



Neutral Citation Number: [2024] EWHC 997 (Fam)

Case No: FD23P00584

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 April 2024

**Before :**

**MR JUSTICE CUSWORTH**

-----

**Between :**

**H**

**Applicant**

**- and -**

**A**

**Respondent**

-----  
-----

**Mr Paul Hepher** (instructed by **WBW Solicitors**) for the **Applicant**  
**Ms Cliona Papazian** (instructed by **Watkins Solicitors**) for the **Respondent**

Hearing date: 15 April 2024

-----

**JUDGMENT**

This judgment was handed down remotely at 10.30am on 30 April 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

.....

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mr Justice Cusworth :**

1. This hearing has been for the adjourned final disposal of Hague Convention 1980 proceedings between the parents of the 3 children who are the subject of the application, X, born on 23 December 2012, so aged 11, Y, born on 18 January 2016 and so aged 8, and Z, born on 10 April 2018, who has therefore just turned 6. I originally heard this matter over 2 days on 12 and 13 February 2024, and handed down a judgment on 26 February, which had first been released to the parties on 15 February.
2. That judgment, which has been published as *H v A* [2024] EWHC 476 (Fam), dealt substantively with all elements of the respondent mother's defences to the return order sought by the father bar one, which was her defence to a return under Art.13(b) of the Convention. I will not repeat here any of the contents of that judgment in which I set out fully the background and history of this case and the circumstances which now exist for these 3 children; I also explained why I was not satisfied that any of the mother's other raised defences could succeed in preventing a return order being made to the children's native Sweden.
3. I therefore come now to deal with this last element of the mother's defence, in circumstances where in February I was concerned that I did not have sufficient information about the prospects that the mother may be imprisoned immediately on her return to Sweden because of the criminal proceedings against her in that country for the offence of gross child abduction. I repeat here 2 paragraphs of my earlier judgment, which followed my setting out a series of questions (identified later in this judgment) that I felt required to be answered as best they could in current circumstances, to identify the position which had been arrived at:

***57. From the evidence I have of the children's expressed views from Ms Baker, I am satisfied that there is a grave risk of their being placed into an intolerable situation if no positive answers are received to any of the above questions, and that the harm they may suffer includes a possible negative impact on the prospects of their being able to rebuild their relationship with the father, if the mother meets the full force of Swedish law immediately upon her return. I stress that I am very clear that the Swedish Court is the court that should be taking welfare decisions about these children, but their vulnerabilities, which***

*have been exacerbated, if not created, by the mother's behaviour over the past 18 months, in removing them from Sweden, abandoning them in X, returning to collect them after her arguments were rejected in Sweden, and finally removing them once again to a new and unfamiliar environment in England, are there, and fall to be addressed.*

*58. I accept the father's case that prior to July 2022 there is no evidence that the time he spent with the children was anything other than positive and beneficial, notwithstanding the mother's allegations of abuse prior to the parties' separation in 2017. However, I have to consider the children's current state of mind and sense of allegiance to their mother, which Ms Baker notes. If arrangements could be put in place which would enable the mother and children now to return to Sweden, without risk of her arrest on entry, and to remain with her until the first hearing could be convened of the court in Sweden charged with dealing with welfare issues in relation to the children – I assume the District Court in Umea – then there may be no sufficient grounds on which the court could exercise its discretion to decline to make a return order.*

4. Since the completion of that judgment I have received 2 further pieces of evidence. The first is a psychological report prepared by a Dr Katherine Donnelly on behalf of the mother for use by her in extradition proceedings currently proceeding here in light of the Swedish arrest warrant which has been issued for her. However, the extradition court has apparently taken the view, at a hearing on 22 March 2024, that rather than deal with the application of the Swedish authorities, it should instead adjourn to take its lead from the outcome of these proceedings. Ms Papazian for the mother tells me that: *'were this Court to exercise its discretion not to order the return of the subject children to Sweden, the extradition Court will likely refuse the extradition request'*. She does not state whether she considers the reverse to be true, but that must be at least the mother's working assumption.
  
5. What then of Dr Donnelly's report, which was commissioned unilaterally by the mother's criminal solicitors? Mr Hepher for the father invited me not to admit it into evidence, although both counsel allude to its content in their notes. Given that it contains reference to recent interviews carried out by Dr Donnelly with the mother and the children's teachers, and observations of them in their schools, it is plainly a relevant document. At the same time it was not commissioned for these proceedings,

but for criminal proceedings where the court's focus is very different, and it was commissioned solely for the mother, its existence not even made known to the father until just before the February hearing. He and his advisors received it only after that. It is consequently based on a partial and evidently selective narrative – an obvious example is that there is no reference to the completed proceedings in Sweden during 2023 in which the mother played a full part.

6. In the absence of any FPR 2010 Part 25 application or compelling argument that it should be so treated, the report cannot have the status of expert evidence. However, in that it records the reporter's observations of the children and the mother for the purposes of its preparation it undoubtedly contains relevant information, and I have admitted it on that basis.
7. I have carefully considered the observations of the children, and of the mother, which Dr Donnelly makes, and note that these are broadly consistent with the observation of Ms Baker for CAFCASS which were made at around the same time. However, I have treated the conclusions which are drawn with more circumspection, as they seem to be based more on generalisations taken from the work of other authors about children of the age of the subject children in these proceedings, rather than from the author's specific observations of the children or any study of their school records. Dr Donnelly was not as indicated made aware of the recent Swedish proceedings, and their outcome, albeit concluded at a time before the mother had embarked on her latest reorganisation of the children's lives.
8. Dr Donnelly acknowledges rightly that she has had no opportunity to assess the father, and in the circumstances, it was not incumbent on the father to offer himself for such an assessment. In these summary proceedings, and where as recently as last October the court in Sweden which as both sides accept has primary welfare jurisdiction in relation to these children has determined that he is well qualified to provide for their care, any assessment of the father would not have been a useful addition to the evidence before the court. Dr Donnelly's was not a joint instruction, nor was it one which was communicated to this court before the report had been filed. Not only that, but the interviews, and the observational process with the children which Dr Donnelly

undertook on the mother's behalf, was not in proceedings where their welfare was the primary focus, but rather where the mother was using her obligations to the children as a shield to extradition, and so for her own principal benefit.

9. When Ms Papazian originally applied on the mother's behalf for the preparation of a Settlement Report at the hearing before me in February, which would have required a further interview of the children by Ms Baker, beyond that which had already been undertaken by her, the fact of this additional process had not been communicated to the court or to the father. In fairness to her legal team in these proceedings, they too had not been made aware of the full picture. But in the circumstances, the father cannot be criticized for asking for the report produced to be treated with a deal of circumspection, rather than embracing its author as a Part 25 expert.
  
10. Notwithstanding, Dr Donnelly's described her assessment of the children as follows, at [7.01] of her report dated 20 February 2024:

My assessment of the children was indirect, due to their ages, linguistic ability and the likelihood that, in my experience of working in the context of parental conflict, children can be pulled into a situation where they feel a need to defend either parent rather than offer a factual account. As such, my assessment was based on observations of each one in their school environment, liaison with their schoolteachers and developmental reports from their mother. I noted that each of these provided a consistent picture of the children's current functioning.

11. It is fair to say that there were no particular concerns in relation to the functioning of any of the children in their school environment identified in the report, nor from the conversations had with their teachers. Rather, Dr Donnelly relies on 'attachment theory' as 'the most widely used theoretical approach to issues of child-parent separation', and she comments that separation of the parent from the child 'is considered to be a major and traumatic loss that will have serious and lasting emotional and relational consequences for the child.' Whilst this is no doubt true as a matter of general theory, it takes this court no further than the careful and detailed specific observations made by Ms Baker in her report and oral evidence to me in February. I remind myself that at [45] in my earlier judgment I had recorded that:

*Overall, the clear picture from Ms Baker's report, and from her oral evidence, was that the children's consistent expression was that they did not want to be separated from their mother, and that they were, if anything, as she put it, clinging to her. Their objections as expressed are not so much objections to Sweden, but objections to being separated from her. X's remark that he would go to Sweden if his parents reconciled was eloquent.*

12. Further, whilst Dr Donnelly also opined no doubt accurately upon the generally negative effects on children in the event that a care-giving parent suffered imprisonment, she also quoted from a 2008 report in support of her argument which concluded with the acceptance [7.08] that: 'Children may be protected from the harmful effects of parental imprisonment by having stable caregiving arrangements, by their families receiving social and economic support'. She was unable to consider the efficacy of such arrangements, however, because she had evidently not been told of the 2023 Swedish proceedings, nor had any interactions with the children's father.
  
13. Of more concern are Dr Donnelly's conclusions about the impacts on the children of such a separation – 'considerable emotional instability' in the case of X [7.19]; 'a severe impact on Y's future development and wellbeing' [7.21]; and 'devastating harm in the event of a further separation from his mother' in the case of Z [7.23]. All of this, notwithstanding the powerful language used, is as explained derived from theory, rather than any detailed interaction by Dr Donnelly with these children, and so whilst I keep her opinion well in my mind, I have to weigh it alongside all of the other balancing factors in the case. These include the damage caused to these children by the loss of their relationship with the father after their wrongful retention in X by their mother in 2022, and the further insecurity no doubt engendered in them by their effective abandonment there with her family and away from either parent during the first 9 months of 2023, only ended by the mother once she became aware of the outcome of the Swedish proceedings.
  
14. Finally, I should also record Dr Donnelly's opinion that testing of the mother herself revealed a possibility that she is 'experiencing difficulties related to post-traumatic stress' [6.116]. And although she later recorded that the mother 'was keen to present at

interview as without mental health difficulty as she emphasised this several times' [7.17], she concluded that paragraph by stating:

Ms A's presentation and responses to the Impact of Events questionnaire were consistent with a diagnosis of PTSD and I was of the opinion that she is likely to be suffering from this condition, which may be exacerbated due to the adverse early experiences of deprivation and parental separation that she described. Extended separation from her children, to whom she presents as strongly attached, is likely to have a severe impact on Ms A's mental health as a result of this pre-existing vulnerability.

15. Whilst I record the fact of that expressed opinion, I do not understand that diagnosis to be a part of the mother's case in these proceedings, and in any event, whilst any impact on the mother's effective functioning as a parent may well be relevant to an assessment under Art.13(b) of the 1980 Convention, there is no other evidence before me of what such an impact might be.

16. I also have before me now the further evidence from Mr Jens Nystrom, who is an expert in Swedish Law, and has been instructed as an SJE. I had set out the questions about the Swedish position which were at large from an earlier ICACU response in my earlier judgment thus:

***56. What is not covered is the situation where the person who is the subject of the proceedings returns not as a result of the extradition prior to the conclusion of the proceedings, and with the 3 children whose return she has been mandated to effect. Will she then be arrested and detained pending the convening of a hearing? Will the court immediately look to implement the extant order which places the children into the care of the father? Is there any process whereby the children can remain with their mother pending their return to Sweden and the matter coming before the District Court for at least a summary reconsideration in light of the changed circumstances since the original order was made? Is the mother's Swedish lawyer right to say that the father can take no steps to enable that to happen? If he cannot, then how is a situation to be achieved whereby these children can be returned to Sweden without avoidable trauma to allow the Courts there to decide where their welfare interests lie? Finally, what if the mother refuses to comply with a return order, with the consequence that the extradition process goes ahead? From the tenor of the reports being prepared, she is evidently intending to use the children's attachment to her as a shield in***

*those proceedings. Is that a realistic defense, and to what extent will the decision in this Hague application impact upon those proceedings?*

17. Dealing with that last question, as already explained, the mother's legal team is now maintaining that, if no return order is made in these proceedings, they expect that the mother will have a good prospect of avoiding extradition. As to the balance, Mr Nystrom has produced a report dated 27 March 2023, and then responded to further questions which were received and translated just before this hearing. The overall effect of his opinion appears to be this.

- a. It is highly likely that the Swedish authorities will pursue their prosecution of the mother, regardless of the father's position. On her return to the country she is likely to be detained, in the first instance for no more than 4 days before a custody hearing. There, she may be detained for a further period of 2 weeks, or if the court can be persuaded that there is no ongoing risk of criminal activity or other complication to the investigation, so that flight risk would be the principal concern, she may have a 50% chance of being released immediately subject to a reporting obligation and travel ban.
- b. These prospects would grow if she could provide a fixed address at the time of the court's review or otherwise have positive information about her living situation. She could apply for accommodation via social services, but this will be more difficult in the event of her immediate arrest on arrival, as she would not be able to liaise directly in her home municipality. The fact that the children have need of her care will be a relevant consideration, but this will be tempered by the fact that there is a Swedish Court order which commits their care solely to the father.
- c. If detained until trial, then the mother can expect incarceration for at least 3-4 weeks before that date, and then perhaps a further 8 weeks to any appeal hearing. The proceedings may be delayed by a few months if she is not in prison ahead of trial.



- d. Mr Nystrom considers the likely tariff in the event of the mother's conviction to be between 8 months and 18 months, with aggravating and mitigating circumstances to be considered within that range. If the eventual penalty comes out at less than 12 months, then the assessment is that there would be a high likelihood of a non-custodial sentence – the expert says that there is 'clearly room' for a non-custodial sentence. If more than 12 months, then the assumption must be that the mother's sentence will require her to serve time in prison.
18. Overall, the impact of the Swedish criminal provisions does appear to be that of a relatively flexible and responsive set of provisions which will adapt fairly to the circumstances surrounding each individual offence, if proven, as one would expect of the criminal code of a sophisticated democracy in Western Europe in the 21<sup>st</sup> Century. I did not in those circumstances consider it necessary to allow any cross-examination of Mr Nystrom for the mother. It is the potential effect of those provisions on this mother and consequentially on the children which she says gives rise to the situation of intolerability for the children in this case. I find that the situation is more finely balanced than I had feared in my February judgment, but that these proportionate Swedish provisions do not provide a clear answer to the determination of this application.
19. The situation is only exacerbated by the mother's flat refusal through Ms Papazian to return with the children to Sweden if a return order is made. It is regrettable that she espouses this as her position today, despite having told the Swedish courts during the 2023 proceedings that she would comply then with any return order made, before subsequently removing the children from X to the UK. She next told Poole J at court on 11 December 2023 that she was en-route to Sweden with the children when she was stopped pursuant to a Swedish arrest warrant and detained in this jurisdiction. She had already by then invited the father by text to come and collect the children from her and return them to Sweden.
20. She has also failed to take any steps to make easier any return to Sweden for the children, in line with the clear indication which I gave in my February judgement at

paragraph 60 where I invited her to ‘*now engage positively with the various different agencies to ensure that she and they return to Sweden safely, but soon*’. I have no difficulty in finding that this is a mother who will do, or say, whatever she believes will assist her from time to time to avoid the children’s return to Sweden, regardless of its potential impact on those same children. I find that she is well aware that the intolerability which she relies on has if anything been made starker and more pressing by her deliberate refusal to mitigate her position with the Swedish authorities, in the hope that she can thereby avoid either a return order being made or any sanctions being imposed on her at all for the way in which she has conducted herself over the past 18 months. She takes this position notwithstanding the plainly deleterious effect that it will have had on the welfare of the children, who have further been completely deprived of a relationship with their father over that period.

21. However, I am well aware that the focus of these proceedings is not on the source of the intolerability, but on its impact on the children in the event that a return order is made. I remind myself again of the words of Moylan LJ in *Re W [2018] EWCA Civ 664* at [57], which I set out in my February judgement. Earlier in the same judgment, Moylan LJ had expressed the conundrum created for the court thus:

*47. It is also well-established that Article 13(b) through the use of the words "grave", "real", "harm" and "intolerable" is of "restricted application": Re E (para 31). It is in this context that intolerable means something "which it is not reasonable to expect a child to tolerate": Re E (para 34). The focus is on the child and not the source of the risk. Whilst, of course, the court must be astute to avoid providing opportunities for a parent to seek to act manipulatively, the ultimate question remains the same.*

22. How then is the situation which the mother has wilfully created for these children in the event that a return order is made to be judged? She maintains that she will not accompany them home, despite expressing her willingness to do so as recently as last December before Poole J. Ms Baker expresses her concern that the children are now ‘clinging to her’, in part at least because between December 2022 and September 2023 she took the inevitably damaging step of leaving all 3 children (initially aged just 9, 6 and 4) with her extended family in X for a period of as long as 9 months, only

**High Court Approved Judgment:**

returning to fetch them once the Swedish court had rejected her case and directed that the children should be given into their father's care.

23. Notwithstanding her strikingly offhand treatment of the children since their removal from Sweden in 2022, I must accept that they will now suffer a significant degree of destabilization and so harm if they were to be separated from her, especially if that separation came by the operation of Swedish criminal law and led to her spending a substantial amount of time in prison. I agree with Dr Donnelly that the children may now be more vulnerable to such harm by reason of their earlier abandonment by her in X. I also remind myself however that she has in doing that in fact compelled them to cope without her for a sustained period before, so the impact on them may not be straightforward.
24. Having said all of that, the following remains true. The Umea District Court in Sweden dealt with contested proceedings between these parents in relation to the care of the children that concluded only on 13 September 2023. Whilst, as I find in response to the judgment concluding those proceedings, the mother has taken dramatic steps to alter the picture since then, returning to the children and bringing them back to Europe, what she has not done is make any application for the Court in Sweden to reconsider its order given the change in circumstances which she has wrought. Her rejected application for permission to appeal was not based on the changed position.
25. If she were to make such an application, no doubt the Umea District Court would consider any evidence which she could produce relevant to the children's welfare in their current circumstances. Given the circumstances that existed for the children during the Swedish proceedings, with the children left without a face to face relationship with either parent for so long, there can be no suggestion that the September order was wrongly made, or not reflective of the children's best interests as then understood by that court. Why then can the court which both parties acknowledge is the court with primary welfare jurisdiction over these children not be trusted to make orders conversant with their welfare in the future?

**High Court Approved Judgment:**

26. After all, this is not a situation as in *Re W*, where it was the mother's case to the Court of Appeal (recorded at [36] in the judgment of Moylan LJ) that it was her 'unchallenged evidence that the father and the paternal family "cannot look after the children for long periods of time and have never done so"'. Here, in proceedings in which both parties were fully engaged, which concluded only 7 months ago, the court of primary welfare jurisdiction has determined that the children should be in the care of their father. This was not therefore an order made punitively post-abduction where the absent parent has not been able to put their case.

27. I remind myself of the words of MacDonald J in *G v D (Art 13(b): Absence of Protective Measures)* [2021] 1 FLR 36 at §39 (approved by the Court of Appeal in *C (A Child) (Abduction: Article 13(b))* [2021] EWCA Civ 1354 at §60), a passage which I also cited in February:

“[39] Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example *Re H (Abduction: Grave Risk)* [2003] EWCA Civ 355, [2003] 2 FLR 141, *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and *Re L (Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433). In this context I note that Lowe et al observe in *International Movement of Children: Law, Practice and Procedure* (Family Law, 2nd edn), at para 24.55 that:

'Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or, even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases.'"

28. Here, the harm to the children on which the mother relies would result from their being placed, possibly, into the care of the parent with whom the Swedish Court has placed them, so in effect the simple implementation of the order made by that court last year. It may be the case that the mother will be detained for a time, although there is at least a real prospect that she will avoid a substantial custodial sentence. I accept that the prosecution of her offence is in the hands of the Swedish authorities, and the father cannot by withdrawing his support from the prosecution protect her from the

consequences of her own actions. But he can offer the children a measure of protection by offering them appropriate care for any period when their mother becomes unavailable to them; by offering them the ‘stable caregiving arrangements’ spoken off by Murray and Farrington in the article quoted by Dr Donnelly in her report at [7.08].

29. Mr Hephher was right too to lay emphasis on the sibling group of the 3 children who have remained together throughout all of the upheavals which they have undergone since the summer of 2022. Whilst they have not had consistency of care since then, they have had at least each other’s company, and I judge that that will be a significant element in mitigating any harm which any fresh temporary loss of their mother might cause.

30. In *Re W*, the mother’s likely ineligibility for a new US visa would have meant any return to that country for two children then aged 5 and 3 would have led to an indefinite separation from her. Here, the mother, by her own actions, has created a risk for herself that she may have earned a custodial sentence, possibly of somewhere between 1 year and 18 months, but equally possibly less, in which case she may avoid actual imprisonment at all, other than for a few initial days or weeks. The mother has done nothing yet to attempt to ameliorate her situation, no doubt in an attempt to make a return order, bringing with it a reckoning for her actions, less likely. If the evidence which she has amassed in these proceedings (seeking to demonstrate the attachment to her of the children) is put before the Swedish Court, I have no doubt that they will pay it all due attention, both as mitigation in the criminal proceedings, and as justification for a review of the Umea District Court order in the welfare proceedings.

31. So, I come back to the words of Art.13(b), which would give rise to a discretion if ‘*there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation*’. I accept too that, if the specified situation is found to exist, it would be impossible to see how the discretion might nevertheless be exercised in such a way as to expose the children to such a risk. I apply the test as articulated by the Court of Appeal in *Re IG* [2021] EWCA Civ 1123, at [47] in the judgment of Jonathan Baker LJ, and set out fully in the

February judgment and so not repeated in its entirety here, but especially the following:

*(2) The focus is on the child. The issue is the risk to the child in the event of his or her return.*

*(3) The separation of the child from the abducting parent can establish the required grave risk.*

32. In this case, of course, there is little that the father can do in the way of offering protective measures, as the criminal proceedings are beyond his control, and it is those which offer the principal risk relied on by the mother. Somewhat ironically, it is she who is the parent in a position to mitigate that risk by cooperating with the Swedish authorities, making arrangements for a return and for accommodation upon return, and complying generally with court orders. These are the most effective protective measures available, and yet it is she who has determined to avoid any such attempt at compliance.

33. I am keenly aware of the need to look at the situation from the children's point of view. Of course, it remains the case that any child whose parent commits a crime is likely to suffer emotional harm if that parent then goes to prison for that offence. Parents nevertheless are sentenced to terms of imprisonment every day. Should the situation be different because the offence in question is the abduction of that same child? Should the desire to avoid culpability in another jurisdiction, especially one whose principles and tenets are not dissimilar to those in the courts of this country, justify the court not making a return order - just because the abducting parent is refusing to return to the second jurisdiction to avoid incurring such a penalty? However inappropriate or distasteful that may appear, I consider that the answer to those questions is probably that, in an extreme case, the focus on the child would render it possible for the court to come to such a conclusion.

34. However, I equally do not consider that, when all of the available evidence is considered here that this is such a case. Dr Donnelly's conclusions, as opposed to her observations, are theoretical, and lacking balance. She could not judge the level of mitigation offered by the availability of the father to care for the children, because she

did not meet him. Ms Baker, as I noted in February, is clear about the children's attachment to their mother. Even so, it is clear from the evidence now available that a situation whereby mother and children can be guaranteed an untroubled return to Sweden ahead of a carefully planned recommencement of the welfare proceedings cannot be achieved.

35. A return to Sweden would present a likelihood at least that the mother would be detained for a few days. That may become a matter of weeks until trial, and there is a real possibility that she could ultimately receive a prison sentence of up to 18 months, although it is certainly also possible that any sentence can be kept to under a year and in that case it would probably not be custodial. The mother has it in her own hands to make a case to the Swedish courts to reverse the welfare order made in September, and to mitigate the possible penalty for her abduction offence.
36. If their mother elects not to return to Sweden, and avoids extradition, then if the children do return no doubt there may be further proceedings in Sweden as to how the children will spend time between their parents. If there is no return order made, then those proceedings may take place in this jurisdiction. Either way, these are children who will already have suffered emotional harm by reason of their treatment over the past 18 months, but who are likely to remain the subject of proceedings somewhere for several more months at least, if not longer. It is certainly in their interests to be reintroduced to their father, but their mother's attitude is very likely to make such a process traumatic for them in any circumstances. The children will likely be the subject of yet further professional investigations before long, come what may. The risk offered by a return order has to be seen in that context.
37. In all of the circumstances, I am not satisfied that it would be intolerable for the children now to return to Sweden for that process to take place where it should, even though there is an attendant self-inflicted risk for the mother. Of course, her receiving a lengthy sentence of imprisonment, if that happens, would negatively impact on the children, in circumstances where she has already by her actions removed their father from their lives, and then left them herself in a very different environment from that into which they had been settled for a full 9 months without either parent. But I am

satisfied that arrangements can be put in place which would minimise the impact of such an outcome on the children, if it happens, which is no means certain. It remains within the mother's power to take steps to reduce its likelihood.

38. Aside from their very understandable attachment to her now, they appear to have recovered, at least superficially, from the damage that those actions of hers will have inflicted on them, although I remain very aware as explained there will be underlying issues, and no doubt also much further contention ahead for them in any event. Sweden however is a country where these children do have deep links, their father's home and formerly theirs, and it is a place where spending time with him should be a feature of their lives. It is the country to which their mother expressed herself willing to return the children to 4 months ago, and where the Swedish Court has found that they should be living after fairly contested proceedings. I also remind myself that in the wake of the Swedish judgment the mother went as far as to invite the father to come and collect the children from her and to return them there.

39. Given that I am not satisfied that the high threshold suggested by the words 'grave' and 'intolerable' is met in this case, the mother should now have the opportunity to begin to act to effect the mitigation which she has so far been determined to avoid. Whilst there is a real risk that she might go to prison for an appreciable period if she returns to Sweden, there is equally no guarantee that that will happen. Even if it did, I am not satisfied that the children being cared for by their father for a period of between a year and 18 months would as explained be 'intolerable' for them, although I accept that they would prefer to be with their mother, and that as they have been kept from him now for many months, a return to their father would require significant readjustment for them.

40. If having given her a substantial period to make plans, arrange housing and instruct lawyers to begin any mitigation in Sweden, as I intend to do, she determines not to return, then the father should be authorised to come to this country to collect the children. She can then organise any return to Sweden for herself in their absence. That should happen in the event that mother has not returned with them to Sweden after a period of 8 weeks from this judgment. Thereafter, if she returns, then subject to her



**High Court Approved Judgment:**

ability to do so, then they should be returned to her care in Sweden pending the resumption of the welfare proceedings there. If she chooses not to, then it will be matter for her to commence fresh proceedings in Sweden to recast the child arrangements to suit their new reality, which she should put in train at once.

I will ask counsel to liaise over drawing up an order to reflect the above.