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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 10/12/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

SA

Applicant

and

MA

Respondent

IN THE MATTER OF LEO, JENNIFER AND NATHAN:  
(INTERNATIONAL RELOCATION)

Ms Deborah Harvey (instructed by Francis Hanna Solicitors) for the applicant  
Mr Michael Bready (instructed by MTB Solicitor) for the respondent  
Ms Melanie Rice (instructed by the Official Solicitor) on behalf of the children

KEEGAN J

Nothing must be published which would identify the children or their family. The names I have given to the children are not their real names.

**Introduction**

[1] This case relates to three children. The eldest child is a boy who I will call Leo in these proceedings and who is now aged 10½. The middle child is a girl who I will call Jennifer and who is aged 6. The youngest child is a boy who I will call Nathan who is aged 3. The parents were married but are now separated and divorced. The mother was born in Northern Ireland, the father in New Zealand but as will be apparent the parties have moved around between the two jurisdictions. The children have joint British and New Zealand nationality. The eldest child was born in Northern Ireland, the two youngest children were born in New Zealand.

[2] There are two applications before the court namely a C1 from the father of 7 May 2019 seeking contact and a C1 of 23 May 2019 brought by the mother seeking relocation to New Zealand.

[3] The case proceeded by way of a socially distanced hearing over 2 days on 19 and 23 November 2020. The mother and father both gave oral evidence and by agreement the Official Solicitor made submissions and was not required to give evidence. The social worker also attended during the hearing and her report was admitted by consent without the need for formal proof. Ms Deborah Harvey appeared on behalf of the mother, Mr Michael Bready appeared on behalf of the father and Ms Melanie Rice appeared on behalf of the Official Solicitor. I am grateful to counsel for their efficient and respectful conduct of this case and for the very helpful legal submissions that were filed.

## **Background**

[4] The parents met in 2009 in Northern Ireland when the father was visiting from England and the mother lived here. They met on a night out and started a relationship. This lasted for a number of months after which the father had to return to New Zealand as his visa had expired. At the time when the parties met the father was living in England where he was playing professional cricket. In and around the end of September 2009 the father returned to New Zealand and at that stage he had asked the mother to come and live with him there. The mother did not initially go to New Zealand as in the summer of 2009 she suffered the death of her brother and so it was a difficult time for her. However, about ten days after the father left the mother discovered that she was pregnant and so ultimately she did go to New Zealand in November 2009. The location in 2009 where the parties lived was Wellington in New Zealand.

[5] Thereafter, the parties moved between New Zealand and Northern Ireland during 2010 and 2011. This was largely to facilitate the father's cricket career. There were periods of substantial enough time living between the two countries largely between October and March in New Zealand and then between April and September in Northern Ireland. At this time the mother had a home in Northern Ireland and that facilitated the living arrangements. In September 2011 the family returned to New Zealand but at this time it was to a different location in Auckland. Again, the family moved around and there was a return to Ireland over the summer of 2012 where the respondent was playing cricket. The parties returned to New Zealand at the end of the cricket season in 2012 and lived again in Auckland. In 2013 the mother found out that her mother had been diagnosed with cancer and she wanted to return to Northern Ireland so she did this with the youngest child. The father remained in New Zealand but the mother returned to New Zealand fairly shortly thereafter in February 2014 and the second child was born there.

[6] The parties got married in Auckland in February 2015. During all of this time when living in New Zealand the parties lived in rented accommodation. It is also

clear that in 2015 there was some discussion about coming to live in Northern Ireland. There is a dispute between the parties about what the exact intention was. The mother makes the case that it was to come for a year or two. The father makes the case that it was to be a permanent move and money was saved to facilitate that. In June 2016 the mother discovered that she was pregnant with the youngest child.

[7] The parties arrived in Northern Ireland in August 2017. They initially lived with the mother's parents but this was clearly a stressful environment and so they obtained rented accommodation. Fairly shortly after the move to Northern Ireland the marriage ended and the father left the family in January 2018. Again, there is a dispute between the parties as to exactly why this was but in any event it is clear that the marriage was over by this stage. Reliance has been placed on a text message which was sent to a friend of the mother's in which the father said:

"This has been over since she lied to me about Nathan ... I have now brought her home. Yes definitely no coming back from here ... I don't get why she keeps asking me if it is over, I have been telling her for so long."

[8] Thereafter, there is an unsettled period for the family for a number of months. The father petitioned for divorce on the ground of unreasonable behaviour in July 2018. This was ultimately not defended by the mother given her situation at the time. In any event in the summer of 2018 the mother decided to return to New Zealand with the children. This resulted in Hague Convention proceedings in New Zealand which were issued in November 2018. The application was heard on 1 February 2019. This judgment was given on 26 February 2019 which ordered a return of the children to Northern Ireland. The mother and children returned to Northern Ireland in April of 2019. Since then the parties have not been on amicable terms however, the father has obtained employment in Northern Ireland which is stable and he has obtained rented accommodation in south Belfast.

[9] The mother has not obtained employment in Northern Ireland but is attending Belfast Met in the hope of reskilling. She is in receipt of Universal Credit and Child Maintenance and currently lives with her parents. Contact arrangements have also been problematic and the children currently avail of one overnight contact a week with their father however he is seeking further contact. During the Covid-19 pandemic the mother moved from her parents' house due to their vulnerabilities and lived in a caravan in in Co. Antrim. That also proved to be problematic in terms of contact arrangements.

[10] This background shows that the parties have clearly moved between the jurisdiction of Northern Ireland and New Zealand. There are no matrimonial assets to speak of. Both parties have a small amount of savings but there is no matrimonial home or other assets to be divided. The mother has her parents in Northern Ireland. She maintained that she does not have any other strong support network and that

her brother is currently in the process of emigrating to Australia. The father has his parents in New Zealand who are separated. His mother lives 2 hours from Auckland, his father lives in Auckland. The father maintains that since coming to Northern Ireland he has set up home and has established a network of friends and that he has no intention of returning to New Zealand. He said that he has not been in New Zealand since 2017. Meanwhile the mother says that she has a very supportive network of friends in New Zealand and wishes to return to that place in which she has spent a considerable part of her life.

[11] In light of the fact that the relocation application is the substantive application that was effectively heard first given that any contact issues will depend on what I decide in relation to that application. The case has been presented on the basis of the oral and written evidence.

### **Legal Principles**

[12] I have set out the legal principles in cases of this nature in the case of WA v KA [2019] NI Fam 2. In that case I refer to the law in this area and in common with that case there has been no real dispute about the legal principles at issue. This area of law has been examined in the Court of Appeal in our jurisdiction in a judgment of the Lord Chief Justice in the case of SH v RD [2013] NICA 44. In that case the Court of Appeal considered the leading decision in England and Wales on relocation of Payne v Payne [2001] Fam 473.

[13] I have dealt with these issues in the WA v KA case at paragraph [37] where I quote from the Lord Chief Justice who explains the position in our jurisdiction at paragraph [35] of SH v RD as follows:

“[35] Although Payne has been said to be binding on the Court of Appeal in England Wales it is not, of course, binding in this jurisdiction. It has, however, been the practice in this jurisdiction to treat decisions of the Court of Appeal in England and Wales as strongly persuasive authority particularly where they involve interpretation of the same or a similar provision (see Beaufort Development v Gilbert Ash [1997] NI 142). There is no dispute about the fact that the welfare of the child is paramount in both applications before the court and that the welfare checklist applies directly in relation to the shared residence application and as a matter of good practice in relation to the relocation application.

[36] We consider that Moore-Bick LJ was correct in MK v CK to draw a distinction between the ratio of Payne which was that the welfare principle applied and the subsequent guidance. We recognise the advantages of

consistency and the disincentive to litigation that such guidance can provide but as the review of the case law above demonstrates, the guidance can often itself give rise to separate disputes and may distract the judge from the statutory test as a result of a mechanistic application of the guidance.”

[14] I refer to paragraph [38] of WA v KA where I state as follows:

“It follows from the above that the welfare of the children at issue is the paramount consideration. In a case such as this the court is enjoined to look at the welfare checklist which assists in reaching a welfare determination. However, the court must look at the particular facts of the case in reaching a holistic overall view. It must also be borne in mind that cases such as this engage the Convention and the rights of various parties including the children.”

[15] I also reflected in that case as I have in others that relocation cases such as this one present an extremely difficult exercise for any Family judge. That is because there is a binary decision: either the application succeeds or it does not. There is no in between and one adult will ultimately lose out. I do not underestimate the heartbreak that these cases cause. So whilst the legal principles are now relatively clear and welfare is the true and authentic principle at the heart of such applications the determination is often not straightforward or simple given family dynamics. In this case I have had to consider the welfare of three different children in the midst of an acrimonious separation and divorce between their parents who want to live at other ends of the world. The irony in this case is that the mother who wants to relocate is Northern Irish by birth but considers New Zealand her home. She also makes the case that she would have a better life there in terms of job prospects, financial security and general standard of life. The father who is New Zealand by birth and who has Maori heritage maintains that he does not want to return to New Zealand and has decided that his life should be in Northern Ireland. This is opposite from the usual scenario where people want to return to the country of their birth.

### **The Evidence**

[16] I received some written evidence from the Official Solicitor who was appointed to represent the interests of the children. I also received a report from the Social Worker which was admitted by consent. I will start with these two sources of evidence as they highlight a number of important factors in relation to the three children in this case. Ms Carson, the solicitor to the Official Solicitor, filed two reports in this case. The first is dated 26 March 2020 and the second is dated 3 August 2020. As part of her work Ms Carson interviewed the children at her offices. The report of this is contained in the first report as follows. All of the children

arrived with their mother prior to the arranged appointment time in March 2020 when the first interview took place. A striking characteristic of the report is that the eldest child immediately said that “he wished to go back to New Zealand as soon as possible.” The Official Solicitor has commented that these wishes and feelings appear to her to be genuine and not unduly influenced. In the interview with the middle girl even though she was fairly young and in primary 3 also said that she likes New Zealand because “the weather is better there, it is sunny.” She did not speak very positively of her father saying “my dad is mean to me.”

[17] The interview with the eldest child is most significant. The Official Solicitor notes that he was extremely engaging; a very charming boy who exuded a mature quiet confidence. He was able to relate to her on a level which went well beyond his years. He talked positively in relation to his mother not so much in relation to his father in particular that his father forced him to go to sport and he also appeared to be resentful for the fact that his father brought the family back due to the Hague Convention proceedings. He said “he brought us back even though I consider it (New Zealand) home. Jennifer and Nathan I don’t think care about it but for me it is really serious.” He said in relation to his father “no he doesn’t chat about it and I don’t chat about it with him. It just makes me so sad. The only reason he left New Zealand was for the cricket.” He said “I have always been happy about going to Northern Ireland to meet my family but until I am 18.” He said unequivocally “I don’t want to live here. I want to live in New Zealand.” He also appeared not to care so much if his father remained in Northern Ireland and said “I would probably forget about him.”

[18] At this stage the Official Solicitor was not clear about the father’s intentions in terms of staying in Northern Ireland should he be unsuccessful in securing a place on the Irish Cricket Team and what his contingency plan was and so she thought there should be further exploration of this and further exploration of the feelings of the child Leo in relation to his relationship with his father.

[19] The second Official Solicitor’s report took place after a further video interview with the eldest child on 27 April 2020 when he was staying in the family caravan in Northern Ireland. The interview with Leo indicated that contact with his dad was “getting better.” He said he felt closer to his dad and that he enjoyed his time with him. So he was positive about the contact. His wishes and feelings regarding relocation remained unchanged. Following interview the Official Solicitor recommended that contact should progress immediately to include overnights from Saturday through to Sunday which she understood was taking place. The Official Solicitor also noted that the cricket season had restarted so she reminded the parents that contact should be child focused and suitable arrangements should be made to accommodate same. As part of these proceedings the Official Solicitor did not give a firm recommendation one way or the other in relation to relocation but she stressed the problems explored by Leo in his interviews with her.

[20] I also received an Article 4 report from the responsible social worker, Emma Robinson. This is an extremely impressive and detailed report. In relation to Leo the Social Worker also noted that he wanted to live in New Zealand. To the Social Worker he said "it was only supposed to be 2 years" and when the Social Worker asked how he knew that he said his dad had said to his mum and he overheard. In this report Leo is expressed as saying "I feel my life is wasted in this dump." To the Social Worker Leo said he felt he did not fit in in Northern Ireland because of his accent being different, and for example he keeps saying dollars instead of pounds. Leo talked about his family fighting and "I don't even have a house." He said he did not like his father's house as it is old, the bed is uncomfortable, there are cracks and there is no proper TV. He said "he is a good person but I never thought he would do this to me, he ruined my life."

[21] At page 17 of her report the Social Worker makes the comment that it is possible that Leo is internalising adult issues/concerns and is manifesting these in his own presentation. She also refers to an incident which was reported to the PSNI relating to the father which involved alleged physical abuse towards Leo. This was also raised with the Gateway Team in the summer of 2018. It was an incident reported by the mother and it was in relation to the father allegedly being rough with the child during homework. Ultimately, whilst contact stopped for a short period the mother accepted that this was inappropriate but did not amount to physical abuse and contact was restarted and there was no further intervention by either the police or Social Services.

[22] In this first report, particularly in the analysis section, Ms Robinson very clearly sets out the position that she has reached which is not in favour of relocation. When I asked Ms Robinson at court about her current position she said that that remained the case. Her analysis is as follows:

"The current social work assessment has highlighted that both parents love Leo, Jennifer and Nathan very much. Equally observations of the children with each parent separately demonstrated a warm bond between the children and both of their parents. The family have experienced numerous moves in the breakdown of the parents' marital relationship, which currently remains a strained relationship between separated parents. This has unfortunately led to the children being directly affected in respect of contact with their father and having to be involved in court proceedings. There have been no child protection concerns raised throughout the current assessment. Albeit there was the allegation in respect of the father which led to the Gateway initial assessment, the PSNI took no further action regarding this allegation and the case was closed. The mother has also advised that she does not believe this was abusive behaviour, and

her actions of reinstating contact with the father demonstrate that she has no concerns that the children are at risk of harm whilst in their father's care. The assessment is that the Trust would have no concerns about the children being cared for by either parent."

[23] The social worker also refers to the fact that during the current assessment factors have been provided by both parents for and against the children relocating to New Zealand. During direct work completed with Leo and Jennifer, both expressed they wanted to return to New Zealand. Leo expressed a wish to return to New Zealand mainly surrounding his friends, school, the weather, community and a healthier lifestyle. The Social Worker records that it is important to note that Leo initially wrote friends in school in relation to what was good about Northern Ireland but scored these out saying both were better in New Zealand. Therefore, he acknowledged liking both in Northern Ireland but demonstrated a preference in relation to both topics in New Zealand. In relation to Jennifer she stated she wanted to be in New Zealand and stated that this was because there was more stuff to do, she has four friends there and in school she was allowed to see her brother.

[24] The Social Worker also stated that:

"The children's wishes and feelings as expressed however have to be carefully considered in the wider context of such a significant decision. It is the assessment that those issues which are important to the children in relation to New Zealand could also be achieved in Northern Ireland should they be given the opportunity to settle. Given the circumstances the children have faced in Northern Ireland so far they have not been given this opportunity and as such New Zealand would naturally be the more appealing option. One of the most important things which the children have not experienced in Northern Ireland is having a stable home environment. Leo expressed this himself stating 'I don't even have a house'. Circumstances were difficult given the parents separation. The mother advised being unable to secure a Housing Executive property in [*her preferred location*]. It is in fact an area where housing is in high demand. However, other areas could be explored and private rental could be an option if the mother were to secure employment.

It would further be amiss to ignore the parent who had initiated the decision on two occasions to move to Northern Ireland with the mother. It is therefore a concern that the mother appears to change her mind as to

where she wishes to reside and the Social Worker could not confidently be assured that the mother would not again decide that New Zealand is not where she wishes to reside. The concern would be, given the pattern historically, future moves are a possibility if the decision were to lie with the mother.

In addition, there are two major factors which have been considered in the context of making a recommendation to the honourable court as to what is in the best interests of the children. These factors are the mother's ability to financially support the children in Auckland, New Zealand; and contact and promoting the relationship between the children and their father."

[25] The Social Worker also raised a question as to why the mother did not attempt to secure a different role outside of the recruitment sector in Northern Ireland to financially support her and the children. Also the Social Worker raised some issues in relation to contact and said:

"Given the issues of maintaining consistent contact with the father to date it would also be a concern that the mother would not be able to actively promote consistent and meaningful contact between the children and their father whilst living in New Zealand."

Also the Social Worker said:

"Ultimately, there is no evidence of how the mother's proposals for contact would work financially or practically."

[26] Ms Robinson filed an update report of 6 November 2020 in which she considers the welfare checklist again and outlines updates in relation to each child. In particular, in relation to Leo she indicated that he had been attending some counselling and that he really required a decision to be made as to whether he returned to New Zealand or remains in Northern Ireland so that he can process this. The Social Worker indicated that the other issue highlighted in respect of Leo's emotional well-being is that of exposure to adult issues such as being witness to adult conversations and possibly having had the opportunity to read divorce papers. She said "It is important that Leo is shielded from adult issues and is not exposed to such issues as they are too complex and conflicting for a child." The Social Worker also pointed out that by this report Leo has been having overnight contact and maintaining indirect contact with his father and that they are warm interactions. She refers to the child Jennifer also enjoying contact and the youngest child being

involved. She says in respect of all of the children it is important to consider their individual circumstances as well as those of a social group.

[27] In addition to this documentary evidence, I have read the decision of the Judge sitting in New Zealand as part of The Hague Convention proceedings. . It is clear from the decision that in the Hague proceedings quite an amount of time was spent on the child objections principally that of the eldest child Leo. In that regard I have also seen a memorandum of the lawyer appointed to represent the child. In this it is clear that the child was expressing a wish not to return to Northern Ireland. The Judge deals with this issue in various places in the judgment in particular at paragraph [55] as follows:

“It is apparent that Leo is very aware of what his mother wants. He appears to repeat comments he says he has overheard he has heard his mother say for example ‘why can’t he come over here’ and then says very tellingly ‘I want to do anything I can to help her’. Leo is an 8 year old and the fact of him being aware of his mother’s views and having overheard adult conversations, of knowing his mother wants to stay in New Zealand and of his desire to do anything he can to do to help her is relevant.”

[28] Ultimately, the Judge did not consider that the child’s objections should defeat the Hague Convention application. The Judge also made findings in relation to this matter at paragraphs [70], [71] and [72] to the effect that the strength of the child’s views are effected by his emotional response to the situation and it is apparent that his views have been shaped or coloured by at the very least indirect influence coming from his mother.

[29] In these proceedings the mother filed comprehensive statements of 22 October 2019, 27 February 2020, 11 November 2020 and I also allowed an updating affidavit to be filed on 23 November 2020. The mother supplemented these affidavits by her oral evidence. During her evidence the mother confirmed that there were clearly issues in this relationship sparked by the third child which led to the separation. The mother was quite clear that she felt duped into coming back to Northern Ireland because very shortly thereafter the father separated from her and in fact was contacting other women fairly quickly on Tinder. The mother did make a case that the father was controlling and also not financially supportive. She also said in evidence that the plan was to come to Northern Ireland for 2 years. She made the case that this was all related to the father’s cricket. She said she did not accept the unreasonable behaviour divorce and tried to defend it but she was in New Zealand at the time and she considers that the divorce was a cynical attempt to obtain a visa on the basis of the father maintaining he was a victim of domestic violence.

[30] The mother stressed the fact that she had good job prospects in New Zealand. She told me that she had a third job interview for a job in New Zealand and that she was confident she could get that and do well in New Zealand. She said that she would have the benefit of free childcare and the benefit system was generous in New Zealand which would supplement her income. She explained that she thought that the school system in New Zealand was particularly good and that the schools would be open to the children in the area in Auckland where she had previously lived. She referred to her 9 months in Auckland on her own as a success and a template for what could happen. She made the case that she had a very supportive network of friends in New Zealand and that she would have a good life there. She said she could easily get a rental accommodation in the area she lived in before. The mother did accept that the move in 2018 without consent was a mistake but she stressed that the eldest child was not happy in Northern Ireland. The mother said she was trying to upskill in Northern Ireland by going to the Belfast Met but her job history was not appreciated here given that it was New Zealand experience. She also referred to the Maori culture being more adaptable to development in New Zealand.

[31] Finally, in relation to the situation in Northern Ireland she said that she did not have a large support network here although she has her parents and other family. She accepted that she has no family in New Zealand and that she would have to rely on friends. She thought it was realistic to think that she could come home for a month a year to facilitate the father having contact and she also had no issue with the father travelling to New Zealand for considerable periods to see the children and she thought that he would live in New Zealand if the children were there.

[32] The father filed a number of affidavits for the court. His substantive reply is dated 11 November 2019. The father also relied on a letter from Andrew White Chair of Selectors Cricket Ireland of 5 October 2020 which states:

“Following a review of our playing staff at the weekend I can confirm that Cricket Ireland Selectors and coaching staff do not see the father representing Ireland. We are committed to our young players through a succession planning model and therefore, although a talented player, at the age of [..], the father is not in those plans.”

[33] In addition to the father’s statement and the documentary evidence the father also filed two statements from the paternal grandparents. These statements both appear to suggest that they would not be offering support to the mother were she to relocate to New Zealand and also that the relationship was not so positive between the mother and the paternal family. These are statements of 28 September 2020 and 30 September 2020. In his evidence the father confirmed that on coming to Northern Ireland he had made strenuous efforts to get into the job market and now had a full-time job. He said he also worked self-employed in the online marketing world but that was not happening during Covid. He made the case that he was very

much in a better position financially here as in New Zealand he had had to coach cricket to supplement his income and that that was draining and something that he did not enjoy. He pointed out that he had saved NZ\$12,000 to move to Northern Ireland and that was a big commitment. He thought that Leo had a burden and he understood his position. However, he was firm of the view that a move to New Zealand was not the best for the family. He maintained that the mother was overly optimistic about life in New Zealand. He said many New Zealanders were moving back and Auckland was a competitive and expensive place. He referred to two previous attempts the mother had had coming back to Northern Ireland. He referred to himself “pivoting” to find employment. He said he was burnt out having two jobs in New Zealand. Overall, the father maintained that it was much more likely that he would be able buy a house here and have a better life here and he thought the mother could also allow herself and the children to settle by getting some employment and a proper home for them.

[34] The father also referred to the disputes about contact which he said had been going on for 2 years and he maintained that he should have greater contact. He said that his overnight contact was good but he could have more contact. He made the case that he could facilitate some contact whilst he was playing cricket and the children would enjoy that. He said he had no intention of returning to New Zealand and he had not been there since 2017 and that he considered Northern Ireland to be the place that he wanted to live longer term. He queried the viability of regular travel both practically and financially if the mother moved to New Zealand.

### **Consideration**

[35] In light of the legal principles in this area I have to conduct an overall holistic welfare inquiry and decide whether or not it is in the best interests of these three children to return to New Zealand or remain in Northern Ireland. The individual child’s welfare is the paramount consideration. In looking at this I must assess all of the evidence but in particular I must have regard to the welfare checklist. I deal with this as follows under the various headings.

**(a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).**

In this case I note that Leo has expressed a clear wish to relocate to New Zealand. He is described as bright and articulate and it is clear that he has a positive view of New Zealand.

In relation to Jennifer she is much younger and it is clear that she has a good view of New Zealand given that the weather is sunny but I do not consider that she has a clearly defined view given her age and understanding. The Official Solicitor had to terminate the interview as her wishes and feelings could not be properly ascertained. Given Nathan’s age his wishes and feelings cannot be ascertained.

**(b) His physical, emotional and educational needs.**

All three children obviously have particular needs. One issue at the minute is housing which is not satisfactorily addressed in Northern Ireland. I note that the mother indicates that it would be a simple process to get good accommodation in New Zealand.

There are no concerns with the physical health of the children but there are serious concerns regarding the emotional health of Leo as he has had to have some counselling and has struggled at school and with this breakup of his parents.

I cannot see any particular emotional issues for the other two children but undoubtedly they will have been affected by the breakup of their parents.

In relation to education all of the children are being educated in Northern Ireland and that seems to be satisfactory. I note that Leo is not going to undertake his transfer test which poses some further potential difficulty in relation to school selection. It is clear from the material that schooling in New Zealand is different and I am satisfied that it is also available.

**(c) His age, sex, background and any characteristics of his which the court considers relevant.**

In this case all three children have a dual heritage from Northern Ireland and New Zealand. In particular they all have the Maori culture as part of their life along with the Irish cultural heritage.

**(d) Any harm which he has suffered or is at risk of suffering.**

I have read that allegations have been made by both parents in relation to domestic violence. There is also the allegation made in June 2018 in relation to Leo however this was not taken forward as anything other than an inappropriate handling. There is clearly acrimony between the children and whilst it is difficult to reach a concluded view about the fact that they may have suffered harm there is a risk of suffering continued emotional harm given the acrimony between the parents.

**(e) How capable of meeting his needs is each of the parents and any person in relation to whom the court considers the question to be relevant.**

It is clear that both parents are committed parents who love the children. Both parents commented that each was a good mother and father and I do not believe that there is any issue about their ability to look after the children. There may be some availability issues due to the commitments of the father in particular with sport alongside his work but fundamentally they are both capable parents.

**(f) The range of powers available to the court under this order in the proceedings in question.**

This is an Article 8 application and so the court can make any Article 8 order whether that be for residence, contact or prohibited steps.

[36] It is quite clear that the parents have had a difficult separation. However, it is hard to reach definite conclusions on some of the allegations made. In particular, I have not heard the specifics of domestic violence alleged by each party and so I cannot make any firm decisions in relation to that. The 2018 incident which was referred to the PSNI appears to have been relatively minor and is not something that I consider of great evidential weight.

[37] However, I do consider that there are some issues between the parents which are of more moment. First, I have some reservations about the mother's position in Northern Ireland since she came here. It does seem to me that the social worker is right that the mother has not really settled herself or allowed her children to settle in Northern Ireland. This is most clearly exhibited by the fact that she has not obtained employment or more fundamentally a home. It seems to me that the mother has presented a much better picture of New Zealand to contrast the situation in Northern Ireland. I invited the mother to file updated plans for New Zealand which I have considered but fundamentally I am not convinced that these are strong and sure enough to facilitate a relocation application. I do note that the mother said it would be 3 months before she could get everything in place but given the circumstances whereby she would have to have a job, house and supports in place at the moment I do not consider the plan is coherent or strong enough. I am particularly concerned about the lack of support structure in New Zealand for the mother and I think she underestimates this in the long term. I am also concerned about the financial constraints in this case which affect travel arrangements.

[38] In any event I also consider that there is some equivocation in the mother's general position about living in Northern Ireland or New Zealand and this application may well be triggered by a desire to get away from the father given the separation. The mother struck me as clearly hurt by the fact that the father separated from her very soon after they came to Northern Ireland and was wanting to see other women. This application may well have been driven by a need to escape. I do not criticise the mother for that but I consider that this is not the best foundation for an application at this time.

[39] I have also considered the wishes and feelings of the children and I am particularly concerned about Leo. However, it seems to me that he has not really been allowed to settle in Northern Ireland. In my view he has clearly picked up either directly or indirectly that his mother's preference is New Zealand and he has naturally been influenced by her. I consider that the Maori culture can be promoted in both jurisdictions and I consider that the educational provision in both jurisdictions is of equal value although different.

[40] I am concerned that the father has an unrealistic view of how difficult life has been for the mother in terms of getting employment. I do not think he has been particularly helpful in relation to her and I tend to believe the mother about the fact that he has been rigid in his thinking as regards her housing and financial support.

[41] I agree with the father's case that there have been difficulties in establishing a good contact regime and that needs to change before a court could be confident that good arrangements could be maintained in a relocation situation. I accept that the father has a good relationship with his children which should be allowed to build. In particular, it is positive that the relationship with Leo is improving. However, I did not find the father at all credible when he said the children could have contact while he was playing cricket. That is not good quality contact. So the father has some recalibration to do himself.

[42] I am not encouraged by the paternal grandparent's statements although I have not been able to fully assess this evidence as I did not hear from these witnesses. So, this evidence is not determinative and I would hope that good relations can be maintained in future.

[43] I remain somewhat sceptical that the father does not have a grand plan to return to New Zealand in a number of years perhaps when he is that bit older that cricket is not on the agenda. I consider that his motivations may be similar to the mother trying to promote his own agenda given the breakdown of the relationship. However, overall I do not consider that relocation at this time in these children's lives is in their best interests. This has also been a family who have moved around and I think there is some strength in what the social worker says about that in terms of numerous changes of mind.

[44] This decision should in no way be taken by the father as a victory for him. I have not been impressed by some of his representations about money issues and assisting the mother. However, I just do not think that the application is well-founded at this stage.

[45] I therefore refuse the relocation application. I will adjourn the contact application to allow the parties to discuss it. Counsel should also discuss the correct forum for any future contact hearing if arrangements cannot be agreed. However, the father should know that contact is not for him to have his pursuits and the children tag along. If he is going to have increased contact he has to be entirely available for the children. I would like the mother to now think about getting a house which might be outside the area where her parents live. The mother struck me as a bright and resourceful young woman and so I think she has the ability to make the best of things in Northern Ireland and she is clearly committed to her children. She does have some family support here. If she got a job in Northern Ireland and was settled in a home it seems to me the children might be in a better place to make a more informed decision about the merits of New Zealand or

Northern Ireland. The timing of this application has not been right for all the reasons I have discussed. At this stage the children do not have a proper vision of what Northern Ireland has to offer given that the mother's situation has been so unstable here. I do not have any difficulty making a residence order for the mother if required and I will hear from counsel as to whether any other order is required.

[46] This case is enmeshed in an acrimonious separation and adult issues. However, I cannot help but think that the situation would benefit from some family therapy where the adults could sit down and make some decisions about their short and long term future in a way that would give the children permission to enjoy relationships with both parents and time between both jurisdictions.

[47] Finally, there is an important issue which is how this judgment is shared with the children. I would like the Official Solicitor to think about this and to consider the timing of the sharing of the information to make sure that the children (particularly Leo) are spared anxiety in so far as that can be done.