



[2024] EWHC 1395 (Fam)

Case No: FD23P00095

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/02/2024

**Before :**

**WILLIAMS J**

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**Between :**

**J**  
**- and -**  
**H**

**Applicant**

**Respondent**

Re J & H (Jurisdiction: 1996 Hague Convention : residual domestic jurisdiction: parental responsibility jurisdiction)

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**Ruth Cabeza (instructed by Dawson Cornwell) for the Applicant**  
**Katy Chokowry (instructed by Osbornes Law) for the Respondent**

Hearing dates: 23 February – 29 February 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....  
**WILLIAMS J**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

## **Mr Justice Williams :**

1. I am concerned with two children who I will refer to as NORA aged 6 years and FELICITY aged 5 years although these are not their real names. Their father is J represented in these proceedings by Ms Cabeza Counsel and Dawson Cornwell solicitors. Their mother is H. Represented by Ms Chokowry Counsel and Osbornes solicitors
2. I have been undertaking a fact-finding hearing relevant both to allegations of abusive behaviour but also to jurisdictional facts over the course of this week.
3. The father seeks parental responsibility and a return order in respect of Nora. He seeks parental responsibility in respect of Felicity. He had at one time also sought a return order for Felicity but did not pursue this at this hearing.
4. The mother invites the court to dismiss all of the father's applications; primarily on the basis that the court has no jurisdiction.

## **BACKGROUND**

5. The father is a British citizen. The mother is a Thai citizen. In June 2017 the mother became pregnant by the father. Nora was born in Thailand in March 2018. At that time the mother was married under Islamic law to a Norwegian citizen Mr Brown, and he was registered as Nora's father. The father discovered Nora's birth and established his paternity following DNA tests. Her birth certificate was amended. Not surprisingly the mother's marriage to Mr Brown fell apart. In January 2019 mother travelled to England on a tourist Visa and Nora travelled with her parents on her British passport. By then the mother was pregnant with Felicity. In July 2019 she returned to Thailand, her tourist Visa having expired. In September the father and Nora travelled to Thailand for Felicity's birth. Following an argument in November 2019, the police and children's services in Thailand became involved. Documents record an agreement that permitted the father to return to England with Nora on the basis that he would marry the mother and resolve her Visa position to enable her and Felicity to travel to England. That never happened and with the intervention of COVID the two branches of the family lived separate lives in England and in Thailand. They were reunited in December 2022 when the father and Nora travelled to Thailand. The mother retained Nora in Thailand despite the father's attempts to covertly remove her from the country. He returned to England and commenced wardship proceedings.
6. After a hesitant start, the mother engaged with the proceedings and they have been timetabled to this hearing in order to determine issues bearing both upon the allegations of abusive behaviour by each of the parents against the other and upon the fact which would determine jurisdiction.

## **Findings Sought**

7. The father seeks findings on the following as being relevant to the issues before this court in relation to habitual residence and welfare considerations in relation to each of the orders sought by the father:
- i) Whether the mother deliberately mislead the father into believing that once he had been named as Nora's father on her birth certificate, he had parental rights for his daughter.
  - ii) The extent to which the mother has been physically abusive to the father:
    - a) In England 2019
    - b) In Thailand 2019
    - c) In Thailand December 2021/January 2022
    - d) In Thailand December 2022
  - iii) The extent to which the father has been physically abusive to the mother (he denies any abuse of any nature).
  - iv) The basis upon which the mother agreed to Nora living with her father in England in November 2019.
  - v) The extent to which the mother has taken up contact with Nora while Nora lived in England.
  - vi) Whether the reason for Nora's visit to Thailand in December 2021 was to:
    - a) relocate to live with her mother; or
    - b) enjoy a holiday with her father during which she could spend time with her mother and her sister before returning home England.
  - vii) The extent to which the mother has facilitated meaningful contact with each of the children while they have lived with her in Thailand.
  - viii) The extent to which the mother has caused Nora emotional harm by denigrating her father in her presence and/or by deliberately and directly seeking to undermine Nora's relationship with her father.
  - ix) Whether the nature and extent of the physical injuries suffered by Nora when she was in the sole care of her mother are indicative of a neglectful lack of adequate supervision in the past.
  - x) The likelihood that the mother will permit either child to have a positive relationship with their father if they remain in her care irrespective of whether he meets her demands for child support.
  - xi) Whether the father has been and remains willing to support the mother in obtaining an immigration visa to live in England in the event that the children or either of them are placed in his care in England

- xii) The father's motivations in seeking parental responsibility for both his children.
8. The mother identifies the following issues for determination:
- i) The circumstances leading to the mother's arrival with Nora to this jurisdiction;
  - ii) The circumstances of the mother's separation from Nora and her departure to Thailand.
  - iii) Whether the mother's subsequent failure to return to England to be reunited with Nora amounts to transnational abandonment? In any event, whether this was a forcible separation or as the father contends, the mother did not care about Nora.
  - iv) The incidents of domestic abuse alleged and whether there is a pattern of behaviour that demonstrates that a course of coercive and controlling behaviour;
  - v) Nora's habitual residence while in England and Wales and the court's jurisdiction.
  - vi) The father and Nora's travel to Thailand. Whether Nora was wrongfully retained?
  - vii) The implication for the court's jurisdiction in the event that: (a) there is a wrongful retention; (b) the move was lawful.
  - viii) Whether the court retains jurisdiction for Nora at this juncture.
  - ix) The necessary directions, in the event that the court has jurisdiction, to inform a determination as to whether such jurisdiction should be exercised.

## **Legal Framework**

### **Jurisdiction**

9. The Family Law Act 1986 sets out the principal statutory provisions relating to jurisdiction in respect of children.

*1 Orders to which Part I applies*

*Subject to the following provisions of this section, in this Part "Part I order" means –*

*(a) section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order;*

*.....*

*(d) an order made by a court in England and Wales in the exercise of the inherent jurisdiction of the High Court with respect to children –*

*(i) so far as it gives care of a child to any person or provides for contact with, or the education of, a child; but*

*(ii) excluding an order varying or revoking such an order;*

*[Northern Ireland]*  
*[Specified dependant territories]*

*2 Jurisdiction: general*

*(1) A court in England and Wales shall not make a section 1(1)(a) order with respect to a child unless –*

*(a) it has jurisdiction under [the Council Regulation or] the Hague Convention, or*

*(b) neither [the Council Regulation nor] the Hague Convention applies but –*

*(i) the question of making the order arises in or in connection with matrimonial proceedings or civil partnership proceedings and the condition in section 2A of this Act is satisfied, or*

*(ii) the condition in section 3 of this Act is satisfied*

*(3) A court in England and Wales shall not make a section 1(1)(d) order unless –*

*(a) it has jurisdiction under [the Council Regulation or] the Hague Convention, or*

*(b) neither [the Council Regulation nor] the Hague Convention applies but –*

*(i) the condition in section 3 of this Act is satisfied, or*

*(ii) the child concerned is present in England and Wales on the relevant date and the court considers that the immediate exercise of its powers is necessary for his protection.*

*3 Habitual residence or presence of child*

*(1) The condition referred to in section 2(1)(b)(ii) of this Act is that on the relevant date the child concerned –*

*(a) is habitually resident in England and Wales, or*

*(b) is present in England and Wales and is not habitually resident in any part of the United Kingdom or a specified dependent territory,*

*and, in either case, the jurisdiction of the court is not excluded by subsection (2) below.*

*[Section 7 defines the ‘relevant date’ as ‘where an application is made for an order to be made ..the date of the application (or first application if two or more are determined together)]*

10. Section 3C of the Civil Jurisdiction and Judgments Act 1982 (inserted by s.1 of the Private International Law (Implementation of Agreements) Act 2020) provides:

*‘The 1996 Hague Convention shall have the force of law in the United Kingdom.’*

11. Article 5 of the 1996 Hague Child Protection Convention provides:

*(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child’s person or property.*

*(2) Subject to Article 7, in case of a change of the child’s habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.*

12. Article 7 of the 1996 Hague Child Protection Convention provides a retention of jurisdiction provision akin to that in Article 10 BIIA:

*(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and*

*(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or*

*(b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.*

*(2) 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 other 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 removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

*The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.*

*(3) So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.'*

13. The Lagarde report on the 1996 HCPC says of change of habitual residence (during the currency of proceedings):

*"On the other hand, in the case of a change of habitual residence from a Contracting State to a non- Contracting State, Article 5 ceases to be applicable from the time of the change of residence and nothing stands in the way of retention of jurisdiction, under the national law of procedure, by the authority of the Contracting State of the first habitual residence which has been seised of the matter, although the other Contracting States are not bound by the Convention to recognise the measures which may be taken by this authority."*

14. The approach that England and Wales has taken to the jurisdictional schemes provided in international instruments such as EC Regulation 2201/2003 (BIIA) and the 1996 HCPC is that they are '*the first port of call*' for the English court in determining jurisdiction. That is the case whether the subject case involves England and no other country, another Contracting State or a non-Contracting State: *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA Civ 659 [49-51] and *Re S (Children: Parentage and Jurisdiction)* [2023] EWCA Civ 897. The Court of Appeal relied on the reasoning of the UKSC in *A v A (Children: Habitual Residence) (Reunite International Child Abduction Centre*

*intervening*) [2014] AC 1 on the effect of BIIA in reaching the conclusion that the 1996 HCPC applied to cases involving countries other than Contracting States. It is that ‘first port of call’ approach which underlies some of the difficulties that have been experienced in interpreting and applying the 1996 HCPC including the issue of change of jurisdiction and the applicability of Article 7 to non-Contracting States. The Lagarde Explanatory Report at paragraph 6 points out that the purpose of Chapter II on Jurisdiction is to eliminate competition between (Contracting) States in taking measures for the protection of children rather than to create a universal jurisdictional framework which displaces domestic systems which would apply generally and in particular when a non-Contracting state was the competing jurisdiction. The wrestling that the courts have undertaken with the proper interpretation of Art 5 and 7 (for instance) would be unnecessary if we interpreted the effect of 1996 HCPC as only applying to determination of jurisdiction as between Contracting States and we applied ‘domestic’ law to other situations. However the current state of the law as determined by the Court of Appeal with Supreme Court jurisprudence in the background is that the 1996 HCPC is the first port of call and unless and until the UKSC rules differently we will have to continue to try to undertake the mental gymnastics necessary to apply 1996 HCPC provisions to cases where the Convention doesn’t apply to the competing jurisdiction.

15. The issue of when jurisdiction is to be determined and how the court approaches a change of jurisdiction has been the subject of much consideration in the High Court and Court of Appeal, most recently in *LB Hackney -v-P and Others (Jurisdiction : 1996 Hague Child Protection Convention)* [2023] EWCA Civ 1213. In that case the Court concluded that the court must consider jurisdiction at the start of proceedings – in order to establish whether it had any jurisdiction [113]. They went on to consider the effect of a change in the child’s habitual residence in the course of proceedings. At para 116, the Court concluded that in a case where the other country concerned was a Contracting State that England would lose jurisdiction and the other country would acquire jurisdiction if habitual residence changed in the course of proceedings. What the Court of Appeal did not explore was the effect of Article 13 in such a situation to enable the court seized to conclude its determination and which prevents the courts of another country embarking on proceedings when proceedings are already pending in another Contracting State. The 1996 HCPC provides its own internal mechanisms for resolving such jurisdictional issues which are inapplicable in cases involving non-Contracting States. However, for the purposes of this case what is important is what the Court of Appeal said about a change of habitual residence where the other country is a non-Contracting State because Ms Chokowry argues that Nora has, as at February 2024, acquired habitual residence in Thailand. The Court of Appeal said at paragraph 117:

*There is, however, a clear difference between a move to a Contracting State and a move to a non-Contracting State. In the former case, the other State acquires Article 5 jurisdiction. In the latter case, the other State does not. The consequence is that, in the former, the original State cannot retain jurisdiction by reference to domestic law,*

*while in the latter case, it can. In my view, this is unlikely to cause difficulties if the child has moved from the State in which the proceedings have been taking place, because the court would be likely to have sanctioned the move and would have needed to consider the consequences of such a move, including as to jurisdiction and recognition/enforcement, before it was sanctioned. There may, of course, be more complex cases in which there has been a wrongful removal or retention but I do not propose to address what might happen in such a situation.*

16. With all due respect to the Court of Appeal, and what was said about the original state not being able to retain jurisdiction where another Contracting State has acquired habitual residence jurisdiction the effect of Article 13 is not considered, nor are the mechanisms by which jurisdiction is to be resolved through the operation of Articles 7, 8, 9 and 13. As it is obiter it may be that this will need to be considered further in an appropriate case. However, for the purposes of this case, the Court of Appeal is clear that jurisdiction can be retained even if habitual residence has shifted to Thailand.
17. The Court of Appeal also concluded [107] that the 1996 HCPC did not operate to deprive a Contracting State of any jurisdiction they might have under their own domestic law. In the Hackney case the court was considering the position where a child might be present in England but habitually resident in a non-Contracting State rather than the position here where the child was habitually resident in England and subsequently was not present and arguably became habitually resident in Thailand. The thrust of the Court of Appeal judgment would suggest that where habitual residence changes to a non-Contracting state, the Court looks to its '*domestic law*' to see if it has retained jurisdiction. That is potentially somewhat circular as the 1996 HCPC has been incorporated into domestic law and is the '*first port of call*' but I think that what the Court is referring to by '*domestic law*' is the non-1996 HCPC jurisdictional rules and so in this case FLA 1986 s.2(1)(b)(ii) and 2(3)(b)(i).
18. The father's case is put on the basis that the case falls outside the jurisdictional framework of the 1996 Hague Convention but within the domestic law framework of FLA 1986 ss2 and 3. Ms Chokowry on behalf of the mother submits that the first port of call is the 1996 HCPC framework but she accepts that if for any reason (for instance Nora is now habitually resident in Thailand) the 1996 HCPC does not apply, that the FLA 1986 jurisdiction would apply and that if Nora was habitually resident at the relevant date in England that the court would have the full substantive habitual residence jurisdiction which could be exercised now. Although I think that Ms Cabeza's analysis is probably more consistent with the intent of the drafters of the 1996 HCPC the way it has been interpreted by the Supreme Court and the Court of Appeal means that Ms Chokowry's approach is that which must be followed.
19. Thus even if Nora had lost her habitual residence as at today's date and the 1996 HCPC Art 5 jurisdiction were no longer available, the residual provisions of the FLA 1986 would come into play and the court can make the order sought by the father if Nora is habitually resident in England and Wales at the relevant date; namely the date of issue. In addition, the court has jurisdiction to grant parental responsibility (issued on 31 August 2023) because by operation of FLA 1986 s.7 the relevant date for second or subsequent applications is the date of the first application so reconsideration of jurisdiction should not be necessary in most cases. Given this domestic jurisdiction would exist, determination of Nora's habitual residence now is not relevant to



whether the court has jurisdiction although it might be relevant to whether it should exercise that jurisdiction.

20. As I indicated in the course of submissions, the evidence before me as to the children's (or primarily for jurisdictional purposes Nora's) current situation is relatively thin and I do not consider I am well enough equipped to determine her habitual residence now. In any event even if I concluded she were now habitually resident in Thailand I would not be in a position to decide whether to exercise the jurisdiction I would have under s.3 FLA 1986 without further welfare and other evidence.
21. Given that the provisions of s.3 FLA 1986 would give jurisdiction based on habitual residence at the time of issue, if the case falls outside the scope of the 1996 HCPC, any further consideration of other potentially relevant issues such as Article 7, are rather arid territory as being of little practical effect. I suppose theoretically if Art 7 operates to retain Art 5 jurisdiction there might be scope for arguing that in deciding whether to exercise it and if so, how, there could be a difference to the s.3 FLA jurisdiction but at present I can't see them, as primarily the court will be looking at the no order principle and paramount welfare in the absence of any forum conveniens or stay application. As it was raised in submissions, I shall nonetheless refer briefly to the arguments about Article 7 which were raised. In *Re H* [2014] EWCA Civ 1101, the Court of Appeal had held that Article 10 BIIA applied when the other state concerned was not a member state; the consequence being that jurisdiction could not be lost in some circumstances as habitual residence could never be acquired in another Member State as specified in Article 10. However the CJEU in *SS-v-MCP* (Case C-60320 PPU) held that Article 10 only applied where the two countries concerned were European Union member states. Ms Chokowry submits that the trend of authorities in the High Court has been to conclude that Article 7 has no relevance where the other state involved is a non-Contracting State (see for instance *SS v MCP* (No.2) [2021] 4 FLR 140 ; *MZ v RZ* (Hague Convention 1996: Habitual Residence: Inward Return) [2021] EWHC 2490 (Fam) ; *H-v-R the Embassy of the State of Libya* [2022] EWHC 1073 (Fam)). In the 'Hackney' case at para 117 Moylan LJ identified the potential relevance of Article 7 in retaining jurisdiction but as it did not arise for determination in that case the Court did not express a view on its relevance in cases involving a non-Contracting state.
22. I have not heard detailed submissions on the applicability of Article 7 where the other state where habitual residence may have been acquired is a non-Contracting State as time did not allow a full exploration of all material which might bear upon that issue and in the event it may not matter in this case because Ms Chokowry accepts that if habitual residence is now in Thailand that the determination of the jurisdiction of the court would move from the 1996 HCPC framework into the 'residual' domestic jurisdictional framework in section 2(1) (b)(ii) and 2(3)(b)(i); namely the habitual residence of the child at the time the first application was issued. I observe that the determination of the CJEU on Art 10 BIIA is not directly applicable to Art 7 1996 HCPC because they dealt with different instruments but also in particular because Article 7 1996 HCPC refers to '*..until the child has acquired a habitual residence in another State..*' not *another Contracting State* and so it may be that there is a distinction. It is clear from other Articles of the 1996 HCPC that where it refers to a *state* it tends to differentiate between a *Contracting State* or a *non-Contracting State*

and so the reference to a *State* without any descriptive preceding adjective is curious. Applying the principles deployed by the CJEU would tend to support an interpretation that Article 7 only applied between contracting states and thus was irrelevant for the purposes of this case. However applying the more literal approach seen in *Re H*, which was subsequently referred to by the Supreme Court without disapproval suggests that Article 7 should be applied according to a literal reading of the words. On that basis it would apply to any other state. The issue would not arise if we only applied the 1996 HCPC to cases involving two contracting states; if that were so, clearly it would not apply to a non-Contracting State. However, as we have chosen to apply the 1996 HCPC to ALL jurisdictional disputes as the first port of call it is harder to apply the SS-v-MCP logic particularly when on its literal reading it is not limited to Contracting States. No doubt in an appropriate case the Court of Appeal or the Supreme Court will be able to shed further (and binding) light on this.

23. However, I do not intend to examine Article 7 in further depth – interesting though it is of itself and interesting though the built in issue is of whether there was a wrongful retention of Nora so as to bring it into play. The fact that the father did not have choate parental rights under Thai or English law would suggest Article 7 could not apply, as submitted by Ms Chokowry, but countering that is the argument that the mother’s delegation of care to him in November 2019 would be sufficient under English and 1980 Hague Abduction Convention law to give him inchoate rights and a further counter that if the mother’s consent was achieved by the father’s deception whether her delegation of care was effective to give inchoate rights. Ms Chokowry submitted the deception would vitiate the delegation of care. S.3(5) ChA1989 might be relevant. All very interesting but an arid exercise if it is accepted (as it is by the mother) that if the court doesn’t have jurisdiction within the confines of 1996 HCPC (‘..the Hague Convention doesn’t apply to use the language of s.2(1)(b) FLA 1986’) the court looks at habitual residence at the time of issue.
24. Habitual residence is a central concept to the determination of jurisdiction in relation to children. For the purposes of this application habitual residence is relevant to the determination of whether the court had a primary jurisdiction pursuant to article 5 of the 1996 Hague Convention which would also fall within s.2(1)(a) FLA 1986 or pursuant to section 3 of the Act. If jurisdiction were established under either of these provisions the full panoply of orders would be available to the court and the father.
25. The approach to the evaluation of habitual residence has been transformed in recent years by a quintet of cases in the Supreme Court together with several cases in the Court of Justice of the European Union; the earlier CJEU cases having informed to a significant extent the principles adopted by the Supreme Court.
26. The core definition is that habitual residence is ‘the place which reflects some degree of integration by the child in a social and family environment’: *A v A* (children: habitual residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 60, [2014] 1 FLR 111. Recent authorities have emphasised that ‘some’ should not be seen as representing too low a threshold particularly when comparing two competing habitual residences.
27. The Supreme Court in *Re B* [2016] UKSC 4 emphasised that it is in a child’s best interests to have a habitual residence so as to avoid falling into a jurisdictional limbo.

Where a set of facts might reasonably lead to a finding of habitual residence or no habitual residence the court should find a habitual residence.

28. The principles which emerge from the decisions of the Supreme Court and the Court of Justice of the European Union are as follows:
- i) habitual residence is a question of fact and not a legal concept like domicile. There is no legal rule akin to that whereby a child automatically takes the domicile of his parents;
  - ii) it was the purpose of the FLA 1986 to adopt a concept which was the same as that adopted in the Hague and European Conventions. The 1996 HCPC must be interpreted consistently with those Conventions;
  - iii) the test adopted by the European court is 'the place which reflects some degree of integration by the child in a social and family environment' in the country concerned. The criterion of proximity identified in the Recital incorporates the child's best interests. This depends upon numerous factors, including the reasons for the family's stay in the country in question;
  - iv) the test adopted by the European court and adopted by the courts of England is preferable to that earlier adopted by the English courts, being focused as it is this on the situation of the child, with the purposes and intentions of the parents being merely one of the relevant factors;
  - v) the social and family environment of an infant or young child is shared with those (whether parents or others) upon whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned. That of an older child or adolescent is likely to be more distinct from that of the primary carer as they will have integrated in school or other aspects of their community;
  - vi) the essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce;
  - vii) parental intent did play a part in establishing or changing the habitual residence of a child: not parental intent in relation to habitual residence as a legal concept, but parental intent in relation to the reasons for a child's leaving one country and going to stay in another. The intentions or wishes of a parent with rights of custody would have to be considered. The intentions of the parents could not override the objective identification of where the child has in fact resided having regard to the importance of proximity. Subjective factors such as nationality or future intention cannot displace objective factors relating to proximity. They would have to be factored in, along with all the other relevant factors, in particular when deciding whether a move from one country to another had a sufficient degree of stability to amount to a change of habitual residence;
  - viii) the state of mind of the child concerned may also be relevant to assessing their degree of integration. The majority held it was only adolescents or those to be

treated as adolescents whose state of mind was relevant. The minority (which included Baroness Hale) held that there was no logical reason to exclude the state of mind of younger children;

- ix) the assessment of integration of the child involves consideration of objective factors as well as subjective factors. The court is seeking to ascertain the ‘centre of the child’s life’. It is also a comparative exercise involving consideration of the quality of the previous habitual residence and that of the new. The judge must take sufficiently into account the facts relevant to the old and new lives of the child and the family although need not necessarily do so in a side by side analysis of the sort carried out by Lord Wilson in Re B as long as it is apparent from the judgment as a whole that the exercise has been undertaken. Objective factors which support geographical proximity are likely to be more decisive than subjective factors such as national origins and future intentions but both are to be considered. Temporary absences from the country of their everyday lives, even if measured in months does not alter the country of habitual residence. Ms Cabeza identified a small cohort of cases where a child had been found not to have acquired habitual residence because their presence was pursuant to a court order which could not be made final until their immigration status (or similar) were determined and this prevented acquisition of habitual residence even though they were present for periods measured in many months or years. I regard those as being fact-specific examples where a degree of uncertainty undermined integration. Ms Cabeza referred to them to argue that Nora could not have become habitually resident in Thailand even now because a return order had been in force since 1 March 2023.
- x) The previous rule that ‘habitual residence’ cannot be changed without the consent of all holders of parental responsibility is to be discarded. Whether a holder of parental responsibility has consented may affect the quality of integration but is not a bar to habitual residence changing. Similarly, the extent of the relationship between a child and a parent in another country may affect the quality of the child’s integration but the complete absence of a relationship would not prevent the child acquiring habitual residence. Ms Chokowry submitted that the poor contact between the mother and Nora in the period 2019-22 prevented her acquiring habitual residence in England.
- xi) A young infant cannot gain habitual residence in a state where he was not born and which he has not visited and has been living with his primary carer elsewhere since birth. A child cannot be habitually resident in a country in which he has never been present;
- xii) a child will usually not be left without a habitual residence and if a set of facts could reasonably lead to a finding of habitual residence or no habitual residence the former should be preferred. As integration is gained in one country it is lost in another. Complete integration is not required but ‘some’.

29. In Re B (as above) Lord Wilson set out three expectations:

*[45] I conclude that the modern concept of a child’s habitual residence operates in such a way as to make it highly unlikely, albeit conceivable, that a child will be in the*

*limbo in which the courts below have placed B. The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw. As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up will probably come the child's roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it.*

*[46] In making the following three suggestions about the point at which habitual residence might be lost and gained, I offer not subrules but expectations which the fact-finder may well find to be unfulfilled in the case before him:*

*(a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;*

*(b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and*

*(c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it.'*

30. The *parens patriae* jurisdiction under the inherent jurisdiction refers to the long established principle at common law that the court has a protective jurisdiction in relation to children who are British citizens. That has been confirmed by the Supreme Court and indeed the CJEU has now referred to the residual '*parens patriae*' jurisdiction as enabling the courts of England to deal with the situation of a child born abroad and neither habitually resident nor present in the UK-: *UD v XB* Case C393/18 PPU, [2019] 1 FLR 289, [2019] Fam Law 21, [2018] All ER (D) 71 (Oct), EUCJ at para 67.
31. *Re A* makes clear a return order can be made under the inherent jurisdiction and falls outside FLA 1986 s.1(1)(a) and outside s.1(1)(d) and so can be outside the prohibitions contained in s.2 FLA 1986. It is an order in matters of parental responsibility though and so is within the 1996 Hague Convention. Unlike BIIA (Article 14) the 1996 Hague Convention is silent on the issue of residual jurisdiction; it neither confirms its existence nor excludes it. I do not consider that a long-standing jurisdiction would have been terminated by the changes effected by our departure from the EU and the replacement of BIIA as the primary jurisdictional vehicle with the 1996 Hague Convention. If Parliament had intended to remove entirely the *parens patriae* jurisdiction by the amendments to the statutory framework arising from our departure from the EU I conclude it would have needed to and wished to expressly exclude it. The Hackney decision on the domestic jurisdiction remaining unaffected by 1996 HCPC confirms this.
32. In *Re A* the UKSC identified the basis of the nationality/*parens patriae* jurisdiction thus:

*Is there another basis of jurisdiction?*

*[59] Article 14 applies where no court of a Member State has jurisdiction under Arts 8–13. No other Member State is involved in this case. Either the*

*courts of England and Wales have jurisdiction under Art 8 or no court of a Member State does so. In that case, the jurisdiction of England and Wales is determined by the laws of England and Wales.*

*[60] We have already established that the prohibition in s 2 of the 1986 Act does not apply to the orders made in this case. The common law rules as to the inherent jurisdiction of the High Court continue to apply. There is no doubt that this jurisdiction can be exercised if the child is a British national. The original basis of the jurisdiction was that the child owed allegiance to the Crown and in return the Crown had a protective or *parens patriae* jurisdiction over the child wherever he was. [Baroness Hale paragraphs 12-24 in *A v A* and another (Children: Habitual Residence) (Reunite International Child Abduction Centre and others intervening) [2013] UKSC 60 and see also Moylan LJ paragraphs 46-49 in *Re M (a child)* [2020] EWCA Civ 922*

33. The *parens patriae* jurisdiction is therefore a more limited jurisdiction than that available under the other heads of jurisdiction claimed by the father in this case. Orders specifying who Nora was to live with and the time she was to spend with the other parent, are not available. The order that would be available would be one requiring that Nora or Felicity be returned to this jurisdiction. Ms Chokowry points out that the *parens patriae* jurisdiction should not be used to empower the court to make substantive welfare orders following the child's arrival based on presence when the court has no real substantive jurisdiction. This would be to achieve by the back door what cannot be achieved through the front door.
34. The Supreme Court and the Court of Appeal have made clear that the occasions when the court can properly have recourse to the nationality jurisdiction is limited. There has been some suggestion that the authorities indicate a 2-stage process whereby the court considered whether the threshold for exercise had to be crossed and secondly the court would consider whether to exercise it on welfare grounds. I do not regard the issue as being bifurcated in that way but rather a unified exercise where the court considers all the circumstances in determining whether the *parens patriae* is to be used. In *re B (A Child)* (Reunite International Child Abduction Centre and others intervening) [2016] UKSC 4 but was not confined to a "dire and exceptional" situation or "the extreme end of the spectrum" see paragraph 59 of *Re B* (above) & 72 of *Re M* [2020] EWCA Civ 922:
  - i) there had to be sufficiently compelling circumstances to "require" or make it "necessary" for the court to exercise its protective jurisdiction (paragraph 60 of *Re B* (above) where the circumstances clearly warrant it with the connotation of an imperative (paragraph 85, 101 & 105 *Re M (a child)* (above).
  - ii) the reasons to deploy caution when deciding whether to exercise the jurisdiction related to "3 main reasons" namely that to do so may conflict with the jurisdictional scheme applicable between the countries in question, secondly that it may result in conflicting decisions in those 2 countries and thirdly it may result in unenforceable orders (*supra*).
  - iii) there is no conclusive test for exercising the jurisdiction (paragraph 33 *Surrey County Council v NR and RT* [2017] EWHC 153 (Fam) [2017] 2 WLUK 83 [2017] 2 F.L.R. 901 and "all must depend on the circumstances of the

particular case and the nature of the orders sought (paragraph 62 & 104 Re M (A Child) (above))

- iv) previous decisions suggest that orders had been made in “2 classes of cases” broadly described “as protective” the 1st being abduction cases outside the statutory scheme the 2nd “comprises cases with the child is in need of protection against some personal danger” (paragraph 78 Re-M (above)).

#### Parental Responsibility Orders under s.4 Children Act 1989

35. As set out in *In re S. (A Minor) (Parental Responsibility: Jurisdiction)* [1998] 1 WLR 1701, an order granting parental responsibility under s.4 of the Children Act 1989 is not a Part 1(a) order and therefore not governed by FLA 1986. It is an order that is potentially governed by the 1996 Hague Convention it falling within Art 3(a) 1996 HCPC, and Ms Cabeza acknowledges that if another Contracting State had jurisdiction under Art.5 of the 1996 Hague Convention, this court would not have jurisdiction to make that order. However, if there is no Contracting State with Art.5 jurisdiction, she submits that the court’s residual powers to make orders have effect. In this case there is a power under the Children Act 1989 to make a parental responsibility order under s.4. The applicant relies the dicta in *re S*, where at page 1705C it states:

*Since Section 4 is not mentioned in section 1 of the act of 1986 which sets out those applications which cannot be dealt with by a court [in circumstances where the child is not habitually resident in England] in my judgement Parliament did not intend the courts to be so limited in respect of an application under section 4... quite simply parliament has left the courts with that jurisdiction, although it has removed the Section 8 jurisdiction from the court.*

36. The father would also rely on the Hackney case in support of its submission that there is a residual jurisdiction to make a s.4 order in circumstances where the 1996 Hague Convention does not apply, At paragraph 105:

*In my view, it is clear that, if the 1996 convention does not provide substantive jurisdiction, the court can turn to our domestic law as an alternative source of jurisdiction.*

37. Ms Chokowry submitted that if parental responsibility fell within the 1996 HCPC then if the court did not have jurisdiction under the Convention it could not make the order. However, this is to ignore that the Court of Appeal said in the Hackney case that 1996 HCPC did not eradicate the pre-existing domestic jurisdiction and if 1996 HCPC did not apply that the court could still apply ‘domestic’ jurisdictional law.
38. It is clear that the s.4 ChA1989 power is not specifically attached to any jurisdictional (in the traditional sense) requirement whether habitual residence, domicile, presence or nationality but the only limitation is being the father. The court might on welfare grounds not grant the order or conceivably the mother in this case could apply for a stay on *forum conveniens* ground but absent those considerations the determination would be welfare driven.

## Fact Finding

39. PD12J applies to any family proceedings in the Family Court or the High Court under the relevant parts of the Children Act 1989 or the relevant parts of the Adoption and Children Act 2002 in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made.

40. The function of the Family Court in resolving disputes of fact is fundamentally different from the criminal court. The Court of Appeal made clear in *Re R* [2018] EWCA Civ 198:

*The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established"*  
([62])

41. The 'General principles' set out in PD12J include

*'Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents. '*

42. The main allegations in this case fall within the category of 'domestic abuse' which is defined in *PD12J FPR 2010* and includes

*'Behaviour is abusive if it consists of any of the following*

- a) Physical or sexual abuse
- b) Violent or threatening behaviour
- c) Controlling or coercive behaviour
- d) Economic abuse
- e) Psychological, emotional or other abuse.

*For the avoidance of doubt it should be noted that domestic abuse includes but is not limited to forced marriage, honour based violence, dowry related abuse and transnational marriage abandonment.*

*'Abandonment' refers to the practice whereby a husband in England and Wales deliberately abandons or strands his foreign national wife abroad, usually without financial resources in order to prevent her asserting matrimonial and/or*



*residence rights and/or rights in relation to child care in England and Wales. It may involve children who are either abandoned with or separated from , their mother.*

*'coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;*

*'controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour."*

43. In **ZM v AM [2014] EWHC 2110 (Fam)** Peter Jackson J aptly encapsulated the mischief of transnational marriage abandonment thus:

*Where one party to a failing marriage has secure immigration status and the other does not, the opportunity arises for the former to exploit the latter's weakness by taking advantage of immigration controls."*

44. Ms Cabeza identified that self-evidently 'marriage abandonment' can only involve parties who are married and that it envisages an act of commission; usually in divorce or separation and notification of the Home Office with the consequence that a spousal visa is revoked. As is recognised within the definition, the practice may involve children who are abandoned with or separated from their mother and in this case this might cover Nora's separation from her mother from November 2019 – December 2022. As I noted in the course of submissions whilst the father's behaviour (if proved) could not meet the definition of transnational marriage abandonment it could still amount to a form of emotional and/or financial abuse if by his deceit and inaction he created a situation which separated the mother and Felicity from Nora. Human behaviour or misbehaviour towards one another is so varied in its range and may differ according to culture that I don't think one needs to create closed categories. What one is always looking at is whether the substance of the behaviour can properly be described as abusive.

45. The Court of Appeal's judgment in *Re H-N* contains much important guidance on various aspects of domestic abuse including that:

*"... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by (PD12J)" (§25).*

46. In *Re JK (A child) [2021] EWHC 1367 (Fam)*, Mr Justice Poole said the following

*Patterns of behaviour are formed from many individual incidents of conduct. It is difficult therefore to separate the pattern from the specific events said to establish the pattern. In this case every one of the mother's allegations is denied by the father. The court cannot make findings about a pattern of behaviour without evaluating the evidence in relation to specific incidents that allegedly contributed to that pattern.*

*The difficulty is in identifying a limited number of incidents that would, if proved, establish a pattern of behaviour. Some specific instances of behaviour will not constitute abuse themselves and may appear to be relatively trivial if looked at in isolation but are in fact important evidence of a pattern of abuse, or the effects of abuse, when set alongside other findings. For example, there is evidence in this case of the mother texting the father to ask if she can use the toilet in his bedroom. Arguably, she did so because she was conditioned by him to ask his permission to perform many of her activities of daily living. How does the court keep a finding of fact hearing within proportionate and manageable limits without filtering out what might be highly relevant evidence of coercion or control?*

47. I also note Peter Jackson LJ's comments in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (§61), cited with approval in *Re H-N* at §32 to the general effect that:

*"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour."*

I observe that whilst findings may not amount to coercive behaviour either because they do not constitute assault, threat, humiliation or intimidation or that they were not intended to harm punish or frighten the victim they may still be emotionally abusive and relevant to future decision making. Patterns of behaviour or acts of behaviour may not primarily be designed to make the victim subordinate or dependent and may thus not amount to controlling behaviour but may still amount to abuse and, even if not abuse, may amount to self-centred, dictatorial or unsupportive behaviour (not an exhaustive list) which may be relevant to answering the ultimate question of what is in the child's welfare. One particular reason for avoiding criminal concepts in the family court is that it may tend to promote a focusing on the label attached to the behaviour and whether the criminal act has been proved, which self-evidently is inappropriate for a family court determining matters on the balance of probabilities but also may promote a binary approach to behaviour as being relevant if proved but irrelevant if not proved. Much behaviour may still be relevant in welfare terms even if it is not 'criminal' or does not fall within the definition of 'domestic abuse' because the family court is always looking at the substance of the behaviour and its impact on the child or other parent and what effect that has on the formulation of what order will best promote the child's welfare. It is also important to note that in evaluating patterns of behaviour and their motivation one should seek to place any pattern identified within the overall context of the multitude of facets of behaviour which a relationship will consist of as this may assist in identifying the intention of the perpetrator, if any, in conducting that pattern. This may inform the determination of whether it might amount to coercive or controlling behaviour as being intended to have the effects required by the definition, whether it is unintentional but still amounts to abusive behaviour or whether seen in a holistic context it is perhaps simply a manifestation of, for instance, selfishness which does not amount to abuse.

48. The burden of proof, of course lies on the party making the allegation. The allegation must be proved by them on the balance of probabilities. In respect of the parents'

cross allegations, the burden and standard of proof can be approached in the usual way. The court is not bound to find the mother's case proved or the father's case proved but may determine that allegations have not been proved to the requisite standard: see the *Popi M* [1985] 1 WLR 948. The inherent probability or improbability of an event remains a matter to be taken into account when weighing probabilities and deciding whether, on balance, the event occurred [*Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at paragraph [15]. The father has to prove nothing in relation to the mother's allegations and vice versa.

49. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The decision about whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence. The court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to a conclusion.
50. Self-evidently, the credibility of the parties plays a central role in matters of fact. I bear in mind the principles in relation to *Lucas* and remind myself that the fact that one party may have lied about one matter does not indicate that they have lied about all matters, still less that they have lied about the allegations made against them. A lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth: *Re H-C (Children)* [2016] EWCA Civ 136 at paragraphs [97-100].
51. However, the honesty or dishonesty of a party does not sound only in *Lucas* terms, where it may positively corroborate an allegation but is of course of more general relevance in determining what weight should be given to a party's evidence. A witness who has been found to be unreliable or dishonest is likely to find their evidence is given less weight than that of a witness who has been found to be generally reliable and honest. In cases where the court finds itself largely reliant on evidence emanating from only two individuals – as is often the reality in domestic abuse cases – the outcome may be heavily influenced by the fact that the court finds one party to be generally honest and/or reliable and the other dishonest and/or unreliable. Of course, in reaching that conclusion as to credibility, the court will be considering a wide canvas including the consistency of the accounts over time, the internal consistency or coherence of the evidence, consistency with other evidence documentary or otherwise, inherent probability as well as demeanour.
52. I remind myself that in relation to historic matters the memory is a potentially fallible source of evidence. See the *Gestmin* case. In this case both parties are giving evidence about events which are up to 7 years old. Evidence may be honestly and sincerely given but be false. The passage of time and the repeating of allegations in court and discussion outside court can undoubtedly result in memory creep. Inconsistency in accounts separated in time does not necessarily mean the accounts are not honestly given. Reliance on demeanour also requires some care particularly in a case such as this; applying general assumptions as to how a victim of domestic abuse could be expected to present are inappropriate. I also note what Judd J said in her judgment in *M (A Child)* [2021] EWHC 3225 (Fam).

53. As with most issues of evaluation of evidence it is of course always a question of fact and degree in which the consistency of evidence with previous accounts or with other evidence must be the subject of scrutiny and balance. The consistency of witness testimony with earlier accounts given by the same witness, its consistency with other witness or documentary evidence particularly contemporaneous records or digital footprints, the internal consistency or credibility of an account are all (non-exclusive) matters that go into the overall evaluation of witness reliability or credibility. In some cases where the only evidence available is that of two individuals – a rare case, as there will usually be some other evidence from other domains which sheds light on their reliability or honesty, or from others as to the dynamic between them, which might illustrate the probability of the matter – then the behaviour or demeanour of each in giving their evidence might assume a greater importance, but even then, the court is unlikely to be left with only their behaviour or demeanour as a gauge for their honesty or reliability because the content of their testimony, together with what the court can gauge of the dynamic that exists between the two from their behaviour in court, or even the way their case is put, will form part of the totality of the light that is available to the court to illuminate where probability lies. An approach which takes account of the content of oral and written evidence, its consistency internally and with other evidence and, in particular, with any contemporary documentary material or other supporting evidence is essential in putting into effect the non-compartmentalised, broad panoramic view which the authorities mandate.
54. Although the general approach is that any fact which needs to be proved by the evidence of witnesses is generally to be proved by their oral evidence r22.2(1)(a) FPR 2010, facts may also be proved by hearsay evidence. The effect of Children Act 1989 s.96(3), Children (Admissibility of Hearsay Evidence) Order 1993 is to make all evidence given in connection with the welfare of a child admissible notwithstanding its hearsay nature. This would commonly include Local Authority or police records which are very often hearsay, often second- or third-hand hearsay, but also extends to witness statements. The court should give it the weight it considers appropriate: *Re W (Fact Finding: Hearsay Evidence)* [2014] 2 FLR 703 and where hearsay goes to a central issue, the court may well require the maker of the hearsay statement to attend to give oral evidence.

## **The Evidence**

55. The parties' evidence is contained within the 467 page bundle that was lodged. In particular, the father's evidence is contained within his first statement, second and 4<sup>th</sup> statement and his oral evidence. The mother's evidence is contained mainly within her 2<sup>nd</sup> and 3<sup>rd</sup> statements and her oral evidence. Parts of their evidence are incorporated within the chronology attached to this judgment which forms an integral part of this judgment in terms of the evidence and my evaluation and findings, although is not published to avoid jigsaw identification. It is drawn from the Applicant's Chronology and the oral and documentary evidence. The fact that I have not recited a piece of evidence does not mean I have not read it or taken it into account but after hearing the oral evidence of the parties which has been central to my evaluation of the case I do not consider any longer or more complete recitation of the documentary and oral evidence to be of assistance in setting the context for my reasoning and conclusions. I have sought to consider the parties' submissions on the

evidence in my consideration of the evidence and my evaluation; I do not consider it proportionate to set them out separately.

56. I am of course acutely aware of the fact that for all these parties the issues in play bring with them high stakes. Neither are familiar with the court environment or processes. The mother in addition was giving evidence between 5.30pm and midnight Thai time and via an interpreter. However, they have representation by highly experienced counsel and solicitors, and I consider that the process of giving evidence enabled both to give a fair account of events and of themselves. The case involved allegations of domestic abuse – no special measures were considered necessary in addition to the use of CVP which was necessitated by reason of the mother’s residence in Thailand.
57. The father gave evidence first. He was very softly spoken and said this was a result of damage to his spine and there were many occasions when he had to be asked to repeat what he had said. This soft speech was not really evident in the video recordings and I wondered whether the stress of the process was playing a role in subduing the father. However, the low volume level did not prevent him being determined and assertive in his evidence often speaking over counsel or myself. He was throughout his evidence vague or imprecise and his evidence rarely contained a description of events which had the quality of recalling a lived experience but were in the main disconnected. One example which did have the character of a genuine recall was around the assault on him by the mother’s family which had a spontaneity and connection which contrasted with other accounts such as the mother punching herself or the assault on 26 December 2023. He was often evasive, failing to answer the question put to him and deflecting onto some matter critical of the mother (often referring to her violence out of context) or giving an answer relevant to a different period of time. He asserted that the whole time Nora was in England the mother never bothered to contact her – which on his own evidence was clearly not true but was an example of his tendency to hyperbole or exaggeration; his and his mother’s description of the assault by the maternal family preventing him working for 3 years; circumcision equals “chopping my dick off”; his exaggeration of his work/finances, his own description of the 26<sup>th</sup> December 2023 incident which suggested a very violent assault which was not borne out by the video. The father subsequently sought hospital treatment for alleged injury to his genitals although nothing on the video suggests he experienced any pain or discomfort from anything the mother did. His evidence was often misleading or contradictory of his earlier accounts. He said there was nothing stopping the mother coming back after November 2019 but immediately had to accept she would have had to be sponsored (at least). His statements and letter to the British Embassy said they had been in a relationship from November 2016, speaking daily and looking forward to the pregnancy. In evidence, he asserted she had been two timing him with Mr Halle, they had infrequent contact until he returned in December 2017 and that he had not provided any financial support in the first 6 months of her pregnancy. This of course was entirely consistent with the mother’s account that after he discovered the pregnancy, he had in effect abandoned her, making no commitment to her, providing no support and giving her good cause to look elsewhere for her future and that of her baby. Both the father’s mother and the father via counsel asserted he had provided financial support to her following the discovery of her pregnancy although no financial records exist of any support. Only cash withdrawals around the time of Felicity’s birth were provided, which do not evidence any money being transferred to

the mother. The father was occasionally frankly dishonest. He was prepared to lie (on his account) to the British Embassy to support the mother's visitor Visa application dated 18 September 2018 although he belatedly sought to say that this was written by his own father and the mother. The date of the emails suggest it was forwarded to the mother after its submission. In that letter he said he discovered the mother was pregnant whilst in Thailand which tied in with the mother's and maternal grandmother's accounts but in court he maintained he found out only after he had returned to England. He said in evidence she was violent to him on the day after his birthday but elsewhere said she became violent after her arrival in England. He asserted that when the mother was in England he contacted the British Embassy in London to find out about visas and at times seemed to make evidence up on the hoof; his evidence about the attempts he made to get her a work visa whilst in England had that character, as did his assertion that he withheld Nora passports in June 2019 when the mother returned to Thailand, because someone told him a Thai national could not be in possession of their child's UK passport. He said he left Thailand so rapidly in November 2019 because Covid was already present there; its first outbreak was in China in December 2019 with the first case in Thailand being early in 2020. He also said in late 2022 he was willing to get her a visitor visa, but he was both unable to identify how much he needed to sponsor that or to say where the money would have come from. The mother had of course paid for his flight. He said he understood from the mother she had plenty of money in the bank so she could have used that; quite where she would have got this and how this sat with what she herself said in the text exchanges is another example of the father's willingness to deploy misleading evidence to the court and to try to mislead the mother. His efforts to get her to the Embassy after she had taken Nora were not because he thought there was any realistic prospect of getting a visa but to get her before officials who he, no doubt, hoped would assist in recovering Nora.

58. On occasions, the father's account was simply unbelievable. He maintained that when he met the mother's family that she did not translate for him and that he had no idea that her family had discussed the expectation that he would marry the mother. The maternal grandmother and the mother were clear this was discussed and whilst it is of course theoretically possible that the mother played a very clever act (she is certainly capable of it) in leading her family to believe he had agreed to marry her in conversations whilst not conveying that to the father but rather suppressing all that her parents and brothers were saying in this regard it is hard to see how the language, body language and other interactions could not have betrayed the fundamental deception that the mother was perpetrating on them all. He also maintained that he did not know what the mother intended when she came to England but that she was clear Nora was to live here and be educated here. This not only was contradicted by the paternal grandmother's evidence and the mother's, but defied common sense and the initial attempts to get a family or partner visa for the mother and his later acceptance that they discussed making a go of it as family in England.
59. The father comes across as man who does as he wants and has little capacity for self-sacrifice. Strangely he says he still speaks virtually no Thai – he said he could ask for a beer and hence he says he could not have known that the maternal family were discussing marriage or that this was a topic when the police were involved in November 2019. I got the impression from his reaction to some of the mother's evidence that he understood some of what she was saying before it was interpreted

and that his Thai was more extensive than he said. Having said that he has never sought to learn Thai and took no active steps to enable Nora to maintain her Thai language in the period November 2019 -December 2022 such that she could barely communicate with her sister or maternal family. This seems consistent with his rather dismissive attitude to the mother (he referred at one point to her ‘not behaving herself’) and his lack of empathy for, or understanding of, others. It might also be a consequence of his rather lethargic approach to other aspects of his life where he seems to lack the energy or commitment to put himself out unless it suits his own needs. His almost complete absence of action to secure the mother’s visa position after she returned to Thailand is the most gross example of this, but one gets an impression of a man who finds it hard to commit to anything very much. He seems to have spent a significant part of the years I am concerned with floating from and to Thailand, working for short periods in rather unspecific capacities, living with his parents and making little headway in life. His inability to commit to the mother and the children to secure their presence in England by hook or by crook highlights this in contrast to what others might have done. He is clearly a man who finds it difficult to take responsibility for events or perhaps for himself. On almost any issue where he might be criticised it would not be his responsibility. The letter to the Embassy was his father and the mother. His lack of financial support was because of covid and illness. He would maintain he was in hospital for a year to the mother to explain why he had not acted to support her or get a visa – although this was clearly not true. He couldn’t travel to Thailand or get a visa for the mother because of Covid travel restrictions; although they ended long before he did travel. He couldn’t get her a visa as it was not possible as she insisted on marriage; although he had done nothing active to secure any other form of visa. He would say he couldn’t afford to sponsor her because he couldn’t work although his mother said that prior to 2019 he was doing well and he told me that he was a property developer giving the impression he was in it in some quite substantial way albeit when pressed he backed off and eventually appeared to suggest he owned no property and all the funds came from elsewhere. He is clearly unwilling to make much if any sacrifice personally to ensure his children could come to England. The contrast with Mr Brown is quite interesting – he was prepared to marry, to get circumcised and to adopt Islam and indeed was initially prepared to accept Nora even when he knew she was not his. The father was not and is not prepared to. Marriage inevitably requires the parties to give up some of their autonomy, in this case the father was also required to surrender a small piece of his anatomy. He was prepared to give up neither even though it was the best way to secure a future in England for the mother and his daughters and he had led her and others to believe he would. Given the issues of the mother’s visa were central to their lives and to this case the lack of evidence from the father about it, and the lack of clarity in what he did say demonstrated beyond anything else how little he had actually done to resolve it despite his obvious commitments (most notably in November 2019) but at earlier times as well to address it. No evidence of advice being sought from immigration specialists, no applications to the Home Office, no effort to save and put himself in a position to sponsor the mother, no evidence of seeking opportunities to get the mother work and a sponsor for her. The silence is deafening.

60. He was intent on giving his narrative rather than assisting the court to determine the truth. He has a significant tendency to exaggerate whether it relates to his work and finances or otherwise. There were only rare moments of frankness. These traits appear to carry over into aspects of his personal life and are apparent in his dealings with the

mother. I accept that he loves his daughters but that is not his only motivation. He is self-centred, very focussed on his needs being met and determined that things should be done his way. There would appear to be an element of getting his own way in his application rather than a pure focus on the welfare of the children. He displays traits of irresponsibility, lack of commitment, self-absorption and lack of empathy to the position of others in particular the mother but also his children.

61. Thus the father overall was a highly unsatisfactory witness who paid little heed to the commitment he had given to tell the truth, the whole truth and nothing but the truth. There is little I would rely on in his evidence on his testimony alone.
62. The mother gave evidence over the course of a day with the interpreter. Although at one stage interpretation and the dialect the interpreter spoke required the mother to correct the interpreter, for the vast majority of her evidence it appeared that the interpretation worked satisfactorily. It was clear that the mother had a reasonable command of English both from the texts and written documents but also as she appeared often to understand the question before it had been interpreted to her. However, when she did on rare occasions seek to answer in English it confirmed the need for an interpreter. The mother is clearly a far more animated personality than the father. In part I think her volume and pace reflects her character but it probably also partly reflects the language itself. Although she never became angry there were stretches when she was clearly more agitated and it was not difficult to picture her becoming very loud, abusive and angry. The videos illustrated what she might be like and away from court and subjected to the father's characteristic evasion or condescension, it was easy to picture how an argument could develop and how the mother could spill over into abuse and aggressive or violent behaviour.
63. She is capable of dishonesty, manipulation and deceit of a very considerable magnitude given what she did to Mr Halle. She also misled her father and brothers and her adherence to Islam is a tenuous one. She is unprincipled and focussed on securing the best outcome for herself and her children without regard to any moral compass. She said why should she tell the father Nora was born when he had done nothing for her? This rather ignoring what might be best for Nora and of course the possibility of Mr Brown discovering it anyway. She got pregnant again almost as soon as the father appeared in December 2018 and this I conclude was a deliberate decision on her part to further tie him to her. The paternal grandmother spoke of the mother taking medicine to enhance her chances of pregnancy. Her text messages in January 2023 still insist on the father undergoing circumcision and marriage for visa related grounds not because she could truly have believed they had a future in marriage. She also was capable of dishonesty and evasion in giving her evidence; getting to the stage where she accepted that shortly after marrying Robert Brown in an Islamic ceremony, she had slept with the father was a protracted and uncomfortable process with the mother metaphorically twisting and turning to avoid the inevitable concession. Her account of the father being violent to her and her denial of being violent to him lacked detail or conviction and the video of 26 December 2023 clearly demonstrated her abusive behaviour which she sought to minimise – although she did accept pushing the father.
64. Her apparent insistence on adherence to Islamic principles in the latter stages of 2022/23 were wholly inconsistent with her behaviour earlier in particular the fact that she was prepared to come to England and cohabit with the father in 2019 without



adhering to them. This I think reflects both the pragmatic and unprincipled side of her character. By the end of 2022 she had concluded that the father was never going to get her a visa save by making the commitment of marriage. I am not sure whether she thought there was any prospect of the father doing this or whether she was presenting him with a single option which she knew he would not take thus justifying (in her own mind and perhaps in a Thai court) her retaining Nora.

65. However, despite the gross dishonesty she was clearly capable of she was a somewhat better witness overall than the father and there were considerable stretches of her evidence where she gave fact rich and seemingly sincere and honest evidence. Her account of the build up of the relationship, the pregnancy and her turning to Mr Brown seemed genuine and far more consistent in themselves and with common sense than the father's. Her account of events around Nora's birth and the unravelling of her relationship with Mr Brown were also detailed and convincing and showed a side of the mother which was much more connected with events than the father, as did her account of the father meeting her family and the need for and acceptance by the father of marriage. Her response to the criticism that she did nothing when in England was also heartfelt and the detail she gave suggested a true account as did her willingness to work. She seems to have a much better developed work ethic and sense of commitment to achieving an end than the father. This would also suggest that the mother is probably more intelligent than the father who was rarely able to maintain any chronological order to his evidence and who was unable to focus on the content of a question in the way the mother was. Although she was evasive on areas which reflected badly on her she was much better able to absorb the thrust of a question (even allowing for interpretation) and to focus her answer on what was requested. However, she was also on occasions (far fewer than the father) capable of diverting off into an unrelated criticism of the father or his girlfriend which illustrated the extent to which she is jealous of other women although she said arguments in England were more about her visa insecurity than her jealousy. The clear impression she gave was of a real concern about other women and feeling threatened by the father's attachment to girlfriends. This was clear in her evidence about the father's contact with female friends in England; how was she to know whether they were friends or lovers she asked in justifying her anger with the father for having contact with other women. Given her own infidelity to Mr Brown this has a pointed irony quite lost on the mother. She would justify her infidelity as being borne of necessity rather than pure pleasure. However, her evidence was clear that arguments were more driven by her visa insecurity and this would confirm that she was understandably interested in securing her permanent presence in England as had been promised by the father and paternal grandmother when the visitor visa was secured with a reassurance that it could be converted once in England. It seems clear that the arguments arose because the father was not reassuring the mother about either his love life or her visa security. Having seen for myself how evasive and obtuse he can be, it is easy to envisage the mother losing her temper with him (she having a more volatile temperament anyway) and lashing out at him. The paternal grandmother's account of her seeing her biting him was graphic and had the sense of a lived experience. Conversely, the mother's own accounts of the father allegedly being violent to her lacked detail, context and were not elaborated upon in oral evidence. The father probably lacks sufficient emotional range to lose his temper – little seems to energise him.

66. She was capable of showing some demonstration of regret for her poor behaviour and some acknowledgment of bad behaviour. This was evident in what she said about her sexual behaviour being inconsistent with Islam and her expression of contrition for how she had misled and taken advantage of Mr Halle. However, this shouldn't be taken too far – it was only some level of contrition and in relation to Mr Brown she justified her behaviour by reference to the father's poor behaviour in not supporting her and taking her on and this caused her to bring her own mother into the deception of the family. The need for this deception which the maternal grandmother was drawn into is most unlikely to have been necessary if the father had indeed been supportive of and supporting her. This ability to acknowledge wrong-doing and to express regret or contrition was in contrast to the father who was almost completely incapable of accepting responsibility for any wrongdoing or poor decision making on his part. However, she is also capable of evasion and dishonesty particularly when it comes to the extent to which she can lose control and use physical as well as verbal aggression and violence. She also has an ability to put her rights or interests before those of her children. As a witness she was also capable of giving broadly truthful evidence on events she witnessed.
67. Overall then the mother was a more reliable witness than the father because she was better able to answer a question and attempt to give a genuine answer linked to the question. Her memory is better and her ability to give a chronological narrative was better. Although she also did not tell the truth, the whole truth and nothing but the truth she was significantly closer to it than the father in many aspects and was more focussed, less evasive and more connected than he. She also evinced some insight into her own poor behaviour and was capable of showing some empathy for others which overall lead me to conclude that her account is a more reliable one. As it happens her account also sits closer to contemporaneous documents than the father's.
68. The maternal grandmother had provided a statement in Thai which had been translated to English. It transpired the maternal grandmother could barely read and needed glasses and it took an inordinate amount of time to adduce her statement as her evidence in chief as it was entirely unclear how it had come to be made. It did not contain any statement on it from an interpreter or a person who read it to her in Thai. She was clearly protective of her daughter and capable of deceit of her husband, although I thought that in the main she was seeking to give me an honest account of what she had personally witnessed which was not much as it turned out. However, her account of the meeting with the father after the mother's pregnancy was discovered and her understanding of his commitment to marry was genuine.
69. The paternal grandmother gave evidence in court. She was strongly protective of her son and resorted on quite a number of occasions to asserting she didn't know what he had said or done or what his finances were in order to avoid giving evidence which might undermine his position. However, she was also capable of giving broadly truthful – although perhaps somewhat exaggerated – evidence about events she witnessed or was a party to. Her account of the mother's abusive and violent behaviour was quite rich in detail and given in a heartfelt way which suggested when she said she had got fed up with the rows and violence that she had witnessed it. She tended to ascribe the blame to the mother solely and was not critical of the father, However she was clear that the intention in January 2019 was to bring the mother and Nora to England on a permanent basis and that when the father went to Thailand for

Felicity's birth in September 2019 her expectation was that the four would return to make their lives in England. She was somewhat evasive on the issue of what had been done to secure the mother's immigration position and said it was not her responsibility which was true to some degree although as she had sponsored the mother to get her here in January 2019 one could justifiably say she had stepped up to a responsibility which required a more active role to pursue it than she played. Overall, I considered her to be broadly reliable with some discount to be applied to her evaluation of her son's actions.

70. The father adduced a witness statement from Barbara . This came in very late in the day. It contains a fair degree of hearsay although interestingly says she has never witnessed the mother being violent but puts this down to the mother's cultural deference to her. She did not give oral evidence and she clearly has worked for the father; presumably on a paid basis at times. I place little weight on her statement.

## **FINDINGS**

71. Drawing all of the evidence together that I have read and heard and taking into account the submissions made by counsel, on the factual issues which fall to be determined for the purposes of jurisdiction and fact finding I find as follows.
72. After the mother became pregnant with Nora the father provided little to no support and was largely disengaged. As a consequence, the mother felt it necessary to seek support from Mr Brown and necessity and family pressure together with the lure of life in the West as the wife of Mr Brown led her to commit a gross and shocking deception on him which resulted in him being circumcised, adopting Islam and marrying the mother and applying for a spousal visa to enable her and the baby to live with him in Norway. The mother was almost immediately unfaithful to him when the opportunity to resume a relationship with the baby's father emerged. The father subsequently again failed to commit to the mother financially or by offering to marry or otherwise create a committed family unit.
73. After Nora's birth the father discovered about it and became energised enough to stir himself. The near inevitable consequence of this was that the mother's plans imploded, Mr Brown left the scene, and the father was left holding his baby.
74. The father and his family explored how they could bring the mother and Nora to England. It is clear the intention was to bring her, if possible, as his partner and on, if possible, a permanent basis but this was not possible and so a visitor visa was the only option. The father, even then, was sufficiently impecunious that his parents had to sponsor the mother.
75. The father, through irresponsibility, and the mother, probably for advantage, engaged in unprotected sexual intercourse and Felicity was conceived.
76. When the mother and Nora arrived in England, the intention was that they should seek to find a way she could remain permanently.

77. The mother under-estimated the impact of moving to England and living with the father and his family. It seems likely she had got (from the father) a misleading impression of his wealth and position in England. Living with his parents and him she became jealous of the father and insecure about her position (both as a consequence of her fear that he had another woman and because of her immigration position.). This caused arguments between them. The father's lack of empathy for the mother, his self-centred and condescending attitude to the mother and his evasive and vague attitude contributed to the mother losing her temper on a number of occasions during which she bit, slapped, hit and pushed the father. It is most probable that the father in fending her off did push her and that has been translated in the mother's mind into his assaulting her. I do not find he deliberately assaulted her by pushing her out of bed or strangling her – more likely he put his hands on her perhaps around her upper chest or shoulders which has become strangling. The father and his mother have exaggerated to a degree the number of assaults and the extent of his injuries.
78. During the time the mother was in England no attempt of any substance was made to resolve her visa situation by the father. This was probably a combination of lack of commitment on his behalf but also his inability to act in a responsible way and to commit to achieving something.
79. If she had been able to stay in England with any security (and in particular being able to work) the mother would have stayed. She left because she was told her visa was expiring, she was not eligible for free maternity care, and she had no other realistic choice. She would have taken Nora with her, but she was persuaded to leave her by a combination of the father lying about her being able to use Nora's UK passport and the reassurance that he would join her in Thailand after the birth and they would resolve her future immigration position. On balance, the mother interpreted this in a more definitive way than the father was committing to. The paternal grandparents also understood that the father was committed to seeking to bring the mother and the two children back to England.
80. In November there was a further row – definitely linked to what the father was doing to secure the mother's immigration to England – probably by this stage the mother realised that marriage was the most secure way and she was by then free to marry him. The father would not commit in this way and was seeking to fob the mother off with other alternatives which he knew had almost no prospect of success. A row ensued – similar to those in England – the mother assaulted the father and in fending her off he pushed her in a way which caused her to hit her head and make it bleed. The mother mis-described this to her family and they assaulted the father.
81. The father and mother agreed with the police and children's representative that the father would resolve the mother's immigration to the UK. It appears likely all realised that marriage was the best and most secure means and that the father – finding himself in a tight spot – agreed to that in order to secure the mother's consent to remove Nora back to England.
82. On his return to England the father took no serious action to put into effect his promise. In reality, it was perhaps impossible for him to achieve as he was adamant he would not marry her and he was unable to commit to working so as to raise the funds to sponsor her. His complaints about his inability to work whilst having a

substrata of truth are far from the complete picture. He does not have the work ethic, capacity for self-sacrifice or determination to achieve.

83. In the course of the 3 years, contact was sporadic but occurred both ways. Each parent used substitute childcare. Both seem to have provided a good enough level of care. The father did not financially support the mother or Felicity.
84. The father had, for reasons which escape me, never established that he did not actually have parental rights over Nora – this only emerged in these proceedings. The mother was aware of that – probably by November 2019 at the latest.
85. It was the mother who sought to reunite the girls and herself with the father, he having achieved nothing and tried very little to do so. She paid for the tickets.
86. By end 2022, the mother had resolved that either the father would marry her and take her and the children to England where she could work even if they were not together, or she would resume care of Nora in Thailand. She removed Nora from his care with that intent. The father snatched Nora back and would have left the country with her had he not been stopped.
87. Each parent feels very great hostility and anger to the other and each denigrates the other and their parenting ability.
88. Both parents have harmed the children by their actions or inaction. The father has harmed both children by separating them in November 2019 when he had no real intention or ability to effect a reunification through immigration. The father has behaved in an emotionally abusive way to the mother by misleading her, failing to support her in her pregnancies and separating her from Nora for 3 years. Although this does not fall within the definition of transnational marriage abandonment, it is abusive of both the mother and Nora and Felicity nonetheless. Covid played some role in the length of the separation, but the father took no active steps to resolve the position. It was acts of omission rather than commission on his part. The mother has behaved in a physically and emotionally abusive way to the father in her verbal and physical assaults and in separating him from Nora. This was also emotionally abusive of Nora albeit that is offset to some degree by the benefit to her and Felicity of being re-united.
89. Both parents within limits will permit a relationship with the other parent but on their terms.
90. The father is more committed to Nora than Felicity. His position accepts an almost inevitable long-term separation of the sisters.
91. This section of the case has focused more on the negative aspects of the parents than their positive qualities. The next stage will hopefully reveal more of that side of them.

#### JURISDICTION FOR NORA

92. Nora had become habitually resident in England after her return here in November 2019 and remained habitually resident in England as at the date of issue of the

wardship application on a date between 6 February 2023 and 1 March 2023.

- i) She had lived in England since January 2019 save for a period of time in Thailand between September - November 2019 and from December 2022 – February/March 2023. Albeit she was without her mother she was integrated into a social and family environment in England living with her father and paternal grandparents, attending English nursery and Reception, acquiring English language and maintaining some degree of knowledge of her mother and sister in Thailand. This was far more than ‘some’ degree but a very high degree of integration, including by reference to the period when her mother also was residing here when there was an intention for the whole family to make their permanent homes in England from January – June 2019 and when she returned in November 2019 with the mother’s permission in the expectation that the mother and Felicity would be joining them in England in the not too distant future.
  - ii) By 1 March 2023 she had been residing in Thailand for no more than 11 weeks. Although re-united with her mother and sister and maternal family and so in a family environment this was an unfamiliar one both in terms of the people but also the language, the culture the food and much else. She had been removed unexpectedly from the father’s care and had not returned to England as she had been expecting in January 2023 to the home, school and family environment she was familiar with. The circumstances of her transfer from the father’s care to the mother’s was not only unexpected but she was exposed to high levels of acrimony between the father and the mother in this time which would have likely been both distressing and destabilising. She had not commenced at school. Although it appears she was beginning to adapt to life in Thailand – as she had to given her age and situation – that limited degree of integration was not sufficient to amount to habitual residence in temporal or qualitative terms and did not amount to a greater degree of integration in Thailand than she retained in England. She remained primarily an English speaker, was far more used to her father’s care and that of his family, was accustomed to attending English school/nursery and to English food, weather, etc. Using the see-saw analogy her roots had not gone down sufficiently in Thailand and had not been sufficiently uprooted from England to result in a change in habitual residence. I do not consider this to be in the theoretical territory of her having lost habitual residence in England and not yet acquired one in Thailand but is truly a retention of habitual residence in England.
93. Therefore she had not retained habitual residence in Thailand (if indeed she had re-acquired it in September-November 2019 ) after November 2019.
  94. The court has jurisdiction pursuant to Article 5 of the 1996 HCPC (applying the *Hackney* case) and determining whether jurisdiction existed at the commencement of proceedings.
  95. Ms Chokowry submitted that between her arrival in Thailand on 14 December 2022 and now that Nora had acquired habitual residence in Thailand because she had been re-united with her mother and sister, commenced living in a family unit, begun school, and assimilated into Thai culture. I observe that the lack of contact with the other parent (which Ms Chokowry relied on to try to maintain habitual residence in

Thailand between November 2019 – December 2022) would be a drag on her acquiring habitual residence but not a bar to becoming habitually resident there. I do not feel it necessary to determine that factual issue at this stage, as even if she is currently habitually resident in Thailand, that fact does not affect the jurisdiction that the court acquired under Article 5 because Thailand is a non-Contracting State and so Art 5(2) is not applicable. In my view once jurisdiction is established at the commencement of proceedings on the basis of her then habitual residence the court continues to have jurisdiction until it concludes the proceedings because if Art 5 jurisdiction were lost (because she ceased to be habitually resident here at the time of this hearing) it would be replaced by the domestic law habitual residence jurisdiction in the form of s.2(1)(b(ii) and 2(3)(b)(i) and s.3 FLA 1986 as Nora was habitually resident here as at 1 March 2023. The position would be different if the other country was a Contracting State

96. The court does not need to determine whether Article 7 operates to retain jurisdiction because if the 1996 HCPC does not apply then the court considers jurisdiction (for return, parental responsibility) by reference to Nora's Habitual Residence at the relevant date, namely the issue of the wardship proceedings.
97. The court has jurisdiction to determine the father's PR application for Nora even though it was issued in August 2023 as the effect of s.7 is to bring forward its jurisdictional date to join the return application. At present I can see no real reason why PR should not be granted but I will consider the order at the next phase.

#### JURISDICTION FOR FELICITY

98. The only jurisdiction the court has in respect of Felicity is the *parens patriae* in relation to return. The father has not sought to persuade the court to exercise it which in practical terms means accepting the inevitable separation of Nora and Felicity. Ms Chokowry submits that Felicity's circumstances do not get close to the sufficiently compelling threshold to justify it being deployed and Ms Cabeza frankly accepted that the father's position was taken in the light of their appraisal of whether the *parens patriae* threshold was met. It might be said that is the end of the matter if no return is sought. However, the court has its own duty to consider whether to make orders of its own motion and given Nora is a ward and Felicity is a UK citizen and the father's position would require separation of the siblings if the court concluded it was in Nora's paramount welfare to return, I do not feel it is appropriate to rule out this possible tool to promote the welfare of Nora and Felicity until their position has received separate consideration. I do not feel in a position to determine whether to consider exercising that jurisdiction without fuller welfare information before me to consider whether it might fall into the rare category of cases identified for its exercise. I will join the children as parties as I consider the potential consequences for the children are so profound that their interests require separate representation.
99. As Felicity does not fall within the parameters of 1996 HCPC for parental responsibility terms, one must fall back on domestic law. Although it is tempting to say that developments in the international field since 1989/1996 have shifted the jurisdictional dial the effect of the decision in *Hackney* is that if the 1996 HCPC does not apply domestic law does. Domestic law does not explicitly reference applications

for PR – I mean within FLA 1986. There are no true jurisdictional requirements in the s.4 CA 1989 save that an applicant is the father which the father is. Thus, the court has jurisdiction. However, given Felicity's very tenuous links to England and the obvious connection she has with Thailand and the ability of the Thai court or administrative authorities to deal with PR, there are clearly strong arguments for refraining from exercising the jurisdiction. Further information will be needed to consider this.

## CONCLUSION

100. Further evidence will be required to resolve the issue of what orders are in Nora's welfare interests and to determine both whether there are grounds to exercise the *parens patriae* jurisdiction for Felicity and whether a parental responsibility order would be in her welfare interests and whether it is appropriate for this court to make it.
101. I have joined the children as parties, and the case will be listed for further directions to consider what further evidence is required; in particular whether expert evidence is required and whether social work evidence on the girls can be secured from a partner agency to CFAB in Thailand.
102. That is my judgment.