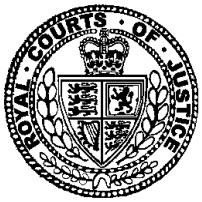

Neutral Citation Number: [2020] EWCA Civ 260

Case No: B4/2019/2759

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY DIVISION OF THE HIGH COURT OF LONDON
DEPUTY HIGH COURT JUDGE MR R PEEL QC
FD19P00110

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2020

Before:

LORD JUSTICE PATTEN
LADY JUSTICE KING
and
LORD JUSTICE MOYLAN

- -

Re P (Abduction: Child's Objections)

- -
- -

Mr E Devereux QC and Ms M Chaudhry (instructed by **Goodman Ray Solicitors**) for the **Proposed Appellant**
Ms M Jones (instructed by **Ben Hoare Bell LLP**) for the **Respondent Father**
The Mother in Person

Hearing date: 28th January 2020

- -

Approved Judgment

Lord Justice Moylan:

Introduction

1. This appeal concerns a return order made under the 1980 Hague Child Abduction Convention ("the 1980 Convention") on 4th October 2019 by Mr Robert Peel QC sitting as a Deputy High Court Judge. The order required three children aged 13, 11 and 8 to be returned to Germany.

2. The children had been wrongfully removed by their mother in late March 2018 when she secretly brought the children to England and Wales. She and the father were engaged in legal proceedings in Germany by which he was seeking contact. As set out in the judgment below, the mother "kept their whereabouts secret from the father, the German courts and other German authorities". The father did not discover that they were living here until December 2018. He then commenced proceedings under the 1980 Convention which led to the precise location of the children being established in April 2019. Regrettably, for a variety of reasons, the determination of the application has been excessively delayed.

3. This appeal is brought by the oldest child who applies to be joined to the proceedings initially for the purposes of appealing the order below. He directly instructed a solicitor following the order being made. Because the identity of the family involved in these proceedings is confidential, I will give him the initial P.

4. The substantive issues raised by the appeal are: (i) whether P should have been joined as a party to the proceedings below; and (ii) whether the judge was wrong to order his return when he objected to returning to Germany and is of an age and degree of maturity at which, in accordance with the 1980 Convention, it is "appropriate to take account of his views".

5. P is represented by Mr Devereux QC and Ms. Chaudhry. The father is represented by Ms M Jones. The mother was represented at the hearing below but appeared before us in person. She did not seek to make submissions, informing us that she attended the hearing in order simply to provide support for P. The mother has separately applied for permission to appeal. This application has been adjourned pending the determination of this appeal.

Background

6. I take the background circumstances largely from the judgment below with additional details from a psychological report that was prepared for the purposes of the proceedings in Germany.

7. The mother and the father are German nationals. They were both born in Germany which is where they met in about 2000. They married in 2005 and continued to live in Germany. The children were all born there and are German nationals. The parents separated in

2012. The children lived with the mother and the father had regular contact, including staying contact. The paternal grandmother also had extensive contact.

8. The mother remarried in 2014. Difficulties in contact started after this with contact ceasing in the summer of 2015. German youth and family services and child and adolescent psychiatric services became involved in and from 2014. Although it is not entirely clear, their involvement appears principally to have been due to problems P was having at school. He had been expelled from school in late 2014 and, for a period, was admitted to a child psychiatric ward for in-patient treatment. He attended what is described, in the psychological report, as a "special school with an emphasis on emotional and social development" and received extra support through an organisation which "offers special support for the development of social competencies".

9. In late 2016 the father applied to the German court for contact. A contact guardian was appointed whose role appears to have been to support and, perhaps, supervise contact. Contact was ordered and, as reported by the contact guardian, very positive contact took place including with the grandmother. The court also ordered the psychological report, referred to above, to provide an expert opinion on what contact would be in the best interests of the children and on the parenting capacity of the mother. The paternal grandmother and the mother's husband were included in those seen by the author of the report.

10. The report is dated 20th December 2017 and contains, at 180 pages, a comprehensive analysis of the background and of the expert's opinion in response to the questions referred to above. Its conclusion was that it was strongly in the interests of all of the children to have contact with the father and the paternal grandmother. The report also records that P's problems at school were said by him to have diminished significantly. The judge rightly described the report as containing a "conspicuously thorough analysis", at [26]. He summarised the report's conclusions as follows, at [26]:

> "(i) M resolutely opposes contact;
> (ii) Engagement with F induces stress in M who would benefit from therapeutic input;
> (iii) M believes F is planning the targeted abuse of the children;
> (iv) The children say that they do not want to see F although this is likely to be on M's "instructions";
> (v) F is able to parent the children;
> (vi) There is no evidence to justify the fears expressed by M about F posing a risk to the children;
> (vii) The children have a very close, "intense" relationship with F's mother, their paternal grandmother;
> (viii) The separation of the oldest child from F and the paternal grandmother is a considerable burden on [him];
> (ix) The eldest child has exhibited challenging behaviour;

(x) Unaccompanied contact, including overnight contact, should resume and be backed up by appropriate and robust measures."

11. The mother left Germany with the children on about 23rd March 2018. She told nobody that she was going or where she was going and effected, what the judge described, at [30], as "a very successful, clandestine departure". The mother's case was that she had fled Germany because "she was in fear of her life from" her husband. The judge was doubtful about this explanation which was in direct contrast with what the mother and P had said as recorded in the psychological report. The mother had described "her current life situation with her husband and everyday family life [as] almost completely idealised". This idealisation was "copied by" P.

12. During the course of her, brief, oral evidence at the final hearing, the mother "denied having told the German psychologist that [her husband] was 'virtually perfect across all domains' and that they had had a 'beautiful family life', even though the report clearly records her speaking in such terms", at [47].

13. The mother and children had, in fact, travelled to Wales. They lived, "after some brief stays in different parts of Wales, in a hostel in Bridgend for several months", at [34]. The judge's assessment, at [34], was that "the children's lives were somewhat chaotic, peripatetic and far from happy in those early months".

14. Social services became involved. This might have led to the German authorities being informed of the location of the children but the Local Authority felt constrained from doing so because the mother refused to agree to this. It has not been necessary, or appropriate, to explore further this decision by the Local Authority because it is not relevant to the determination of this appeal.

15. Following leads obtained by the German Police, the police in Wales confirmed that the mother and children were living in Wales. This led to the father making his application under the 1980 Convention in March 2019 with the location of the children being found in April.

16. The mother moved with the children to a new address in England in May 2019. The children had been at school in Wales, at least for a period, but the move interrupted at least the oldest child's schooling. He was still not attending a school at the date of the final hearing and the judge records his understanding that P was due to go to a new school "starting in 10 days' time", at [37].

Proceedings and Judgment

17. The 1980 Convention proceedings began, without notice to the mother, with a raft of orders designed to establish the precise location of the children and to prevent any further move by the mother from that location.

18. Following the mother and children being located in April 2019, she attended court on 9th May. The mother and children did not return to Wales after this hearing but after, perhaps, one or two days moved to a new address in England. This was contrary to the terms of the court's orders which had prohibited her from moving the children to a different location without permission from the court.

19. The mother filed a 57 page statement. In this, as referred to above, she states that she had to leave Germany urgently because she was "in great danger at the hands of" her husband. She also set out in detail why she asserted that the children would be at a grave risk of harm if they returned to Germany and that the children objected to returning to Germany.

20. For reasons which were not explored during the hearing of this appeal, the progress of the 1980 Convention proceedings was significantly delayed. This appears in part to be because the parties agreed that further directions were required and also because the final hearing, which had been due to take place on 28th August, had to be adjourned because of delays in the evidence being completed. The individual delays were not in themselves substantial but the cumulative effect was that the determination of the application occurred much later than it should have been.

21. Cafcass filed a report dated 13th September 2019 dealing, as required by the court's order, with the children's views, wishes and feelings about returning to Germany; their maturity; whether any of them should be separately represented; and whether any of the children wanted to meet the trial judge.

22. P was "polite and co-operative" and engaged fully with the Cafcass officer. He made it very clear that he did not want to return to Germany. He told the Cafcass officer he did not miss anything about Germany and could not recall any positive memories. I do not propose to go into the detail of what he said but they included him saying that he "hated" his school in Germany. The report summarised the position as being that all three children said that they did not want to return to Germany with P "expressing his views with the most force" and "emphatically".

23. The report's conclusion on the issue of objections was as follows:

> "Whilst accepting the children have been in their mother's sole care and their position is likely to be aligned with and supportive of their mother, [P] expressed his views with considerable force and his expressed memories of his life in Germany were wholly negative. He is approaching 13 years and I consider of an age and understanding for his wishes to be taken into account and he voiced his objection to returning to Germany. Regarding (the two younger children), whilst expressing they did not wish to return to Germany, I assessed their priority was to remain with their mother in her care, wherever she may be living".

24. In response to the question of whether any of the children should be separately represented, the Cafcass Officer indicated that she did not consider this was necessary. In her opinion, their "views and feelings are before the court and their voices are raised in this report". She added that, if the proceedings were not determined at the impending hearing, this "may need to be reviewed". The children had, however, said, with varying degrees of interest, that they would like to meet the judge.

25. In her oral evidence the Cafcass Officer "confirmed and enlarged upon her report", at [43]. This included that P "has a clear objection to returning" based on his "unhappy memories of Germany". The judge found her evidence "clear, measured and sensitive".

26. The mother also gave oral evidence and the judge met the children in the presence of the Cafcass Officer. The children were "delightful, engaging and polite".

27. At the outset of the final hearing the mother applied for an adjournment on the basis that the two older children should be separately represented; that expert evidence was required to address whether the removal of the children from Germany was in breach of the father's rights of custody; and that expert evidence should be obtained from a psychologist on the impact on the mother of returning to Germany. The judge rejected each of these applications. He first pointed to the delays which had already occurred and considered that a "further significant delay" was "inimical to the interests of all concerned, including the children," and "contrary to the purpose and intent of the summary nature of" the proceedings. He also decided that further expert evidence was not necessary to enable him properly to determine the case and that "nothing would be gained by separate representation". The latter was because the "children's views have been clearly presented through the report and oral evidence of the very experienced Cafcass officer". In addition the mother had set out "what their views are"; their "objections to a return to Germany coincide with [the mother's] objections".

28. The judge addressed each of the matters relied on by the mother in opposition to the father's application, even though the mother had "abandoned" the first ground during the course of the hearing. They were (a) that the removal of the children was not in breach of the father's rights of custody; (b) that Article 13(b) was established; and (c) that each child objected to returning.

29. The judge succinctly rejected (a). It was clear that the removal had been in breach of the father's rights of custody.

30. As to (b), the judge set out, at [69], a summary of the matters relied on by the mother. These included the father's abusive conduct during the marriage; her husband's abusive conduct during their relationship; the effect on the children of this conduct; the father's behaviour during contact and that the children did not want to see the father; and that the mother said she suffered from "mental health issues".

31. The judge gave, at [70], extensive reasons for rejecting the mother's case under Article 13(b). There was, in summary, no substantive support for her allegation that she or the

children would be at risk of any harm from either the father or her husband if she returned to Germany. Although not accepted by the judge, he pointed to the fact that it had been the mother's own case that she had not left Germany because of the father but because of her husband and that she had told the psychologist in the German proceedings that, as referred to above, her husband was "virtually perfect" and that they had a "beautiful family life". In addition, there was no evidence that her husband had made any attempt to find her and it was "reasonable to assume … that the German police, courts and safeguarding agencies have a variety of tools in their legal toolbox to ensure the protection of the mother and the children". Further, in respect of her husband, the mother had given evidence that he had been a "a better father" than the father and the judge "did not pick up from her any substantial concern about her husband's behaviour towards the children in the future". It seemed "inescapable … that part of [the mother's] motivation for leaving was a clear desire to prevent the children having any contact" with the father; she had "fled after receiving the expert report and shortly before the next court hearing."

32. The judge also referred to the fact that the mother and the father had separated in 2012 and that for "6 years thereafter [the mother] was able to manage the situation with no marked detrimental effect of her ability to care for the children". In addition, he made the following observations in respect of the children's position, at [70]:

> "(iv) For some years after 2012 the children were able to maintain a relationship with F and regular levels of contact. The report of the psychologist referring to the intense bond developed between the children, in particular the eldest child, with F and the paternal grandmother is telling. It is objectively improbable that such a bond would have developed if the children felt in danger from him. The separation of the eldest child from F is described by the German psychologist as an extreme burden on the child.
>
> […]
>
> (xiii) Her concern that the children do not want to have contact with F, and should not be placed in his care is, in my view one for the German courts to decide. Further, their resistance may be less entrenched than M submits; certainly, the contact between F and the younger 2 children during this hearing appears to have been successful."

33. The judge referred to a number of protective measures which could be put in place "to mitigate the impact of the return on the mother and the children".

34. During the course of the hearing the mother had, for the first time, said that she would not return to Germany with the children. The judge considered that "there is an element of tactical playing on her part", as this was part of her attempt to establish Article 13(b). The judge was confident that the mother would return but was equally confident that, if

she did not, the German courts would be in a position to make decisions which would meet the children's welfare needs on their return.

35. As to (c), the children's respective objections, the judge summarised the law and, having referred to the evidence during the course of his judgment, summarised the nature of the children's objections. He set out the Cafcass officer's evidence that P had a "clear objection to returning" based on his "unhappy memories of Germany, particularly schooling there" and on his feeling "far happier" in England. The judge accepted that all of the children were of an age and maturity to make it appropriate to take account of their views. He also accepted the Cafcass Officer's assessment that although they each expressed "opposition" to returning to Germany, "the younger two children's views in particular are bound up with being with their mother", at [78].

36. The judge's summarised his conclusion on the exercise of his discretion in one paragraph:

> "79. I have concluded that even though the children's views should be taken into account, they are outweighed by all the matters to which I have referred in the previous paragraphs of this judgment (particularly paragraphs 69-75) and which I do not propose to repeat. They are not of an age where their views are determinative. And their views are, so it seems to me, in part a product of their mother's antipathy towards F and resistance to any idea of contact. These are issues best dealt with in Germany for all the reasons previously given."

37. The "matters" to which he had referred earlier in his judgment included the broader analysis undertaken when the court has a discretion whether to make a return order. This was as follows:

> "74. The children, like the parents, are German. They lived all their lives in Germany until March 2018. Their extended families are in Germany. Their first language is German. They had no connection with the United Kingdom before their arrival here. Their lives here have been unsettled with a number of moves and no consistency of accommodation or schooling. The courts in Germany were seised of the case for well over a year before M and the family came to the United Kingdom. They are far better placed to deal with the welfare issues than the courts of this jurisdiction; those welfare issues may include where the children live, contact and perhaps also whether M should be permitted to relocate with the children from Germany to the United Kingdom. The German social services were engaged with the family for a period measured in years and a family psychologist report was prepared in Germany. The authorities (legal and non-legal) in Germany are likely to have a much better understanding of

> this case than their counterparts in this jurisdiction, and undoubtedly are better positioned to resolve factual and welfare issues.
>
> 75. I also consider it possible that were I not to order a return, the relationship between the children and F, as well as the relationship between the children and their paternal grandmother, may be difficult to re-establish. It is hard to see how F, and the paternal grandmother, could achieve a successful reintroduction of contact from the distance of Germany in circumstances where M is resolutely opposed to contact. Difficulty in pursuing legal proceedings from afar, together with difficulty in implementing and enforcing welfare decisions, may prove too much for F."

38. The judge, accordingly, ordered the children's return.

Legal Framework

39. The objective of the 1980 Convention is clear. As set out in the Preamble, it is "to protect children internationally from the harmful effects of their wrongful removal or retention". In addition to seeking to discourage abductions generally, in specific cases this is achieved through the application of the structure and procedures established by the Convention which are designed and intended to "to ensure their prompt return to the State of their habitual residence". As noted by Lady Hale, the "two fundamental purposes of the Convention (are) to protect children from the harmful effects of international abduction and to secure that disputes about their future are determined in the state where they were habitually resident before the abduction": *Re K (A Child) (Reunite International Child Abduction Centre intervening)* [2014] AC 1401, at [57].

40. The question of when a child should be joined as a party to proceedings under the 1980 Convention has been considered in a number of authorities. The provisions in the Family Procedure Rules 2010 ("the FPR 2010") dealing with the joinder of children are found in Part 16. Rule 16.2 provides:

> "(1) The court may make a child a party to proceedings if it considers it is in the best interests of the child to do so."

Practice Direction 16A provides under paragraph 7:

> "7.1 Making the child a party to the proceedings is a step that will be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases. Before taking the decision to make the child a party, consideration should be given to whether an alternative route might be preferable, such as asking an officer of the Service or a Welsh family proceedings officer to carry out further work or by making a referral to social services or, possibly, by obtaining expert evidence.

> 7.2 The decision to make the child a party will always be exclusively that of the court, made in the light of the facts and circumstances of the particular case. The following are offered, solely by way of guidance, as circumstances which may justify the making of such an order –
>
> (a) where an officer of the Service or Welsh family proceedings officer has notified the court that in the opinion of that officer the child should be made a party;
> (b) where the child has a standpoint or interest which is inconsistent with or incapable of being represented by any of the adult parties;
> (c) where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute;
> (d) where the views and wishes of the child cannot be adequately met by a report to the court;
> (e) where an older child is opposing a proposed course of action;
> (f) where there are complex medical or mental health issues to be determined or there are other unusually complex issues that necessitate separate representation of the child;
> (g) where there are international complications outside child abduction, in particular where it may be necessary for there to be discussions with overseas authorities or a foreign court;
> (h) where there are serious allegations of physical, sexual or other abuse in relation to the child or there are allegations of domestic violence not capable of being resolved with the help of an officer of the Service or Welsh family proceedings officer;
> (i) where the proceedings concern more than one child and the welfare of the children is in conflict or one child is in a particularly disadvantaged position;
> (j) where there is a contested issue about scientific testing.
>
> 7.3 It must be recognised that separate representation of the child may result in a delay in the resolution of the proceedings. When deciding whether to direct that a child be made a party, the court will take into account the risk of delay or other facts adverse to the welfare of the child. The court's primary consideration will be the best interests of the child."

41. As was pointed out by Lord Wilson in *In re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] AC 1038, at [50], r. 16.2 and PD16A are "not focussed on Convention proceedings". However, as he also observed, "much of it is

directly apposite to them". He made a number of observations which I propose to quote in full:

> "[51] Thus paragraph 7.1 of the Practice Direction makes clear that a grant to a child of party status will be made only in cases which involve an issue of significant difficulty and thus only in a minority of cases. Consideration, so it suggests, should first be given to whether an alternative course might be preferable; and the suggestion is well reflected by the court's current practice of inviting an officer in the CAFCASS High Court team to see the child before it decides whether to make her a party to Convention proceedings.
> [52] Paragraph 7.3 of the Practice Direction stresses that a grant to a child of party status may result in delay adverse to her welfare and of which account should therefore be taken. This factor has a particular relevance to Convention proceedings. The need for expedition is written into article 11.3 the Convention; and the aspiration, articulated in the same paragraph, for determination within six weeks of issue is, in the case of EU states, stiffened by article 11.3 of B2R, which positively requires determination within that period save in exceptional circumstances.
> [53] But it is paragraph 7.2 of the Practice Direction which is of particular significance. It offers non-prescriptive guidance about the circumstances which may justify a grant to a child of party status. The examples include, at (a) the case where a CAFCASS officer favours the grant; at (d) the case where the child's views cannot adequately be communicated by a report; and at (e) the case where an older child is opposing a proposed course of action. The last example should not in my view be taken to endorse any routine grant of party status to older children objecting to their return to the requesting state in Convention proceedings. But the example most apt to the present case is at (b), namely where the child has a standpoint incapable of being represented by any of the adult parties."

42. Guidance has been given in a number of other cases about when it might be in a child's best interests to be joined as a party to proceedings under the 1980 Convention. Apart from *In re LC*, I propose only to refer to three other authorities.

43. In *In re D (A Child) (Abduction: Rights of Custody)* [2007] 1 AC 619. Lady Hale made some general observations including, at [59], that "children should be heard far more frequently in Hague Convention cases than has been the practice hitherto". This was in part because it "is plainly not good enough to say that the abducting parent, with whom the child is living, can present the child's views to the court". This was because, "If those views coincide with the views of the abducting parent, the court will either assume that they are not authentically the child's own or give them little independent weight. There has to be some means of conveying them to the court independently of the abducting parent".

44. Lady Hale went on to deal with the ways in which this might be achieved. As she said, at [60], and as has become firmly established since then, the usual means by which a child's views are conveyed to the judge is by a Cafcass officer seeing the child and providing a report. They are, as she said, "skilled and experienced in talking with children" and are "aware of the limited compass within which the child's views are relevant in Hague Convention cases". As she also said at [60]: "Only in a few cases will full scale representation be necessary" adding that, "whenever it seems likely that the child's views and interests may not be properly presented to the court, and in particular where there are legal arguments which the adult parties are not putting forward, then the child should be separately represented".

45. In *In re M and others (Children) (Abduction: Child's Objections)* [2008] 1 AC 1288, a case which concerned the issue of "settlement" under Article 12, Lady Hale said, at [57], in respect of cases other than those concerning settlement, that the question was "whether separate representation of the child will add enough to the court's understanding of the issues that arise under the Hague Convention to justify the intrusion, the expense and the delay that may result". Adding that, "I have no difficulty in predicting that in the general run of cases it will not".

46. In *In re LC*, Lord Wilson expanded on what Lady Hale had said in *In re M*. He commented, at [48], that the "intrusion of the children into the forensic arena … can prove very damaging to family relationships … and definitely affect their interests" as can "delay in the resolution" of the proceedings.

47. Detailed consideration was given in *In re M and others (Children) (Abduction: Child's Objections)* [2016] Fam 1 as to how the Court of Appeal should respond to an application made to it by a child who was not a party to the proceedings below. It is not, therefore, necessary to deal with this issue again save that I would repeat what Black LJ (as she then was) said:

> "156 I end this section of my judgment with a cautionary note. It should not be expected that an application for children to be involved in proceedings, either as appellants or as respondents, for the first time in the Court of Appeal will be received sympathetically. By the time the matter reaches the Court of Appeal, it is usually far too late in the day to address this sort of issue. I have said several times already, and make no apology for saying again, that this needs to be thought of at the very outset of the proceedings. As to how an application made at that stage may fare, nothing that I have said in this judgment is intended to affect the existing jurisprudence on the subject."

This observation applies with even more force now that the President's Guidance on *Case Management and Mediation of International Child Abduction Proceedings* 13th March 2018, expressly requires the question of whether and how a child is to be heard, including

whether a child should be joined as a party, to be addressed at the first on notice hearing: paragraph 2.11(h).

48. It is clear from the above authorities that it will only rarely be in a child's best interests to be joined as a party to proceedings under the 1980 Convention. When the relevant issue is a child's objections, this is because the child's views and interests will, typically, "be properly presented to the court" through evidence from a Cafcass officer and through the legal arguments being advanced on behalf of the parents and addressed by the court.

49. I would finally add that, as is well-known, when a child objects to returning to their home state and they are of an age and degree of maturity at which it is appropriate to take account of their views, the court has a broad discretion whether to order the child's return. The discretion is "at large" and will involve the "various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare": Lady Hale, at [43], *In re M*. As she observed, at [44], the weight to be given to these factors will "vary enormously" including that, "the further one gets from the speedy return envisaged by the Convention, the less weighty those general Convention considerations must be".

50. When a child's objections are engaged, Lady Hale considered, at [46], that "the range of considerations may be even wider than those in the other exceptions". She made clear that the child's views are not "determinative or even presumptively so" and set out factors that the court *may* have to consider:

> "46 … Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances."

Submissions

51. I am grateful to counsel for their submissions. I do not propose to set out every aspect of these submissions but summarise them as follows.

52. Mr Devereux advanced two principal arguments in support of the appeal. First, (i) that the judge's approach to the decision whether to order P to be separately represented was flawed, leading him to make the wrong decision. Secondly, (ii) that the judge's approach

to the exercise of his discretion, when P objected to returning to Germany, was also flawed, in particular because the judge did not properly analyse or balance the relevant factors, leading him again to make the wrong decision.

53. In support of these overarching arguments Mr Devereux made a number of specific submissions which included the following.

54. Mr Devereux submitted that the judge's reliance on the delay which would have been caused if he had acceded to the application for P to be separately represented was misplaced. The time which had elapsed since the children had been removed from Germany and the delays which had occurred in the determination of the application under the 1980 Convention diminished, and indeed negated, the significance of any further delay which would have been caused by P being joined. Further he questioned the use by the judge of the word "nothing" being gained by separate representation when, he submitted, surely something would be gained.

55. He submitted that the judge had failed to direct himself in accordance with r. 16.2 and PD16A of the FPR 2010. As I understood it, this was partly because the judge did not refer to these provisions or any authorities dealing with separate representation and partly because the factors set out, in particular in paragraphs 7.2(b), (c), (d) and (f), supported P being joined as a party. Mr Devereux submitted that while P has many strengths and attributes, as an older child who objected "very strongly" and who had "particular needs and vulnerabilities", it was in his best interests for him to be separately represented.

56. In addition, Mr Devereux submitted that P's views were not properly conveyed to the judge and were, therefore, not properly taken into account. He questioned whether the Cafcass officer's evidence was sufficient in part because P's views were based on matters which were "entirely different to the mother's concerns" and/or did not coincide with the mother's views. The other "problem" on which he relied was that, because the mother was open to criticism, P's views were at risk of being "tainted" by association with the mother. Mr Devereux also referred to the fact that a full translation of the psychological report was not available when the Cafcass officer met the children and completed her report. However, as he acknowledged, she had seen a full translation by the time she gave oral evidence.

57. Mr Devereux submitted that there were a number of factors which did not feature or did not feature sufficiently when the judge was deciding whether to make a return order. The judge's brief analysis, as set out in paragraph 79 of his judgment, was, Mr Devereux submitted, inadequate. In his submission the judge's analysis should have included the following but did not: the strength of P's objections and his age and level of maturity; a proper consideration of the authenticity of P's views; an analysis of the rationality of his objections; the length of time he had been in this country; the consequences of the mother not returning including the practical arrangements for the children.

58. Mr Devereux submitted that P should be joined to the proceedings and the matter remitted to be reheard.

59. Ms Jones submitted that the judge was well placed to decide whether P should be joined as a party and whether, in his discretion, to make a return order. It was unusual for a court deciding an application under the 1980 Convention to have as much information as was available in this case from the psychological report.

60. In her submission, the judge was right not to accede to the application to join P as a party. Separate representation would not "add enough to the court's understanding of the issues" to justify joining P. His objections were fully before the court. They were set out in the Cafcass officer's evidence and also in the mother's evidence. There was no conflict between what the mother was saying and what P was saying. Indeed, in Ms Jones' submission, they were consistent. In addition, all relevant legal arguments were before the court.

61. As for the exercise by the judge of his discretion, Ms Jones submitted that the judge took into account the "broad canvas" relevant in this case.

Determination

62. (i) Should P have been joined as a party to the proceedings? In my view, the judge's decision not to join P was plainly right.

63. In setting out the reasons for his decision the judge did not need to refer to Part 16 or previous authorities. He had been referred to the provisions of r. 16.2 and of paragraph 7.2 of PD16A and some of the relevant authorities in the mother's skeleton argument for the hearing. He would clearly have had these in mind when making his decision. There is nothing to suggest that the judge did not properly consider whether joining P was in his best interests.

64. Indeed, the judge's analysis, albeit brief, referred to the critical features in this case namely whether P's views were properly presented to the court and whether anything would be gained by P being separately represented. He decided that the children's views, including P's, were "clearly presented through the report and oral evidence of the very experienced Cafcass officer". This was a decision which the judge was entitled to make and which, in my view, was right. He also decided "nothing would be gained by separate representation". By this, the judge clearly meant that nothing sufficient would be gained to justify joining P. He determined that he had the evidence *and* the arguments necessary properly to decide whether P's objections meant that a return order should not be made. Again, he was entitled to reach this conclusion and, in my view, was right to decide in the circumstances of this case that P's interests were fully before the court and did not require or justify separate representation. I would also note that Mr Devereux did not identify any additional matter which was not set out in the evidence before the judge. It is, accordingly, clear that none of the circumstances set out in paragraph 7.2 of PD16A justified P being joined as a party.

65. In my view, the points advanced by Mr Devereux do not undermine the judge's decision. He was entitled to take into account the further delay that would be caused if P were joined as a party. The judge was also able properly to take into account P's age and his maturity and the nature and strength of his objections without him being joined as a party. The fact that the reasons for his objecting to returning overlapped only in part with the matters relied on by the mother did not mean that his objections could not be properly conveyed through the Cafcass officer's evidence. Her evidence was clear that P "expressed his views with considerable force" and that "his expressed memories of Germany were wholly negative". Additionally, the background, including what Mr Devereux referred to as P's "needs and vulnerabilities", are analysed in detail in the psychologist's report which, as Ms Jones submitted, provided a great deal of information to assist the judge in making his decision.

66. (ii) Was the judge wrong to make a return order? Was the judge's exercise of his discretion flawed as submitted by Mr Devereux? Did he fail to take relevant factors into account and/or fail to give proper weight to factors which he did take into account? Is Mr Devereux's criticism of paragraph 79 of the judgment justified?

67. The judge rightly determined that P objected to returning to Germany and that he was of an age and degree of maturity at which, in accordance with the 1980 Convention, it was "appropriate to take account of his views".

68. Mr Devereux, as referred to above, relied on the brief analysis, as set out in paragraph 79 of the judgment, which he submitted was inadequate. Whilst that paragraph is, indeed, succinct, the judge expressly referred to what he had said in previous paragraphs and, as with any other judgment, it must be read as a whole.

69. Dealing with the specific factors referred to by Mr Devereux (see paragraph 57 above), the judge was plainly aware of the strength of P's objections and of his age and degree of maturity and expressly took these into account. The judge also referred to P's own issues. He plainly took into the account the reasons why P was objecting to returning as clearly conveyed through the Cafcass officer's evidence.

70. The judge also decided what weight he should give to P's objections when considering whether to make a return order. He analysed the extent to which they were "authentically" P's own views, applying the guidance given by Lady Hale in *In re M*. He was entitled to conclude that P's views were "in part a product of [the] mother's antipathy towards F and resistance to any idea of contact" and to take into account the matters referred to by him at [70(iv] and [70(v)] (set out in paragraph 32 above). I would add that, having read the psychologist's report, the judge was plainly right to be cautious about the weight to be placed on P's expressed views.

71. In my view, although paragraph 79 is, indeed, brief, when the other factors referred to by the judge are taken into account, the judge's decision is not inadequate or flawed as submitted by Mr Devereux. It contains a sufficient analysis of the relevant factors to explain why the judge decided to make a return order. Reading the judgment as a whole,

and specifically the paragraphs in which the judge dealt "with other considerations relevant to" welfare, it is clear that the judge did conduct a proper balancing exercise which included the extent to which P's objections coincided with or were at odds with these considerations, again applying the guidance given by Lady Hale in *In re M*. Although Mr Devereux submitted that the judge failed to undertake the required analysis, in my view his case in fact amounted to a submission that the judge failed to give sufficient weight to some factors and too much weight to others. Matters of weight are for the trial judge and I am not persuaded that the judge gave too much weight or insufficient weight to any relevant factor or that he reached a decision which was wrong. Indeed, in my view, the judge reached the right decision.

72. I would deal, for the avoidance of doubt, with one further submission made by Mr Devereux, namely that the judge failed adequately to address what the children's circumstances would be in Germany if they returned without the mother. The judge doubted that the mother would, in fact, leave the children to return on their own. However, he expressly considered what their situation would be if this was to occur. He was entitled to decide, for the reasons he gave, that the children's situation would not be such that they should not be ordered to return. The judge was entitled to decide that, with the protective measures referred to in the judgment, which included the involvement of the German courts, the broader welfare and other factors present in this case would still justify an order for P's return to Germany.

73. In conclusion, in my view, P's application to be joined to the proceedings and for the order made under the 1980 Convention to be set aside must be dismissed.

Lady Justice King:

74. I agree.

Lord Justice Patten:

75. I also agree