Neutral Citation Number: [2023] EWCA Civ 532

Case No: CA-2023-000667

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
The Honourable Mr Justice MacDonald
FD22P00491

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 May 2023

Before :

LORD JUSTICE BAKER
LADY JUSTICE ANDREWS
and
LORD JUSTICE NUGEE

- -

Between :

MARYAM ALLAMI	**Applicant/ Respondent**
- and –	
ALI FAKHER	**Respondent /Appellant**

- -
- -

Arfan Khan (instructed by **CV Brooks**) for the **Appellant**
Mani Basi (instructed by **Dawson Cornwell LLP**) for the **Respondent**

Hearing date : 3 May 2023

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Approved Judgment

This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 2pm on 19 May 2023

LORD JUSTICE BAKER :

1. This is an appeal against an order made by MacDonald J committing the appellant to prison for six months for contempt of court for breach of a series of orders made in the Family Division in proceedings concerning his two children.

2. At the conclusion of the hearing, we informed the parties that the appeal would be dismissed. This judgment sets out my reasons for agreeing with that decision.

3. The background can be summarised as follows.

4. The appellant, hereafter referred to as the father, and the children's mother both hold dual Iranian and British citizenship. They married under Sharia law in this country in 2007 and underwent a civil marriage ceremony in 2008. The two children were born in 2008 and 2012. Each has dual Iranian and British citizenship. It is the mother's case, denied by the father, that he was emotionally and psychologically abusive to her throughout their relationship and violent to the children.

5. Following the death of his own mother in 2015, the father spent increasing periods of time in Iran. In July 2021, when the father was in Iran, the mother travelled there with the children from the United Kingdom on return tickets. At that point, the father applied to register the marriage with the Iranian authorities. The mother's case is that, because she was worried about the consequences of this for her and the children, she decided to cut the trip short and booked earlier flights back to the UK for herself and the children. On 3 August 2021, when she tried to leave Iran with the children, she was told by the authorities that the father had withdrawn his permission for the children to leave the country. She says that, fearing she herself would not be able to leave Iran, she left the children with their maternal grandparents and returned to the UK to seek the children's return to her. The father's case is that the Iranian authorities required his consent for the mother to remove the children from that jurisdiction and that she made no attempts to obtain it. He asserts that the mother was apprehended trying to leave without his consent and abandoned the children at Tehran Airport, as a result of which the father was forced to take custody of them by default.

6. It is the mother's case that she initially tried to secure the return of the children to the UK by negotiation with the father. Having failed in these efforts, on 21 July 2022, she filed an application in the Family Division of the High Court in this jurisdiction seeking an order for the return of the children. At a without notice hearing on the following day, Judd J made a passport order authorising the Tipstaff to seize the father's passport. A few weeks later, the father travelled to the UK and on arrival his passport was duly seized and has been retained by the Tipstaff ever since.

7. At a further hearing before Newton J on 18 November 2022, the children were made wards of court and a series of orders were made with the aim of securing their return to this jurisdiction. In particular, the order required the father to cause the children to be (a) returned here forthwith for the purposes of attending the final hearing then listed for 8 and 9 December 2022 and (b) placed in the care of the maternal family in Iran pending their return to this jurisdiction. The order included recitals that the father had agreed to execute a notarised agreement permitting the children to leave Iran and travel to this country to attend the hearing; and that he had informed the court that he retained an English driving licence which he required for the purposes of obtaining the notarised

consent and which he would lodge with the Tipstaff by 4pm on 22 November 2022. The order further required the father to send a copy of the notarised consent "immediately upon completion of the same".

8. Immediately following the hearing before Newton J on 18 November, the father surrendered his driving licence to the Tipstaff. It was the mother's case at the later hearing before MacDonald J that he had done so deliberately in order to disable himself from obtaining the notarised agreement. The father asserted that it had been more convenient for him to surrender it to the Tipstaff whilst at court.

9. The children were neither placed in the care of the maternal grandparents in Iran nor returned to this jurisdiction for the listed final hearing. They remained living with the paternal grandfather.

10. The hearing on 8. 9 and 12 December went ahead before ICC Judge Mullen. By the order dated 12 December made at the conclusion of that hearing, the judge ordered the father to cause the children to be returned to this jurisdiction by midnight on 15 December 2022 and to complete a notarised document by 13 December in terms set out in the order to the effect that he unequivocally consented to the children travelling from Iran to England by 16 December and being accompanied by their maternal grandmother. Upon their return, the children were to be placed in the care of their mother pending further order. By a separate order made at the same time, the judge ordered that the father be subject to electronic tagging. It was alleged that he was a flight risk because, according to the mother, he had some 18 aliases, had convictions for offences of dishonesty, had changed his name by deed poll following the passport order and subsequently obtained a driving licence under that name.

11. Once again, the children were neither placed in the care of the maternal grandparents in Iran nor returned to this jurisdiction by the date prescribed in the order. They remained living with the paternal grandfather. Subsequently, the father alleged that the tagging company failed to attend at the appointed time to fit the tag and that as a result he was unable to collect his driving licence from the Tipstaff (as had been agreed but not specifically ordered) and therefore unable to execute the notarised agreement. On a subsequent occasion when the tagging company attended, the father had to be taken to hospital because he was suffering chest pains

12. On 16 December 2022, a further hearing took place before Moor J. The judge made a further order that the father return the children to the jurisdiction by 6 January 2023 and a further order that he execute a notarised agreement in the same terms as prescribed by ICC Judge Mullen with the additional provision that he unequivocally consented to the maternal grandparents obtaining replacement Iranian passports for the children. The order further provided that, to enable the father to notarise the document, the Tipstaff should return his driving licence; that upon execution of the document, the father should deliver the notarised document to the children's solicitor; and that the father should not leave his home between 10pm and 6am. In addition, Moor J made a further tagging order, providing for the tag to be fitted on 16 December at any time before the start of the curfew.

13. As before, the children were neither placed in the care of the maternal grandparents in Iran nor returned to this jurisdiction by the date prescribed in the order. They remained living with the paternal grandfather. Once again, the father subsequently contended that

the tagging company had prevented him complying with the order to execute the notarised agreement because they had failed to attend before the start of the curfew.

14. On 9 January 2023, a further hearing took place before Mr Simon Colton KC sitting as a deputy High Court judge. The deputy judge made a further order that the father return the children to the jurisdiction by 19 January 2023 and a further order that he execute a notarised agreement (in the same terms as prescribed by Moor J) and send a copy to the children's solicitor. He directed that, to facilitate the execution of the notarised document, the driving licence be returned to the father by the Tipstaff (but only after it had been confirmed that he was subject to electronic monitoring under the tagging order which was renewed) and returned to the Tipstaff once notarisation had taken place. The order made by the deputy judge recorded that the father confirmed to the court that he understood the orders that were being made but had no intention of complying with them.

15. As on previous occasions, the father did not comply with the order. The children were neither placed in the care of the maternal grandparents in Iran nor returned to this jurisdiction by the date prescribed in the order. They remained living with the paternal grandfather. Once again, the father subsequently contended that the tagging company had prevented him complying with the order to execute the notarised agreement because they had failed to attend before the start of the curfew.

16. On 24 January 2023, a further hearing took place before Theis J. The father again stated that he did not intend to execute the notarised agreement nor cause the children to be returned from Iran. The judge made a further order for the return of the children and for the execution of a notarised document but did not renew the tagging or curfew orders. By this point, the father had filed a notice of appeal against the order made by ICC Judge Mullen and Moor J. On 9 February, his application for permission to appeal was refused.

17. On 31 January 2023, the mother filed an application to commit the father to prison for contempt of court relying in particular on the following breaches of court orders:

> "1. The father is in breach of the order of Newton J dated 18 November 2022, requiring him to send a copy of a notarised document consenting for the children travelling from Iran to England, immediately the same has been completed.
>
> 2. The father is in breach of the order of Newton J dated 18 November 2022 requiring him to cause the children to be returned to the maternal family in Iran, until they return to England and Wales for the purpose of physically attending the final hearing on 8 and 9 December 2022 in London
>
> 3. The father is in breach of the order of Newton J dated 18 November 2022 requiring him to cause the children to be returned to the jurisdiction of England and Wales by no later than 5 December 2022.
>
> 4. The father is in breach of the order of ICC Judge Mullen dated 12 December 2022, requiring him to return the children to the

> jurisdiction of England and Wales by 15 December 2022, and upon return place them in the care of their mother pending further order.
>
> 5. The father is in breach of the order of ICC Judge Mullen dated 12 December 2022, requiring him to send a copy of a notarised document consenting to the children travelling from Iran to England, immediately the same has been completed.
>
> 6. The father is in breach of the order of Moor J dated 16 December 2022 requiring him to return the children to the jurisdiction of England and Wales by 6 January 2023, and upon return place them in the care of their mother pending further order.
>
> 7. The father is in breach of the order of Moor J dated 16 December 2022 requiring him to send a copy of a notarised document consenting to the children travelling from Iran to England, immediately the same has been completed.
>
> 8. The father is in breach of the order of Mr Colton KC dated 9 January 2023 requiring him to return the children to the jurisdiction of England and Wales by 19 January 2023 and upon return placing them in the care of their mother pending further order.
>
> 9. The father is in breach of the order of Mr Colton KC dated 9 January 2023 requiring him to send a copy of a notarised document consenting to the children travelling from Iran to England, immediately the same has been completed."

The application also cited breaches of the tagging orders. In the event, these were not pursued by the mother at the hearing.

18. The hearing of the committal application took place before MacDonald J on 3 March 2023. The mother was represented, the father appeared in person assisted by a McKenzie friend who was permitted by the judge to address the court.

19. At the conclusion of the hearing, the judge reserved judgment until 13 March. In his judgment, the judge stated that he was satisfied beyond reasonable doubt that the father had breached the orders. The father did not dispute that he had failed to provide a notarised agreement or that the children remained in Iran. The judge considered but rejected the father's defence that it had not been possible for him to comply. In particular, he rejected the father's explanation for surrendering the driving licence to the Tipstaff immediately after the hearing before Newton J and found that he had done so to frustrate his own ability to obtain the notarised agreement. Having considered the unchallenged evidence provided by the tagging company, he further rejected the father's explanation that the actions of the company had prevented him taking the steps necessary to execute the notarised document. He concluded that he was satisfied that the father sought to avoid being tagged as a means of frustrating the court's order. He

therefore made the nine findings of contempt in accordance with the mother's application.

20. At that point, the judge adjourned to allow the father and his McKenzie friend to consider submissions in mitigation. Having returned to court and listened to submissions, he then delivered a further judgment. He started by setting out what he described as the general legal principles applicable to sentencing of a contemnor in these terms:

> "(a) The court can order imprisonment, immediate or suspended, and/or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
>
> (b) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future.
>
> (c) Committal to prison is appropriate only where no reasonable alternative exists.
>
> (d) Where the sentence is suspended or adjourned, the period of suspension or adjournment and the precise terms for activation must be specified.
>
> (e) Imprisonment is not the starting point and is not the automatic response to a contempt of court.
>
> (f) Equally, there is no principle that a sentence of imprisonment could not be imposed on a contemnor who has not previously committed a contempt.
>
> (g) In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed and the likelihood of any risk to the process of justice.
>
> (h) In circumstances where the disposal chosen must be proportionate to the seriousness of the contempt where an immediate term of imprisonment is appropriate it should be as short as possible, having regard to the gravity of the contempt, and must bear some reasonable relationship to the maximum sentence of two years imprisonment that is available to the court.
>
> (i) Where a term of imprisonment is the appropriate sentence, the length of the term should be determined without reference to whether that term is to be suspended or not.
>
> (j) Having determined the length of the term of imprisonment, the court should expressly ask itself whether a sentence of imprisonment might be suspended. The power of the Family Court to suspend a sentence is separate from the power of the

criminal to suspend the sentence. In particular, in the Family Court, the sentence may be suspended on terms.

(k) The court should briefly explain its reasons for the disposal it decides to impose it if finds the contempt proved."

21. He continued:

> "As Marcus Smith J made clear in Patel v Patel & Ors [2017] EWHC 3229 (Ch) at [22] and [23] a penalty for contempt has two primary functions. First, it upholds the authority of the court by marking the disapproval of the court and deterring others from engaging in conduct comprising contempt. Secondly, it acts to ensure future compliance. In some cases, therefore, and, in particular, those cases where the contempt arises from a breach of the court order, a penalty [will] have the primary objective of ensuring future compliance with that order."

22. He identified the following mitigating factors identified by the father's McKenzie friend:

(a) the father's age – 57;

(b) the impact of a sentence of imprisonment on the children;

(c) the fact that [the] mother had said that she did not seek his imprisonment;

(d) the fact that the mother had not pursued some of the alleged breaches, in particular relating to the tagging orders.

23. The judge indicated that he had considered those matters very carefully. He continued:

> "8. However, against this, I am satisfied that in this case there are very significant aggravating factors. The aggravating factors in this case include the repeated breaches of court orders over an extended period of time. The father has deliberately, in my judgment, failed to comply with no less than four orders of the High Court, despite repeated opportunities being given to him by this court to allow compliance. Notwithstanding those repeated opportunities, the father has repeatedly set his face deliberately against the compliance with the orders of the High Court.
>
> 9. A further aggravating factor in this case is what I am satisfied has been the father's wilful acting in a manner designed to make compliance with the orders difficult or impossible as a result of his own conduct. In particular, his early surrendering of his driving licence under the order of Newton J and his lawful misinterpretation of the order of ICC Judge Mullen with respect to tagging and his repeated avoidance of the representatives of the tagging company when they made repeated attempts to tag him.

10. Finally, I am satisfied that an additional aggravating factor in this case is the father's statements, both to this court and previous courts, that he has absolutely no intention of complying with the orders of the court. Those assertions have been given without caveat. The continued multiple breaches, it must also be noted, have left the children stranded in the jurisdiction of Iran for an extended period.

11. Having regard to the aggravating and mitigating factors in this case, to the principles of sentencing that I have outlined which I have careful regard to and to the function of the sentence in first marking the disapproval of the court and deterring others from engaging in the conduct comprising the contempt and, second, to ensure future compliance, I am satisfied that the starting point in this case for an appropriate sentence for the breach of the orders must be one of custody. I am further satisfied that the appropriate sentence in this case is one of 6 months' imprisonment.

12. I have given some consideration to suspending the sentence of imprisonment with a view to securing the father's compliance with the orders of the court. However, in circumstances where the father has repeated to this court his settled intention not to comply with the orders of the court such a suspension would, in my judgment, serve no purpose, and certainly not serve its intended purpose.

13. In the circumstances, after careful consideration, I do not consider this an appropriate case in which to suspend the sentence of imprisonment that I have passed, and such sentence will therefore be immediate.

14. In addition, I will make a further order under the inherent jurisdiction requiring the father to facilitate the return of the children to the jurisdiction of England and Wales forthwith and provide a notarised agreement in that regard.

15. It will, of course, be open to the father to apply to purge his contempt of court and, hence, to secure his release from custody if the children are returned to the jurisdiction of England and Wales pursuant to the return order. To this end, if the father evinces an intention now to comply with the order to provide a notarised agreement, I intend to direct that the solicitor for the child attend the prison in which the father is held with his driving licence and a notary public in order that that document can now be completed.

16. If the children are not returned to England and Wales in breach of that order, it will be open to the mother to make a further application to commit the father for the breach of that

> order, at which time he will be liable to a further period of imprisonment if he is once again found in contempt.
>
> 17. I advise the father that he is able to apply to purge his contempt, in particular, should the children be returned to the jurisdiction as ordered by the court."

24. The father filed a notice of appeal against the order. The appeal notice and grounds of appeal were drafted by the appellant with assistance from his McKenzie friend. Subsequently, however, he instructed solicitors who in turn briefed Mr Arfan Khan of counsel to represent him at the appeal hearing. Mr Khan filed an amended single ground of appeal – that the judge was wrong to have sentenced him to an immediate six-month custodial sentence which was disproportionate in all the circumstances of the case – together with a skeleton argument in support. The Court is very grateful to Mr Khan for his assistance on the appeal.

25. Mr Khan identified a number of authorities as being of relevance to the appeal.

26. First, he cited the decision of this Court in *Hale v Tanner* [2000] EWCA Civ 5570 in which Hale LJ set out ten points relevant to sentencing for contempt of court in family cases. These include the observation (at paragraph 29):

> "There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity."

This is in the same terms as the statement of principle recited by Marcus Smith J in the *Patel* case cited by the judge.

27. Secondly, he referred to the observation of McFarlane LJ in *Wilkinson v Anjum* [2011] EWCA Civ 1196 at paragraph 41:

> "The cases of *Re Barrell Enterprises & Others* [1973] 1 WLR 19 and *Enfield London Borough Council v Mahoney* [1983] 1 WLR 749 established that on the facts of any given case, the time may come when it is obvious that the coercive element provided by a term of imprisonment will have evaporated, and there is thus little to be gained other than pure punishment from any continued incarceration. But the facts of those two cases were stark and the evidence that the 'carrot and stick' approach had reached the end of its useful life was very clear."

28. Thirdly, Mr Khan referred to the well-established principle that in family proceedings committal should be the order of last resort since it may cause further damage to relations within the family and emotional harm to the children. He cited the decisions in *Ansah v Ansah* [1077] 2 WLR 760 and *Re B (Contact Order: Enforcement)* [2010] 1 WLR 419 in support of this proposition.

29. Finally, he cited the recent decision of this Court in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 in which Birss LJ, with whom Stuart-Smith LJ and Edis LJ agreed, set out in a series of cases detailed guidance about the sentencing for breaches of orders under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014. Reading his skeleton argument, it seemed to me that Mr Khan was contending that the detailed guidance was applicable to sentencing for contempt in civil and family proceedings generally. In oral submissions, however, Mr Khan did not pursue this argument, and instead confined himself to relying on two passages in the judgment. The first was Birss LJ's classification (at paragraph 47) of three levels of culpability for breach of court orders, namely (A) high culpability – very serious breach or persistent serious breaches, (B) deliberate breach falling between (A) and (C); and (C) lower culpability – minor breach or breaches. The second was Birss LJ's observation at paragraph 56:

> "It cannot be over emphasised that the task of sentencing a defendant for breach of orders in contempt of court is a multifactorial exercise of judgment based on the particular facts and circumstances of the case before the judge. Any sentence must be just and proportionate."

30. In the light of those authorities, Mr Khan made the following submissions.

31. First, he submitted that the breaches were not so serious as to require the imposition of an immediate custodial sentence. The mother herself had not pressed for an immediate sentence. The judge had therefore started at the wrong starting point. Committal must always be the course of last resort, particularly in family proceedings. Alternative remedies must be exhausted before an immediate custodial sentence is imposed. Here there was a clear alternative. The judge could and should have imposed a sentence suspended on terms that the father execute the notarised agreement. Provision could have been made for the passport and driving licence held by the Tipstaff to be produced to facilitate the notarisation of the agreement in court.

32. Secondly, Mr Khan submitted that, in passing sentence, the judge had failed to give sufficient weight to the fact that the father's non-compliance with the earlier orders was attributable at least in part to the acts and omissions of the tagging company.

33. Thirdly, it was argued that the judge had overlooked the fact that the children were not suffering significant harm as a result of the breaches. On the contrary, they were being well cared for by the paternal family in Iran. In fact, there was a risk that, by imposing an immediate custodial sentence on the father, the children would suffer emotional harm through knowing that their father was in prison and because a resolution of the dispute about their future care would be more difficult as a result of his imprisonment. There was also an added risk of the politicisation of the dispute since the imposition of a custodial sentence might make it less likely that the Iranian authorities would co-operate with return of the children to this country.

34. Fourthly, it was submitted that, as the father had made it clear that he would not comply with the earlier orders, the order could not achieve the objective of compliance which, as recognised in *Hale v Tanner* and in other cases, is one of the two aims of a committal order. There was no reason to believe that a 6-month sentence was likely to induce compliance. This case had therefore reached the stage anticipated in *Wilkinson v Anjum*,

when it was obvious that the coercive element provided by a term of imprisonment had evaporated. The sentence imposed was thus an exercise in futility.

35. Finally, in oral submissions, Mr Khan raised an argument not prefigured in his skeleton argument. He asserted that at the hearing before ICC Judge Mullen, after the judge had risen and after the mother and her representatives had left court, his client had signed a written consent to the return of the children and handed it to the solicitor for the children. This assertion was not supported by any document by way of an application for fresh evidence. During the course of the hearing before us inquiries were made of Ms Janet Broadley, the children's solicitor (who was not present at the appeal). In an email she replied:

> "Yes Mr Fakher did sign a document which was witnessed by Mr Lennard [the father's McKenzie friend] but part of it was deleted. We went into court to ask the judge about it and he insisted it was signed and notarised as had been ordered – I am sure this is what happened. Then he told the judge he wouldn't comply. ICC Mullen urged him to sign it in front of a notary in the court building but Mr Fakher said to the judge he would not sign it"

Mr Khan submitted that, whilst the father had not complied with the order for a notarised agreement, he had given his consent in writing and that the breaches were therefore not as serious as found by the judge. Furthermore, this episode indicated that there was a possibility that the dispute could be settled by mediation. On that basis, he invited this Court to allow the appeal and set aside the immediate custodial sentence.

Discussion and conclusion

36. MacDonald J was plainly aware that an immediate custodial sentence was the course of last resort. He reminded himself (in both judgments) that "committal to prison is appropriate only when no reasonable alternative exists". In my view he was entirely justified in concluding that the breaches of court orders were of a level of seriousness that required an immediate sentence. There is no merit in the argument that a custodial sentence was in some way less justified because the mother was opposed to his imprisonment. As Mr Basi reminded us in short submissions in response to the appeal, although the mother had not pursued the alleged breaches of the tagging orders, she had pursued those breaches which were found by MacDonald J. In determining whether there had been breaches of the orders, the judge considered but rejected the argument that the father's non-compliance had been attributable to or in some way explained or excused by any acts or omissions of the tagging company. His conclusion as to the seriousness of the breaches was plainly supported by evidence.

37. Furthermore, the judge was entitled and right to take into account the father's repeated assertions that he would not comply with the orders. For that reason, there is no merit in the submission that he should have suspended the sentence on the condition that the father execute a notarised agreement. It might conceivably have been open to the judge to suspend the sentence on such a condition if the father had promised to execute the notarised agreement. But as he consistently said that he would not do so, suspending the sentence on that basis would have been pointless.

38. As McFarlane LJ observed in *Wilkinson v Anjum*, the time may come when it is obvious that the coercive element provided by a term of imprisonment will have evaporated, and there is thus little to be gained other than pure punishment from any continued incarceration. But this will only arise after a contemnor has served a period of imprisonment sufficient to mark the court's disapproval of the disobedience of its order. There is no merit in the argument advanced in this case that a custodial sentence is futile because the father is refusing to comply with the order.

39. There is similarly no merit in the argument that the breaches were in some way less serious because the children are not suffering significant harm. As a result of the deliberate actions of their father, they are separated from their mother who has been their primary carer throughout their lives.

40. The fact (not mentioned in the grounds of appeal or skeleton argument to this Court, nor, apparently, at the hearing before MacDonald J) that the father signed a written consent at the hearing before ICC Judge Mullen adds no merit to the appeal. No evidence about this document has been adduced in a form that complies with the rules concerning fresh evidence on appeal. In any event, it is clear from Ms Broadley's email that any fresh evidence about the written consent signed at that hearing would have no impact on the outcome of the appeal. Successive judges, including ICC Judge Mullen, have ordered the father to execute a notarised document. MacDonald J concluded that the father

> "failed to comply with no less than four orders of the High Court, despite repeated opportunities being given to him by this court to allow compliance. Notwithstanding those repeated opportunities, the father has repeatedly set his face deliberately against the compliance with the orders…"

In those circumstances, the episode involving the signed consent at the hearing before ICC Judge Mullen provides no mitigation whatsoever. It does nothing to diminish the seriousness of the breaches. I am wholly unpersuaded that the fact that the father had signed a written but un-notarised document gives rise to any ground for believing that there is a possibility of a mediated resolution of the dispute concerning the children's future.

41. The judge's conduct of the sentencing exercise was careful, measured, and fully in line with established principle. There was no basis for this Court interfering with his decision. In the words of Birss LJ in *Lovett v Wigan Borough Council*, he carried out a "multifactorial exercise of judgment based on the particular facts and circumstances of the case" and the sentence he passed was "just and proportionate". For those reasons, I concluded that the appeal should be dismissed.

LADY JUSTICE ANDREWS

42. I agree.

LORD JUSTICE NUGEE

43. I also agree.