



Neutral Citation Number: [2021] EWHC 3024 (Fam)

Case No: ME21P00244

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/09/2021

Before :

MR JUSTICE WILLIAMS

Between

FA

- and -

MA

Applicant

Respondent

Victoria Halsall (instructed by **Evolve Family Law**) for the **Applicant**
Litigant in Person Respondent

Hearing dates: 07 September 2021

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

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

Approved Judgment**Williams J :**

1. I am concerned with a young man AA who is aged 13 years who is now the subject of a dispute between his parents as to his future. He is currently residing in Nepal. The applicant father is FA. The respondent mother is MA. All are British citizens of African heritage and the mother and father I believe are citizens of an African country, and AA may be entitled to citizenship although does not currently have it.
2. In the proceedings today the father has been represented by Ms Halsall, counsel and his solicitors. The mother has acted in person. AA has not played any part in the proceedings. The hearing that took place on 7 September 2021 was listed to consider whether the court had jurisdiction to make orders in respect of AA. Proceedings commenced on 21 February 2021 when the father issued a C100 seeking AA's return. The case was listed before His Honour Judge Scarratt on the 7 May and on 5 July 2021 he gave directions and transferred the case to be heard by the High Court. A C66 seeking to invoke the court inherent jurisdiction was issued on 5 August 2021.
3. The proceedings today have been conducted remotely by MS Teams. The case was listed for one day to include reading, evidence, and judgment. Given the nature of the legal issues in play this proved to be an inadequate time estimate and at the conclusion of submissions I reserved judgment. Having regard to what the President of the Family Division has said in 'The Way Ahead' about the need in the current circumstances to focus on the critical issues and to allocate an appropriate and proportionate amount of time to cases having regard to the issues and the importance thereof I do not intend to set out at great length the evidence that I have read and heard or the submissions that have been made to me in writing and orally but shall seek to confine myself to a more summary exposition of the matters which I have considered.
4. Whilst perhaps not unique in the pantheon of jurisdictional disputes the undisputed factual background to this case makes it very unusual indeed. On even the father's case, AA has since 2016 (when he was about eight years old) lived a nomadic or semi-nomadic life in which he has moved around the world, sometimes staying in a country for a few weeks, sometimes a few months and more recently in Nepal since early 2020. At least once a year AA and the mother have returned to England staying with friends or family before resuming their globetrotting life. The father said the time spent in England was about 10% of this time. The mother says the father expressly agreed to her and AA adopting this lifestyle. The father disagrees and says that the mother simply did as she chose despite his relatively light touch (my appraisal) objection. What he accepts though is that he never sought to challenge the way of life that the mother had adopted for AA in any formal way still less by application to the court even when he issued divorce proceedings in 2018. He says that he expected the mother and AA to return to England so that AA could commence his secondary education in September 2019 and that when the mother and AA were in England in April/May 2019 he spoke to the mother about his expectation. The mother denies this saying that at that stage they had been based in India for several months and planned to return to live there. She and AA resumed their globetrotting in May 2019 and have not returned to the UK since, living initially back in India (having visited Europe and Asia) and then visiting Nepal where they were locked in following the outbreak of the covid pandemic. Since early 2020 she says they have in fact adopted Nepal as their home and intend to remain there as it provides the ideal location for AA who is devoted to mountaineering. The father says the catalyst for his issuing proceedings was the receipt of text messages from AA

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in which he said “I don’t want to be here anymore. Not with mum at least. She doesn’t care about me..... Just get me home”. The father suggested he speak with his mother about this and forwarded the texts to her. Subsequently the father issued his applications. The mother says she believes the spark for the applications was her conversation with the father in early 2021 in which she said she intended to seek a divorce from him which he took exception to and that his application for orders about AA was his way of getting back at her for suggesting she would divorce him.

5. The father has applied for:
 - i) A Child Arrangements Order;
 - ii) A Prohibited Steps Order preventing the mother from removing AA from the jurisdiction; and
 - iii) A Specific Issue Order requiring the mother to return AA to this jurisdiction.
 - iv) An order under the inherent jurisdiction for AA’s return to England.
6. In the skeleton argument filed on his behalf four potential bases of jurisdiction are identified:
 - i) S1(1)(a) and (d) orders on the basis of s.2(1)a FLA 1986 and Article 7 of the 1996 Hague Convention on Jurisdiction...and Measures for the Protection of Children (Retained jurisdiction after abduction)
 - ii) S.1(1)(a) and (d) orders on the basis s.2(1) (b)(ii) and S3(1)(a) of the Family Law Act 1986 (FLA1986) - Habitual Residence)
 - iii) S1(1)(a) and (d) orders on the basis s.2(1)(b)(i) and s.2A (Jurisdiction in connection with divorce proceedings)
 - iv) A return order made under the *parens patriae* inherent jurisdiction, on the grounds of the child’s British nationality.
7. The mother’s case is that AA is habitually resident in Nepal and lost his habitual residence in England soon after they adopted a globetrotting (my words not hers) way of life from 2016 onwards. She denied that there had been a wrongful removal of AA saying that the father had agreed that she and AA could leave the jurisdiction and submitted that the court should not conclude that it had jurisdiction in connection with divorce or that it was appropriate to make orders based on AA’s nationality.
8. Both parties gave oral evidence in relation to the jurisdictional issues. Both parents included within their evidence their perception of how AA felt about his life in the last few years and what he currently wanted. No Cafcass report or other independent evidence was available as his state of mind in relation to his habitual residence. The parties’ oral evidence was briefly given and so my impressions of their honesty and reliability were necessarily limited. The documentary evidence that was submitted by each of them in support of their positions was also very limited in its extent. Both parties accepted matters which were potentially adverse to their interests and neither came across as inherently dishonest although both are plainly capable of either deliberately

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suppressing or withholding the whole truth. The father's disclosure that the mother's older child had been home-schooled through to GCSEs whilst living with he and the mother cast his assertion that it had always been intended that AA would attend secondary school from September 2019 in quite a different light. The mother's acceptance that she had continued to claim child benefit for AA until relatively recently (after the proceedings commenced at least) suggested more of a formal link with England than she had previously accepted. Both are clearly deeply entrenched in the positions that they have adopted within these proceedings, and which would appear to have developed to some extent over time as a consequence of the breakdown of their marriage and events which have happened subsequently. The mother demonstrated some hostility to the father asserting that he had married her only to obtain British citizenship and she was forceful and animated in her evidence finding it hard to restrain herself at times. She is clearly a woman with a forceful character, intelligent, determined and independent spirited. The father in contrast came across as passive in the extreme, avoiding confrontation, sometimes seeming to disengage from the process of giving evidence, cautious or timid. The nature of their personalities both informs my evaluation of their evidence and the conclusions I draw from it and conversely my assessment of their personalities is informed by the undisputed nature of what occurred in AA's life between 2016 and 2021. Neither demonstrated any real ability to be objective about AA's position. The mother maintained that he couldn't be happier with his life. The father maintained that for much of the intervening years AA had been bored and discontented. Although the mother might be expected to have a greater degree of attunement to AA's wishes given the fact that she has been his primary carer for most of his life and indeed his sole carer in the last six years her personality is so strong that it seems likely that it would take a child of quite considerable inner strength to express or maintain a contrary view to hers for any length of time. The father has despite his stated concerns never sought to address those concerns either in court or with any safeguarding authority or even it would appear very much with the mother, and I infer from this that the level of his concerns were modest and that in broad terms he trusted the mother to meet AA's principal needs. The father has been so inactive in seeking to influence the trajectory of AA's life in the last few years that one might conclude either he was satisfied that AA's welfare was being properly promoted and that AA was content, or it may be that he had never really put himself in AA's shoes to consider it from his point of view. As a result of my inability to rely on either parents' opinion as to AA's position, if the case proceeds further inevitably his views will need to be put before the court through some independent channel.

9. Turning then to the history for the purposes of determining the jurisdictional issues. At the outset of the hearing I identified what appeared to me to be the central legal/factual issues. They were,
 - i) AA's habitual residence at the time of the issue of these proceedings,
 - ii) his habitual residence in May 2019,
 - iii) whether the father had acquiesced in his removal or retention
 - iv) the link between the applications issued by the father and the divorce,

The evidence as I find it.

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10. Rather unusually given the passage of time that is involved in this case there is very little in the form of contemporaneous documentary evidence to inform the assessment. I am in the main reliant upon the parents' accounts and I intend to focus on what appears to be relevant for the purposes of determining the central issues.
11. The parties married in England in 2008 shortly before AA was born.. Both appear to have made their home in England since their arrival.. They lived together in a rented property together with the mother's daughter from an earlier relationship. She appears to have been born in about 2000 as I'm told she is now 21. The father accepted that the mother had chosen to home-school her daughter up to GCSE level which she took in 2016. Since then she has lived with her father. The father's suggestion in his statement that she had gone to live with her father following a court case may strictly speaking have been true, but it does not appear to have been because there were concerns about the mother's care, rather that it was probably linked to the fact that the mother planned to adopt a globetrotting lifestyle and her daughter wished to study for A-levels. Initially AA attended a Montessori school but in 2014 he was withdrawn from that school and commenced home schooling alongside his older sister. The father said that the mother did this without telling him and that he accepted it. This approach appears to have dominated his relations with the mother in respect of AA ever since. The evidence was not sufficiently extensively tested for me to get any real sense of why the father has adopted such a passive approach. The mother says he is simply not really interested in AA but is more interested in other aspects of his life. The father disputes this and refers to having sought guidance from his church as to how to deal with matters. In any event AA became accustomed to being home-schooled along with his sister and thus being home-schooled since the globetrotting lifestyle was adopted was not a significant change or indeed a significant negative in terms of his integration in any environment as that was his environment in England. The mother and father both agree that AA had some involvement with home schooling clubs which enabled him to mix with other children who were being home-schooled and that he had some involvement with the church. Both parents have family members living in the UK and AA seems to have a good relationship with a cousin who is a couple of years older than him. The impression I got from the evidence was that neither the father or the mother lived in the bosom of their extended family but maintain cordial relationships without them being particularly close and without them relying on them particularly for emotional or other support. The mother told me she has siblings in three countries and she maintains contact with each of them.
12. Following the breakdown of the marriage it seems the mother and the children moved out of the family home. The mother maintained that the father made them homeless by ending the tenancy; the father maintained that she vacated the property. I'm unable to determine which is correct. However, what seems tolerably clear thereafter is that the mother did not secure an alternative permanent base for herself and the children but rather made her way in temporary housing provided either by friends, family or it seems for a short period the local authority. The father on the other hand appears to have moved into an alternative and smaller rented property which has become his longer term home, he may now have purchased a home. There is a disagreement between the parties as to the extent to which the father and AA maintained their relationship following separation. The father maintained that it was every weekend whilst the mother said that it was probably every fortnight or every third weekend. I'm not sure that disagreement which I am unable to resolve makes any material difference for the

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purposes of determining that AA and his father had an ongoing and substantial relationship following the marriage breakdown. The father did not take issue with the mother's care of AA or the nature of the relationship that she facilitated as his primary carer nor with his continued home schooling.

13. In 2016 a significant change in AA's life occurred. This would seem to have coincided with his sister completing her GCSE level education. From 2016 onwards the mother and AA have travelled the world extensively. The father said their initial forays were for a number of weeks and encompassed the European continent. Although he says he did not expressly agree to the adoption of this lifestyle he said he accepted it on the basis that it had educational benefits for AA. His understanding was that they travelled to various European countries and then returned to the UK for a period of weeks. The mother says that she discussed her plans with the father and that he expressly agreed to her essentially giving up the UK as their home and adopting a life travelling internationally as and where their inclinations took them. The father said that after the European exploration was over they began to travel more extensively in Asia and were away for months at a time before returning to England for short periods before returning abroad. The mother said there was no such clear distinction but agrees that they travelled far and wide sometimes housesitting in Europe, sometimes staying for a few weeks, sometimes staying for months and renting accommodation. She agrees that they returned to England periodically each year and that when they were back in England (she occasionally said home) they stayed with family or her friend GD with whose child AA has a friendship.
14. The mother said she had not sought from the father a formal written consent for travel purposes or otherwise as she had discussed the matter with the father. She said she had never had any difficulty at a border travelling with AA because of the absence of any formal consent to travel document. There is no contemporaneous evidence either in documentary form or from any other witness as to what occurred. Having regard to events prior to 2016 and subsequently and taking into account the personalities of the parents it seems to me more probable than not that the mother told the father what she planned on doing, that he expressed some muted disagreement which he did not persist with and that she has subsequently interpreted this as amounting to his consent. Equally it is fairly clear that the father's opposition to the move in keeping with his passive nature was indeed muted and was not taken very far still less acted upon by any informal objection via the church or otherwise or formally through legal proceedings.
15. The pattern of AA's life from 2016 onwards has therefore been one where there has been no single long-term base. It appears that for a significant period of time in 2018 and 2019 the mother and AA were based in India. The mother told me that she had rented a three bedroom house there for about £220 per month and that she had been able to meet their expenses from a combination of child maintenance and her own earnings. She omitted to tell me that she had also been claiming child benefit up until 2021.
16. In 2019 she said she and AA returned to England in April. She stayed with her family or friends. She denies the suggestion that AA maintains strong or close links with friends from his former home schooling clubs or from the church or elsewhere. She says he has moved on in the last five years and whilst he remains friendly with her friend GD's child and with his cousin, she denies that he has close ties of friendship in England. Nothing in the father's evidence put flesh on the assertion that this was so; he

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gave no evidence of AA staying with him and pressing to meet up with old friends or anything of that nature. Nor did the father describe or evidence family gatherings following AA's return which suggested a high degree of family integration remained. The father says that his understanding was that she was then returning to England permanently in order to enable AA to attend secondary school from September 2019 onwards. His case is that he was not much concerned where AA was to be educated; where the mother's sister was based or near to him were acceptable to him. He says that he raised this with the mother and was led to believe that the mother was going to do what was necessary to settle in England and get AA into a school. The mother expressed incredulity at this suggestion in her evidence. Why would she do that when she had home-schooled her daughter up to GCSE, had no permanent base in England, had left England to live internationally? It is clear that the father did nothing himself to address the question of AA's education or what the future held for him. He frankly accepted that he made no enquiries of any schools himself, did not press the mother for any information about what her plans were and where she would settle or any of the other steps that might be expected of a father seeking to ensure his son's secondary education was settled. Again the nature of the evidence surrounding events in 2019 is obscured by the absence of any contemporaneous digital or other documentary evidence or indeed any corroborating witness evidence. It seems likely that at some stage the father did raise the question of AA's future education although whether this was with AA or with the mother is unclear. Again his passivity and the mother's opposing assertiveness leads me to conclude on balance that the father did raise the issue in some shape or form which was either ignored or answered in Delphic form. The father may have persuaded himself that he had raised it sufficiently and having done so he expected it to happen. The mother may have rhetorically considered she had made clear she dismissed it with some rhetorical answer. Their means of communication are so far apart that it is easy to see how each could persuade themselves of what they wanted to hear. The father did nothing to pursue it himself. He says that he was then expecting to see AA again and when he called, he discovered from AA that they had travelled to Albania. Thereafter they travelled to Asia for a period of weeks before returning to India where they remained from about August until December when they travel to Nepal. The mother says by this stage the travels were essentially dictated by AA's interest in mountaineering. Although the father said September 2019 was a critical date for him, he did nothing when it passed.

17. In late 2020 the mother and AA travelled to Nepal. This was clearly intended to be a short-term visit because the mother retained the rented property in India and both the mother and AA left their possessions there. Having travelled in Nepal the covid pandemic struck and they found themselves stuck in Nepal. The mother says that they could have taken a repatriation flight to England but they did not wish to return to England and preferred to remain in Nepal which she says she and AA had realised was far better placed to fulfil AA's ambitions in the mountaineering field. She says that in due course she surrendered the tenancy of the Indian property and that her sister collected the belongings they had left behind and forwarded them to her. She says they rented accommodation there initially before moving to their current home in September 2020 which was taken on a month by month tenancy which the mother said is the way they do it in Nepal. She says that AA has continued to be home-schooled following the English curriculum, is planning to sit Ed Excel GCSE's, receives outside tutoring in maths, sciences, and English and pursues tennis, guitar and mountain hiking in a local club. She says he has attended dental and opticians' appointments and that they are

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registered with the local hospital. She has the necessary health insurance. She continues to earn some money from working online and does not require a geographical base. AA, she says, has friendships from the mountaineering club and they are integrated into the local community who are very fond of AA. She has produced some documentary evidence of the practical aspects of life in Nepal although very little in relation to AA's social or family contacts. The father says that he was in contact with AA 3 to 4 times a week and that he sought at one stage to assist with online education although his efforts did not get very far. He says he set up an online chess game so that when they ran out of things to speak about, they were able to play chess. Thus it seems that the father was in very regular contact with AA for most of the time that he was away and was aware of what was happening in his life. Although the father says that AA at times expressed boredom with his life it seems likely that this is connected with lockdown rather than more generally. If prior to 2019 AA had expressed any real dissatisfaction or unhappiness with his globetrotting lifestyle it seems hard to understand why the father would not have done something about it. The content of the texts which AA sent in February 2021, and which spanned only a period of about 20 minutes, have more of the feel of the product of some sort of fallout rather than a long-standing discontentment. It seems hard to believe that if AA were seriously discontented in Nepal and seriously wanted to come back to England that he would not have sent more and extensive messages to his father or to his family and "friends" in England. The content of the father's response "but you need to tell her that you are not happy there any more.. Or I will forward your text to her!" suggests that previously the father had understood that AA was happy there. Given that AA had been there since about December 2019 /January 2020 that would suggest a period of a year or more in which the father had understood AA to be content with his life in Nepal.

18. The mother says that in January 2021 she spoke to the father about getting divorced; they having remained married since their separation some five or six years earlier. She says that the father then told her that there was already a divorce petition which he had issued in 2018. She said that he was very angry saying "who do you think you are?" The father disputes this. The mother said she was not particularly bothered about who undertook the divorce and she is content for the father's petition to proceed although she says she has never seen it. She is content for that to go forward in the English court and for the English court to deal with matters of child support if it has jurisdiction so to do. She believes that it was the father's anger at her suggestion that she would divorce him that led him to issue the proceedings that he did. The father maintains that it was the contents of AA's text messages which led him to make the applications that he did. He said it had nothing to do with the mother's suggestion of a divorce. I confess it is on this as on other aspects of the case that it is puzzling. After five years of passivity the contents of the text messages seem a relatively benign basis on which to issue proceedings. Ultimately why the proceedings were issued is perhaps of little relevance to the matters before me. What is clear is that they made no reference to the fact that divorce proceedings had been issued in 2018, the father's evidence made no reference to it, and it only emerged in the Skeleton Argument filed for this hearing that there was indeed a divorce petition still extant.
19. The father says that in May 2021 (and I think the mother agrees) that he was blocked from communicating with AA's phone. The mother says that this was because AA was angry with the father over his response to the text messages. It seems unlikely to be a coincidence that the first hearing in the father's applications to place on 7 May 2021

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and that on 27 April 2021 the mother was in communication with Cafcass over the application. In his interview with Cafcass which is consistent with the position statement the father filed with the court for the May hearing he said that the mother and AA spend 90% of their time travelling and had lived in and out of the UK since 2015 living in India/Nepal since May 2019. His concerns in particular were expressed to be around the instability that the travelling lifestyle led to, the lack of formal educational arrangements and (per his Position Statement) concern about his safety in non-EU countries.

Legal Framework on Jurisdiction

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

1 Orders to which Part I applies

Subject to the following provisions of this section, in this Part “Part I order” means –

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

.....

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

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

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

[Northern Ireland]

[Specified dependant territories]

2 Jurisdiction: general

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

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

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

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

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

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

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

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

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

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

3 Habitual residence or presence of child

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

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

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

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

21. Habitual residence is a central concept to the determination of jurisdiction in relation to children. For the purposes of this application habitual residence is relevant to the determination of whether the court has a retained jurisdiction under article 7 of the 1996 Hague Convention in which case jurisdiction would be covered by section 2(1) (a) FLA 1986. It would also be relevant for the purposes of considering whether the court had a primary jurisdiction pursuant to article 5 of the 1996 Hague Convention which would also fall within s.2(1)(a) FLA 1986 as opposed to section 3 of the Act. If jurisdiction were established under either of these provisions the full panoply of orders would be available to the court and the father.
22. The approach to the evaluation of habitual residence has been transformed in recent years by a quintet of cases in the Supreme Court together with several cases in the Court of Justice of the European Union; the earlier CJEU cases having informed to a significant extent the principles adopted by the Supreme Court.
23. The core definition is that habitual residence is ‘the place which reflects some degree of integration by the child in a social and family environment’: *A v A* (children: habitual residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 60, [2014] 1 FLR 111.
24. Given the highly unusual factual matrix in this case I observe at this stage that the Supreme Court in *Re B* [2016] UKSC 4 emphasised that it is in a child’s best interests to have a habitual residence so as to avoid falling into a jurisdictional limbo. Where a set of facts might reasonably lead to a finding of habitual residence or no habitual residence the court should find a habitual residence.
25. The principles which emerge from the decisions of the Supreme Court and the Court of Justice of the European Union are as follows:
 - i) habitual residence is a question of fact and not a legal concept like domicile. There is no legal rule akin to that whereby a child automatically takes the domicile of his parents;
 - ii) it was the purpose of the FLA 1986 to adopt a concept which was the same as that adopted in the Hague and European Conventions. BIIa must also be interpreted consistently with those Conventions;
 - iii) the test adopted by the European court is ‘the place which reflects some degree of integration by the child in a social and family environment’ in the country concerned. The criterion of proximity identified in the Recital incorporates the

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child's best interests. This depends upon numerous factors, including the reasons for the family's stay in the country in question;

- iv) the test adopted by the European court is preferable to that earlier adopted by the English courts, being focused on the situation of the child, with the purposes and intentions of the parents being merely one of the relevant factors;
- v) the social and family environment of an infant or young child is shared with those (whether parents or others) upon whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned. That of an older child or adolescent is likely to be more distinct from that of the primary carer as they will have integrated in school or other aspects of their community;
- vi) the essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce;
- vii) parental intent did play a part in establishing or changing the habitual residence of a child: not parental intent in relation to habitual residence as a legal concept, but parental intent in relation to the reasons for a child's leaving one country and going to stay in another. The intentions or wishes of a parent with rights of custody would have to be considered. The intentions of the parents could not override the objective identification of where the child has in fact resided having regard to the importance of proximity. Subjective factors such as nationality or future intention cannot displace objective factors relating to proximity. They would have to be factored in, along with all the other relevant factors, in particular when deciding whether a move from one country to another had a sufficient degree of stability to amount to a change of habitual residence;
- viii) The state of mind of the child concerned may also be relevant to assessing their degree of integration. The majority held it was only adolescents or those to be treated as adolescents whose state of mind was relevant. The minority (which included Baroness Hale) held that there was no logical reason to exclude the state of mind of younger children;
- ix) The assessment of integration of the child involves consideration of objective factors as well as subjective factors. The court is seeking to ascertain the 'centre of the child's life'. It is also a comparative exercise involving consideration of the quality of the previous habitual residence and that of the new. The judge must take sufficiently into account the facts relevant to the old and new lives of the child and the family although need not necessarily do so in a side by side analysis of the sort carried out by Lord Wilson in *Re B* as long as it is apparent from the judgment as a whole that the exercise has been undertaken. Objective factors which support geographical proximity are likely to be more decisive than subjective factors such as national origins and future intentions but both are to be considered. Temporary absences from the country of their everyday lives, even if measured in months does not alter the country of habitual residence;
- x) The previous rule that 'habitual residence' cannot be changed without the consent of all holders of parental responsibility is to be discarded. Whether a

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holder of parental responsibility has consented may affect the quality of integration but is not a bar to habitual residence changing;

- xi) A young infant cannot gain habitual residence in a state which he has not visited when he was born and has been living with his primary carer in another MS for several months. A child cannot be habitually resident in a country in which he has never been present;
- xii) A child will usually not be left without a habitual residence and if a set of facts could reasonably lead to a finding of habitual residence or no habitual residence the former should be preferred. As integration is gained in one country it is lost in another. Complete integration is not required but 'some'.

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

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

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

- (a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;*
- (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and*
- (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it.'*

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

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

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

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(2) *The removal or the retention of a child is to be considered wrongful where –*
 (a) *it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
 (b) *at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*
The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.
 (3) *So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.'*

28. In *Re H* [2014] EWCA Civ 1101 the Court of Appeal had held that Article 10 BIIA applied when the other state concerned was not a member state; the consequence being that jurisdiction could not be lost in some circumstances as habitual residence could never be acquired in another member state as specified in Article 10. However the CJEU in *SS-v-MCP* (Case C-60320 PPU) held that Article 10 only applied where the two countries concerned were European Union member states. Article 7 refers to *until the child has acquired a habitual residence in another State not another Contracting State* and so it may be that there is a distinction. I have not heard detailed submissions on the proper interpretation of the phrase. It is clear from other Articles of the 1996 Convention that where it refers to a *state* it tends to differentiate between a *Contracting State* or a *non-Contracting State* and so the reference to a *State* without any descriptive preceding adjective is curious. Applying the principles deployed by the CJEU would tend to support an interpretation that Article 7 only applied between contracting states and thus was irrelevant for the purposes of this case. However applying the more literal approach seen in *Re H*, which was subsequently referred to by the Supreme Court without disapproval suggests that Article 7 should be applied according to a literal reading of the words. On that basis it would apply to any other state. However for reasons which will become apparent I have concluded that Article 7 would not apply to retain jurisdiction in this case for other reasons and so my conclusions on this are not central to the outcome of this decision.
29. In *A v A* (children: habitual residence) (Reunite International Child Abduction Centre Intervening) [2013] UKSC 60, [2014] 1 FLR 111 the Supreme Court suggested that concepts common to international instruments should be interpreted consistently across them. Applying this principle indicates that in this context 'acquiescence' must be considered to be the same to its use in the 1980 Hague Convention. In *Re H* (minors) (abduction: acquiescence) [1998] AC 72, [1997] 1 FLR 872 the House of Lords confirmed this meant that it was proved on the balance of probabilities that:
- i) The left-behind parent had subjectively given up the right to insist on the summary return of the child; or
 - ii) exceptionally, the left-behind parent had behaved in such a way as to clearly and unequivocally show and have led the other parent to believe, that they would not insist on the summary return of the child.

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30. Jurisdiction in, or in connection with divorce proceedings is addressed 2(1) and section 2A FLA 1986. The section will only come into play if jurisdiction is not established within the parameters of the 1996 Hague Convention. Thus if there is no habitual residence jurisdiction and no retained jurisdiction the next stage would be to consider jurisdiction pursuant to this provision.

2A Jurisdiction in or in connection with matrimonial proceedings or civil partnership proceedings.

The condition referred to in section 2(1) of this Act is that the proceedings are proceedings in respect of the marriage or civil partnership of the parents of the child concerned and –

(a) the proceedings-

(i) are proceedings for divorce or nullity of marriage or dissolution or annulment of a civil partnership, and

(ii) are continuing

31. Section 42 provides that;

(2) For the purpose of this Part proceedings in England and Wales or in Northern Ireland for divorce, nullity or judicial separation in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of 18 (whether or not a decree has been granted and whether or not in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).'

32. The Court of Appeal has considered the application of section 2(1)(b)(i) in **Lachaux v Lachaux** [2019] 2 FLR 712 where Moylan LJ said:

[186] Further, contrary to the views expressed by Mostyn J, I can envisage circumstances in which it would be appropriate for jurisdiction to be provided in or in connection with matrimonial or civil partnership proceedings. A simple example is that provided by Art 12 of BIIA, namely where the parents agree to the courts of England and Wales exercising parental responsibility jurisdiction when this is 'connected' with the divorce proceedings. I certainly have experience of cases in which parents wanted proceedings concerning their child or children to be determined in England rather than the country in which they lived. There might be a number of reasons for this and, in my view, it would be regrettable if there were not scope to accommodate at least this type of case. This would, of course, be subject to the provisions of BIIA or the 1996 Hague Convention, but the fact that habitual residence is, for good reason, the core basis of jurisdiction does not, in my view, mean there is not a legitimate place for the jurisdiction provided by s 2(1)(b)(i).

[187] The courts should take a broad view as to whether the question arises in or in connection with the other proceedings. In broad terms all that is required is that the parties to those proceedings are 'the parents of the child concerned', that the proceedings are taking place or did take place in England and Wales, and that one or other or both of the parents seek a s 1(1)(a) order because their marriage or civil partnership is being or has been dissolved. The reason the court can take a broad view is because this

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provision only applies if neither BIIA nor the 1996 Hague Convention apply and because s 2A(4) balances the broad scope of s 2(1)(b)(i) by giving the court the power not to exercise this jurisdiction.

33. Earlier in the decision the court explored two earlier cases in which the proper interpretation of *in or in connection with* had been considered. In the passage cited Bodey J concluded that the simple fact that applications in relation to children had been made and divorce proceedings were pending did not fulfil the criteria connoted by *in connection with*. He considered there must be some nexus more than just the mere existence of the two sets of proceedings. He concluded it was probably a question of fact and degree. In the most recent example of the provisions being deployed *XM v XF* [2021] EWHC 1279 (Fam) was one which both parties agreed to; agreement clearly being a material factor in determining whether the provision can apply.
34. It seems to me that it must be right that the phrase ‘in or in connection with’ must mean something more than the mere existence for a child arrangements order being made whilst a divorce petition is continuing. The Court of Appeal in *Lachaux* refers to the application being made **because** the marriage is being dissolved. Thus one is looking for something which creates some nexus or connection even perhaps a tenuous connection in order for the wording of the statutory provision to be fulfilled. Ms Halsall emphasised that the Court of Appeal had supported a broad construction of the phrase not a narrow one. Ultimately it is probably a question of fact.
35. The *parens patriae* jurisdiction under the inherent jurisdiction refers to the long-established principle at common law that the court has a protective jurisdiction in relation to children who are British citizens. That has been confirmed by the Supreme Court and indeed the CJEU has now referred to the residual ‘*parens patriae*’ jurisdiction as enabling the courts of England to deal with the situation of a child born abroad and neither habitually resident or present in the UK. : *UD v XB* Case C393/18 PPU, [2019] 1 FLR 289, [2019] Fam Law 21, [2018] All ER (D) 71 (Oct), EUCJ at para 67.
36. *Re A* makes clear a return order can be under the inherent jurisdiction and outside FLA 1986 s.1(1)(a) and outside s.1(1)(d) and so can be outside the prohibitions contained in s.2 FLA 1986. It is an order in matters of parental responsibility though and so is within the 1996 Hague Convention. Unlike BIIA (Article 14) the 1996 Hague Convention is silent on the issue of residual jurisdiction; it neither confirms its existence nor excludes it. I do not consider that a long-standing jurisdiction would have been terminated by the changes effected by our departure from the EU and the replacement of BIIA as the primary jurisdictional vehicle with the 1996 Hague Convention. If Parliament had intended to remove entirely the *parens patriae* jurisdiction by the amendments to the statutory framework arising from our departure from the EU I conclude it would have needed to and wished to expressly exclude it.
37. In *Re A* the UKSC identified the basis of the nationality/*parens patriae* jurisdiction thus:

Is there another basis of jurisdiction?

[59] Article 14 applies where no court of a Member State has jurisdiction under Arts 8–13. No other Member State is involved in this case. Either the courts of England and Wales have jurisdiction under Art 8 or no court of a

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Member State does so. In that case, the jurisdiction of England and Wales is determined by the laws of England and Wales.

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

38. The parens patriae jurisdiction is therefore a more limited jurisdiction than that available under the other heads of jurisdiction claimed by the father in this case. Orders specifying who AA was to live with and the time he was to spend with the other parent, or the dressing issues of education are not available. The order that would be available would be one requiring that AA be returned to this jurisdiction.
39. The Supreme Court and the Court of Appeal have made clear that the occasions when the court can properly have recourse to the nationality jurisdiction is limited. In re B (A Child) (Reunite International Child Abduction Centre and others intervening) [2016] UKSC 4 but was not confined to a "dire and exceptional" situation or "the extreme end of the spectrum" see paragraph 59 of Re B (above) & 72 of Re M (above):
- i) there had to be sufficiently compelling circumstances to "require" or make it "necessary" for the court to exercise its protective jurisdiction (paragraph 60 of Re B (above) where the circumstances clearly warrant it with the connotation of an imperative (paragraph 85, 101 & 105 Re M (a child) (above).
 - ii) the reasons to deploy caution when deciding whether to exercise the jurisdiction related to "3 main reasons" namely that to do so may conflict with the jurisdictional scheme applicable between the countries in question, secondly that it may result in conflicting decisions in those 2 countries and thirdly it may result in unenforceable orders (supra).
 - iii) there is no conclusive test for exercising the jurisdiction (paragraph 33 Surrey County Council v NR and RT [2017] EWHC 153 (Fam) [2017] 2 WLUK 83 [2017] 2 F.L.R. 901 & "all must depend on the circumstances of the particular case and the nature of the orders sought (paragraph 62 & 104 Re M (A Child) (above))
 - iv) previous decisions suggest that orders had been made in "2 classes of cases" broadly described "as protective" the 1st being abduction cases outside the statutory scheme the 2nd "comprises cases with the child is in need of protection against some personal danger" (paragraph 78 Re-M (above).

Application of the legal principles to the evidence

40. In the hierarchy of jurisdictions contained within the 1996 Hague Convention as applied by section 2 FLA 1986 the starting point would be to ask whether AA was habitually

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resident in England at the time the proceedings were commenced. This is what the father describes in his skeleton argument as the habitual residence basis of jurisdiction. Indeed in contrast to BIIA, which contains a *lex perpetuato fori* provision in the 1996 Hague Convention makes provision for jurisdiction to transfer where habitual residence changes to another contracting state, but as Nepal is not a contracting state, I need not consider how that operates in the abstract. I'm prepared to accept that the proper interpretation of article 5 requires the court to consider habitual residence at the time the court was seized of the application in these circumstances.

41. Thus the critical time in respect of this issue is 20th of February 2021. Did AA remain habitually resident in England as at that date or had his habitual residence shifted to Nepal? Given the almost unique factual matrix involved in this case the possibility of him having no habitual residence is more real than it might be in most. However, I'm satisfied that by February 2021 the habitual residence seesaw had tipped and that AA's roots in England had been lifted sufficiently and that sufficient roots had been put down in Nepal for the habitual residence seesaw to have tipped in favour of Nepal.
42. In favour of his roots in Nepal being deeper than those which remained in England are the following:
 - i) Fthe period since 2016 his family environment had essentially consisted of life with his mother and so his integration into a social and family environment in Nepal to a significant extent revolves around the fact that his family life is essentially that of himself and his mother. That is what exists in Nepal. In contrast his integration into family life in England has become very tenuous. True it is that his father remained in England and that is a significant enduring root. However the nature of the relationship between AA and the father has become increasingly attenuated since 2015 and so is of less significance in terms of enduring integration than it might have been. Similarly, it is right that he has other family members in England in particular his half-sister who continues to live and study here as well as extended relatives in the form of aunts, uncles and cousins. However again the reality is that his integration with them as a family has been stretched over the last 5 to 6 years and their importance in his life has diminished such that they are a small part of the framework of his life.
 - ii) In February 2021 AA was 12 years old. He had lived in Nepal for fourteen months. Prior to that he had lived largely in India since late 2018. Although the quantum of time is far from definitive the reality for AA was that his life had been lived largely in India since some point in 2018 and wholly in Nepal since late 2019/early 2020. Whilst he was living in India the mother had rented accommodation for them and they were based in India for many months. Following their visit to Nepal they were forced to remain there because of the covid pandemic but they have rented homes there. I accept the mother's evidence that they have created homes in India and in Nepal which are in contrast to the house-sitting experiences AA may have had in some destinations. From 2015 to 2016 AA did not have a permanent base with his mother in England and since 2016 they have returned for about 10% of the time according to the father and have stayed with friends and family. Although the father has a home in England the amount of time AA has spent in it is modest. It is true that AA has a bedroom at his fathers and has asked to see it when on the phone with his father which suggests an enduring link with that home, but it is clear that his

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main carer and his main home is with his mother and that they have based themselves in India and Nepal since 2018. Nepal has been his constant base for 12 months by February 2021.

- iii) I accept that the mother has taken steps to normalise and integrate AA and herself into Nepal by obtaining accommodation, dealing with the practicalities of healthcare, engaging AA in extracurricular activities and continuing his home schooling which had characterised his educational life in England. Whilst he maintains registration with his GP and has seen an optician and whilst his mother continues to claim child benefit in the UK in practical terms AA's integration into the English system is vestigial and insignificant in comparison to his integration into the Nepalese day-to-day world. Whilst he is educated according to the English curriculum and so culturally and linguistically there are strong remaining ties to England his education has in fact been carried out in his home in Nepal rather than in his home in England. It is not as if he is at boarding school in England and maintaining strong connections through physical presence.
 - iv) It has clearly been the mother's intention for some years to travel internationally and to settle in places which took her fancy for whatever reason. Inevitably these have a temporary character some more temporary than others. Some of the locations they have travelled to have clearly been no more than visits for a purpose. However others such as India and Nepal have clearly been more akin to making their home there. In order to put down roots one does not need to intend the home to be permanent; that would be to blur the boundary with domicile. Of course there must be a degree of stability in order to integrate but it is clear from the mother's evidence that whilst they have been in Nepal a degree of stability has been achieved. The fact that it was a result of force majeure rather than an entirely voluntary act may lessen its weight to some degree but ultimately the intentions behind the move are of less weight than the product of the move. It seems clear that both the mother and AA have attempted to settle in Nepal. The text messages from AA together with the father's evidence of his occasional complaints of boredom do not in my view undermine the significant level of integration that is manifested by the objective and subjective evidence. It is implicit in the father's text back to AA that he himself thought AA was content making his life in Nepal prior to February 2021. Thus in so far as AA state of mind weighs in the balance it weighs more in favour of Nepal as the place where he was integrated rather than in England. His reference to England as home I do not think bears the weight the father would seek to place on it.
43. Thus while it is clear that there are aspects of AA's life that remain in England in particular in the form of his father, his extended family, cultural and educational aspects and some vestigial links with 'friends' it is equally clear that the unique way of life that AA has pursued at the direction of his mother and with the acquiescence of his father has led to him developing roots of greater depth and consequence in Nepal. It is true that they may in due course be uprooted in favour of another destination and his roots in Nepal may wither more rapidly than the roots of his integration in England but that does not negate the reality of his integration in Nepal. I am satisfied that the seesaw has tipped away from England and that his roots have been put down in Nepal and that they

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are now deeper and more extensive than the remaining roots of his integration in England. Whilst his roots in England have not been completely removed the seesaw has decisively tipped in favour of habitual residence in Nepal as of February 2021.

44. I therefore conclude that this court does not have jurisdiction pursuant to article 5 of the 1996 Hague Convention.
45. However what of the Article 7 jurisdiction? My conclusions in respect of the outcome of the discussions between the parents as to what was happening with AA are such that I'm satisfied that the father had not given his express consent to AA's permanent removal from England. The situation was more in the nature of a resigned acceptance that the mother would do as she chose and the father was unwilling to take any informal or formal steps to oppose that. For the purposes of determining whether the removal of AA from the jurisdiction was wrongful or not it seems to me therefore that it was wrongful in that it was in breach of the father's custody rights; those including the right to determine AA's place of residence. Unless and until AA became habitually resident elsewhere or at least as long as he remained habitually resident in England the father's right to determine his place of residence as England endured. If the father's acquiescence sounds in law, it sounds in a different aspect of Article 7.
46. The operative removal for the purposes of Article 7 would be that which occurred in May 2019 when AA left England for the last time. Each prior removal had been in effect negated by his subsequent return to the jurisdiction. Had the father wish to take action to prevent his subsequent removal he could have done so on each occasion AA returned but he did not. Thus the next question for consideration is whether AA was habitually resident in England immediately prior to his removal in May 2019. I reach a different conclusion in this regard to my conclusion in relation to February 2021. As far as I can ascertain from the mother's evidence although they had spent time in India from late 2018 it had not taken on the character of a home by that stage. When they returned to England in April 2019, I have no doubt that it was for a further temporary visit, but they did not have a home to return to in India when they left. It seems clear that it was the mother's intention to return to India but on balance I'm satisfied that this was because she had identified India as a potential home rather than it having already become her and AA's home by April 2019. Integration was developing in India prior to April 2019, but it was embryonic in nature. The enduring connections with England were of diminishing importance but on balance, albeit a fine balance, I think they outweighed any connection with India at that point and so the habitual residence seesaw remain tilted in favour of England. It is conceivable on the very unusual facts of this case that one might formulate an argument that AA had no habitual residence at that point in time but on balance sufficient vestigial roots remained in England to justify a conclusion that habitual residence was retained in May 2019. By February 2021 AA had acquired a habitual residence in another state. The next issue to consider therefore is whether the father had acquiesced in the removal from England or the retention in Nepal. It is perhaps self-evident from what I have said earlier in this judgement that the father's passivity over the period 2016 through to 2019 and which endured thereafter up to February 2021 meets the test for demonstrating acquiescence on his part. The evidence establishes that he himself had accepted that he would not seek the summary return of AA. On each and every occasion that the mother removed AA from the jurisdiction and took him to another country or continent the father accepted that and took no steps whether formally or informally to secure his return. That continued for

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three years up until 2019 and thereafter for another 21 months. Of particular importance it seems to me is the fact that the father took no action at all in September 2019 at a time when he maintains he was insistent that AA should have commenced secondary school. If ever there was a time when he might have been expected to take action it was in pursuit of his asserted desire that AA undertaken secondary schooling in England. However he did nothing. It seems to me that this satisfies the subjective test outlined in re H. However it also seems to me that in the very unusual circumstances of this case that the father's actions or rather inaction from 2016 onwards clearly and unequivocally show that would not seek a summary return. I'm therefore satisfied that the father acquiesced for the purposes of article 7(1)(b) of the 1996 Hague Convention. Thus the court has no retained jurisdiction pursuant to that article which was lost at some point probably in late 2019 or early in 2020.

47. The next issue is whether the father's applications were made in or in connection with divorce proceedings. Although I accept that the Court of Appeal decision in Lachaux supports the court taking a broad approach this issue I do not read the decision as amounting to a boundless discretion where the mere existence of a divorce petition at the same time as applications in respect of children satisfy the condition. It is clear that the applications were not made in the divorce but were they made in connection with the divorce? I am driven to the conclusion that no nexus is established. Paradoxically the father's case on the facts would tend to undermine his case in this regard whilst the mother's case would support there being some nexus. However it is clear from the father's evidence and from these applications themselves that the applications were entirely distinct from the divorce which appears to have been dormant since 2018 and largely forgotten about by the father who had taken no steps to progress it. Thus applications issued in February 2021 and August 2021 in circumstances where the petition still remained dormant, slumbering for over two years were entirely unconnected with the divorce. Had the father reinvigorated the divorce petition and in tandem with seeking to reach a final resolution of their status, had sought to finalise the disentanglement of the family financially and in respect of AA an obvious connection would have been demonstrated. However these applications were essentially issued in the void and without any reference to or linkage with the divorce. I'm therefore not satisfied that this jurisdictional ground is established. As a question of fact no connection existed between these proceedings and the divorce and however generous an application of the statutory provision is applied, I cannot stretch it to finding a connection of which I can see no visible evidence. The fact that the mother now wishes the divorce to proceed and for maintenance to be dealt with under the divorce does not in my view create a connection between these proceedings and the divorce which did not exist at the time they were issued, and which appears to have been an afterthought raised by counsel in or around early July.
48. The court therefore does not have jurisdiction over AA under any of the limbs set out in the Family Law Act 1986 and the 1996 Hague Convention. The wide-ranging orders available to the court under section 1 (1) (a) and 1(1)(d) are not jurisdictionally grounded. The remaining potential jurisdiction is that of the *parens patriae* jurisdiction based on AA's British nationality.
49. It is undoubtedly the case that because jurisdiction does not exist under any other statutory provision it is open to the father to invite the court to exercise its common law inherent jurisdiction arising by reason of AA's nationality. As I've set out above, I'm

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satisfied that the common law jurisdiction endures. In this case there is no competing jurisdiction to complicate the question of this court seeking to exercise jurisdiction. The mother has not initiated proceedings in Nepal, and she has not put any evidence before the court to suggest that Nepalese law provides jurisdiction. There is therefore unlikely to be a conflict of orders in relation to AA or any issues of comity. Given her desire to return to this jurisdiction for instance for her daughter's graduation orders made by this court would have some traction. Furthermore given the mother's desire for the petition to proceed in England and for the English court to determine matters of maintenance relating to AA there would appear to be logic in the court exercising some jurisdiction in respect of AA. The fact that the relationship between the father and AA has now been entirely ended seems to me to provide additional force to the need for the court to enquire into this young man's welfare to establish whether the end of that relationship is at AA's instigation or whether it is a product of the force of the mother's personality and her unhappiness at the father having initiated proceedings in this court. There is clearly a protective element to this. The cases in essence approve the exercise of the jurisdiction where the court considers it necessary in the welfare interest of a child for it to be exercised on the particular facts of the case. In this case seems to me that it is at least arguable that the jurisdiction be exercised. However the nature of the jurisdiction that could be exercised is essentially binary; should he be returned to this jurisdiction or not. That is of course a very significant welfare order to make in respect of a child who I have concluded is habitually resident in Nepal. It is inconceivable that the jurisdiction would be exercised without a careful welfare evaluation of whether such an order would be in his welfare interests. In the circumstances of this case I will invite the Cafcass High Court team to undertake an enquiry into AA's wishes and feelings and into the issue of whether he should be returned to this jurisdiction. If the High Court team consider that it is in his best interest to be joined as a party to these proceedings they will report on that also, but it does not seem to me at this stage that it is essential that he be joined. The mother said that AA had mentioned to her getting his own lawyer and if that is the position he takes when Cafcass speak to him they may well accept that it is an appropriate case for him to be granted party status and for him either to have his voice heard through a Guardian and the Cafcass legal or by alternative means.

50. I will therefore make an order that dismisses the father's applications for child arrangements orders and which case manages the inherent jurisdiction application seeking a summary return. I will invite the Cafcass High Court team to provide a report. The father and the mother will need to set out their respective cases on the options for AA going forward. The matter will then need to be timetabled for a further hearing before me for directions.
51. I will reserve all further applications in relation to AA to myself. If the mother wishes to return to this jurisdiction in order to attend her daughter's graduation or anything else she can apply to me to settle the terms upon which she and AA may return that of course may include an application to enable him to return temporarily and to then return to Nepal but that will have to be determined if and when and in the circumstances it is made.
52. That is my judgment.