you're going to kill me whilst knowing that I am carrying your child is very serious.

Father: You've seen what a man in love can do. You're going to discover what a broken man who has nothing to lose can do.

Keep on being stupid and confusing despair with hatred.

You'll quickly understand the difference and find out what real violence is.

When you're in hospital and you don't know where your child is. You might understand the violence you've inflicted on me."

(g) The threat to kill the mother at pdf pages 91-92, referred in para 18 above.

(h) "I will always be violent with you. Every word you say is like a knife in my stomach." (2 December 2022, pdf pages 95-96).

(i) In an undated sequence of text messages at pdf pages 99-102, the father blames the mother for making him angry, and suggests that it is not normal "to be capable of angering someone so much". He says that he has never been angry with anyone else in the way that he is with her. He says that she has opened "doors to a new level of violence in [him]", because he was "frustrated".

(j) In an exchange on 11 July 2024 (pdf pages 103-110), the father writes:

“[Adam will] have to cope with my mental and physical scars, because that’s the harsh law of life. At least he’ll be able to decide and give himself the means to change if he wants to. To improve his life and his life for his children.”

The mother responds:

“I mentioned a judge because this situation is unbearable and we can’t manage to find a solution. I want what’s best for Adam and that means not having his 2 parents under the same roof.”

In the same exchange the father writes that the mother starts “the violence”, that she wants, triggers and seeks it, and that she provokes him.

(k) There is a message dated Thursday 5 September, which follows a photograph.

The message reads: “I want the e-mails to be prepared before I’m back”. The photograph is of handwriting (apparently written by two different people) on a piece of paper. At the top is an email address “corr.tj-[name]@justice.fr”. At the bottom is “Réf 3 Sept 2024 [arrow] Chambre 7.2” and an 11-digit reference number. The significance of this message is that it tends to support the mother’s allegation that the father required her to write in support of his appeal arising from the circumstances of his arrest in April 2023. He asked her to write after he had missed a hearing on 3 September 2024: supplementary affidavit of the mother, paragraph 4.

*Reports from Dr Eldad Farhy*

[32] Dr Farhy is a consultant counselling and psychotherapeutic psychologist, who provided two reports, numbers 7/28 and 7/34 of process. On psychological testing, the mother’s clinical profile included elevated scores for low mood, intrusive negative thinking,



suspiciousness and paranoia, and social isolation. Such elevations had been reported in the literature for female victims of intimate partner violence. At the time of examination she was exhibiting a degree of depression, but not at the level required for a major depressive episode.

[33] The mother's symptoms of paranoia, distress and isolation appeared to derive from her subjective experience of her relationship with her partner. If the proceedings were to resolve in a manner that the mother found satisfactory, it was likely that her symptoms would resolve.

[34] There would almost certainly be a deterioration in the mother's mental state if she were required to return to France, or to have unsupervised dealings with the father. In the absence of evidence that she had neglected or abandoned Adam, it was difficult to know whether she would be able to "overcome her inner feelings" and ensure that Adam was unaffected by them. She presented with a high degree of repression - that is of repressing feelings of depression.

[35] Dr Farhy noted that the mother's distress (arising from the death of her daughter, not from domestic abuse) had in the past resulted in a suicide attempt. He noted also a finding of significantly elevated levels of overcontrolled hostility. That would present as silently, and apparently passively, accumulating feelings of hostility and discontent, which could then be released in an explosive and uncontrolled manner when "the provocation becomes great enough". The finding was not predictive of violence, but suggested that if the mother were placed in a situation in which she felt she was being continuously abused, she might eventually act in a sudden, uncontrolled and aggressive way. I read this part of Dr Farhy's report as indicating that there is an unquantifiable but real risk that if the mother

is placed in a situation which she found intolerable, her distress will lead to a sudden and uncontrolled act, which may include an attempt to take her own life.

[36] Previous deteriorations in the mother's mental health had been commensurate with the stressors she experienced. If returned to France she could show signs of reactive depression. The extent of the deterioration would be proportionate to the risks to which she was exposed and any abuse she might experience.

*Other affidavit evidence - mother*

[37] The mother produced affidavits from a friend for whose family she used to work as an au pair. The witness describes the mother's giving him accounts in 2021 of violence perpetrated by the father. He facilitated her staying at his sister's apartment in Paris when the mother left the father for a period in 2021. He was with her when the father sent images of burning items in 2021. The witness encouraged the mother not to return to the father.

[38] The mother has also produced affidavits from her father ("EV"), sister and brother. They all give accounts of learning from the mother of some of the incidents that she described in her own evidence. EV went to France at the time of the father's arrest in 2023. He describes the father showing him what he had done to the mother by grabbing his shoulders as he sat on the bed. EV's account is of the father's providing a justification for having done so, and saying that he had not done it to hurt the petitioner.

*The father*

*The father's affidavits*

[39] The father denies many of the mother's allegations of domestic abuse. In relation to some he provides explanations for his conduct. He describes arguments some of which

he says occurred because he found electronic messages between the mother and other men. It is in this context that he admits throwing her mobile phone, but not her laptop, against a wall. He admits throwing some of her notes and books on a fire in 2021 because he was offended that she had “given up on the prospect of family life”.

[40] Amongst the matters that the father denies are allegations which are vouched by text messages attributed to him. He denies, for example, in paragraph 3 of his first supplementary affidavit, threatening to have the mother committed to a psychiatric hospital, and saying that he would spend all his energy and money on doing so.

#### *Protective measures*

[41] A range of protective measures is available in France. The mother did not dispute the information provided by the father about those measures. The father produced a report from Mme Niamh Ni Ghairbhia, avocat (6/43). According to Mme Ni Ghairbhia, the mother would be eligible for legal aid, as she is habitually and regularly resident in France and her recent stay in Scotland would not be regarded as having altered that. An application for provisional legal aid would be made at the hearing and would be granted at the bar on an application for a protection order, and a full grant of legal aid would follow if the protection order were granted. The mother would be eligible for legal aid as she was not working and had no income. Protection orders could include prohibitions on contact between the parties.

[42] It would not be possible to obtain a protection order before the mother’s return to France. The victim seeking protection must reside in France in order to engage the jurisdiction of the French court. Applications for such orders were prioritised, and must be dealt with within 6 days.

[43] It would be possible for an application to be prepared in advance of the mother's return so that it could be presented on her return, with a provisional order being made, potentially, within 24 hours of the application. That would leave the mother unprotected for at least 24 hours on her returning to France.

[44] There was a Fresh Start package available for victims of abuse which provided counselling or therapy for victims of abuse. The package included a living allowance, and a fast-track system for childcare and emergency accommodation. I was provided with no information as to how long it would take for someone in the mother's position to be given accommodation and money under this scheme. It would also be open to her to apply for the right to reside in the former family home.

[45] The father also produced a certified and signed statement from his own French legal adviser, Mme Coralie Gaffinel, which is consistent with the advice from Mme Ni Ghairbia regarding protective measures available from the court. She provides some additional information about victim support organisations.

*Other affidavit evidence - father*

[46] The father produced affidavits from SZC and TL. They are both friends of the father. They both speak in positive terms of the father, of their perception that he has been a supportive partner to the mother, and of the mother's appearing to withdraw from social activities after Anna's death.

[47] TL's affidavit provides some support for the mother's accounts of the arrest in April 2023. In relation to the incident in April 2023, TL heard the father shouting at the mother the day before the arrest. He seemed to be annoyed with her. During the arrest, the mother alleged that the father had hit her. She also said, "I don't want that", during the arrest,

which is consistent with her own account that she had not wanted the father to be arrested, but had been looking for assistance to leave him.

### *Undertakings*

[48] During the second hearing counsel for the father said that he would be willing to undertake that the mother be allowed to occupy that address without him on return. He would be willing to grant an undertaking to behave in France subject to the restrictions placed on his conduct by the non-harassment order. He had complied with conditions of bail. Later in her submission counsel said that if the mother did not wish to live in the apartment she formerly shared with the father, he would be willing to pay for alternative accommodation for her.

### **Decision**

[49] The mother has made a strong *prima facie* case that she has been the victim of physical, verbal and sexual abuse. Her allegations alone, assuming them to be true, constitute a *prima facie* case. I regard it as a strong *prima facie* case because of the extent to which it is supported by other evidence, particularly the recordings and text messages, and accounts given to professionals well before the mother retained the child in Scotland in 2024. I have given relatively little weight to the affidavits from the family members or friends of the parties.

[50] Assuming the mother's allegations to be true, there is potential for harm to Adam in a number of different ways. If he is present when the father physically or verbally abuses the mother he is at risk of psychological harm. Some of the audio recordings indicate that he has been present while the father has engaged in very aggressive and

apparently uncontrolled verbal abuse towards the mother. The mother's case is that she has been holding Adam on occasions when the father has assaulted her. That gives rise both to a risk of psychological harm to Adam, and of physical harm to him as a result of an assault directed at the mother. Taking the allegations at their highest, the father has threatened to kill the mother, and Adam, and to kill himself in front of Adam. Threats to kill himself and the mother are supported by text messages and audio recordings. A threat to kill Adam, if acted upon, would obviously constitute physical harm of the most serious kind. Threats to kill the mother, or of suicide, if acted upon, would give rise to a risk of serious psychological harm to Adam.

[51] The mother's subjective view is that she will not be safe in France, even if protective measures are provided, and fears that she will not be able to cope. She fears violence "or worse" from the father. Her present clinical profile is consistent with having been a victim of intimate partner violence, although she does not currently have a diagnosis of a psychiatric disorder. Her symptoms are likely to resolve if the present proceedings resolve in a manner that does not require her to return to France with Adam. Her mental state will almost certainly deteriorate if she is required to return to France. She has attempted suicide in the past, although not because of domestic violence. The mother has elevated levels of "overcontrolled hostility", with a risk that she might act in a sudden, uncontrolled, and aggressive way. As I have already narrated, there is a risk that if she is placed in a situation that she finds intolerable she may attempt to take her own life. If that were to happen, Adam would be placed in an intolerable situation.

[52] Looking at all of these matters, I am satisfied that they indicate risks of a very serious nature to Adam's physical and psychological well-being. As to the level of risk, the mother's case is of a history of persistent abuse over a substantial period. There is material,

particularly in the text messages, that indicates that the father blames the mother for his anger and aggression towards her, and regards at least one physical assault on her (by dragging her physically) as justified. The mother's case is that she has returned to the relationship after having tried to leave it on occasions in the past. I note that she disavows any intention to resume her relationship with the father, but also that she appears to have been vulnerable in the past to persuasion and, on her own account, to psychological coercion, to do so. There is no doubt that the father followed her to Scotland in October 2024, or that he pleaded guilty to an offence based on his conduct at that time. If the parties were to be in physical proximity to each other, I would regard the risk of harm to Adam as high.

[53] It was common ground at the second hearing that the mother has not engaged in economic activity since Adam was born. She does not have an address in France other than that which she shared with the father before October 2022. On arrival in France the mother would have no accommodation of her own available to her. She would have no income immediately available to her.

[54] The risk of deterioration in the mother's mental state on return to France is high. Dr Farhy says that a deterioration is almost certain. It is difficult to assess the level of risk of a very serious deterioration, and in particular the risk of suicide or attempted suicide by her. That is, however, a risk of very serious harm so far as Adam is concerned. The risk is higher if the mother is actually subjected to physical or psychological abuse. There will still be a risk if the mother finds herself in a situation that she subjectively perceives is not tolerable.

[55] On the assumption that the parties remain apart, and the mother is protected from direct physical contact and communication from the father, then the risk would appear to be lower. The courts of France offer protective measures which are at least comparable to those

available in this jurisdiction, as one would expect. There would, however, be a period when no protective measures would be in place on the mother's return to France. That period might be as short as 24 hours, if an application were made as soon as she returned to France, but it would be a period without any formal protection. It is uncertain whether her application would be granted.

[56] On the assumption that an application for protective measures were granted, there is then a question as to whether the father would comply with it. It is difficult to predict whether he would. He has complied with bail conditions and with the non-harassment order imposed on 10 February 2025. On the other hand, he has been in France, and the mother in Scotland, for most of the time during which those measures have been in place. Some of the messages he has sent in the past indicate a lack of respect for the authority of the courts, and of the police. He appears to have engaged in a struggle with the police when he was arrested in France in 2023, although he does allege that they used excessive force against him, and I cannot resolve that dispute. The content of his messages to the mother indicate that he lacks insight into his own responsibility. He blames her for his anger and violent behaviour. In one of his messages he said that he would always be violent towards her. These factors cause me to lack confidence in his compliance with orders that might be made in the future.

[57] So far as the mother's subjective fears and the risk of deterioration in her psychological condition are concerned, I am not satisfied that any of the measures available in principle in France would be likely to mitigate either her fears or that risk.

[58] I have placed no reliance on the undertakings proposed for the father during the second hearing. There is no information to suggest that any undertaking offered in these proceedings is enforceable in France. The undertakings were notably lacking in detail and



offered only in oral submission towards the end of the second hearing. In the Minute of Proceedings for the first hearing, I recorded that it was important that parties provide early notice of their positions in relation to protective measures, including their positions in relation to undertakings and the enforceability of any such undertakings in France.

[59] My assessment is that the protective measures available in France are not sufficient to protect Adam from risk of physical and psychological harm, or of being put in an intolerable situation, given the particular combination of risk factors that arises in this case. In summary, there are no formal protective measures available to the mother immediately on return to France. She will, at point of return, have no accommodation or income available to her. There are objective reasons to doubt that the father will comply with any protective measures that the courts might come to impose. The mother's mental state is almost certain to deteriorate on return to France, and the harm to her, and therefore to Adam, from a serious deterioration in her mental health is of the most grave nature. There is nothing in the protective measures available in France that obviously mitigates that risk.

[60] I am therefore satisfied that there is a grave risk that return to France would expose Adam to risk of physical or psychological injury or place him in an intolerable situation. Having reached that conclusion, I exercise my discretion to refuse to order that he be returned to France. My conclusions as to the nature of the harms to which he would be exposed are incompatible with an order for his return.