

**THE HIGH COURT**

**Record No: [2016/3HLC]**

**IN THE MATTER OF THE CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT, 1991**

**AND**

**IN THE MATTER OF THE HAGUE CONVENTION ON THE CIVIL ASPECT OF INTERNATIONAL CHILD ABDUCTION**

**AND**

**IN THE MATTER OF COUNCIL REGULATION (EC) NUMBER 2201/2003 OF 27 NOVEMBER 2003**

**AND**

**IN THE MATTER OF E.R. (A MINOR)**

**BETWEEN:**

**B.F.**

**APPLICANT**

**AND**

**E.R.**

**RESPONDENT**

**JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 17th day of June, 2016.**

1. This case concerns an application for the return of a child, E.R., born on 10th December, 2001, to the jurisdiction of the England and Wales pursuant to Article 12 of the Hague Convention on the Civil Aspects of Child Abduction 1980. The application is set out in the special summons issued 1st February, 2016.
2. The applicant mother and respondent father married each other in 1994. There were three children of the marriage. They were granted a decree of judicial separation by order of the Circuit Court dated 17th May, 2012. Subsequently, the parties were granted a decree of divorce by order of the Circuit Court dated 13th November, 2014 on consent granting the parties joint custody of the dependent children of the marriage, including E., the subject matter of these proceedings and noting that the day to day care of the children would be by the mother and they would reside in England.
3. The child was born in this jurisdiction. Since in or about 15th August, 2014 the child resided with the applicant mother in Bristol, England with the consent of the respondent father. On 22nd December, 2015, the child left Bristol to visit the respondent father in Ireland for Christmas. It is the applicant's case that the child was due to return to England on 30th December, 2015, he did not do so. It is accepted by the applicant that she argued with the child at this time. The child continues to reside with his father in Ireland and is attending secondary school.
4. It is the applicant's case that this constituted a "wrongful retention" within the meaning of Article 3 of the Hague Convention:-

"The removal or the retention of a child is to be considered wrongful where:

(a) it is in breach of rights of custody attributed to a person, an institution or any body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention."
5. The respondent has raised defences in relation to the child's objections, the "grave risk" defence and also alleges that there was a consent for the child to remain living in Ireland with the respondent.
6. This Court ordered on 17th February, 2016 that Ms. Ruth More O'Ferrall interview the child and supply the Court with a report for the purposes of ensuring that the said child is given the opportunity to express his views pursuant to Article 11(2) of Regulation (EC) 2201/2003. Ms. More O'Ferrall supplied the Court with a report dated 29th February, 2016.
7. The respondent father filed an affidavit dated 23rd February, 2016. He confirmed that there was an agreement that the dependent children would live with the applicant mother in England from August 2014. The eldest child was no longer dependent and chose to remain living in Ireland. It is alleged that the applicant mother was abusive towards the second child and she chose to return to Ireland in April 2015. Upon her return, she first lived with the respondent father and then she moved into independent accommodation with her older sister. The respondent stated that the applicant did not object to the second child returning to Ireland.
8. While living with his mother in England the child, E., the subject matter of these hearings regularly visited his father for access in Ireland. The respondent alleges that E. became increasingly unhappy with his living arrangement with his mother. Disagreements between E. and the applicant escalated to the point where the applicant mother told E. that he could stay in Ireland by text message which was exhibited in the respondent's affidavit. The respondent's position is that he is of the belief that the applicant consented to E. remaining in Ireland beyond 30th December, 2015.

9. The respondent stated on affidavit that he sought to regularise matters pertaining to the residence of E. in this jurisdiction and sought to re enter proceedings in the Irish Circuit Court. The respondent is of the view that the Irish courts are best placed to determine all future matters in relation to the child E.

10. The respondent alleged in his affidavit that the applicant suffers from psychological difficulties, that she sometimes refuses to communicate with the children, that she takes the children's money and possessions and that she is verbally and physically abusive towards the child E.

11. The applicant mother filed an affidavit dated 9th March, 2016. She stated that E. was habitually resident in England at the time of the alleged wrongful retention. She denies that she gave any consent for E. to stay in Ireland beyond 30th December, 2015. She stated that upon learning that E. was not returning she commenced the within proceedings extremely swiftly. She denies all the allegations set out in the respondent's affidavit and outlined in the above paragraph. She alleges that E. has been coerced and manipulated into agreeing to stay in Ireland. She stated that she has a very good relationship with her son and that she cannot understand why he is making the allegations that he made to the assessor. She further stated in her affidavit dated 26th April, 2016 that she would engage fully with child protection services in England if required to do so.

#### **Legal Submissions of the Applicant**

12. Written legal submissions were filed on behalf of the applicant dated 14th May, 2016. Counsel for the applicant submitted that Article 12 of the Hague Convention provides that where a child has been wrongfully retained the court shall order the return of the child. It was noted that the mandatory nature of the article means that once there has been a wrongful retention within the terms of the Convention the relevant authority is required to make an order for return. It was submitted that the applicant has established that E. was habitually resident in the jurisdiction of England and Wales on 30th December, 2015, that, at that date, the applicant has rights of custody, that she was exercising those rights and that the retention of E. in Ireland beyond 30th December, 2015 without her consent was in breach of those rights of custody.

13. The case of *S.R. v. M.M.R* [2006] IESC 7 was cited by counsel for the applicant in so far as it held that the person asserting that there was a consent for a removal or retention has the onus of proving it and that it must be established that the consent was real, positive and unequivocal. It was submitted that this has not been established and that any comments made to E. in text messages were not intended as a consent to him changing his place of habitual residence to Ireland.

14. Counsel for the applicant addressed the issue of the "child's objections" defence and he cited the case of *C.M.H. v. J.P.D.* [2014] IEHC 261 in which three stages are set out for consideration when this defence is raised:

- (1) Whether or not the objections to return are made out
- (2) Whether the age and maturity of the child are such that it is appropriate for the court to take account of those objections
- (3) Whether or not the Court should exercise its discretion in favour of retention or return.

It was accepted on the evidence of the assessor's report that E. has raised objections to return and that, given his age and maturity, the Court should take account of those objections. However, it was submitted that there are compelling reasons for the Court not to exercise its discretion under Article 13 of the Convention to refuse to make an order for return. These reasons include the fact that there was an agreement between the parties which had been sanctioned by the Irish Circuit Court that E. would live in England from August 2014. It was further submitted that while the child's views should be taken into account, they are not determinative.

15. Submissions for the applicant also addressed the issue of the "grave risk" defence which counsel for the applicant asserted must be established by the respondent and the threshold is that there has to be "clear and compelling evidence" as referred to by Finlay Geoghegan J. in *C.A. v. C.A.* [2010] 2 I.R. 162. The "grave risk" defence is established under Article 13(b) of the Convention:-

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that-

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

It was further submitted that the respondent must also establish that the court in the country of habitual residence "may be incapable or unwilling to give the child adequate protection" (per Fennelly J. in *P.L. v. E.C. (Child Abduction)* [2009] 1 I.R. 1) as there is a presumption under the Convention that all contracting states take sufficient steps to safeguard children in their own jurisdictions. It was submitted that there is no evidence that the child care authorities in England would not be in a position to take whatever steps would be appropriate to address any issues raised in the assessor's report. It was further emphasised by counsel for the applicant that she is willing to engage with child protection services in England.

16. Article 11(4) of the Council Regulation (EC) 2201/2003 was further cited and provides as follows:-

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

It was submitted that this effectively removes the discretion which a court may have under the "grave risk" defence where adequate arrangements are in place to secure the protection of the child upon his return to his country of habitual residence. It was further submitted that the applicant in this case has contacted the relevant authorities in England who have indicated a willingness to get involved as appropriate which amounts to "adequate arrangements".

17. Supplemental legal submissions were filed on behalf of the applicant dated 2nd June, 2016 in relation to the application of Article 8 of the European Convention on Human Rights which provides for a right to respect for family life. It was submitted, in referring to the decision of the Grand Chamber of the European Court of Human Rights in the case of *X. v. Latvia* (ECHR App. 27853/09, 26th November, 2013), that in order to ensure that Article 8 rights are respected, a Court dealing with a Hague Convention case is not required to carry out a more detailed examination of the circumstances of the child in question than it would usually do under the Hague Convention. It was further submitted that the ECHR does not require any further level of investigation than would already be carried out by the court in applying the principles of the Hague Convention.

### **Legal Submissions of the Respondent**

18. Written legal submissions were filed on behalf of the respondent dated 23rd May, 2016. Counsel for the respondent submitted that the applicant consented to the child remaining in Ireland by her conduct and the comments made to the child via text message. It was further submitted that the child relied upon her comments and believed that she was consenting to him residing in Ireland. Counsel for the respondent submitted that the applicant, at least, acquiesced to the child residing in Ireland and cited Denham J. (as she then was) in *R.K. v. J.K.* [2000] 2 I.R. 416 who outlined that acquiescence is acceptance and that it is case specific.

19. The respondent has raised the defence of "grave risk" under Article 13(b) of the Hague Convention. It was accepted by counsel for the respondent that the test for successfully invoking the defence is extremely high. It was submitted that, as referred to in the assessor's report, the child has been physically assaulted and has been psychologically and emotionally abused by her. Comments made to the child by text message are further pointed to as evidence of this abuse. It was further submitted that the applicant's assertions that she will engage with social services in England may not be relied upon.

20. Counsel for the respondent further submitted that Article 12(2) of the Hague Convention provides that the Court has a discretion to refuse to return the child if it is demonstrated that he is well settled in his new environment. Counsel for the respondent cited several cases including that of *L. v. C.* [2008] IESC 19 in which Fennelly J. held that the concept of "settlement" must be assessed according to all the circumstances of the case and that there is both a physical and emotional element to the concept. It was submitted that the child is well settled in Ireland with his father, that he is attending school and that he has regular contact with his two sisters. It was further submitted that to remove the child to reside in England would cause him significant distress and he would lose out on the family connections which are most important to him.

21. The issue of the child's objection was also addressed by counsel for the respondent. It was submitted that Article 13 of the Hague Convention provides the Court with a discretionary power to refuse the return of the child on the basis of the child's objections. It was submitted that the views expressed by the child were clear and formed independently. The child does not wish to return to live with his mother, he wishes to continue to reside in Ireland with his father. Counsel for the respondent urged the Court to exercise its discretion and refuse the reliefs sought by the applicant herein.

22. It was further submitted on behalf of the respondent that there should be a transfer of proceedings relating to this child to the jurisdiction of the Irish Courts. It was submitted that Article 15 of Council Regulation (EC) 2201/2003 provides for the transfer to a court better placed to hear the case in exceptional cases. It was accepted that the child E. was habitually resident in the jurisdiction of England and Wales in December 2015, however, it was submitted that Ireland is now the appropriate jurisdiction for proceedings in relation to the child to be lodged.

23. Counsel for the respondent filed supplemental submissions in relation to the issue of Article 8 of the ECHR dated 3rd June, 2016. It was emphasised by counsel for the respondent that the courts in every case under the Hague Convention must consider what is in the best interests of the child. It was submitted that the Hague Convention was designed with the best interests, not only of children generally, but also of the individual child concerned as a primary consideration and this is in line with the requirements of Article 8 as set out in *B. v. C.* [2015] IEHC 548.

### **View of the child**

24. Ms. More O'Ferrall gave evidence of her interview with E., the 14 year old boy at the centre of this child abduction case. She found that he was appropriately apprehensive and appropriately mature but not precociously so. He separated easily from his father and showed appropriate social skills with appropriate eye contact and his intention was as one would expect.

25. His views were based on his own experience and were congruent with his lived experiences. Ms. More O'Ferrall indicated to the Court that E. was very aware of his sister's view. His view was his own and he had validated the view of his sister. His own view she deemed to be based on his experience. He said both he and they had a similar view and both had lived the experience. Paragraph 30 of the report refers to good things he found regarding England and the picture was not entirely negative and she pointed out that very few experiences are entirely negative. Regarding his complaint that he was asked to do an inordinate amount of chores around his mother's house, she described this as a pretty normal complaint from a teenager but that he described it as a little more than that and that he felt that it amounted to more than a couple of chores. He described to the assessor what always happens two days before he is due to come back from Ireland to England after a holiday and he described there always being a row. He said that the contact with his mother had upset him greatly and he did not feel that he loved her and felt very hurt by messages he had received from her and by the way life was when he was living with her. Ms. More O'Ferrall referred at para. 46 of her report to real fear in this young man and she felt that there was the feeling that matters could get an awful lot worse and that his response was if he were returned to England that he would have to get on with it. This is a 14 year old boy who's quite frightened and terribly sad regarding his circumstances. Ms. More O'Ferrall felt that he was able to communicate his feelings and desires.

26. She described him as having travelled to Ireland on holiday for three weeks in the summer of 2015 and there was no evidence at that point of him not wishing to return and that at Christmas 2014 he had also returned to England at that time. This young man described that after his sister R. returned to Ireland to live with her father from her mother's house in England, matters became impossible for him. Ms. More O'Ferrall described him as becoming empowered to object as he was older.

27. Regarding the effect of a return order on him Ms. More O'Ferrall felt that he believes he has grounds to be afraid that he was a 14 year old in a different country. Regarding his mother's text referring to him in very rough language when she described in an abusive manner, the young man felt very sad and was crying because of this and he is a child described by Ms. More O'Ferrall as feeling terribly hurt and wounded and frightened. She described him as having a terror and he was concerned at his own physical and emotional wellbeing and that were he to be returned there would have to be further investigation of his needs and that there would have to be a fuller assessment where he to be returned to England. She also felt that there would have to be a preliminary investigation before he would be sent back and that his affect was congruent with his story and she believed that there was certain veracity to what he was saying.

28. Regarding child allegations Ms. More O'Ferrall felt that they could not be disregarded. She wondered would the mother write to E. and felt that the air needed to be cleared. She described the child as blocked and the old fashioned idea for card or letter might help and that pretty harsh things had been said. E. also believes that his mother won't spend the money coming to see him but she felt that the row between them needs to be patched up. CAFCAS, she described as not being a child protection service and that the police in England would be unlikely act unless there was a criminal complaint made. Regarding the emails which are exhibited in the affidavit Ms. More O'Ferrall felt that if these matters were said with emotionally abusive of this young man and she found on the surface, although she had not spoken to his mother that these were concerning events. She found the text messages which were sent by the mother concerning in their nature and that they would have been terribly distressing to receive. She felt that the young man had not responded and did not do anything to deserve them and she described this as emotionally abusive of him.

29. In addition, Ms. More O'Ferrall gave evidence that this young man described being repeatedly hit by his mother with her hand on his head and she felt that there was shame in him concerning this physical chastisement of him and shame and embarrassment. Ms. More O'Ferrall pointed out that his affect was congruent with his story that there was no sense of him trying to gain or be gleeful and no sense of melodrama in him. She noted that this young man liked his mother's partner and described as intervening to protect him and that he had said on one occasion to his mother when she was being abusive towards him, "Don't be doing that to your child". Ms. More O'Ferrall felt that his description of this event added credibility to his story. She described this young man as believing that he had to get away from his mother because of her outbursts and that he had developed a coping mechanism but matters had emotionally impacted on him and that his resilience presented in itself a danger of interpretation to the point where she would say "one could not say that he wasn't harmed by this experience just because he had developed coping strategies but that he wasn't emotionally coping". He described himself as going to his friend's house if his mother became more aggressive.

30. His fear was that his mother would go crazy and that the level of aggression towards him would reach a new level. He was seeking a refuge. Ms. More O'Ferrall felt that his wishes were very clear. She felt that there was maturity and strength in his objections.

31. This Court was so concerned by the report of Ms. More O'Ferrall and felt that because the situation sounded so highly unusual the Court was minded to interview E.R. herself. This young man described his next birthday as falling on 10th December, 2016 when he will be 15 years of age. He described his dilemma being that his mother was not very nice and that she never really talked to him and he further described that his sister had gone back to Ireland between six and eight months ago.

32. He described his life in Ireland, that he was 9 years of age when his parents split up and that he moved to B. with his mum and his sisters, and that they had three moves within County L. Subsequently, in 2014, his mother and two sisters moved to be in England, where he had two subsequent moves in rented accommodation.

33. E.R. described to the Court how there was a pattern of his mother arguing to him two days before he would be due to go back to England to live with her after holiday visits home to see his father in Ireland. He described these rows as his mother telling him that she didn't want him to go back to be in England to live with her. He describes this as happening when he was around 13 years of age and that at the time he was very shocked and really upset and angry. He described his ambition in life to become an architect.

34. He described himself as explaining to his sisters what his mother was saying and that they were also very angry because the same thing had happened to them. He described his father as becoming angry about this but that his father calmed everyone down and that on previous occasions he chose to go back. On this occasion, two days before he was due to go back, it was worse this time and he described his mother as threatening him. He described her text messages, one of which indicated, in abusive terms, that she didn't want her son home and her complaints that he had broken her iPad/tablet when it fell off his bike and that his mother didn't find out until he went home to Ireland for Christmas a month later. He described himself as knowing that it was an accident but he didn't tell her for a month. He described his mother's reaction when he told her as being very angry and shouting at him and that he stayed in his room. He described threats to hit him and that she told him that he might as well stay in Ireland. He described his mother leaving him to the airport to come back for Christmas and that he said, "She just said goodbye". He described Facebook messages then, beginning two days before he was due to go back and his own upset and anger and how he deleted some of these messages.

35. He described his life in Ireland, that the whole family were there, his father, his sisters, and that he had now made new friends in school and has a girlfriend in second year, secondary school. He said it was very hard the first week in school but now it is ok, he has got used to the time table. He says that he wants to stay in Ireland, that his mother doesn't treat him like a son but that his dad does treat him like a son. When asked was it possible to patch up the row, he described it as having gone too deep and described his mother as having anger problems, he thought, and he felt that for them to repair this row his mother would have to get counselling and that a good apology would help.

## Conclusions

36. During the hearing of this case, this Court was in a position to closely observe the demeanour of both parents who were present in court and of the minor during the interview with him. This Court is of the view that for a number of reasons, the minor himself refused to return to the United Kingdom on or about the 30th December, 2015, after an access period with his father in Ireland. The Court has not formed the view that the father wilfully retained this minor although he did have him placed in secondary school when it was clear that his son was not willing to return to England.

37. Technically, therefore, it does within the ambit of a wrongful retention case within a meaning Article 3 of the Hague Convention. It seems to this Court on the evidence on affidavit and on the various assessments of this minor and the Court's own interview with him that the minor himself who will be 15 years of age in December, 2016, refused to return to his mother in England. This Court did not form the view that the father had in any way manipulated his son to bring about the above situation. In fact, on the child's own evidence, his father was a calming influence on both E. and his sisters at the crucial point when E. explained his reasons for not wishing to return to his mother in England.

38. His mother, through counsel, has indicated that she will give whatever undertakings the Court requires. The child, in his interview with the Court, has indicated that matters have gone too deep and that a good apology from her would be a start in terms of his perception as to how his mother has ill treated him in recent times. It is quite clear from the affidavit evidence that the parties were all habitually resident in Ireland until the mother decided to move to England with the children in 2014 and the parties had agreed that this should be the case.

39. It is quite clear that prior to E's determination not to return to England in December, 2015, that E. was habitually resident with his mother in England. An important and unusual feature of this case is however the fact that up until he was nine years of age he lived with his parents in the west of Ireland and thereafter from then until 2014 he lived with his mother and sisters in the west of Ireland where they had three house moves. By agreement of the parties herein the mother was allowed leave this country and travel to England where she had two different addresses in rented property since that time. The children moved with her initially and the two daughters have now returned of their own volition to this jurisdiction. England became E.'s habitual residence for the purposes of the Hague Convention in 2014.

40. There does not seem to be any dispute between the parties as to the fact that there has been a breach of rights of custody for the purposes of Article 3 of the Convention even though there were no orders in being in England concerning custody and access, but there had been court orders reflecting a written agreement between the parties regulating these matters, in the Irish courts.

41. Article 12 of the Convention provides in clear mandatory terms that where a child has been wrongfully removed or retained in

breach of custody rights and less than one year has elapsed from the date of such breach, the judicial authority in the State where the child is shall order the return of the child forthwith. In spite of the clear mandatory nature of Article 12, Article 13 allows for certain exceptions which permit the judicial authority a measure of discretion as to whether such an order for return of the child can be refused. The question for this Court is whether this case comes within the exceptions provided for by Article 13 and whether the court's discretion should be exercised by refusing the order to return the child. Article 13 sets out as follows:-

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

42. Regarding 13(a), this Court finds that the mother, the applicant herein, was actually exercising custody rights at the time of the wrongful retention. It seems to this Court that the boy's evidence given to the assessor and to the Court directly is extremely concerning were he to be returned to his mother's care. It seems to this Court that there is no actual proof to the Court, on the evidence heard and affidavits, of actual psychological harm for the specific range that comes within the range of a minimum amount of harm or an extreme amount of harm. This case has to be decided upon an analysis of the particular types of harm which seem probable on the evidence available to the Court. At para. 54 of the assessor's report statements have been noted from Facebook dated 28th December, 2015 which are before the court and not denied by the applicant that she sent to her son the minor herein. These statements are in abusive terms. The allegation is made that the applicant sent a further message to her daughter R. via Facebook also on 28th December, 2016, also noted in the assessor's report.

43. As a minimum, these messages are very, very mixed ones from the applicant they are also threatening and concerning. On the evidence considered by this Court is also the material given in the interview between the Court and this minor where he feels he has a non-relationship at this stage or no relationship with the applicant. He has asserted himself and has become mature enough to assert himself to state his very definite wish that he does not wish to return to the jurisdiction of England and Wales to live with his mother. A referral to social services child protection department local to his mother's home is recommended as a minimum if the court is to return him. The allegations would have to be investigated fully by child protection and a protection plan or family support plan be implemented as necessary, as is set out at para. 55 of the report of the assessor. It is quite implicit from para. 56 of the report that it would not be physically and or emotionally safe to return this minor in present circumstances and the alternative is a statutory social work department in Mayo being requested to assess the allegations and to facilitate initial access meetings no matter which way one looks at this case it is a most unusual set of circumstances.

44. This Court notes the judgment of Finlay Geoghegan J. in *C.A. v. C.A (otherwise C. McC.)* [2010] 2 IR 162 at p. 174 when she also referred to the comments of Baroness Hale of Richmond in *Re. M. (Abduction: rights of custody)* [2007] UKHL 55 [2008] 1 AC 1288 at p. 1307. Consideration was given in this context to the child's objection to being returned but they also do seem to have relevance in relation to consideration of what might amount to an intolerable situation. This Court has also noted the decision of Denham J. (as she then was) in *T.M.M. v. M.D. (Child Abduction: Article 13)* 1 IR 149 where she stated at pp. 163 – 162 of her judgment:

"This aspect of Article 13 is a separate ground. The child's views alone are sufficient basis to refuse to return her. I agree with the approach in *S. v. S. (Child Abduction) (Child's Views)* [1992] 2 F.L.R. at 492, where it was determined that the part of art. 13 which relates to the child's objection to being returned is completely separate from para. (b) which referred to the grave risk of physical or psychological harm and that there is no reason to interpret that part of the article as importing a requirement to satisfy para. (b) or to interpret the word "object" to mean something stronger than its literal meaning."

She then goes on to say:-

"However, this is an area where the exercise of the discretion of the judge must be done with great care...

Whilst it is a separate ground, a decision not to return a child to the country of its habitual residence is a decision of the court and care should be taken that it is not, nor does it appear to be, the decision of the child."

45. The minor E. presented to the assessor as appropriately mature for his age and stage of development the assessor noted that when given opportunities to exaggerate negatively about his mother or life in England he did not take these opportunities. He told the assessor that his sisters are of the view that he should remain in Ireland and he believes that this is "*because they have been through it and they know what they have been through*". He said that his father also believes he should stay in Ireland. This young minor described how his eldest sister had to move with in with a foster family years earlier and he did not know exactly why but he said it was because of some "*big ordeal*" and he stated that his mother did not want him to have contact with her. He described being "*slaved around*". The section dealing with the circumstances in which E. has remained in Ireland since the 22nd December, 2015 describe at para. 36 of the assessor's report a pattern of behaviour the minor says that:

"Two days before I come home she starts threatening me on facebook to hit me when I come home, to sell all my stuff and to ground me for ages. I asked my dad if I could stay and he said 'no bother you are welcome whenever' so I stayed etc."

He later goes on to describe his mother:

*"My mum is kinda crazy"*

*"She has random mood swings – just kinda goes mad for no reason"*

He described her as:

*"A bit bipolar"*

*"That's when you are feeling really good and really bad"*

46. This minor alleged that his mother started to hit his dad and hit him *"not regularly though"*. He also indicated to the assessor that the applicant continued to hit him, the minor, intermittently since and regularly screams abusively at him. He described her as hitting him with her hands and slapping him repeatedly. His coping mechanism is described in that he goes upstairs to his room or goes out when his mother is what he describes as outbursts because he knows he has to get away from her. Currently this young man as appears both from the report and this Court's interview with him does not have any contact with his mother and indicates that he has *"blocked her"* on his phone. Of extreme concern to this Court is the section set out at para. 46 of the assessor's report dealing with *"if those wishes do not include England whether he has any objection to return to live in England"* the minor states that he does not want to go back to England because his mam is *"mad"* and *"crazy"*. He says he is afraid she will *"go crazy, crazy"* explaining this as meaning more aggressive towards him than she has been to date and that if this happens he would have to stay with friends who are aware of his situation he does however say that if he sent against his wishes to England he would have to get on with it. He expresses the belief at para. 51 that his mother wouldn't access time with him in Ireland because *"she lives money and she wouldn't want to spend money"*.

47. This case is, in the opinion of this Court, quite similar to the case *G. v. R.* [2012] IEHC 16 and this Court has had the benefit of reading the judgment of Peart J. delivered on the 12th January, 2012. In the view of this Court, this minor has made out his objections to return. He is of a sufficient age and degree of maturity that it is appropriate for the Court to take his objections into account. He describes a non-relationship with his mother and this Court finds that he has attained an age and level of maturity at which it is appropriate to take account of his views. It is quite clear to this Court that he has not been in any inappropriate way influenced in terms of his view. His view is based on what appears to this Court to be a strong mixture of rejection, threat and abusiveness shown by his mother towards him.

48. This Court then has to conduct a balancing exercise whereby the aims and objectives of the convention are considered, as are the nature and extent of the objections being made. It is the sincere view of this Court in conducting this balancing exercise in considering the objections expressed by E. and on his behalf that same should prevail over the aims and objectives of the Convention, namely a swift return of a child to the place of his habitual residence so that all matters concerning his welfare and custody can be determined there. This Court does view this case as a highly exceptional one.

49. This Court has considered the issue of Article 11(4) of Council regulation (EC) 2201/2003 concerning the possibility of undertakings but in a situation such as this, this court does not believe that undertakings specific undertakings even if they were forthcoming would be effective in managing the situation of a return of this minor to the jurisdiction of England and Wales pending a review by the courts there because there is what the child describes as a non-relationship or no relationship between himself and the mother and given his age and degree of maturity it is hard to envisage with the threats as he perceived them of what might happen him on his return in terms of facing his mother's anger, how social services could monitor or protect such a situation, save to place him outside the family setting. This minor is in a situation where most of his immediate family members are living in this jurisdiction and where he was habitually resident in Ireland until his mother and the children moved in 2014 to live in England.

50. The fact that this young man has formed a strong view did not happen over night and it was not the result in the opinion of this Court of an isolated incident of no significance. What has occurred is that he has reacted in a final way against what he sees as ill treatment of himself he appears both polite and mature.

51. It is not a decision of his own that he is not returning to the United Kingdom it is the decision of this Court having carefully measured his view and the views of the assessor which have informed this Court's opinion as well as the legal submissions and evidence in the case that it is open to this Court to refuse the order to return this minor where this minor objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the minor's views. This is a free standing defence and it is on this basis that this Court refuses the return order.